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## **Schumer, Specter Unveil Revised Reporter Shield Bill That Addresses National Security Concerns, Clearing Way For Passage by Key Senate Panel**

### **Bill, Endorsed By 72 Media Organizations, Would Create a Legal Protection For Journalists Guarding Their Sources' Anonymity**



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Bill, Endorsed By 72 Media Organizations, Would Create a Legal Protection For Journalists Guarding Their Sources' Anonymity

Revised Version Clarifies Exception To The Privilege In Terrorism Cases; Also Adopts Court-Settled Standard For Defining a Journalist

Previous Version Of Bill Passed Committee 15-4 in 2007, But Never Reached Senate Floor

In a move that should ease passage for a landmark reporter shield law, U.S. Senators Charles E. Schumer (D-NY) and Arlen Specter (D-PA) released a revised version of their legislation Thursday that includes new provisions that further protect national security interests. The amended bill, unveiled today before the Senate Judiciary Committee, retains the support of the newspaper industry, which has long sought a legal protection for journalists guarding the anonymity of their sources.

Schumer and Specter's bill—which, in its previous form, earned committee approval by a 15-4 margin in 2007 but never advanced to the floor—is expected to pass the Senate Judiciary Committee again one week from today. The bipartisan proposal is co-sponsored by Judiciary Committee Chairman Patrick Leahy, as well as Senators Lindsey Graham (R-SC), Richard Lugar (R-IN) and Senator Amy Klobuchar (D-MN). It has also been endorsed by 42 state attorneys general and 72 media organizations, including

The New York Times, the Washington Post, the Washington Times, the Associated Press, and Gannett Newspapers.

“This compromise accommodates both the need for Americans to be safe, and the right of Americans to be free in a country with an unencumbered press,” Schumer said. “We have come close to passing this bill in the past, and these changes should help us finally cross the finish line this Congress. Our revised bill strikes an appropriate balance between the government’s strong national security interest in these cases against the public’s right to know.”

“This bipartisan compromise legislation creates a fair and efficient means to serve journalists and the news media, prosecutors and the courts, and, most importantly, the public interest,” Specter said. “I urge my colleagues to join Senator Schumer and me in passing this key legislation.”

Currently, 49 states, plus the District of Columbia, provide some measure of legal protection to reporters who decline, even under the threat of being held in contempt of court, to disclose the identity of confidential sources. However, no federally recognized protection exists. The Free Flow of Information Act seeks to change that by establishing a qualified privilege for reporters to withhold confidential source information obtained or created under a promise of confidentiality. The legislation has always accounted for the fact that, in certain instances, the public’s interest in national security, law enforcement and fair trials outweighs the public’s First Amendment interest in permitting reporters to protect the identify of sources. One of the changes announced Thursday clarifies an exception to the privilege when the information at issue concerns an act of terrorism. The bill now states that the government may compel information from a reporter when the information would “materially assist” in not just preventing such threats, but in mitigating or identifying the perpetrator of such threats. Taken together with the existing provisions, the revised bill now outlines three types of instances where no privilege applies:

- When a court determines that the information came from criminal conduct, or from observing criminal conduct
- When the information is material to preventing, mitigating, or identifying an act of terrorism;
- When the information is reasonably necessary to stop, prevent, or mitigate a specific case of death, kidnapping, or substantial bodily harm.

In every other instance, the legislation provides for a balancing test that a judge must apply to weigh any national security considerations against the public’s right to a free press.

Among other changes, in a case involving a leak of classified information, the bill no longer requires the government to try to prove that the leak was from an authorized person at the same time that the government is trying to figure out who that person is. The new bill also tightens the definition of a “covered person” in response to concerns expressed by Senators Dick Durbin (D-IL) and Dianne Feinstein (D-CA). The new definition follows the “von Bulow” standard, taken from the First Circuit Court of Appeals case; it applies only to reporters who have the intent to engage in a list of journalistic activities, and who engage in them regularly.

The bill also includes language to clarify that neither Foreign Intelligence Surveillance Act nor grand jury laws nor defamation or libel laws are affected by this bill.

The changes were accepted unanimously by the committee Thursday, and the revised bill is scheduled for consideration next week.