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Affiliations appear only for purposes of identification.

By email

June 7, 2024

United States Senate
Washington, D.C. 20510

Re: Support the PRESS Act (S. 2074/H.R. 4250).

Dear Senator:

The Reporters Committee for Freedom of the Press and the 53 undersigned news media and press rights organizations write in strong support of the Protect Reporters from Exploitative State Spying, or PRESS, Act. The PRESS Act would provide essential protections for the public's right to know.

The bill passed unanimously in the House of Representatives earlier this Congress. We urge Senate leadership to advance the bill this term and similarly urge Senators to support the measure if it does advance.

The PRESS Act is timely and critical. Absent a federal law, journalists' protections in federal courts against the compelled disclosure by federal officials of confidential source information or sensitive newsgathering materials vary considerably by jurisdiction.¹ And, in recent years, under administrations of both parties, the Justice Department and other federal agencies have sought sensitive records from or of journalists on multiple occasions. While the Department of Justice adopted new internal guidance in 2021 sharply limiting that practice at DOJ, the policy remains subject to change at the department's discretion and other federal agencies are not bound by it.²

Only Congress can provide the press the certainty of a federal statute and, in doing so, vindicate the core principle that, when our Constitution was adopted, "[t]he press was protected so that it could bare the secrets of government and inform the people." *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1981) (Black, J., concurring).

The PRESS Act, which passed in the House of Representatives on January 18, 2024, would shield reporters from having to disclose information identifying confidential sources as well as records, communications content, documents, or information that the journalist

¹ For a thorough accounting of the law on reporter's privileges in every federal and state jurisdiction, see *Reporters Privilege Compendium*, Reporters Comm. for Freedom of the Press, <https://www.rcfp.org/reporters-privilege/> (last visited June 5, 2024).

² See 28 C.F.R. § 50.10 (2022); Bruce D. Brown & Gabe Rottman, *A Major Milestone in the Fight for Press Freedom*, CNN (Oct. 28, 2022), <https://perma.cc/7EL5-737X>.

obtained or created as part of their journalism. The bill also bars government demands for that data to third parties like phone or email providers unless a court finds a reasonable threat of imminent violence absent the disclosure. And it helpfully uses a functional definition of journalist that focuses on the gathering and reporting of news to the public.

The bill includes narrow exceptions. A court can order the disclosure of protected information from a covered journalist when it determines that it is necessary to prevent or identify the perpetrator of an act of terrorism against the United States, or to prevent a threat of imminent violence, significant bodily harm, or death, including specified offenses against a minor. It also does not apply when the journalist is suspected of having committed a crime.

When one of these exceptions does apply and the government seeks records from a third-party, the bill provides for strong notice provisions to ensure news organizations can negotiate the scope of a request for records or challenge it in court. The government would be able to delay this notice when a judge determines that providing it would pose a “clear and substantial threat to the integrity of a criminal investigation, or would present an imminent risk of death or serious bodily harm.”

The PRESS Act is a reasonable, common-sense measure to preserve the free flow of information to the public, as evidenced by its broad bipartisan support and the fact that 49 states and the District of Columbia have similar protections. All reflect the reality that the press cannot fulfill its constitutionally recognized watchdog role without some safeguard for confidential source identities and sensitive newsgathering material. Congress must step in to provide a durable shield at the federal level.

Please do not hesitate to contact Bruce D. Brown or Gabe Rottman with any questions. They can be reached by email at bruce.brown@rcfp.org and grottman@rcfp.org, respectively.

Sincerely,

Reporters Committee
for Freedom of the Press

Advance Publications, Inc.
American Broadcasting Companies, Inc.
The Associated Press
The Atlantic
Axios Media Inc.
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Boston Globe Media Partners, LLC
BuzzFeed
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