

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

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Affiliations appear only for purposes of identification.

By email

December 7, 2022

United States Senate  
Washington, D.C. 20510

Re: Support the PRESS Act (H.R. 4330/S. 2457).

Dear Senator:

The Reporters Committee for Freedom of the Press and the 15 undersigned members and representatives of the news media write in strong support of the federal reporters' shield bill currently pending before the Senate, titled the "PRESS Act" (H.R. 4330/S. 2457). 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 this bill during the 117th Congress, and similarly urge Senators to support the measure if it does advance.**

This bill is timely and critical. Absent a federal law, journalists' protections in court against compelled disclosure of source information or work product by federal authorities vary considerably from jurisdiction to jurisdiction.<sup>1</sup> But there is widespread recognition of the need for this protection at the state level; 49 states and the District of Columbia recognize a reporter's privilege or have some sort of reporter's shield law.<sup>2</sup> In recent years, under administrations of both parties, the Justice Department has sought sensitive records from or of journalists in expansive national security investigations on multiple occasions.<sup>3</sup> While the Department of Justice recently adopted new regulations that will sharply limit that practice,<sup>4</sup> they remain subject to change by the next administration. **Only Congress can provide the press the durable protection of a federal statute.**

<sup>1</sup> For a thorough accounting of the law on reporter's privileges in every state and federal jurisdiction, see *Reporters Privilege Compendium*, Reporters Comm. for Freedom of the Press, <https://www.rcfp.org/reporters-privilege/> (last visited Dec. 4, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> See Letter from Reporters Comm. for Freedom of the Press and Media Coalition to Eric Holder, Att'y Gen. and James M. Cole, Deputy Att'y Gen., on AP subpoena (May 14, 2013), <https://perma.cc/64CH-5CTT>; Letter from Reporters Comm. for Freedom of the Press and Media Coalition to Eric Holder, Att'y Gen., on amending 28 C.F.R. § 50.10 (June 21, 2013), <https://perma.cc/M5RT-8EHG>; Bruce D. Brown and Gabe Rottman, *Everything We Know About the Trump-Era Records Demands From the Press*, Lawfare (July 6, 2021), <https://perma.cc/2WHS-4T7X>.

<sup>4</sup> 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/7ELS-737X>.

The PRESS Act would meet that need, providing reporters a robust shield against the compelled disclosure of newsgathering information and standardizing journalists’ rights across the federal courts. It would codify into federal law the important protections that the Department of Justice has established to ensure that those safeguards have lasting force. And it would 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.”<sup>5</sup> We respectfully urge you to advance the bill and to support its passage.

Specifically, the PRESS Act would shield journalists from the forced disclosure of information about their newsgathering, including information that could identify confidential sources. As courts have often observed, “journalists frequently depend on informants to gather the news, and confidentiality is often essential to establishing a relationship with an informant.”<sup>6</sup> As a result, the Department of Justice has explained, there is “an important national interest in protecting journalists from compelled disclosure of information revealing their sources, sources they need to apprise the American people of the workings of their government.”<sup>7</sup>

To that end, the PRESS Act would extend reporters important legal protections with respect to “any information identifying a source who provided information as part of engaging in journalism” as well as “any records, contents of a communication, documents, or information that a covered journalist obtained or created as part of engaging in journalism.”<sup>8</sup> The bill generally bars government requests for that data to third parties like cell phone providers or social media companies,<sup>9</sup> in addition to efforts to compel the same information from journalists directly.<sup>10</sup>

Exceptions for process directed at third parties are narrowly drawn to accommodate cases where a court finds there is “a reasonable threat of imminent violence.”<sup>11</sup> The same exception exists for process directed at journalists,<sup>12</sup> as well as an exception when the information is needed to “prevent, or to identify any perpetrator of, an act of terrorism against the United States.”<sup>13</sup> When an exception does apply, the bill requires the government to “inform the court” that a journalist’s records are at issue,<sup>14</sup> and gives the journalist notice and an opportunity to be heard, except when a judge determines that providing advance notice “would pose a clear and substantial threat to the

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<sup>5</sup> *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1981) (Black, J., concurring).

<sup>6</sup> *Zerilli v. Smith*, 656 F.3d 705, 711 (D.C. Cir. 1981).

<sup>7</sup> Memorandum from the Att’y Gen. Regarding Use of Compulsory Process to Obtain Information From, or Records of, Members of the News Media (July 19, 2021), <https://perma.cc/428V-FX24>.

<sup>8</sup> S. 2457, 117th Cong. § 2(8). We cite to the Senate version of the bill, S. 2457, which corresponds with only minor, immaterial, differences to the House-passed bill, H.R. 4330.

<sup>9</sup> *See id.* § 4(a).

<sup>10</sup> *See id.* § 3.

<sup>11</sup> *Id.* § 4(a).

<sup>12</sup> *Id.* § 3(1). The House-passed version of the legislation uses the language “imminent violence, significant bodily harm, or death, including specified offenses against a minor (as defined by section 111(7) of the Adam Walsh Child Protection and Safety Act of 2006 (34 U.S.C. 20911(7)))” in this provision.

<sup>13</sup> *Id.* § 3(2).

<sup>14</sup> *Id.* § 4(b).

integrity of a criminal investigation, or would present an imminent risk of death or serious bodily harm.”<sup>15</sup>

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The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The 15 undersigned are news organizations and their representatives. Again, we respectfully urge the Senate to pass this essential protection for the public’s right to know.

Please do not hesitate to contact Bruce D. Brown, Reporters Committee Executive Director; or Gabe Rottman, director of the Technology and Press Freedom Project at the Reporters Committee with any questions. They can be reached by email at [bruce.brown@rcfp.org](mailto:bruce.brown@rcfp.org) and [grottman@rcfp.org](mailto:grottman@rcfp.org).

Sincerely,

Reporters Committee  
for Freedom of the Press

ABC News  
The Associated Press  
Bloomberg News  
Boston Globe Media Partners, LLC  
Cable News Network, Inc.  
CBS News  
Gannett Co., Inc.  
Hearst Corporation  
Los Angeles Times Communications LLC  
National Public Radio, Inc.  
NBCUniversal News Group Inc.  
The New York Times Company  
News Media Alliance  
Tribune Publishing Company  
The Washington Post

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<sup>15</sup> *Id.* § 4(c). The House-passed version of the legislation adds “including specified offenses against a minor (as defined by section 111(7) of the Adam Walsh Child Protection and Safety Act of 2006 (34 U.S.C. 20911(7)))” to this exception.