

## Federal Shield Bill Introduced Again in Congress

### Digital Media and Data Privacy Law Blog

on 02.18.2009

Posted in Shield Laws

After a number of years in which proposed federal shield statutes have stalled in Congress, news media interests are optimistic that this time will be the charm. Last week bills were introduced in both the House of Representatives and the Senate that would create a qualified privilege for journalists subject to federal subpoenas akin to the protections journalists currently have under many state shield statutes.

Dubbed the "Free Flow of Information Act of 2009," Senators Specter, Schumer, Lugar, and Graham introduced S. 448 last Friday. The bill mirrors H.R. 985, which was also introduced in the House last week. The House bill provides that:

In any matter arising under Federal law, a Federal entity may not compel a covered person to provide testimony or produce any document related to information obtained or created by such covered person as part of engaging in journalism, unless a court determines by a preponderance of the evidence, after providing notice and an opportunity to be heard to such covered person [that certain enumerated provisions have been met].

The House bill provides that the party seeking material from a journalist may overcome the privilege by demonstrating that: (1) alternative avenues to obtain the information have been exhausted; (2) the information sought is critical to the investigation or proceeding; (3) the public interest favors disclosure of the information; and (4) if the information would reveal the identity of a source of information, disclosure is necessary to prevent an act of terrorism, to prevent imminent bodily harm, to identify a person who has disclosed a trade secret or other confidential information, or to identify a person who has disclosed classified information that may harm national security. The House bill also contains exceptions for journalists who are eyewitnesses to or who commit a crime.

The Senate bill is comparable, as were the bills introduced in the last session of Congress. In connection with introducing S. 448, Senator Schumer issued the following statement:

Federal Shield Bill Introduced Again in Congress

A truly free press is the lifeblood of our democracy. This compromise bill takes a reasonable and balanced approach to keeping us free and safe. We have worked closely together to craft a careful bill that protects both the freedom of the press and the safety of our citizens. In a free and democratic country, we should be able to do both – and this bill does.

The change in Presidential administrations has given The Reporters Committee for the Freedom of the Press and other organizations that have advocated for a federal shield law cause for optimism. President Bush and his Justice Department opposed prior federal shield bills, and President Bush threatened to veto such a bill if it passed Congress. In contrast, both President Obama and Attorney General Holder have voiced their support for a federal shield law. We will follow closely the progress of the Free Flow of Information Act of 2009 as it wends its way through Congress.