

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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June 23, 2008

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*Attorney General of Idaho*

*Via Facsimile*

The Honorable Harry Reid  
Majority Leader  
United States Senate  
S-221 Capitol Building  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
S-230 Capitol Building  
Washington, DC 20510

Dear Senators Reid and McConnell:

We, the undersigned Attorneys General, write to express our support for the Free Flow of Information Act (S. 2035). The proposed legislation would recognize a qualified reporter's privilege, bringing federal law in line with the laws of 49 states and the District of Columbia, which already recognize such a privilege. The Senate Judiciary Committee reported S. 2035 favorably on October 4, 2007, by a vote of 15-4. The House passed a similar reporter's privilege bill, H.R. 2102, by a vote of 398-21.

Justice Brandeis famously referred to the important function the states perform in our federal system as laboratories for democracy, testing policy innovations. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Reporter shield laws, which have been adopted – through either legislation or judicial decision – by every state but one,<sup>1</sup> must now be viewed as a policy experiment that has been thoroughly validated through successful implementation at the state level.

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<sup>1</sup> Wyoming has yet to address the issue.

The reporter's privilege that is recognized by the laws of 50 United States jurisdictions rests on a determination that an informed citizenry and the preservation of news information sources are vitally important to a free society. By affording some degree of protection against the compelled disclosure of a reporter's confidential sources, these state laws advance a public policy favoring the free flow of information to the public. An overwhelming consensus has developed among the states in support of this public policy, and United States Justice Department guidelines, on which the current legislation is largely modeled, likewise recognize the interest in protecting the news media from civil or criminal compulsory process that might impair the news gathering function. Nevertheless, the federal courts are divided on the existence and scope of a reporter's privilege, producing inconsistency and uncertainty for reporters and the confidential sources upon whom they rely.

By exposing confidences protected under state law to discovery in federal courts, the lack of a corresponding federal reporter's privilege law frustrates the purposes of the state-recognized privileges and undercuts the benefit to the public that the states have sought to bestow through their shield laws. As the states' chief legal officers, Attorneys General have had significant experience with the operation of these state-law privileges; that experience demonstrates that recognition of such a privilege does not unduly impair the task of law enforcement or unnecessarily interfere with the truth-seeking function of the courts. The sponsors of S. 2035 have sensibly sought to strike a reasonable balance between these important interests, as the states have done, and we are confident that the legitimate concerns for national security and law enforcement can be addressed in the court procedures for evaluating a claim of privilege.

We urge you to support the Free Flow of Information Act and to enact legislation harmonizing federal law with state law on this important subject.

Thank you for your consideration of our views.

Sincerely,



Douglas Gansler  
Attorney General of Maryland



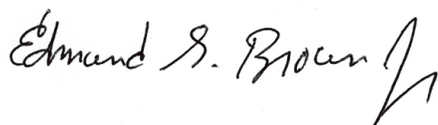
Rob McKenna  
Attorney General of Washington



Terry Goddard  
Attorney General of Arizona



Dustin McDaniel  
Attorney General of Arkansas



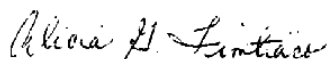
Edmund G. Brown Jr.  
Attorney General of California



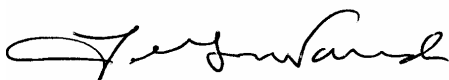
Richard Blumenthal  
Attorney General of Connecticut



Bill McCollum  
Attorney General of Florida



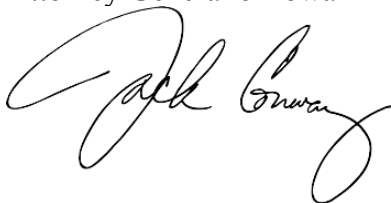
Alicia G. Limtiaco  
Attorney General of Guam



Lawrence Wasden  
Attorney General of Idaho



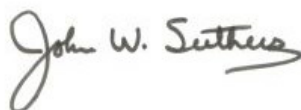
Tom Miller  
Attorney General of Iowa



Jack Conway  
Attorney General of Kentucky



G. Steven Rowe  
Attorney General of Maine



John Suthers  
Attorney General of Colorado



Joseph R. Biden III  
Attorney General of Delaware



Thurbert E. Baker  
Attorney General of Georgia



Mark J. Bennett  
Attorney General of Hawaii



Lisa Madigan  
Attorney General of Illinois



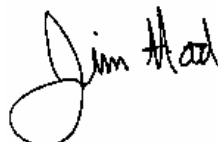
Stephen N. Six  
Attorney General of Kansas



James D. "Buddy" Caldwell  
Attorney General of Louisiana



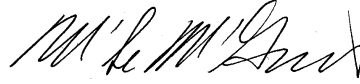
Michael Cox  
Attorney General of Michigan



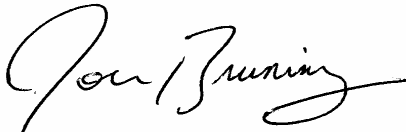
Lori Swanson  
Attorney General of Minnesota



Jim Hood  
Attorney General of Mississippi



Jeremiah Nixon  
Attorney General of Missouri



Mike McGrath  
Attorney General of Montana



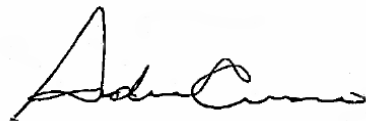
Jon Bruning  
Attorney General of Nebraska



Catherine Cortez Masto  
Attorney General of Nevada



Kelly A. Ayotte  
Attorney General of New Hampshire



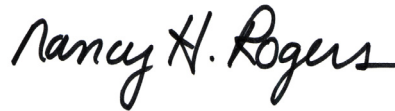
Gary King  
Attorney General of New Mexico



Andrew Cuomo  
Attorney General of New York



Roy Cooper  
Attorney General of North Carolina



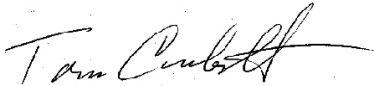
Wayne Stenehjem  
Attorney General of North Dakota



Nancy Hardin Rogers  
Attorney General of Ohio



W. A. Drew Edmondson  
Attorney General of Oklahoma



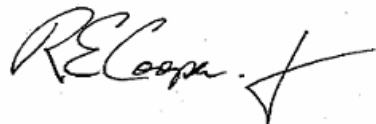
Hardy Myers  
Attorney General of Oregon



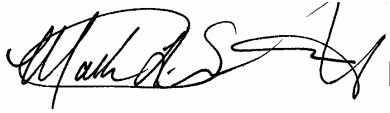
Tom Corbett  
Attorney General of Pennsylvania



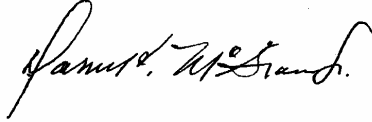
Henry McMaster  
Attorney General of South Carolina



Lawrence E. Long  
Attorney General of South Dakota

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Mark Shurtleff  
Attorney General of Utah

A handwritten signature in black ink, appearing to read "Darrell V. McGraw Jr.".

Darrell V. McGraw Jr.  
Attorney General of West Virginia

Robert E. Cooper, Jr.  
Attorney General of Tennessee

A handwritten signature in black ink, appearing to read "William H. Sorrell".

William H. Sorrell  
Attorney General of Vermont

Cc: The Honorable Arlen Specter  
The Honorable Charles Schumer  
The Honorable Patrick Leahy  
The Honorable Lindsey Graham  
The Honorable Richard Lugar  
The Honorable Christopher Dodd  
James McPherson, Executive Director, NAAG  
Blair Tinkle, General Counsel and Congressional Liaison, NAAG