

EXECUTIVE SUMMARY

1. **Summary:** This Recommendation expresses support for the principles inherent in the current legislative initiative for a Federal Shield Law for journalists entitled the “Free Flow of Information Act of 2005” in order to protect the public’s right to know and the fair administration of justice.
2. **Summary of the Issue:** The issue presented is whether Congress should enact a Federal Shield Law for reporters, so as to provide reporters with some measure of protection when they are subpoenaed to disclose the identities of confidential sources or other information that they obtain in the course of their work. There is broad support for such protection on the state level. Forty-nine states provide protection in one form or another either by statute or judicial decision. In contrast, recent decisions from federal courts highlight the inconsistent treatment of the privilege in the federal system, with some federal courts refusing to recognize any privilege. There is concern that without federal protection, not only will reporters continue to be subjected to differing judicial treatment for the same conduct based solely upon the forum of the proceeding, but more importantly, there will be a limiting of information available to the public. Many sources for important stories (*e.g.*, a whistleblower or critic of government) need a promise of confidentiality before they will speak to a reporter due to concerns for physical safety or professional job security. If reporters are not in a position to grant confidentiality, or if sources believe that a reporter will not keep his or her promise of anonymity, sources will be less willing to speak with reporters and information going to the public will be chilled.
3. **Explanation:** This Recommendation addresses the issue by supporting the principles inherent in the pending federal shield law legislation. Because the text of the actual bill may change in the legislative process, the Recommendation is stated in terms of inherent principles underlying the proposed legislation. Those principles include the concept that the public’s right to know should be protected by establishing reasonable standards and balances for both compelling and shielding journalists with respect to subpoenas requiring them to disclose the names of sources and other information they collect in the course of their work.
4. **Minority Views:** No minority views or opposition have been identified at this time.