

Cheryl Ewen

From: Paul Heintz <paul@sevendaysvt.com>
Sent: Tuesday, February 28, 2017 1:41 PM
To: Jeanette White; Richard Sears; Luke Martland; Brian Collamore; Claire Ayer; Alison Clarkson; Christopher Pearson; Cheryl Ewen
Cc: David Gram
Subject: shield law feedback from the Vermont journalism community

Dear Sen. White, Sen. Sears, members of the Senate Government Operations Committee and Luke Martland,

Thank you again for taking the time to consider S.96. We appreciate your commitment to the First Amendment — and to protecting the journalists and sources essential to an informed debate.

As you requested last Thursday, we have been working to reach consensus throughout Vermont's journalism community — including print, television, radio, online and freelance reporters. To that end, we expect to be joined tomorrow afternoon in Senate Government Operations by three representatives of the broadcast industry: Vermont Public Radio news director John Dillon, WCAX-TV lobbyist Andrew MacLean and Vermont Broadcasters Association executive director Jim Condon.

As you also requested, we are providing below several specific changes we hope you will consider making to the current version of S.96:

1. We think it would be simpler and more effective to protect (and define) *journalism*, rather than the *journalist*. We would propose replacing “person ... employed by the news media” throughout S.96 with “person engaged in journalism.” And we would define journalism as “the gathering, preparing, or distributing of news or information with the primary purpose to investigate and report on events and procure material for public dissemination, whether or not the information is ultimately published.”

2. We would like the "compelled disclosure prohibited" section to be simple and broad. It should say "no judicial, legislative, administrative, or other body or individual with the power to issue a subpoena shall compel a journalist, as defined in Sec. 7201 of this section, to disclose information gathered while engaged in journalism."

3. We believe that the simplest and strongest shield law you could write would establish an absolute privilege for all journalism, as described above. That said, we recognize and appreciate that you may not be willing to go that far. If necessary, we could accept an approach akin to the New York State model, which establishes an absolute privilege for all information obtained in confidence, and a qualified privilege for all other information.

4. The balancing test for such a qualified privilege, however, would have to be tighter than currently described in S. 96. We believe that the exceptions as drafted — “relevant to a significant legal issue” and “overriding public interest” — are too broad.

5. There should be a provision in the bill barring subpoenas to third parties — mobile phone companies, internet service providers and the like — with the aim of making an end-run around the prohibition on seeking information gained by journalists in the course of news gathering.

6. We like the no implication of waiver section in your draft.

7. We would like the effective date to apply retroactively to information obtained in the course of journalism prior to the law's effective date.

Please let us know if there's any additional information we can provide in advance of or during Wednesday's meeting.

Thanks very much,

Paul Heintz and Dave Gram, on behalf of the journalists who testified last week

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// SEVEN DAYS //

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