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# Chapter 519: Fortifying California's Reporters' Shield

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## *Civil Procedure*

### Chapter 519: Fortifying California’s Reporters’ Shield

*Devina Douglas*

*Code Section Affected:*

Code of Civil Procedure § 1986.1 (amended).  
SB 558 (Lieu); 2013 STAT. Ch. 519.

#### I. INTRODUCTION

Most Americans expect the media to “expose private and public corruption, to keep government honest, and to better inform our citizenry about the events that shape our lives.”<sup>1</sup> In order for citizens to understand what is happening behind closed doors within our government, it is essential that news sources feel free to speak confidentially and anonymously to reporters.<sup>2</sup> So when the news broke in May 2013 that the US Department of Justice (DOJ) secretly seized the phone records of editors and reporters from the Associated Press (AP), purportedly to assess governmental security leaks,<sup>3</sup> the response was bitter.<sup>4</sup> The journalist community called it “‘a massive and unprecedented intrusion’ on the free press,”<sup>5</sup> and the American Civil Liberties Union called it “‘an unacceptable abuse of power.’”<sup>6</sup> In the days that followed, the Seattle Times Editorial Board

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1. *Greater Protection from Secret Monitoring of California Journalists Goal of Sen. Ted W. Lieu Bill*, OFFICE OF SENATOR TED LIEU (June 25, 2013), <http://sd28.senate.ca.gov/news/2013-06-25-greater-protection-secret-monitoring-california-journalists-goal-sen-ted-w-lieu-bill#sthash.mF52BkTK.dpuf> [hereinafter *Greater Protection*] (on file with the *McGeorge Law Review*).

2. Peter Y. Sussman, *Principle Protection—A Free Press/Is a Court’s Need to Identify Sources Worth Eroding Trust in an Independent Media?*, SFGATE (Feb. 29, 2000, 4:00 AM), <http://www.sfgate.com/opinion/openforum/article/Principle-Protection-A-Free-Press-Is-a-2772725.php> [hereinafter *Principle Protection*] (on file with the *McGeorge Law Review*); Editorial, *Need for Shield Law Magnifies*, MONTANA STANDARD (May 26, 2013), [http://mtstandard.com/news/opinion/need-for-shield-law-magnifies/article\\_e1e0\\_8d46-c4d4-11e2-9111-0019\\_bb2963f4.html](http://mtstandard.com/news/opinion/need-for-shield-law-magnifies/article_e1e0_8d46-c4d4-11e2-9111-0019_bb2963f4.html) [hereinafter *Need for Shield Law Magnifies*] (on file with the *McGeorge Law Review*).

3. Charlie Savage & Leslie Kaufman, *Phone Records of Journalists Seized by U.S.*, N.Y. TIMES (May 13, 2013), [http://www.nytimes.com/2013/05/14/us/phone-records-of-journalists-of-the-associated-press-seized-by-us.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/05/14/us/phone-records-of-journalists-of-the-associated-press-seized-by-us.html?pagewanted=all&_r=0) (on file with the *McGeorge Law Review*).

4. See Lynn Oberlander, *The Law Behind the A.P. Phone-Record Scandal*, THE NEW YORKER (May 14, 2013), <http://www.newyorker.com/online/blogs/newsdesk/2013/05/ap-phone-record-scandal-justice-department-law.html> [hereinafter *Oberlander*] (on file with the *McGeorge Law Review*) (stating that the records were needed purportedly to “investigat[e] the leak of information concerning the C.I.A.”).

5. Joseph Straw, *Associated Press Blasts Feds in Secret Seizure of Journalists’ Phone Records Tied to Story on Al Qaeda-Yemen Spying Operation*, N.Y. DAILY NEWS (May 13, 2013), <http://www.nydailynews.com/news/politics/ap-raps-feds-secret-grab-phone-records-article-1.1343107> (on file with the *McGeorge Law Review*) (quoting AP CEO Gary Pruitt).

6. *Id.* (quoting Ben Wizner of the American Civil Liberties Union).

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dubbed President Obama “the worst modern president for press freedom.”<sup>7</sup> As this intrusion frayed the fabric of America’s free press, trusted sources have stopped talking to the media.<sup>8</sup> Some, such as AP CEO Gary Pruitt, are calling for “a federal shield law ‘with teeth’” to protect the media.<sup>9</sup> California has already moved to protect reporters located in the state, by closing a legal loophole—the one exploited by the DOJ—that had persisted since the 1980s<sup>10</sup> in order to demonstrate that, in this state, news agencies “will be able to operate freely and independently of the government.”<sup>11</sup>

## II. LEGAL BACKGROUND

This Part first summarizes the Federal and State constitutionally-guaranteed right to free speech.<sup>12</sup> It then discusses California’s Reporter’s Shield Law<sup>13</sup> and California’s Code of Civil Procedure Section 1986.1, as that Section existed prior to the amendments made by Chapter 519.<sup>14</sup>

### A. *The Constitutionally-Guaranteed Right to Free Speech and the Media*

Americans have long valued the free flow of information—so much so, that the right was enshrined in the First Amendment to the Constitution.<sup>15</sup> For the media, exercising this right often depends on a reporter’s ability to gather information from anonymous sources.<sup>16</sup> The United States Supreme Court first recognized a journalist’s qualified<sup>17</sup> right to protect a source in the early 1970s.<sup>18</sup>

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7. Editorial, *Obama’s Weak Record on Freedom of the Press*, SEATTLE TIMES (May 20, 2013, 4:09 PM), [http://seattletimes.com/html/editorials/2021023871\\_editassociatedpressxml.html](http://seattletimes.com/html/editorials/2021023871_editassociatedpressxml.html) (on file with the *McGeorge Law Review*).

8. Jennifer Harper, *Newsgathering Has Taken a Hit Since AP Phone Records Seized*, THE WASHINGTON TIMES (June 19, 2013), <http://www.washingtontimes.com/news/2013/jun/19/newsgathering-has-taken-a-hit-since-ap-phone-recor/> (on file with the *McGeorge Law Review*).

9. *Id.*

10. CAL. CODE CIV. PROC. § 1986.1 (amended by Chapter 519).

11. Telephone interview with Ted Lieu, California Senator (July 18, 2013) [hereinafter *Lieu Interview*] (on file with the *McGeorge Law Review*).

12. *Infra* Part II.A.

13. *Infra* Part II.B.

14. *Infra* Part II.C.

15. U.S. CONST. amend. I.

16. *Principle Protection*, *supra* note 2.

17. *Branzburg v. Hayes*, 408 U.S. 665, 667 (1972). It is a “qualified” right because reporters cannot refuse to answer questions if they witnessed criminal activity, they can only refuse if the subpoena was “issued in bad faith, or if there were no legitimate law enforcement need for the information.” *Introduction—Legislative Protection of News Sources—The Constitutional Privilege and its Limits*, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS (last visited July 1, 2013) [hereinafter *The Constitutional Privilege and its Limits*], <http://www.rcfp.org/first-amendment-handbook/introduction-legislative-protection-news-sources-constitutional-privilege-a> (on file with the *McGeorge Law Review*).

18. *See Branzburg*, 408 U.S. at 725–52 (recognizing the qualified reporter’s privilege).

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In that case, Justice Stewart took the position that anything less would force the media to work as “an investigative arm of government.”<sup>19</sup> Since that time, the media has noted that without this protection, the government may also require the media to serve as a “convenient conduit” between attorneys and elusive witnesses if the attorney deems it too time-consuming or expensive to otherwise find these sources.<sup>20</sup> To prevent these issues, and because being able to guarantee confidentiality to sources is often crucial to a journalist’s ability to uncover a story,<sup>21</sup> the “primary purpose” of reporter’s shield laws throughout the country “is to safeguard the media’s ‘future ability to gather news.’”<sup>22</sup>

While all but one state have some sort of protection preventing journalists from having to reveal their sources,<sup>23</sup> the recent AP wiretapping scandal has demonstrated that a nationwide loophole in these laws still exists: as long as entities can subpoena records related to a reporter’s contacts with her sources, a confidential source’s identity may be exposed.<sup>24</sup> Some, including the Reporters Committee for Freedom of the Press (RC), feel this loophole “undercut[s] the media’s independence from government” and could ultimately dissuade journalists from sharing important news pieces with readers.<sup>25</sup> There is further concern that, if left unchecked, the DOJ’s use of subpoenas to gain access to information may become a pervasive practice.<sup>26</sup>

*B. California’s Reporters’ Shield Law*

California’s Reporters’ Shield Law expands upon the freedom of speech granted by the First Amendment of the United States Constitution.<sup>27</sup> Not only does it assure “[e]very person may freely speak, write and publish” thoughts and

19. *Id.* at 725. (Stewart, J., dissenting).

20. *Principle Protection*, *supra* note **Error! Bookmark not defined.** (detailing the plight of a small-town newspaper editor jailed for failing to disclose the identities of his sources to an attorney defending a man against criminal charges).

21. *Id.*

22. *Rancho Publications v. Super. Ct.*, 68 Cal. App. 4th 1538, 1542–43, 81 Cal.Rptr.2d 274 (1990) (citing *Delaney*, 50 Cal. 3d 785, 810).

23. *The Constitutional Privilege and Its Limits*, *supra* note 17 (reporting Wyoming does not have any type of reporter’s shield law).

24. Aaron Sankin, *California Journalist Shield Law Extension Proposed After AP Wiretapping Scandal*, HUFFINGTON POST (May 26, 2013) [hereinafter Sankin], [http://www.huffingtonpost.com/2013/05/26/california-journalist-shield-law\\_n\\_3334253.html](http://www.huffingtonpost.com/2013/05/26/california-journalist-shield-law_n_3334253.html) (on file with the *McGeorge Law Review*).

25. *The Constitutional Privilege and its Limits*, *supra* note 17. The Reporters Committee for Freedom of the Press represents the interests of over 2,000 people within the journalistic community. REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, <http://www.rcfp.org/about> (last visited July 5, 2013) (on file with the *McGeorge Law Review*).

26. See William Dotinga, *Reporter Shield Laws Get a Boost in California*, COURTHOUSE NEWS SERVICE (July 5, 2013, 10:21 AM) [hereinafter Dotinga], <http://www.courthousenews.com/2013/07/05/59129.htm> (on file with the *McGeorge Law Review*) (quoting Senator Lieu as saying “[t]he U.S. Department of Justice just gave a roadmap on ways to bypass the shield law”).

27. U.S. CONST. amend. I.

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opinions,<sup>28</sup> but it also prevents journalists from being held in contempt of court for refusing to reveal the source<sup>29</sup> of published or unpublished information.<sup>30</sup>

### C. Journalist's Immunity Rights and Subpoenas

Section 1986.1, added to the California Code of Civil Procedure in 2000, protects the “important constitutional rights” of witnesses that are not parties to a lawsuit.<sup>31</sup> It states that journalists do not waive the aforementioned immunity if they testify in court about other matters.<sup>32</sup> The law also requires parties issuing a subpoena to a journalist<sup>33</sup> to provide the journalist five days’ advance notice of the subpoena.<sup>34</sup> This advance notice allows a reporter or news organization time to oppose issuance of the subpoena in court.<sup>35</sup> Further, in order to hold a journalist in contempt for failure to comply with a subpoena, a court must state in its findings: (1) the necessity for the testimony or records and (2) why this information was not available through other sources.<sup>36</sup>

Unfortunately, the media feels the statute (still less than two decades old) has failed to keep up with technology.<sup>37</sup> To reflect technological changes, to prevent an end run-around the reporter’s privilege,<sup>38</sup> and to “ensure that what happened to the AP in Washington, D.C., won’t happen in the Golden State,” Senator Lieu introduced Chapter 519.<sup>39</sup>

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28. *Id.* § 2(a).

29. *Id.* § 2(b).

30. *See id.* § 2(b) (including “but . . . not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated”).

31. CIV. PROC. § 1986.1(a) (West 2007).

32. *Id.* § 1986.1(d) (amended by Chapter 519).

33. *Id.* (amended by Chapter 519) (defining “journalist” consistent with language of CAL. CONST. art 1, § 2). “Journalist” is defined as a “publisher, editor, reporter,” or person connected with, or employed by, “[a] newspaper, magazine, or other periodical publication, or by a press association or wire service,” or radio or television news. *Id.*

34. *Id.* (amended by Chapter 519). The five-day notice does not apply in cases involving exigent circumstances. CIV. PROC. § 1986.1(b) (West 2007).

35. Associated Press, *Bill Would Protect Calif. Reporters’ Phone Records*, NEWS 10 ABC (May 23, 2013) [hereinafter AP], <http://www.news10.net/news/politics/246163/13/Bill-would-protect-Calif-reporters-phone-records> (on file with the *McGeorge Law Review*).

36. CIV. PROC. § 1986.1(c) (amended by Chapter 519).

37. *See generally* Sankin, *supra* note 24 (quoting California Newspaper Publishers Association general counsel Jim Ewert saying Chapter 519 “‘brings California’s shield law into the 21st century by recognizing that there’s material covered under the shield law that is stored or held by a third party, like the cloud or a cell phone provider or a car rental company’”).

38. Lieu Interview, *supra* note 11.

39. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 588, at 4 (June 25, 2013).

### III. CHAPTER 519

Chapter 519 expands the legal protections reporters receive to safeguard information found in the records of their journalistic activities.<sup>40</sup> While retaining language stating that those who wish to subpoena a journalist to testify must give the journalist five days notice before issuing the subpoena, Chapter 519 adds that this same advance-notice requirement now applies when litigants wish to subpoena “records of a journalist” from third parties.<sup>41</sup> Chapter 519 also adds the requirement that the advance notice include a statement of why the particular records are needed and why alternate sources are inadequate. In addition, the law replaces language stating that the only exception is exigent circumstances with language clearly delineating that exceptions are now only to be made in situations “that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm.”<sup>42</sup>

### IV. ANALYSIS

This Part discusses why reporters benefit from learning about third-party subpoenas,<sup>43</sup> how Chapter 519 will ensure increased judicial oversight of the government,<sup>44</sup> whether the law will affect the procedures used in federal courts,<sup>45</sup> and what effect, if any, Chapter 519 will have on the number of anonymous-source stories shared by the media.<sup>46</sup>

#### A. *Why Reporters Need to Know About Third-Party Subpoenas*

One of the most apparent benefits of the amendment to Section 1986.1 is that reporters will finally be made aware of attempts to access records kept by third parties.<sup>47</sup> The notice, which must be made in writing,<sup>48</sup> affords reporters the opportunity to prepare opposition to either quash the subpoena or ensure the requesting party limits the subpoena’s breadth so it does not infringe upon reporters’ right to protect their sources.<sup>49</sup> Proponents of Chapter 519 point out

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40. CIV. PROC. § 1986.1(b)(2) (amended by Chapter 519).

41. *Id.* These “records of a journalist” encompass documents such as cell phone bills, internet use logs, car rental paperwork and notes stored in the Cloud, all of which could provide clues to the identity of protected sources. Sankin, *supra* note 24; *Greater Protection*, *supra* note 1.

42. *Id.* § 1986.1(b)(2) (amended by Chapter 519).

43. *Infra* Part IV.A.

44. *Infra* Part IV.B.

45. *Infra* Part IV.C.

46. *Infra* Part IV.D.

47. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 588, at 3 (June 25, 2013).

48. Email from Ray Sotero, Communications Director for Senator Lieu, to Devina Douglas, Staff Writer, MCGEORGE L. REV. (July 24, 2013 9:40 PST) (on file with the *McGeorge Law Review*).

49. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 588, at 4 (June 25, 2013).

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that previously within California, journalistic protection only applied to “material physically in the reporter’s possession,”<sup>50</sup> and there was no mechanism in place to alert journalists to the fact that litigants were subpoenaing their records held by third parties.<sup>51</sup> With Chapter 519 serving as that mechanism, California law better protects the rights of journalists<sup>52</sup>

### B. Increasing Judicial Oversight of the Government

Chapter 519 allows judicial review of the government’s interactions with those it serves.<sup>53</sup> This oversight was previously incomplete as, prior to Chapter 519, judges were not necessarily a part of the subpoena-issuance process.<sup>54</sup> Some questioned the propriety of this lack of judicial review<sup>55</sup> in instances where government interest and public interest clearly conflicted<sup>56</sup>—as was the case in the AP scandal.<sup>57</sup>

The argument that judicial oversight is needed over third-party subpoenas is not unprecedented; the Second Circuit Court of Appeals stated in 2006 “that whatever rights a newspaper or reporter has to refuse disclosure in response to a subpoena extends to the newspaper’s or reporter’s telephone records in the possession of a third party provider.”<sup>58</sup> The court extended these protections because “First Amendment rights are implicated whenever [the] government seeks third parties records” related to legitimate journalistic activities.<sup>59</sup> Chapter

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50. Office of Senator Ted Lieu, *CHINA.ORG.CN: California Seeks to Protect Journalists from Gov’t Secret Monitoring*, OFFICE OF SENATOR TED LIEU (June 26, 2013) [hereinafter Office of Senator Ted Lieu], <http://sd28.senate.ca.gov/news/2013-06-26-chinaorgcn-california-seeks-protect-journalists-gov-t-secret-monitoring> (on file with the *McGeorge Law Review*).

51. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 588, at 4 (June 25, 2013) (“SB 588 is intended to give journalists and their newspaper or media employers a chance to become aware of the threat to their . . . confidential sources.”) (quoting the California Newspaper Publishers Association).

52. See generally Dotinga, *supra* note 26 (discussing how Chapter 519 benefits the journalistic community).

53. See generally Oberlander, *supra*, note 4 (“Even more important, [the Department of Justice’s actions] prevented the A.P. from seeking a judicial review of the action.”).

54. See CAL. CODE CIV. PROC. § 1985 (West 2007) (authorizing a party’s attorney or a judge to issue subpoenas); CAL. PEN. CODE § 1326 (authorizing the district attorney, the public defender or their investigators, “the clerk of the court in which a criminal action is to be tried,” a party’s attorney, or a judge to issue subpoenas).

55. See Dotinga, *supra* note 26 (stating that the RC “questioned ‘the very integrity of DOJ policies toward the press and its ability to balance, on its own, its police powers against the First Amendment rights of the news media’”).

56. See Letter from Bruce D. Brown, Executive Director of the Reporters Committee for Freedom of the Press to Eric Holder, United States Attorney General (May 14, 2013) [hereinafter Holder Letter] (on file with the *McGeorge Law Review*).

57. See Oberlander, *supra* note 4 (explaining the AP was reporting on the conduct of the CIA).

58. *The New York Times Company v. Gonzales*, 459 F.3d 160, 163 (2nd Cir. 2006) (reasoning that without this notice, the Times would “have no chance to assert its claim of privileges as to the source(s)’ identity”).

59. *Id.* at 168 (quoting Local 1814, Int’l Longshorem’n’s Ass’n, *AFL-CIO v. Waterfront Comm’n of*

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519 brings similar protections to California journalists.<sup>60</sup> Now, when a subpoena of a journalist's records potentially threatens his or her First Amendment right to free speech, Chapter 519 serves as a check against the power of the government.<sup>61</sup>

*C. What About Federal Court?*

Because Chapter 519 changes the state's Code of Civil Procedure, the law will only affect the procedures used in state court.<sup>62</sup> Some members of the media question the overall effectiveness that Chapter 519 will have because the law is "unlikely to stop [federal government] agencies" from issuing subpoenas in federal court.<sup>63</sup> This is concerning because while the majority of subpoenas issued to those in the media relate to state, not federal, proceedings,<sup>64</sup> the number of federally-issued subpoenas is on the rise.<sup>65</sup> Moreover, almost half of these federal subpoenas "seek[] the names of confidential sources."<sup>66</sup>

While such concerns are not entirely unfounded, the issue may not be as grave as it appears on its face; there are already voluntary<sup>67</sup> guidelines that dictate how the federal courts should issue subpoenas to the media.<sup>68</sup> These guidelines,<sup>69</sup> nearly identical to portions of Chapter 519, incorporate the requirements that the information be: (1) "essential to the successful completion of the litigation in a case of substantial importance"<sup>70</sup> and that (2) the government was unable to procure the information elsewhere.<sup>71</sup> The RC believes that had the government

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New York Harbor, 667 F.2d 267, 271 (2d Cir. 1981)).

60. Lieu Interview, *supra* note 11.

61. *Id.*

62. CAL. CODE CIV. PROC. § 1986.1 (amended by Chapter 519).

63. AP, *supra* note 35. Whether the law will have any affect in federal courts will depend on whether this law is classified as affecting only the reporter's privilege (in which case Chapter 519 would be used in federal diversity cases) or whether it is deemed to be in conflict with the Federal Rules of Civil Procedure regarding discovery (in which case the courts will need to decide if federal law should be used). See email from Michael Vitiello, Professor of Law, McGeorge School of Law, to Devina Douglas, Staff Writer, MCGEORGE L. REV. (July 20, 2013 4:36 PM) (on file with the *McGeorge Law Review*).

64. RonNell Andersen Jones, *Avalanche or Undue Alarm? An Empirical Study of Subpoenas Received by the News Media*, 93 MINN. L. REV. 585, 637 (2008) [hereinafter Andersen Jones] ("[F]ederal subpoenas represent only about 10% of the total reported subpoenas [issued to the media].") *Id.* at 642.

65. *Id.* at 638. ("Nearly twice as many federal subpoenas per respondent were reported in the [2006] study than in the 2001 study.")

66. *Id.* at 642.

67. Tripp Huffstetler, *Preserving Public Accountability: Quashed Subpoenas and the Journalist's Privilege*, Campbell Law Observer (June 19, 2013), <http://campbelllawobserver.com/2013/06/preserving-public-accountability-quashed-subpoenas-and-the-journalists-privilege/> (on file with the *McGeorge Law Review*).

68. 28 C.F.R. § 50.10(f) (2012).

69. See CAL. CODE CIV. PROC. § 1986.1(b)(2) (amended by Chapter 519).

70. 28 C.F.R. § 50.10(f)(2) (2012).

71. *Id.* § 50.10(f)(3) (2012).

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not “ignored or brushed aside”<sup>72</sup> these federal guidelines that the RC helped to create,<sup>73</sup> the AP wiretapping scandal likely would not have occurred.<sup>74</sup>

While these guidelines are voluntary<sup>75</sup> and Chapter 519 will not bind the federal court system,<sup>76</sup> Senator Lieu hopes Chapter 519 will nonetheless have an indirect effect on the federal system.<sup>77</sup> He believes the law will pave the way for other states to enact similar laws; and that if enough states pass such laws, eventually Congress will be persuaded to pass a federal shield law to prevent federal agencies from gathering third party records the way the DOJ obtained the AP phone records.<sup>78</sup>

### D. Will Chapter 519 Have Much of an Impact?

In general, the number of anonymous-source stories written by journalists has decreased in the twenty-first century—a result of policy changes by their employers.<sup>79</sup> While the media may claim that without the protection Chapter 519 provides the number of anonymous-source stories would be cut back even further,<sup>80</sup> a 2006 survey of journalists suggests otherwise.<sup>81</sup> The study revealed that the driving force behind these types of changes was *not* an attempt to avoid the hassles of responding to subpoenas, but instead part of “a desire for greater transparency . . . increas[ing] credibility in the eyes of readers and viewers.”<sup>82</sup>

However, Senator Lieu believes that while smaller news organizations may need to maintain credibility by restricting anonymous-source stories, larger organizations, such as the New York Times, are generally accepted as being credible, regardless of the number of anonymous-source stories they print. This is

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72. Holder Letter, *supra* note 56.

73. 28 C.F.R. § 50.10 (2012).

74. Holder Letter, *supra* note 56.

75. Huffstetler, *supra* note 67.

76. Samantha Gallegos, *Stronger Safeguards Sought for Reporters, Sources*, CAPITOL WEEKLY (July 11, 2013) (on file with the *McGeorge Law Review*).

77. *See generally* Lieu Interview, *supra* note 11 (discussing how Senator Lieu hopes Chapter 519 will affect federal law).

78. *Id.*

79. Andersen Jones, *supra* note 64, at 649.

80. *See id.* (“In 35.4% of American newsrooms, the use of confidential sources has decreased in the last five years” and “almost one-third of organizations have altered their internal policies in the last five years to permit fewer uses of such sources”); *see generally* *Need for Shield Law Magnifies*, *supra* note 2 (“Fewer U.S. news organizations are doing investigative reporting because of budget constraints . . . and [f]ewer journalists are covering the federal or state governments.”). Budget constraints affect the ability of organizations to print anonymous-source stories as it is costly to battle defamation suits and there is a significant loss of work-time if the reporter is imprisoned defending the right to keep the sources confidential or is unable to cover the news responding to the subpoena. *See* Timothy L. Alger, *Promises Not to Be Kept: The Illusory Newsgatherer’s Privilege in California*, 25 LOY. L.A. L. REV. 155, 164–69 (1991) [hereinafter Alger].

81. *See* Andersen Jones, *supra* note 64, at 626 (discussing the results of the Reporter’s Committee study).

82. *Id.* at 651; *see* Alger, *supra* note 80 (discussing the drawbacks to using anonymous sources).

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because these organizations are known for performing extensive fact-checking before going to print.<sup>83</sup> Nonetheless, while it is unclear if Chapter 519 will have an impact on California's journalistic community as a whole,<sup>84</sup> it will offer some protection for journalists who want to maintain a source's anonymity.<sup>85</sup>

## V. CONCLUSION

While on its face Chapter 519 appears to only protect journalists, in reality, it does much more.<sup>86</sup> By taking additional steps to guarantee "freedom of the press," the law protects us all by allowing the citizens of our state to make informed decisions based on a truly free flow of information.<sup>87</sup> Although Chapter 519 only affects procedures used in state courts, it serves to pave the way for a federal shield law,<sup>88</sup> while sending a message to the nation that here in California, the press will not be intimidated into withholding the news.<sup>89</sup>

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83. Lieu Interview, *supra* note 11.

84. *See id.* (recognizing news organizations may not use anonymous sources for other reasons).

85. Office of Senator Ted Lieu, *supra* note 50.

86. *Id.*

87. *See* Lieu Interview, *supra* note 11 (noting that a free flow of information is "critical to democracy").

88. *Id.*

89. *Id.*