Assembly Joint Resolution No. 16

Adopted in Assembly June 28, 2010

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Chief Clerk of the Assembly

Adopted in Senate June 24, 2010

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Secretary of the Senate

This resolution was received by the Secretary of State this _____ day of _____, 2010, at _____ o'clock ____M.

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Deputy Secretary of State

RESOLUTION CHAPTER _____

Assembly Joint Resolution No. 16—Relative to journalism shield laws.

LEGISLATIVE COUNSEL'S DIGEST

AJR 16, Evans. Journalism shield laws.

This measure would urge the Congress and President of the United States to work together to enact a shield law for America's journalists.

WHEREAS, A free press is vital to the publication of important news within our society so that our government is accountable to its citizens; and

WHEREAS, A journalist's promise of confidentiality to a source of information is often the only way the public can learn about waste, fraud, and abuse in government and the private sector, and the forced disclosure of confidential sources and information will cause individuals to refuse to talk to journalists, resulting in a chilling effect on the free flow of information and the public's right to know; and

WHEREAS, The most famous confidential source in United States history, W. Mark Felt, also known as Deep Throat, voluntarily revealed his identity as a resident of Santa Rosa 33 years after the Watergate scandal revealed corruption in the highest levels of the Nixon White House; and

WHEREAS, Shield laws promote the free flow of information to the public and prevent government from making journalists its investigative agents because they prohibit courts from holding journalists in contempt for refusing to disclose unpublished news sources or information received from those sources; and

WHEREAS, California's shield law was first enacted in 1935 and later incorporated as subdivision (b) of Section 2 of Article I of the California Constitution in 1980 to provide that a journalist may not be held in contempt for refusing to disclose a news source or unpublished information gathered for news purposes; and

WHEREAS, California's shield law was broadened in 2000 to also provide that no testimony or other evidence given by a

journalist under subpoena in a civil or criminal proceeding may be construed as a waiver of immunity rights provided by the California Constitution, that a journalist subpoenaed in any civil or criminal proceeding shall be given at least five days' notice, except in exigent circumstances, and that a judge must set forth findings on the record stating why the testimony of a journalist is essential to guarantee the defendant's constitutionally guaranteed right to a fair trial when presiding over a criminal trial wherein a journalist is asserting protection under the media shield law; and

WHEREAS, In O'Grady v. Superior Court (2006) 139 Cal.App.4th 1423, the application of California's shield law was further broadened to include the gathering and collection of news by journalists publishing information through the Internet; and

WHEREAS, Thirty-nine states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin, and the District of Columbia, have statutory shield laws giving journalists some form of privilege against compelled production of confidential or unpublished information; and

WHEREAS, Ten states: Idaho, Iowa, Massachusetts, Mississippi, Missouri, New Hampshire, South Dakota, Vermont, Virginia, and West Virginia have established varying confidentiality privileges for journalists through their courts; and

WHEREAS, Two companion measures in the 111th Congress, House Resolution 985 and Senate Bill 448, would establish a federal shield law for journalists through the enactment of the Free Flow of Information Act; and

WHEREAS, House Resolution 985 passed the House of Representatives on March 31, 2009, by a voice vote, demonstrating the broad bipartisan support for the bill, and Senate Bill 448 is expected to be considered by the Senate Judiciary Committee soon; and

WHEREAS, President Barack Obama cosponsored media shield legislation when he was a Senator in the 110th Congress; and

WHEREAS, Attorney General Eric Holder, during his Senate confirmation hearing in January 2009, expressed support for media shield legislation; and

WHEREAS, The pending Free Flow of Information Act in the 111th Congress establishes that a federal entity may not compel a journalist to divulge confidential sources unless a court determines by a preponderance of the evidence that: (1) all reasonable alternative sources of information have been exhausted, (2) information is needed to prevent an act of terrorism or other significant harm to national security, to prevent death or substantial bodily harm, to investigate a leak of properly classified information or private trade secret, health or financial information, and to furnish eyewitness observations of a crime, and (3) taking into account the public interest in, disclosure of a confidential source and the public interest in gathering and disseminating news and information; and

WHEREAS, The pending Free Flow of Information Act in the 111th Congress stipulates that the testimony or documents sought by a federal entity from a journalist should be narrowly and appropriately tailored in scope and time period; and

WHEREAS, A 2008 University of Arizona survey found that there were 335 federal subpoenas in 2006 seeking information obtained by a reporter following a promise of confidentiality and, of these, 21 sought the names of confidential sources and 13 sought other information obtained under a promise of confidentiality; and

WHEREAS, Over the last seven years, four federal courts of appeals, the First Circuit, the Fifth Circuit, the Ninth Circuit, and the Circuit for the District of Columbia, have affirmed contempt citations issued to reporters who declined to reveal confidential sources; and

WHEREAS, Federal courts are imposing prison sentences that are increasingly severe on journalists for nondisclosure of confidential sources, most recently demonstrated in 2008 by the United States District Court for the District of Columbia in Hatfill v. Mukasey (D.C. Cir. Mar. 7, 2008, No. 031793), in which the court ordered fines of up to $5,000 a day on a journalist and expressly prohibited the journalist from seeking assistance from her employer in paying the fines, even though the fine related to activities occurring within the course and scope of her employment; and

WHEREAS, In relation to Miller v. United States (2005) 125 S.Ct. 2977, and Cooper v. United States (2005) 125 S.Ct. 2977, the Attorneys General of 34 states: Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin, and the District of Columbia, stated in an amicus brief submitted to the United States Supreme Court, "A federal policy that allows journalists to be imprisoned for engaging in the same conduct that these State privileges encourage and protect buck[s] that clear policy of virtually all states, and undermines both the purpose of the shield laws, and the policy determinations of state courts and legislatures that adopted them"; and

WHEREAS, Confidentiality of certain communications has long been protected in order to further important interests, both public and private, including communications between doctor and patient, lawyer and client, and priest and penitent; and

WHEREAS, A May 2005 poll conducted by the First Amendment Center and American Journalism Review found that 69 percent of Americans agree with the statement: "Journalists should be allowed to keep a news source confidential"; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully urges the Congress and President of the United States to work together to enact a shield law for America's journalists; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Senate Majority Leader, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

Attest:

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Secretary of State