

Supreme Court and Reporters

What does the Supreme Court Decision mean to GA reporters?

An opinion by David O'Connor of Holland and Knight prepared for GAB.

Journalists face greater risk in trying to protect their sources following hostile decisions in two separate federal court proceedings in Washington, D.C. this week.

0. On Monday, the United States Supreme Court refused to hear the appeals of two journalists seeking to protect the confidentiality of their sources under the First Amendment in the face of grand jury subpoenas. Later in the week, a federal judge set a near-term date to sentence those journalists to incarceration.

0. On Tuesday, the US Court of Appeals for the DC Circuit reached a similar conclusion with respect to four other journalists, upholding a lower court ruling finding them in contempt for protecting sources in a civil case, where the reporters have been fined \$500 per day. Importantly, these court rulings do not affect the Georgia reporter shield law. Georgia reporters and their sources may continue to rely on this shield law with the knowledge that the confidentiality of the source is strongly protected when dealing with state and local issues.

But there is no comparable shield statute in cases involving federal law, and the courts in this week's decisions in Washington found either zero or very weak protection under the First Amendment. A congressional solution may be possible. Senators Richard Lugar (R-Ind.) and Christopher Dodd (D-Conn.) recently introduced a reporter's shield law, the "Free Flow of Information Act," that would provide increased protections in all federal cases. Stations should contact their federal representatives to support this bill.

In the meantime, these decisions have created troubling uncertainty about whether reporters' promises to sources will be recognized in every case. Obviously, the potential "chilling effect" on sources, who now may be unwilling to provide information, is a serious issue.

Reporters in Georgia may need to educate their sources on the protections of the Georgia shield law, and consider discussing with sources, up front, the precise parameters of the promise and what the reporter would do if he or she is faced with a subpoena.