

An Open Letter to U.S. Government Officials Regarding Free Expression in the Wake of the Wikileaks Controversy

December 22, 2010

Dear Public Officials:

Last week, the House Judiciary Committee heard testimony from legal and free speech experts about the possible application of the Espionage Act to the recent publication of secret documents by the whistle-blower website Wikileaks, as well as to traditional media outlets, Internet companies, and others who have also distributed and reported on that information. All seven witnesses cautioned against attempts to suppress free speech and criticized the overwhelming secrecy that permeates the United States government. We write to echo these concerns and applaud those who have spoken out against attempts to censor the Internet. **We urge caution against any legislation that could weaken the principles of free expression vital to a democratic society or hamper online freedoms.**

Unfortunately, some government officials have already attacked newspapers' rights to report on the releases by Wikileaks. Other government actors have made official and unofficial statements casting doubt on the right of government employees and others to download, read, or even discuss documents published by Wikileaks or news reporting based on those documents. Others have rashly proposed legislation that could limit the free speech of legitimate news reporting agencies well beyond Wikileaks.

These actions have created an atmosphere of fear and uncertainty among the general public, leading them to question their rights with regard to the documents posted by Wikileaks. **As you continue to discuss these critically important issues, we urge you to do so in a way that respects the constitutional rights of publishers and the public that have been recognized by the Supreme Court.** Specifically:

- Publishers have a First Amendment right to print truthful political information free of prior restraint, as established in *New York Times v. United States*.
- Publishers are strongly protected by the First Amendment against liability for publishing truthful political information that is lawfully obtained, even if the original disclosure of that information to the publisher was unlawful, under *Bartnicki v. Vopper*.
- Internet users have a First Amendment right to receive information, as repeatedly endorsed by a series of Supreme Court cases, including *Stanley v. Georgia*.

- The public has a First Amendment right to voice opinions about government activities. This is core political speech, which receives the highest protection under the Constitution.

It will be especially critical for members of Congress to keep these rights in mind as they consider any future legislation that may impact freedom of expression. **In a free country, the government cannot and does not have unlimited power to determine what publishers can publish and what the public can read.** As the robust public debate about Wikileaks continues, please make sure that it includes the rights of all involved.

Sincerely,

American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Library Association
Arizona First Amendment Coalition
Association of Research Libraries
Bill of Rights Defense Committee
Bob Barr, Former Congressman and Chairman, Liberty Guard, Inc.
Center for Constitutional Rights
Center for Democracy and Technology
Center for Digital Democracy
Center for Financial Privacy and Human Rights
Communication Is Your Right!
Courage to Resist
Electronic Frontier Foundation
Feminists for Free Expression
First Amendment Coalition
Government Accountability Project
Liberty Coalition
Muslimah Writers Alliance
National Coalition Against Censorship
New America Foundation
New Media Rights
OpenTheGovernment.org
Privacy Activism
Privacy International
Privacy Rights Clearinghouse
Privacy Times
Progressive Librarians Guild
Sunlight Foundation
Tully Center for Free Speech at Syracuse University