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Media Coalition Statement on the Open and Responsive Government Act of 2019

WASHINGTON — Four senior senators introduced legislation to reinstate significant limits on what commercial or financial information should be kept “confidential” and out of the public eye when submitted to the federal government. Introduced yesterday by Senators Charles Grassley (R-IA), Patrick Leahy (D-VT), John Cornyn (R-TX), and Dianne Feinstein (D-CA), the “Open and Responsive Government Act of 2019” seeks to reverse the United States Supreme Court’s decision in *Food Marketing Institute v. Argus Leader Media*, which unnecessarily broadened what is deemed “confidential” under Exemption 4 of the Freedom of Information Act (FOIA). The legislation would essentially codify the interpretation of “commercial or financial information obtained from a person and privileged or confidential” established in by the United States Court of Appeals for the District of Columbia in the 1974 case of *National Parks & Conservation Association v. Morton*.

The *National Parks* standard, as applied by courts, required the government to disclose information submitted by third parties unless the disclosure created a “substantial harm to the competitive position” of the submitter. Even though the information in the *Argus Leader* case was not directly submitted by the retailers represented by FMI, the Court nonetheless allows the retailers to claim confidentiality. The *National Parks* standard struck the right balance between the public’s right to information and commercial interests and should be restored. The bill also reverses the Environmental Protection Agency’s rule allowing political appointees to exclude portions of records from disclosures under the Freedom of Information Act.

In support of the bill’s introduction, the News Media for Open Government (NMOG) makes the following statement:

“We applaud Senators Grassley, Leahy, Cornyn, and Feinstein for taking steps to defend the Freedom of Information Act. In overruling the 45-year-old *National Parks* precedent applicable to Exemption 4, the Court prevented the public from receiving newsworthy information of profound public interest, including information relating to nutrition, health, and safety. This bipartisan legislation reaffirms the public’s right to know how the government spends taxpayer dollars. We look forward to working with these Senators on this crucial piece of legislation.”

NMOG members have worked together in a nonpartisan manner for over a decade to speak with a united voice to strengthen open government policies and practices. Members of NMOG include American Society of News Editors, The Associated Press, Association of Alternative Newsmedia, National Association of Broadcasters, National Newspaper Association, News Media Alliance, Online News Association, Radio Television Digital News Association, Reporters Committee for Freedom of the Press, and Society of Professional Journalists.

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