Note: this letter was sent by email on June 5.

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June 6, 2015

VIA EMAIL

Niketh V. Velamoor, Esquire (Niketh.Velamoor@usdoj.gov)
Assistant United States Attorney
Southern District of New York
One Saint Andrew's Place
New York, NY 10007

Re: Subpoena to Reason.com

Dear Mr. Velamoor:

Our firm represents Reason.com in connection with the subpoena ("the Subpoena") you served on Mike Alissi earlier this week. Mr. Alissi has forwarded to me the court order ("the Order") you sent to him last night at approximately 5:35 pm prohibiting any disclosure regarding the Subpoena or the Order pursuant to 18 U.S.C. § 2705(b). Our client intends to comply fully with the Order.

Yesterday morning, at approximately, 10:30 a.m. I called you in response to your letter to our client, served along with the Subpoena, which stated the following:

> The Government hereby requests that you *voluntarily* refrain from disclosing the existence of the subpoena to any third party. *While you are under no obligation to comply with our request*, we are requesting you not to make any disclosure in order to preserve the confidentiality of the investigation and because disclosure of the existence of this investigation might interfere with and impede the investigation.
>
> Moreover, if you intend to disclose the existence of this subpoena to a third party, please let me know before making any such disclosure.

(emphases added).

Pursuant to the request in your letter, I advised you that, based both on your explicit statement that the decision regarding disclosure was up to Reason.com and on the law supporting your position, our client would inform the commenters of the Subpoena so that they would be able to assert their First Amendment rights to comment anonymously, if they chose to do so, and that Reason.com would otherwise fully comply with the Subpoena with regard to any commenter who did not move to quash by June 8. Shortly after our call, at approximately 11 a.m., Reason.com informed the commenters of the Subpoena by email sent to their email addresses on file.

In our telephone call, you expressed skepticism regarding both the existence of the First Amendment right to comment anonymously and the current trend for Internet services to alert their subscribers or commenters to subpoenas for information to allow them to assert their rights to prevent the release of that information where appropriate. That skepticism is not well-founded. On the first point, please see *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342-43 (1995). In *McIntyre*, Justice Stewart traced the long history of the importance of anonymous speech in expressing unpopular points of view and recognized its incorporation into the First Amendment. He stated that anonymous speech is part of the nation's "honorable tradition of advocacy and of dissent," *id*. at 347, 357 (noting that "anonymity is a shield from the tyranny of the majority"), and its protection reflects the historical practice of "accord[ing] greater weight to the value of free speech than to the dangers of its misuse," *id*. at 347. *See also id*. at 368 (Thomas J., concurring) (commenting on the "remarkable extent to which the Framers relied upon anonymity"); *id*. at 371 (Thomas, J., concurring) ("After reviewing the weight of the historical evidence, it seems that the Framers understood the First Amendment to protect an author's right to express his thoughts on political candidates or issues in an anonymous fashion."); *Doe No. 1 v. Reed*, 561 U.S. 186, 219-20 (2010) (Scalia, J., concurring in judgment) (describing the majority opinion as acknowledging a "First Amendment right to anonymity").

A case that illustrates both points is *In re Grand Jury Subpoena No. 11116275*, 846 F.Supp.2d 1 (D.D.C. 2012) ("the Twitter case"). There, an anonymous Twitter poster moved to quash a grand jury subpoena to Twitter. The court noted that "[u]pon receiving the subpoena, Twitter informed Mr. X of its existence and of Twitter's intent to comply unless Mr. X filed a prompt motion to quash," *id*. at 4, just as Reason.com did here. The court also explained, citing *McIntyre*, that "Mr. X has a First Amendment right to post on the Internet and to do so anonymously." *Id*. The court stated that the right would not yield unless the Government could demonstrate "'a compelling interest in the sought-after material" and "a sufficient nexus between the subject matter of the investigation and the information they seek.'" *Id*. (citing *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. § 1461*, 706 F. Supp. 2d 11, 18 (D.D.C. 2009). In the Twitter case, the Department of Justice was investigating online threats made to then-Congresswoman Michele Bachman.

Indeed, while you could have attempted to obtain an order directing Reason.com not to reveal the existence of the Subpoena whicht could have been served with the Subpoena, you did not do so. Instead, you served the Subpoena with a letter that explicitly advised Reason.com that it was *permitted* to disclose the existence of the Subpoena. Thus, Reason.com's conduct was entirely appropriate. Now that the Order has been entered, however, Reason.com will comply with it and will make no further disclosures regarding the Subpoena or the Order, except as permitted in the Order.
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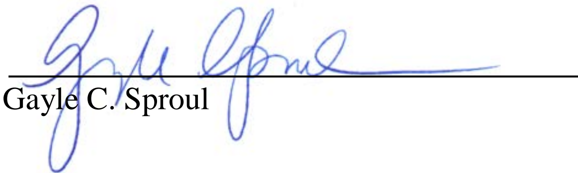
Finally, in yesterday's telephone call, I identified myself to you more than once, spelled my name, and gave you the name of my firm and my telephone number. In light of that, I am surprised that you emailed the court order directly to my client, rather than to me. Please direct any further communications to me.

Thank you.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
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