

## **Reps. Mike Pence and Rick Boucher on the introduction of a Media Shield Bill**

**Rep. Pence:** I am honored to be here today alongside my colleague Rick Boucher, who is such a tireless advocate for the First Amendment. Also, we are pleased to have Chairman Conyers and Reps. Coble, Walden and Yarmuth as original cosponsors. This is truly a bipartisan issue. It is a First Amendment issue, and I thank not only Congressman Boucher for his leadership but also the senior senator from my home state, Dick Lugar, as well as Senator Chris Dodd from Connecticut for their leadership in the Senate. They are truly champions for a free press.

As a conservative who believes in limited government, I know the only check on government power in real time is a free and independent press. The Free Flow of Information Act is not about protecting reporters; it is about protecting the public's right to know. Our Founders did not enshrine the freedom of the press in the Constitution because they got good press. And, I am certainly not advocating a free and independent press because I always get good press.

Enshrined in the First Amendment are these words: "Congress shall make no law...abridging the freedom of speech, or of the press."

We all remember when not long ago a confidential source brought to light abuses at the highest levels of government in the long national nightmare of Watergate. History records that W. Mark Felt never would have come forward without the assurance made to him of confidentiality.

But, thirty years later the press cannot make that assurance to sources, and we face the real danger that there may never be another Deep Throat. The protections provided by the Free Flow of Information Act are necessary so that members of the media can bring forward information to the American public without fear of retribution or prosecution.

In recent years, we have famously seen reporters such as Judith Miller jailed and Mark Fainaru-Wada and Lance Williams threatened with jail sentences. They are a few names among many who have been subpoenaed for taking a stand for the First Amendment and refusing to reveal confidential sources.

Compelling reporters to testify, and in particular, compelling them to reveal the identity of their confidential sources, is a detriment to the public interest. Without the promise of confidentiality, many important conduits of information about our government will be shut down. The dissemination of information by the media to the public on matters ranging from the operation of our government to events in our local communities is invaluable to the operation of our democracy. Without the free flow of information from sources to reporters, the public is ill-equipped to make informed decisions.

Thirty-two states and the District of Columbia have various statutes that protect reporters from being compelled to testify or disclose sources and information in court. Seventeen states have protections for reporters as a result of judicial decisions. The Free Flow of

Information Act would set national standards similar to those that are in effect in the states.

The Free Flow of Information Act closely follows existing Department of Justice guidelines for issuing subpoenas to members of the news media. It simply makes the guidelines mandatory and provides protection against compelled disclosure of confidential sources. In doing so, this legislation strikes a balance between the public's need for information and the fair administration of justice.

Abraham Lincoln said, "Give the people the facts and the Republic will be saved." The Free Flow of Information Act is designed to ensure that the American people have the facts that they need to make choices as an informed electorate.

A free and independent press is the only agency in America that has complete freedom to hold government accountable. Integrity in government is not a Democratic or Republican issue, and corruption cannot be laid at the feet of one party. When scandal hits either party, any branch of government, or any institution in our society, it wounds our nation.

As a conservative, I believe that concentrations of power should be subject to great scrutiny. The longer I serve in Congress, the more firmly I believe in the wisdom of our Founders – especially as it pertains to the First Amendment and freedom of the press. It is imperative that we preserve the transparency and integrity of American government, and the only way to do that is by preserving a free and independent press.

Thomas Jefferson warned that, "Our liberty cannot be guarded but by the freedom of the press, nor that limited without danger of losing it."

This Congress would be wise to take those words to heart. Now is the time to heed the advice of Mr. Jefferson. It is time to repair this tear in the First Amendment. It is time to pass a federal media shield law, and I am pleased to stand with my colleagues today to introduce the Free Flow of Information Act."

**Rep. Boucher:** I am pleased today to join with Mike Pence in introducing the Free Flow of Information Act of 2007. We are joined in co-authoring the bill by Judiciary Committee Chairman John Conyers, Howard Coble, the Ranking Member of the Subcommittee on Courts, and John Yarmuth from Kentucky, who has a strong commitment to our effort.

The bill provides a privilege in federal court proceedings for reporters to refrain from revealing their confidential sources of information. The privilege is similar in nature to that currently offered by 32 states and the District of Columbia.

The ability to assure confidentiality to people who provide information is essential to effective news gathering and reporting on highly sensitive and important issues.

Typically, the best information about corruption in government or misdeeds in a private organization will come from someone on the inside who feels a responsibility to bring the information to light.

But that person has a lot to lose if his or her identity becomes known. In many cases, the person responsible for the corruption or the misdeeds can punish the source through dismissal or more subtle forms of punitive action if the source's identity becomes known.

And so it is only by assuring anonymity to the source that a reporter can gain access to the information in order to bring it to public scrutiny.

I have long thought that the ability to protect the confidentiality of sources is so essential to effective news gathering that a privilege to refrain from revealing sources should be interpreted to be extended to reporters by the 1<sup>st</sup> Amendment.

Since to date the 1<sup>st</sup> Amendment has not been so interpreted, and given the increasing use of subpoenas in recent years to extract confidential source information in federal court proceedings, the time has clearly arrived for Congress to enact this statutory privilege.

While extending a broad privilege, we have included some exceptions for instances in which source information can be disclosed where a strong public interest compels the disclosure. The exceptions are:

- to prevent an imminent and actual harm to national security;
- to prevent imminent death or significant bodily harm; or,
- to determine who has disclosed trade secrets, personal health, or financial information in violation of law.

An exception to the privilege will only apply if the court determines that the public interest in disclosing the information outweighs the public interest in news gathering and maintaining the free flow of information.

The bill is a carefully constructed measure which will provide a broad new and much needed privilege for reporters to refrain from revealing confidential sources.

It protects the public's right to know. Its passage should be a priority in this Congress.

I am pleased to note this afternoon that a measure identical to the House bill will be introduced in the Senate by Senators Lugar and Dodd. We have coordinated our efforts closely with them.

I want to commend Mike Pence who has devoted substantial personal time and attention to this effort.

He has done much to bring the need for the privilege to public attention, and he is a highly effective advocate for the cause.

It was a pleasure co-authoring a similar bill with Mike in the last Congress and in this Congress writing the bill we are introducing today. I also want to thank our Judiciary Committee colleagues, Chairman Conyers and Howard Coble, for their helpful suggestions and their co-sponsorship of the bill.

Given the broad bi-partisan support this measure enjoys, I am optimistic that it will be reported by the Judiciary Committee and passed by the House this year.

I also want to thank the many journalistic organization and public interest groups that have worked with us and have urged passage of the bill. The Newspaper Association of America, the NAB, and the Reporter's Committee for Freedom of the Press deserve special recognition for their efforts and have a place on our program this afternoon.