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House of Representatives

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Opening Statement Ranking Member Jamie Raskin Hearing on “Shielding Sources: Safeguarding the Public’s Right to Know” July 24, 2018

Thank you, Mr. Chairman. “Democracy and its operating principle, the rule of law, require a ground to stand on and that ground is the truth,” my father wrote shortly before his death in 2017.

The Founders of American democracy were obsessed with giving people the means to acquire the truth. Madison said, “A people who mean to be their own governors must arm themselves with the power that knowledge gives.”

Jefferson too identified the central role of the press in preserving democracy. He said, “The only security of all is in a free press.”

So the First Amendment established a preferred place for freedom of the press just as it established a preferred place for freedom of speech and freedom of religion.

The Supreme Court has held that government can reasonably accommodate religious free exercise and worship, which is why federal law can exempt Native American Indians using peyote for sacramental purposes from the general criminal ban on peyote. It is why public schools can create exemptions for students and employees who observe religious holidays on official school days while not releasing other students and employees. These laws are not constitutionally necessary but the Courts have found them to be constitutionally permissible as an acceptable accommodation of religious liberty, which occupies a high place in our pantheon of constitutional values.

The right of free press occupies a similarly exalted perch. In theory, the specific command in the First Amendment that, “Congress shall make no law abridging the freedom of the press,” was unnecessary because press freedom was already covered under the freedom of speech. But the Framers insisted upon protecting the distinctive and indispensable role that the press plays as a free institution in a democratic society.

Not everyone can go to congressional hearings, state legislative sessions or county and city council meetings late into the night. Not all of us can travel to war zones in Iraq, Afghanistan or Vietnam to determine the reality of our foreign policies. Not everyone can personally uncover torture at Abu Ghraib or Guantanamo Bay, or obtain the Pentagon Papers,

break the Watergate scandal, determine how much oil from the BP oil spill leaked into the Gulf of Mexico, or figure out what Vladimir Putin and Donald Trump talked about in their secret meeting in Helsinki. But as citizens we are all equally implicated by these events, and invested in ascertaining the truth. This is why we need professional journalists and newspapers to get the information for us.

The First Amendment protects a free press, but that abstract guarantee means nothing if reporters cannot protect confidential sources and whistleblowers, or if they have to live in fear of criminal prosecution and jail time. When reporters can't do their jobs, our ability to function as a reflective democracy suffers. The free press is not the enemy of the people but the people's best friend and the tyrant's worst enemy.

Jefferson said, "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

As in other times of sharp political division and national stress, like the period of the Alien and Sedition Acts in 1798, the press is under ferocious political attack today. Reporters are berated and castigated daily; journalists are arrested, punched, attacked and even murdered, including in my home state of Maryland, simply for doing their jobs. We cannot afford as a society to have reporters attacked, intimidated or fearful; that they will be thrown into jail just for doing their jobs. Congress must defend the free press and the American public's right to know what exactly the government is doing in their name.

It's time to pass a federal shield law to protect the press, whose work is essential to strong democracy.

America favors shield laws to protect the media watchdog. Fully 49 states and the District of Columbia have passed shield laws or adopted some sort of reporter's privilege. What extraordinary evidence that the American people want a free and aggressive press to expose corruption and safeguard democracy.

Mr. Chairman, I introduced the Free Flow of Information Act of 2017 last November, after Attorney General Jeff Sessions, in testimony before the House Judiciary Committee, refused to commit to not jailing journalists for doing their jobs. I approached you on the spot and asked whether you would introduce this measure with me and I will never forget your immediate and enthusiastic response. It has given me hope that we can come together across party lines to defend the basic institutions of democracy.

Throughout our history, dozens of journalists have served, or been threatened with, jail time for protecting their confidential sources. One of these journalists I know quite well--Brian Karem, who is one of my constituents and the current Montgomery County Sentinel Executive Editor. In 1990 and 1991, Brian went to jail four different times to protect confidential sources while working as a television reporter. The last time, he went to jail for nearly two weeks while the Supreme Court considered his case and was only spared a long sentence when his source,

once she had moved from the state of Texas to California and no longer feared for her life, came forward.

Confidential sources are essential not only in investigative journalism – whether these sources shed light on government abuse and corruption, as was the case with Watergate, the Pentagon Papers, or the abuse of detainees at Abu Ghraib prison in Iraq – but also in daily news gathering and reporting local news stories that immediately and directly influence the lives of our people.

The Free Flow of Information Act is long overdue, but there could be no better time to pass it than now, a time of peril to the Republic, a time of corruption when foreign governments are trying to subvert our elections and when the basic values of our society are in danger. This exact same federal shield law legislation passed the House with overwhelming bipartisan support (398-21) in 2007 and the bill was championed by none other than then-Congressman, now Vice President, Mike Pence. It provides covered reporters with a qualified privilege and contains exceptions for compelled disclosure of a source when national security is threatened, when there is a threat of imminent bodily harm or death, and in other limited situations. It would not cover reporters who are suspected of committing a crime themselves, nor would it give reporters the right to interfere with law enforcement working to solve a crime.

This is an area where I think our colleagues – Republicans and Democrats alike – can come together for the good of our democracy.

I urge my colleagues to support this legislation. I look forward to hearing testimony from our panel of witnesses today. I yield back.

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