SUPPORTING THE GOALS AND IDEALS OF NATIONAL IDIOPATHIC PULMONARY FIBROSIS AWARENESS WEEK

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the concurrent resolution, H. Con. Res. 182, on which the yeas and nays were ordered.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Wisconsin (Ms. BALDWIN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 182.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 414, nays 0, not voting 17, as follows:

[Roll No. 971]

YEAS—414

Abercrombie
Ackerman
Aderholt
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Braley (IA)
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carter
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gilchrest
Gillibrand
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Hare
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, Sam
Jones (NC)
Jones (OH)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lamborn
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Nunes
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pence
Perlmutter
Peterson (MN)
Petri
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schakowsky
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Space
Spratt
Stark
Stearns
Stupak
Sullivan
Sutton
Tanner
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Westmoreland
Wexler
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—17

Akin
Blunt
Boehner
Carson
Clyburn
Cubin
Jindal
Johnson (IL)
Johnson, E. B.
Peterson (PA)
Tancredo
Taylor
Waters
Weller
Whitfield
Wilson (OH)
Woolsey

□ 1537

So (two-thirds being in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. JOHNSON of Illinois. Mr. Speaker, unfortunately today, October 16, 2007, I was unable to cast my votes on H. Res. 734, H.R. 2295, and H. Con. Res. 182 and wish the RECORD to reflect my intentions had I been able to vote.

Had I been present for rollcall No. 969 on passing H. Res. 734, expressing the sense of the House of Representatives regarding the withholding of information relating to corruption in Iraq, I would have "aye."

Had I been present for rollcall No. 970 on suspending the rules and passing H.R. 2295, the ALS Registry Act, I would have voted "aye."

Had I been present for rollcall No. 971 on suspending the rules and passing H. Con. Res. 182, supporting the goals and ideals of National Idiopathic Pulmonary Fibrosis Awareness Week, I would have voted "aye."

FREE FLOW OF INFORMATION ACT OF 2007

Mr. CONYERS. Mr. Speaker, pursuant to House Resolution 742, I call up the bill (H.R. 2102) to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Free Flow of Information Act of 2007".

SEC. 2. COMPELLED DISCLOSURE FROM COVERED PERSONS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—In any proceeding or in connection with any issue arising under Federal law, a Federal entity may not compel a covered person to provide testimony or produce any document related to information possessed by such covered person as part of engaging in journalism, unless a court determines by a preponderance of the evidence, after providing notice and an opportunity to be heard to such covered person—

(1) that the party seeking to compel production of such testimony or document has exhausted all reasonable alternative sources (other than a covered person) of the testimony or document;

(2) that—

(A) in a criminal investigation or prosecution, based on information obtained from a person other than the covered person—

(i) there are reasonable grounds to believe that a crime has occurred; and

(ii) the testimony or document sought is essential to the investigation or prosecution or to the defense against the prosecution; or

(B) in a matter other than a criminal investigation or prosecution, based on information obtained from a person other than the covered person, the testimony or document sought is essential to the successful completion of the matter;

(3) in the case that the testimony or document sought could reveal the identity of a source of information or include any information that could reasonably be expected to lead to the discovery of the identity of such a source, that—

(A) disclosure of the identity of such a source is necessary to prevent imminent and actual harm to national security with the objective to prevent such harm;

(B) disclosure of the identity of such a source is necessary to prevent imminent

death or significant bodily harm with the objective to prevent such death or harm, respectively; or

(C) disclosure of the identity of such a source is necessary to identify a person who has disclosed—

(i) a trade secret of significant value in violation of a State or Federal law;

(ii) individually identifiable health information, as such term is defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), in violation of Federal law; or

(iii) nonpublic personal information, as such term is defined in section 509(4) of the Gramm-Leach-Bliley Act (15 U.S.C. 6809(4)), of any consumer in violation of Federal law; and

(4) that nondisclosure of the information would be contrary to the public interest, taking into account both the public interest in compelling disclosure and the public interest in gathering news and maintaining the free flow of information.

(b) LIMITATIONS ON CONTENT OF INFORMATION.—The content of any testimony or document that is compelled under subsection (a) shall, to the extent possible—

(1) be limited to the purpose of verifying published information or describing any surrounding circumstances relevant to the accuracy of such published information; and

(2) be narrowly tailored in subject matter and period of time covered so as to avoid compelling production of peripheral, nonessential, or speculative information.

SEC. 3. COMPELLED DISCLOSURE FROM COMMUNICATIONS SERVICE PROVIDERS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—With respect to testimony or any document consisting of any record, information, or other communication that relates to a business transaction between a communications service provider and a covered person, section 2 shall apply to such testimony or document if sought from the communications service provider in the same manner that such section applies to any testimony or document sought from a covered person.

(b) NOTICE AND OPPORTUNITY PROVIDED TO COVERED PERSONS.—A court may compel the testimony or disclosure of a document under this section only after the party seeking such a document provides the covered person who is a party to the business transaction described in subsection (a)—

(1) notice of the subpoena or other compulsory request for such testimony or disclosure from the communications service provider not later than the time at which such subpoena or request is issued to the communications service provider; and

(2) an opportunity to be heard before the court before the time at which the testimony or disclosure is compelled.

(c) EXCEPTION TO NOTICE REQUIREMENT.—Notice under subsection (b)(1) may be delayed only if the court involved determines by clear and convincing evidence that such notice would pose a substantial threat to the integrity of a criminal investigation.

SEC. 4. DEFINITIONS.

In this Act:

(1) COMMUNICATIONS SERVICE PROVIDER.—The term ''communications service provider''—

(A) means any person that transmits information of the customer's choosing by electronic means; and

(B) includes a telecommunications carrier, an information service provider, an interactive computer service provider, and an information content provider (as such terms are defined in sections 3 and 230 of the Communications Act of 1934 (47 U.S.C. 153, 230)).

(2) COVERED PERSON.—The term ''covered person'' means a person engaged in journalism and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person.

(3) DOCUMENT.—The term ''document'' means writings, recordings, and photographs, as those terms are defined by Federal Rule of Evidence 1001 (28 U.S.C. App.).

(4) FEDERAL ENTITY.—The term ''Federal entity'' means an entity or employee of the judicial or executive branch or an administrative agency of the Federal Government with the power to issue a subpoena or issue other compulsory process.

(5) JOURNALISM.—The term ''journalism'' means the gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

The SPEAKER pro tempore (Mr. SERRANO). Pursuant to House Resolution 742, the amendment in the nature of a substitute printed in the bill is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Free Flow of Information Act of 2007''.

SEC. 2. COMPELLED DISCLOSURE FROM COVERED PERSONS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—In any matter arising under Federal law, a Federal entity may not compel a covered person to provide testimony or produce any document related to information obtained or created by such covered person as part of engaging in journalism, unless a court determines by a preponderance of the evidence, after providing notice and an opportunity to be heard to such covered person—

(1) that the party seeking to compel production of such testimony or document has exhausted all reasonable alternative sources (other than the covered person) of the testimony or document;

(2) that—

(A) in a criminal investigation or prosecution, based on information obtained from a person other than the covered person—

(i) there are reasonable grounds to believe that a crime has occurred; and

(ii) the testimony or document sought is critical to the investigation or prosecution or to the defense against the prosecution; or

(B) in a matter other than a criminal investigation or prosecution, based on information obtained from a person other than the covered person, the testimony or document sought is critical to the successful completion of the matter;

(3) in the case that the testimony or document sought could reveal the identity of a source of information or include any information that could reasonably be expected to lead to the discovery of the identity of such a source, that—

(A) disclosure of the identity of such a source is necessary to prevent an act of terrorism against the United States or its allies or other significant and specified harm to national security with the objective to prevent such harm;

(B) disclosure of the identity of such a source is necessary to prevent imminent death or significant bodily harm with the objective to prevent such death or harm, respectively; or

(C) disclosure of the identity of such a source is necessary to identify a person who has disclosed—

(i) a trade secret, actionable under section 1831 or 1832 of title 18, United States Code;

(ii) individually identifiable health information, as such term is defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), actionable under Federal law; or

(iii) nonpublic personal information, as such term is defined in section 509(4) of the Gramm-Leach-Biley Act (15 U.S.C. 6809(4)), of any consumer actionable under Federal law; and

(4) that the public interest in compelling disclosure of the information or document involved outweighs the public interest in gathering or disseminating news or information.

(b) LIMITATIONS ON CONTENT OF INFORMATION.—The content of any testimony or document that is compelled under subsection (a) shall—

(1) not be overbroad, unreasonable, or oppressive and, as appropriate, be limited to the purpose of verifying published information or describing any surrounding circumstances relevant to the accuracy of such published information; and

(2) be narrowly tailored in subject matter and period of time covered so as to avoid compelling production of peripheral, nonessential, or speculative information.

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed as applying to civil defamation, slander, or libel claims or defenses under State law, regardless of whether or not such claims or defenses, respectively, are raised in a State or Federal court.

SEC. 3. COMPELLED DISCLOSURE FROM COMMUNICATIONS SERVICE PROVIDERS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—With respect to testimony or any document consisting of any record, information, or other communication that relates to a business transaction between a communications service provider and a covered person, section 2 shall apply to such testimony or document if sought from the communications service provider in the same manner that such section applies to any testimony or document sought from a covered person.

(b) NOTICE AND OPPORTUNITY PROVIDED TO COVERED PERSONS.—A court may compel the testimony or disclosure of a document under this section only after the party seeking such a document provides the covered person who is a party to the business transaction described in subsection (a)—

(1) notice of the subpoena or other compulsory request for such testimony or disclosure from the communications service provider not later than the time at which such subpoena or request is issued to the communications service provider; and

(2) an opportunity to be heard before the court before the time at which the testimony or disclosure is compelled.

(c) EXCEPTION TO NOTICE REQUIREMENT.—Notice under subsection (b)(1) may be delayed only if the court involved determines by clear and convincing evidence that such notice would pose a substantial threat to the integrity of a criminal investigation.

SEC. 4. DEFINITIONS.

In this Act:

(1) COMMUNICATIONS SERVICE PROVIDER.—The term ''communications service provider''—

(A) means any person that transmits information of the customer's choosing by electronic means; and

(B) includes a telecommunications carrier, an information service provider, an interactive computer service provider, and an information content provider (as such terms are defined in sections 3 and 230 of the Communications Act of 1934 (47 U.S.C. 153, 230)).

(2) COVERED PERSON.—The term ''covered person'' means a person who, for financial gain or livelihood, is engaged in journalism and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person. Such term shall not include—

(A) any person who is a foreign power or an agent of a foreign power, as such terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); or

(B) any organization designated by the Secretary of State as a foreign terrorist organization in accordance with section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(3) DOCUMENT.—The term ''document'' means writings, recordings, and photographs, as those terms are defined by Federal Rule of Evidence 1001 (28 U.S.C. App.).

(4) FEDERAL ENTITY.—The term ''Federal entity'' means an entity or employee of the judicial or executive branch or an administrative agency of the Federal Government with the power to issue a subpoena or issue other compulsory process.

(5) JOURNALISM.—The term ''journalism'' means the gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

The SPEAKER pro tempore. After 1 hour of debate on the bill, as amended, it shall be in order to consider the amendment printed in House Report 110–383 if offered by the gentleman from Virginia (Mr. BOUCHER) or his designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered read, and shall be debatable for 10 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2102.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Ladies and gentlemen of the House, in recent years, the press has been under assault as reporters are increasingly being imprisoned, imprisoned for obstruction of justice and other charges. There are many causes of these attacks, including an increasingly consolidated media, abuse of position of power to intimidate members of the press, and a co-opting of the media as an investigative arm of the government.

Today, we are here in an attempt to reclaim one of the most fundamental principles enshrined by the Founding Fathers in the first amendment to the Constitution. Freedom of the press is the cornerstone of our democracy. Without it, we cannot have a well-informed electorate and a government that truly represents the will of the people.

This measure before us, H.R. 2102, the Free Flow of Information Act, helps restore the independence of the press so that it can perform its essential duty of getting information to the public. The bill will ensure that members of the press are free to utilize confidential sources without causing harm to themselves or their sources by providing a qualified privilege that prevents a reporter's source material from being revealed except under certain narrow circumstances. This measure balances the public's right to know against the legitimate and important interests that society has in maintaining public safety.

After the hearing and markup of this legislation, the sponsors of the bill worked hard to accommodate the concerns of all that were raised. While several good changes were made, I want to focus my comments today on the issue of national security and why I believe concerns about national security have been very effectively addressed in the bill and in the proposed manager's amendment.

The bill provides that disclosure of a source can be compelled where necessary to prevent an act of terrorism or significant specified harm to national security. The manager's amendment that will be offered by our colleagues, Mr. BOUCHER and Mr. PENCE, specifically addresses the Department of Justice and DNI's primary concern, which is that the bill's exception for national security concerns would hinder efforts to investigate and prosecute leakers of classified information.

In response to this concern, the manager's amendment provides that disclosure of a source can be compelled in a criminal investigation or prosecution of an unauthorized disclosure of properly classified information when such disclosure will cause significant harm to national security.

The bill defines a covered person to exclude foreign powers or agents of foreign powers, so that, for example, a government-controlled newspaper of a foreign nation does not receive the protections of the act. This provision insures that our national security and law enforcement efforts will not be flouted by foreign governments that try to hold themselves out as covered journalists and claim entitlement to the act's protections.

The bill makes it clear that any foreign terrorist organization designated by the Secretary of State is excluded from the protections of the act.

In addition, the manager's amendment adds three more exceptions to the definition of ''covered person,'' so the privilege does not apply to any person designated as a specially designated global terrorist by the Treasury Department, any person who is specially designated a terrorist under FISA, and any terrorist organization as defined in the Immigration and Nationality Act.

Each of these exceptions were proposed by the Department of Justice and accepted by us. So, as you can see, the bill provides broad protection for national security.

□ 1545

If the exceptions were any broader, it would swallow up the rule itself. And for those who claim that the national security exception should not also be subject to the balancing test, I have no doubt that if a court finds that the disclosure of the source is necessary to prevent an act of terrorism or other harm to national security, it will also find that disclosure outweighs the public interest in gathering and disseminating the information.

So it is our responsibility, Congress's responsibility, to ensure the press is able to perform its job adequately. The Free Flow of Information Act is an important part of fostering the continued growth of a free and independent press in the United States. It will encourage increased dialogue on the issues that face this country; and, in doing so, it will strengthen the foundation of our democracy.

This legislation receives wide support. Over 100 editorial boards, a diverse group of over 50 media companies and organizations, including the Newspaper Association of America, the National Association of Broadcasters, the Associated Press, News Corp, the Newspaper Guild, ABC, NBC, and journalist organizations like the Reporters Committee for Freedom of the Press and the American Society of Newspaper Editors.

Please join with us on both sides of the aisle so that we can support and pass this important piece of legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

First of all, I would like to say to my colleagues that beginning last night in the early evening and continuing and extending to this morning, a number of us have been in touch with each other about the provisions of this bill with the hope and expectation that we might be able to resolve our differences. I have been in touch with the White House. I have been in touch with the principal sponsors of the legislation; and I think we had engaged in some good-faith efforts to try to, as I say, resolve our differences.

Specifically, I had been hopeful that the other side would accept some of the provisions that had been in an amendment that I had hoped to offer today. Unfortunately, that amendment was not allowed by the Rules Committee. So Members of the House are not going to be able to vote on that amendment, which, in my judgment, would have improved the bill. There were a couple of provisions in that amendment, though, that I thought would be of interest to the sponsors of the bill and to the other side, and I regret that we were not able to come to a meeting of the minds, because I think that would have improved the bill and also yielded a better result when the bill perhaps becomes law.

Mr. Speaker, I also want to say to my colleagues that, if anything, I have a sympathy for the media, for the press. Long ago and far away, I was a newspaper reporter and spent 2 years writing articles, and so I have stood in the shoes of those who are reporters today. After being a reporter for a couple of years, I went to law school; and while in law school I actually wrote an article for the Texas Bar Journal called ''Politicians Versus the Press: Libel in Texas,'' and I actually came down on the side of the press. So that is where my sympathies lie.

However, in the case of this bill, I am afraid I cannot support it. And because we were not able to reach a compromise on the bill, I remain opposed to the bill, the White House remains opposed to the bill, the Director of National Intelligence remains opposed to the bill, and the Department of Justice remains opposed to the bill. Unfortunately, it is still so flawed that we cannot support it.

Mr. Speaker, a free press strengthens democracy. In our Nation the first amendment of the Constitution guarantees the press their freedom to report. And for 200 years in this Nation, the press, in fact, has flourished. Information has flowed freely. And that is why I believe this bill is simply a solution in search of a real problem.

Members of the private sector and law enforcement officials believe H.R. 2102 diminishes legal rights, public safety, and our national security. We must ensure that whistleblowers can expose crimes, waste, and wrongdoing. But we should not create a protection so broad that those who would destroy people's reputations, businesses, and privacy can hide behind it.

The Federal Government defends our national security; so we must weigh the benefits of a reporter's privilege with the problems it may cause for those who protect our country.

I thank the primary authors of H.R. 2102, Mr. BOUCHER and Mr. PENCE, for working with the Department of Justice, interested groups, and Members to develop alternative language to address legitimate concerns of industry and law enforcement authorities. Despite efforts to accommodate their concerns, the Justice Department and the acting Director of National Intelligence, as I mentioned a while ago, still oppose this bill for very good reasons. The White House also opposes the bill and a veto is likely. The President's senior advisers, in fact, have recommended a veto of this bill. They believe the stakes are too high in a post-9/11 world to support the Free Flow of Information Act.

For example, they have pointed out that the exceptions language fails to address misconduct that the Justice Department confronts on a daily basis. To illustrate, neither the bill nor the manager's amendment that will be offered contains exceptions language allowing DOJ to obtain the identity of a new source with the knowledge of a child prostitution ring, an online purveyor of pornography, gang violence, or alien smuggling, all examples.

And the text governing source disclosure exceptions only addresses prospective events, not past events. For example, the Department may be able to acquire information about a source's identity to prevent a terrorist attack like September 11; but if al Qaeda decides to tell a media outlet on September 12 how it planned and carried out the attack, DOJ could not compel that media outlet to reveal its terrorist sources while conducting an investigation.

If a child molester spoke to a journalist and revealed that he molested a child yesterday, under this bill Justice officials could not compel that journalist to reveal his sources and cooperate in the investigation. The Department of Justice will be hamstrung as it goes about the business of conducting investigations and prosecuting criminals.

Yes, numerous States have shield laws, but they run the gamut; and many are not near as broad as the Federal shield law proposed today. But the key difference is that the States are not entrusted with the responsibility of defending our country; the Federal Government is. Under the bill, DOJ carries the burden of trying to establish a national security imperative which can still be negated by a judge's subjective notion of what constitutes the public interest in news gathering. The bill's terms will be subject to the different opinions of hundreds of Federal judges across the country.

The bill is simply a solution in search of a problem. It has been 35 years since the Supreme Court ruled that the first amendment does not shield journalists in grand jury proceedings. The Justice Department has issued only 19 subpoenas to reporters seeking confidential source information since 1991. Only 19 subpoenas since 1991. The system is not broken. So why are we trying to fix it?

I simply believe we must err on the side of caution and not support legislation that could make it harder to apprehend criminals and terrorists or to deter their activities.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself 1 minute before turning to the gentleman from Virginia (Mr. BOUCHER).

I want to just take this time to say to the distinguished ranking member of Judiciary, LAMAR SMITH, how much we appreciate his constructive work with the working group that has been trying to come together to reach an agreement on this bill. At all times he has been straightforward, candid; and we think that the work that we are doing should go on, even though we are bringing the bill up today and it is moving forward. And I invite his continued working with us so that we can reach as much conclusion as we can on the several points that are outstanding.

Mr. Speaker, I now yield 4 minutes to the gentleman who has put so much work into this matter, the distinguished gentleman from Virginia, RICK BOUCHER, the author of this bill.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, I thank the gentleman from Michigan, the distinguished chairman of the House Judiciary Committee, for yielding this time to me. I want to thank Chairman CONYERS also for his strong leadership and his persistent effort that has resulted in this bipartisan measure's coming to the floor of the House this afternoon. His leadership has been invaluable to the success that we will experience when this measure is approved by the House later today.

I also want to commend the outstanding work of the gentleman from Indiana (Mr. PENCE), who has devoted his personal time and his commitment to this bipartisan undertaking. He is the lead Republican sponsor of this bill, and I want to say to him how much I appreciate the productive partnership that he and I have formed and the tremendous work that he has done in moving this measure forward. We truly would not be where we are today without the constructive work of Mr. PENCE.

He and I are joined by a total of 71 House cosponsors, who, on a bipartisan basis, believe that the time has arrived for the Congress to extend to journalists a privilege to refrain from revealing their confidential sources of information in Federal court proceedings.

The privilege our bill provides is similar to those currently extended by statutes in 34 States and in the District of Columbia. The ability to assure confidentiality to people who provide information is essential to effective news gathering and reporting. Typically, the best information that can be received about events like corruption in government or misdeeds in a large private organization, such as a corporation or a large public charity, will come from someone on the inside who feels a responsibility to contact a reporter and bring that sensitive information to public scrutiny.

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 that individual through dismissal from employment or through more subtle means if the identity of that confidential source is disclosed. In most sensitive cases it is only by assuring anonymity to the source that a reporter can gain access to the information and bring that information to public light.

By granting to reporters a qualified privilege to refrain from revealing their confidential news sources, we are clearly protecting the public's right to know. And public knowledge of misdeeds can lead to the corrective action

of criminal charges or of the passage, perhaps, of legislation.

While extending a broad privilege, we have included some exceptions for instances in which source information can and should be disclosed where a strong public interest compels that disclosure. The exceptions include disclosures to prevent an act of terrorism or 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 or personal health or personal financial information in violation of law.

□ 1600

An amendment that I will be offering shortly, along with Mr. PENCE, will permit disclosure in a number of other instances, including the instance of the leak of certain kinds of classified information.

In every instance, an exception to the privilege will only apply if the court determines that the public interest and disclosure outweighs the public interest in protecting news gathering and news dissemination. Our measure extends a needed privilege; it will protect the public's right to know.

I again want to thank Chairman CONYERS and his outstanding staff for the work that they have done which leads to this measure arriving on the floor today. And I thank my partner, Mr. PENCE, for his outstanding efforts.

Mr. SMITH of Texas. Mr. Speaker, before I yield to a colleague, I want to yield myself 1 minute.

Mr. Speaker, what I want to do is read an excerpt from the Statement of Administration Policy that might respond to some of the points that have been made.

The administration said that if H.R. 2102 were presented to the President in its current form, his senior advisers would recommend that he veto the bill, and here's one of the reasons why:

''The bill would impose an unreasonable and unjustified evidentiary burden on prosecutors seeking to issue a subpoena to a member of the news media, placing authorities in an untenable position.

''In order to satisfy the bill's requirements, prosecutors essentially must prove the existence of specific criminal activity in a hearing before a judge, with notice to the subjects of the investigation, before they will be able to undertake the necessary investigative steps to determine whether a crime has occurred. Thus, in many cases, prosecutors will have to conduct a mini-trial before their investigation has concluded, and in some cases, even before their investigation has gotten off the ground.''

Mr. Speaker, I am now happy to yield to the gentleman from Missouri, the minority whip (Mr. BLUNT).

Mr. BLUNT. Mr. Speaker, I thank the gentleman for yielding.

I want to also thank my good friends, Mr. PENCE and Mr. BOUCHER, for working so hard on this legislation. I think it was first introduced 3 years ago. I was a cosponsor of it at the time and I am a cosponsor today. And I want to mention the hard work that Mr. CONYERS has done to get this legislation to this point today after a long effort, and also to suggest that the hard work of my good friend, Mr. SMITH, is deeply appreciated.

I'm always hesitant when I rise on the House floor with any position that's different than his, but this is a place where I really do think that it's important to draw a line, and important, a bright line, between the information that people have access to and how they get it. I certainly can't say that I agree with everything I read in a newspaper article or that I see on the evening news or that I hear on a local radio program, but I can say that the public is best served by maintaining the free flow of information on matters of public interest.

As James Madison said in the report of 1800, arguing against the Sedition Act, ''To the press alone, checkered as it is with abuses, the world is indebted for all the triumphs that have been gained by reason and humanity over error and oppression.'' Madison, Jefferson and our history lead to the conclusion that a free press is essential for a free people.

In the past few years, there have been too many instances where the pendulum has swung against the free flow of information and in favor of the government. I was troubled by the instances I've seen where reporters have been jailed or threatened with jail for simply protecting their sources. Journalists should be the last resort, not the first stop, for civil litigants and for prosecutors attempting to obtain the identity of confidential sources.

In my view, continuing to compel reporters to reveal the identity of their confidential sources will result in a chilling effect on the free flow of information and be detrimental to the public interest. Nevertheless, the privileges that reporters have should not be unlimited, they should not be absolute, and this bill defines those exceptions in an important way. This bill says that in cases where it's necessary to reveal a source to prevent an act of terrorism, to prevent other significant harm to national security, to prevent imminent death or significant bodily harm, the reporter can be compelled. It also includes an exception in cases where a properly classified national security secret along with financial information, a trade secret or personal medical information has been improperly leaked, where that reporter can face a penalty.

Finally, it excludes from protection terrorists and their media arms. Yes, there are times when confidentiality must be breached, and I believe this bill strikes that balance. Forty-nine States and the District of Columbia have legislation similar to this, but this establishes a national standard.

Again, I thank my colleagues for the hard work to bring this to the floor. I look forward to the vote today, and I urge my colleagues to support this bill.

Mr. CONYERS. Mr. Speaker, I am pleased now to yield 1 minute to Ms. SHELLEY BERKLEY of Nevada.

Ms. BERKLEY. I thank the gentleman from Michigan for being in the forefront of this issue as well as all other issues regarding the civil liberties of our fellow Americans, and a special thank you to Mr. BOUCHER and Mr. PENCE for their outstanding work on this particular piece of legislation.

Mr. Speaker, I rise in strong support of the Free Flow of Information Act. This legislation strikes a careful balance by protecting journalists from being forced to reveal confidential sources unless there is an imminent threat to our national security.

I've heard from journalists and broadcasters in my district about the importance of being able to protect their sources without risking prosecution. Without this protection, stories involving conditions at the Walter Reed Army Medical Center, prisoner abuse at Abu Ghraib, and the unmasking of the culprits behind the Enron scandal might never have been written.

I wholeheartedly support this legislation, and I urge my colleagues to do the same.

Mr. SMITH of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana, a distinguished member of the Judiciary Committee and one of the original sponsors of the legislation we are debating today.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the gentleman for yielding.

I want to thank Ranking Member SMITH for his spirit of cooperation on this legislation. While we may differ ultimately on the vote today, he is a public-minded man deeply committed to the free press, and I appreciate his engagement.

My heartfelt thanks to Chairman CONYERS for his yeoman's work in moving this legislation forward. And I also want to express my profound gratitude to the gentleman from Virginia, Congressman RICK BOUCHER, who is the lead sponsor of this legislation today and has been my partner these last 3 years as we've moved the Free Flow of Information Act to this moment on the House floor.

This legislation today is a direct result of his bold and thoughtful leadership, and it is a result of a bipartisan partnership that has been a singular, personal and professional pleasure for me.

As a conservative who believes in limited government, I believe 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's about protecting the public's right to know.

Not long ago, reporters' assurance of confidentiality was unquestionable, but today the press cannot currently make the same assurances, and we face a time when there may never be another Deep Throat. Compelling reporters to testify, in particular, compelling them to reveal the identity of confidential sources is a detriment to the public interest.

The Free Flow of Information Act has been carefully crafted after reviewing internal Department of Justice guidelines, State shield laws, and other gathering input from interested parties. In most instances, under our bill, a reporter will be able to use the shield provided to refrain from testifying or providing documents or revealing a source, but the privilege is not absolute or unlimited. Testimony or documents can be forced if all other reasonable alternative sources have been exhausted, it's critical to a criminal prosecution, and a judge determines, through a balancing act, that its disclosure is in the public interest.

In a situation where a reporter is being asked to reveal the identity of a source, the bill provides several exceptions where a reporter can be compelled to reveal a source, and in the Boucher-Pence manager's amendment we will add additional exceptions to this bill under which compelled disclosure of a source will be permitted in cases of unauthorized leaks of national security secrets.

It is important to know what the bill does not do. It does not give reporters a license to break the law, the right to interfere with police or prosecutors; it simply gives journalists certain rights and abilities to seek sources and report information without intimidation.

Lastly, let me say how humbling it is for me to have played a small role in moving this legislation forward. From my youth, I have enjoyed a fascination with freedom and the Constitution. I learned early on that freedom's work is never finished, that it falls on each generation to preserve the freedoms we inherit. The banner of the Indianapolis Star in my home State reads below the name, ''Where the spirit of the Lord is, there is freedom.'' I opened my Bible this morning for my devotions, and it was that verse that happened to be in my daily readings; just happened to be. It reminded me of when we do freedom's work by putting a stitch in a tear in the fabric of the Bill of Rights, His work has truly become our own.

I urge my colleagues and both parties to join us in freedom's unfinished work. Say ''yes'' to the Free Flow of Information Act.

Mr. CONYERS. Mr. Speaker, I am pleased to have the gentleman from Kentucky working with us (Mr. YARMUTH) and I yield to him 2 minutes in support of this measure.

Mr. YARMUTH. I thank the chairman. And I also want to thank Mr. BOUCHER and Mr. PENCE for inviting me to become an original cosponsor of this important piece of legislation.

As the only member of the Society of Professional Journalists in Congress and as a former journalist, I fully understand how assurances of anonymity put a frightened insider at ease and turn a reluctant source into an eye-opening wealth of information.

At my newspaper in Louisville, we were able to open doors for the community on several occasions due to confidential accounts of protected sources which would have otherwise remained closed to us forever. Also, at Louisville, we saw what happens when we fail to protect a source's identity. There, Jeffrey Wigand, the famous tobacco whistle-blower, was victimized by threats and intimidation, ultimately losing his job, his family and his home. He is considered a hero today, but for many the lesson from that episode was, if you have incriminating information that will benefit the American public, just keep it to yourself.

The first amendment to the Constitution demands the right to free press. Now it falls on Congress to help facilitate that freedom pursuant to our authority vested in us by the first article of the Constitution. And speaking of article I of the Constitution, the article vests all legislative power in the Congress of the United States. It doesn't ask us to ask the White House first whether it approves of what we do. It actually imposes on us, not just the right, but the responsibility to legislate in the best interests of the country. And that's what we are doing with this legislation.

Without the Free Flow of Information Act, we, as a country, will be in the dark on certain issues, conscientious journalists will be imprisoned, and potential sources will remain tight lipped.

I urge my colleagues to join me in supporting this crucial measure.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to my friend from North Carolina (Mr. COBLE), a distinguished member of the Judiciary Committee and the ranking member of the Intellectual Property Subcommittee of the Judiciary Committee.

Mr. COBLE. I thank the gentleman.

H.R. 2102 was approved by the House Committee on the Judiciary by voice vote.

I feel strongly, Mr. Speaker, that the administration's opposition to this legislation is misguided.

Former Solicitor General of the United States, Theodore Olson, wrote that ''the legislation is well balanced and long overdue, and it should be enacted.''

The bill is good policy, and I urge all Members to vote in support of final passage and in support of the manager's amendment.

In closing, I want to thank the sponsors of the legislation, the distinguished gentleman from Virginia, the distinguished gentleman from Indiana, Representatives BOUCHER and PENCE, respectively. Both have been champions for H.R. 2102 and have diligently worked to address all concerns throughout the legislative process, as have Chairman CONYERS and Ranking Member SMITH.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. KELLER), a diligent member of the Judiciary Committee.

Mr. KELLER of Florida. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of the Free Flow of Information Act. This media shield legislation is important because off-the-record, confidential sources are needed to help journalists get to the truth, and I don't want reporters thrown in jail for doing their jobs.

Our history is full of examples of confidential sources exposing corruption, fraud and misconduct. For example, the Watergate scandal was blown wide open by Deep Throat, a confidential source we now know to be Mark Felt, the number two person at the FBI. Confidential sources also exposed the cooked books at Enron, and the unacceptable treatment of soldiers recovering at Walter Reed.

A free and independent press which protects the public's right to know is needed for a healthy democracy and government accountability. That's why a majority of States already have media shield laws on the books, and why we need this law on the Federal level.

I urge my colleagues to vote ''yes'' on the Free Flow of Information Act.

□ 1615

Mr. SMITH of Texas. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I would like to read an excerpt from the Department of Justice's letter in opposition to the bill we are discussing: ''Given the extensive safeguards already in place, the Department strongly opposes H.R. 2102 and similar legislative efforts to provide a 'journalist's privilege' that would prevent the disclosure of relevant testimony and evidence critical to the fair disposition of investigations and trials.

''H.R. 2102 would make it virtually impossible to enforce certain Federal criminal laws, particularly those pertaining to the unauthorized disclosure of classified information, and would seriously impede other national security investigations and prosecutions, including terrorism prosecutions.

''H.R. 2102 would undermine national security and other law enforcement investigations by permitting compelled disclosure of a media source only when necessary to prevent a terrorist attack against the United States and only when the bill's other burdensome prerequisites are satisfied.''

But the problem here is that it would not allow us to get to the information after the fact. You could not force a journalist to disclose information, for instance, after a terrorist attack when you want to find out who was involved

in that attack. For that reason, we should oppose the bill.

Mr. CONYERS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I would like to begin by complimenting MIKE PENCE of Indiana, a distinguished member of the Judiciary Committee who has been working on this bill before the 110th Congress. He was a leader in supporting this legislation in the 109th Congress and may have been working on it even before then. So when I listened to my other colleagues on the other side who have been working on and continue to support this legislation, I think it is very easy to perceive that with the working group, with the leaders on both sides of the aisle working with RICK BOUCHER on this for so long, we have now come to a point where most of the concerns have been addressed; and I deeply thank my colleagues on the Judiciary Committee for the constructive role they played not only in their independent capacity, but in the working group that has been working behind the scenes on this, as well.

Now, Members of the House, there has been something said about the importance of national security information. Sometimes it is just as important that the press report on information that the government has tried to hide in the name of national security. Because the problem frequently is that if we keep going after journalists trying to shut them up, trying to put them in jail, or threatening to prosecute them, they will be afraid to report some of the important stories that I am going to relate to you that up until now journalists have had to take it on their own risk to decide what to do. I don't think that is appropriate, nor is it necessary, nor is it contrary to any of our concerns about national security.

The history of the American press provides ample evidence of certain stories that would have never been known to the general public without the news media's use of confidential sources. Oftentimes these stories shed light on government misconduct, on corporate waste, fraud and abuse, and other matters of concern. The free flow of information to the public is vitally important to the operation of our democracy and to oversight our most powerful public and private institutions.

Now, here are a few examples of issues that were made known to the public through news reports based on confidential source information. Reporters decided that they would honor the confidence of their resources no matter what happened to them. These are courageous people of the media that had to take this on themselves. So this shield law is to take people out of this bind, out of this fear of having to be coerced because we don't know what is going to happen. This draws a very bright line for everybody to understand how we should proceed in the future.

Here is a matter that is important: the unsafe and deteriorating conditions at the Walter Reed Army Medical Center. Here is another public interest matter: the exposure of fertility fraud in Southern California based upon clinical records provided by anonymous sources, reporting more than 250 accounts of fertility fraud and revealed coverups, intimidation of clinical employees and bribery. Because of this reporting, the American Medical Association issued new guidelines for fertility clinics.

Here is another story that was of some consequence: a hospital scandal of patient dumping by a Los Angeles County emergency aid program. Reporting that article prompted a government investigation that brought it to an end. Rampant steroid use in Major League Baseball by world-class athletes which, in part, led Major League Baseball and its players union to open up its labor contract and adopt a steroid testing policy.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to my friend and colleague from Texas (Mr. POE).

Mr. POE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, The Free Flow of Information Act helps ensure that our press remains free. Our Constitution provides for a free press in the first amendment. The first amendment is first for a reason. It is the most important. Without the first amendment freedom of press, speech, religion and assembly, all the rest of the amendments are meaningless. A free press provides for a free flow of information.

I agree with the doctrine: a free press will ensure a fair press. The president and publisher of the Houston Chronicle, Jack Sweeney, said today: ''Journalists should be the last resort, not the first stop for civil litigants and prosecutors attempting to obtain the identity of confidential sources. This bill would protect the public's right to know, while at the same time honoring the public interest in having reporters testify in certain circumstances.''

This bill really does not create a new special protection. It gives journalists the protection that is already afforded to them in 49 States which protect the confidentiality of reporters' sources. Federal protection is long overdue.

Mr. Speaker, I gladly cosponsor this bill, and that's just the way it is.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to my distinguished colleague from Oregon (Mr. WALDEN).

Mr. WALDEN of Oregon. Mr. Speaker, as a graduate of the School of Journalism at the University of Oregon and as the owner of radio stations with award-winning journalists, I am a firm believer in the need for journalists to be able to protect their confidential sources so they can have a vibrant and free press in America.

This bill is about much more than simply shielding reporters. It is about protecting the public's right to know. Jailing reporters to force them to divulge their sources has a chilling affect on whistleblowers and investigative reporters.

Thomas Jefferson said: ''Our liberty cannot be guarded but by the freedom of the press nor that be limited without danger of losing it.'' A vote for the Free Flow of Information Act is a vote to protect citizens and taxpayers from an ominous and oppressive government that seeks to silence its critics. And in America, such government power would threaten our freedom and our informed democracy.

Mr. SMITH of Texas. Mr. Speaker, may I ask how much time remains on each side.

The SPEAKER pro tempore (Mr. SERRANO). The gentleman from Texas has 11 minutes remaining. The gentleman from Michigan has 9½ minutes remaining.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would like to read for my colleagues an excerpt of a letter we received from the Office of the Director of National Intelligence:

''We are joining the Department of Justice in opposing H.R. 2102, the Free Flow of Information Act of 2007. We share the Department's strong opposition to H.R. 2102 articulated in its letter of July 31, 2007.

''The government must retain the ability to obtain information from the press that would both prevent harm to the United States and its citizens and to identify and bring to justice those who cause such harm. Unfortunately, press reports on U.S. intelligence activities have been a valuable source of intelligence to our adversaries. Former Russian military intelligence Colonel Stanislav Lunev wrote: 'I was amazed, and Moscow was very appreciative, at how many times I found very sensitive information in American newspapers. In my view, Americans tend to care more about scooping their competition than about national security, which made my job easier.''

What an indictment.

Finally, and I am quoting from the letter: ''The bill, as drafted, would require that identification of the source be necessary to prevent an act of terrorism or other significant and specified harm to the national security. It would not, however, allow the government to compel the identification of a source if it was necessary to identify the perpetrators of a completed act of terrorism or an act that harmed the national security. Similarly, the bill could authorize the government to compel the identification of a source in order to prevent imminent death or bodily harm, but would not allow the government to compel disclosure of a source in order to identify a murderer.

''For these reasons and for the reasons set out in the letter from the Department of Justice, we urge the Congress to reject this bill.''

Mr. Speaker, that is a letter from the Office of the Director of National Intelligence.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, during our negotiations led by the Boucher-Pence team, I would like to bring to the attention of the ranking member and manager of this bill before us an important change that was made in the manager's amendment which may or may not have come to his attention because it was made so late in the day. We now have a manager's amendment that would allow the government to pierce the journalistic shield to prevent a terrorist attack, but also to identify any perpetrators of a terrorist attack. I wanted to make sure that my friend and colleague was aware of this very important change because it was made at the very last minute.

Mr. Speaker, I will submit a number of articles from newspapers, mostly editorials, that deal with the support of the shield law that is before the Congress at this time.

We have a contribution from the Post-Standard in Syracuse, New York, entitled, ''The Shield Law Moves Closer to Reality,'' dated 14 October of this year.

In the Baltimore Sun, we had an opinion written yesterday in that newspaper, ''In Search of Shield,'' in support of the legislation.

We have heard from the Detroit Free Press from today's paper, ''Vote to Pass Law to Shield Reporters,'' in support of this legislation.

The Los Angeles Times earlier in May wrote an article: ''Shielding Journalists: Reporters, and the Country, Would Benefit from a Proposed Federal Law to Protect Confidential Sources.''

The Detroit News in May of this year wrote, ''Why a Federal Shield Law is Necessary,'' authored by Christine Tatum.

The New York Times in two different instances in September and October of this year, ''A Shield for the Public,'' was the editorial page comment, and in October, ''The Public's Right to Know,'' another important article in support of this legislation.

□ 1630

Here's one that the ranking member would be interested in. The San Antonio Express-News: ''Smith's Decision on Shield Law Critical.'' We hope that had come to his attention before today.

The Washington Post, in September: ''Protecting Sources.''

Another important contribution: ''A Much-Needed Shield for Reporters,'' written by Theodore B. Olson in The Washington Post in June of this year.

Finally, from USA Today: ''Our Views on Prosecutors and the Press: Jailing of Reporters Chills Free Flow of Information.''

These are only a few of a notebook full of materials that we wouldn't dare introduce this many pieces of material into the CONGRESSIONAL RECORD. I will include for the RECORD the items that I cited.

SUBMISSIONS TO RECORD ON H.R. 2102

''Shield Law Moves Closer to Reality.'' The Post-Standard. Syracuse, NY: Opinion Section. 14 October 2007.

''In Search of Shield.'' The Baltimore Sun, Baltimore, MD: Opinion Section. 15 October 2007.

''Vote to Pass Law to Shield Reporters.'' Detroit Free Press. Detroit, MI: Opinion Section. 16 October 2007.

Shielding Journalists: Reporters, and the Country, Would Benefit from a Proposed Federal Law to Protect Confidential Sources.'' The Los Angeles Times. Los Angeles, CA: Editorial Page. 27 May 2007.

Tatum, Christine. ''Why a Federal Shield Law Is Necessary.'' The Detroit News. Detroit, MI. 23 May 2007.

''A Shield for the Public.'' The New York Times. New York, NY: Editorial Page. 20 September 2007.

''The Public's Right to Know.'' The New York Times. New York, NY: Editorial Page. 9 October 2007.

''Smith's Decision on Shield Law Critical.'' San Antonio Express-News. San Antonio, TX: Editorial Page. 28 July 2007.

''Protecting Sources.'' The Washington Post. Washington, DC: A–18. 21 September 2007.

''Olson, Theodore B. ''A Much-Needed Shield for Reporters.'' The Washington Post. Washington, DC: A–27. 29 June 2007.

''Our Views on Prosecutors and the Press: Jailing of Reporters Chills Free Flow of Information.'' USA Today. McLean, VA: Editorial page. 14 May 2007.

[From the Detroit News, May 23, 2007]

WHY A FEDERAL SHIELD LAW IS NECESSARY

(By Christine Tatum)

Regardless of whether you think journalists use too many anonymous sources, it's hard to argue that they don't need to promise confidentiality sometimes.

Many of the biggest investigative stories of our age have been based in part on information shared with a reporter by someone who wanted to keep his or her identity a secret. Anonymous sources handed over the Pentagon Papers and unmasked the culprits behind Watergate and Enron. They have outed some of the nation's worst corporate polluters. They have helped inform Americans' debates about the Iraq War, the proliferation of nuclear weapons and global warming.

Yes, sources almost always have an agenda when they speak up, but sometimes they have information of vital interest to the general public and much to lose if they're caught passing it along. If journalists can't protect their sources' identities, you will be much less informed about the world.

Currently, 49 states (Wyoming is the only unenlightened one) have shield laws or operate under court rulings that grant journalists and their sources a ''privilege'' much like those afforded to clergy, lawyers and their clients and therapists and their patients. This protection applies only to local and state cases, not federal ones.

Lately, federal prosecutors have dragged too many journalists into court, flaunting subpoenas for notes, work product and recollections of private conversations. The feds' arrogant insistence that journalists should be compelled to act as arms of law enforcement undermines free speech, a free press and an informed citizenry.

Journalists need a federal shield law. Thankfully, one has been reintroduced in Congress. The Free Flow of Information Act of 2007 has bipartisan support in the House and Senate. The bill's sponsors include Reps. Mike Pence, R–Ind., and Rich Boucher, D–Va., and Sens. Richard Lugar, R–Ind., and Christopher Dodd, D–Conn. All four have fought for a federal shield law for a couple of years, arguing that transparency is good for democracy even if it exposes politicians to more scrutiny.

Among the bill's provisions: The federal government could not compel a person covered by the shield to provide testimony or produce documents without first showing the need to do so by a ''preponderance of evidence.''; Journalists can be compelled to reveal the identity of sources when the court finds it necessary to prevent ''imminent and actual harm to national security'' or ''imminent death or significant bodily harm.'' Journalists also may be compelled to identify a person who has disclosed trade secrets, health information or nonpublic personal information of any consumer in violation of current law; and people covered by the shield would be those ''engaged in journalism.'' Journalism is defined as ''the gathering, preparing, collecting, photographing, recording, writing, editing, reporting or publishing of news and information for dissemination to the public.'' The bill does not explicitly protect bloggers, but to the extent a court determines they are engaged in the practice of journalism, they are likely to be shielded.

Even with the protection of a federal shield law, journalists should use anonymous sources sparingly and take great care to explain to the public why a source's identity needs to remain secret. More Capitol Hill reporters should insist their conversations are on the record. Newsrooms should tighten rules regarding the use of anonymous sources, which undermine the credibility of the news and leave journalism with black eyes at the hands of more reporters than we have the space to name here.

A federal shield law won't end journalists' abuse of anonymous sources, and it won't end prosecutorial witch hunts. It will, however, help the public have access to important information, and that, in the end, is what really matters.

[From the New York Times, Sept. 20, 2007]

A SHIELD FOR THE PUBLIC

For freedom of the press to be more than a promise and for the public to be kept informed about the doings of its government, especially the doings that the government does not want known, reporters must be able to pursue the news wherever it takes them. One of the most valuable tools they have is the ability to protect the names of confidential sources—people who provide vital information at the risk of their jobs, their careers, and sometimes even their lives.

That is why it is so important for Congress to finally pass a federal shield law for journalists and why we commend Senators Arlen Specter, Republican of Pennsylvania, and Charles Schumer, Democrat of New York, for a compromise bill designed to achieve passage.

The bill would create a qualified privilege, which is what this newspaper and other news organizations have sought, not an absolute protection against revealing a source's name under any conceivable circumstance.

The new measure does not contain everything we would have liked. The shield for sources in the sphere of national security is weaker than in a bill approved by the House Judiciary Committee in August and an earlier proposal by Senators Richard Lugar, Republican of Indiana, and Christopher Dodd, Democrat of Connecticut.

Under the new bill, in order to compel disclosure of a source, the government would have to show that withholding the information is necessary to prevent a specific act of terrorism against the United States or would create ''significant harm to national security'' that outweighs the public interest in maintaining the flow of information. That is a broad standard and much will depend on judges exercising care to ensure that the government meets its burden to prove that the alleged harm to national security is real.

However, some tweaking was necessary to reassure hesitating senators that the bill

would not permit journalists to withhold information that is truly necessary to protect the United States.

The compromise has the support of dozens of news organizations, including The New York Times Company. Having worked for months to achieve this accord, Senators Specter and Schumer, and the chairman of the Senate Judiciary Committee, Patrick Leahy of Vermont, must do everything in their power to make sure that there is no further watering down of the protection for reporters and the whistle-blowers, or other insiders who will not speak without a pledge of confidentiality.

Passage of a federal shield law would be a major achievement. Some 32 states and the District of Columbia have such laws, and 17 other states have recognized a reporter's privilege to maintain the confidentiality of sources through judicial decisions. Prosecutions have not suffered, and it is past time for Congress to act.

In fact, a virtue of the Specter-Schumer bill is that it removes any excuse by lawmakers to avoid taking a step vital for the press's ability to report, so the public can exercise its right to know what government is doing and to make informed judgments.

[From the Washington Post, Sept. 21, 2007]

PROTECTING SOURCES: PRESERVING THE FREE FLOW OF INFORMATION

Next week, the Senate Judiciary Committee is scheduled to take up the Free Flow of Information Act of 2007, sponsored by Sens. Arlen Specter (R-Pa.) and Charles E. Schumer (D-N.Y.). This finally would bring to the federal government something that exists in 49 states and the District of Columbia: clear protection for the relationship between journalists and their sources.

Sometimes people who speak to journalists don't want it publicly revealed that they were the source of information that exposed ethically sketchy behavior or criminality; one common reason is a fear of reprisals. The relationship between reporters and confidential sources is rooted in trust, and the accountability it fosters is a foundation of a thriving democracy.

As with a bill approved last month by the House Judiciary Committee, the Senate measure does not give to reporters a blanket protection against disclosure of sources but instead offers a reasonable balancing of competing interests. Information identifying sources who were promised confidentiality would be covered by the new law. But courts would still be able to compel disclosure in certain circumstances—for example, if national security interests at stake in the case outweighed ''the public interest in gathering news and maintaining the free flow of information.'' The Washington Post Co. and other media organizations that have lobbied for a bill might want more protection, but this represents a reasonable compromise that many legislators, including Sens. Richard G. Lugar (R-Ind.) and Christopher J. Dodd (D-Conn.), have labored to get right.

More than 40 reporters have been questioned in recent years by federal prosecutors about their sources, notes and reports in civil and criminal cases. No doubt those who would talk to the media confidentially have been chilled by such action. Without adequate protection on the federal level, much information that Americans have a right to know might never be known. That's not good for journalism—and it isn't good for the republic, either.

JUNE 29, 2006

A MUCH-NEEDED SHIELD FOR REPORTERS

(By Theodore B. Olson)

Journalists reporting on high-profile legal or political controversies callllot function effectively without offering some measure of confidentiality to their sources. Their ability to do so yields substantial benefits to the public in the form of stories that might otherwise never be written about corruption, misfeasance and abuse of power. A person with information about wrongdoing is often vulnerable to retaliation if exposed as an informant.

Yet it has become almost routine for journalists to be slapped with subpoenas seeking the identity of their sources when their reports make it into print or onto the air. From the Valerie Plame imbroglio and the Wen Ho Lee investigation to the use of steroids by professional baseball players, it is now de rigueur to round up the reporters, haul them before a court, and threaten them with heavy fines and jail sentences if they don't cough up names and details concerning their sources.

Unfortunately, the rules regarding what reporters must disclose, and under what circumstances, remain a hopelessly muddled mess. Ask any reporter today, or his publisher, or his publisher's lawyer, whether a reporter must testify about his sources and you will get a litany of ambiguity. The answer may depend on which court issued the subpoena or the predilections of the judge before whom the reporter is summoned. State courts have their rules and federal courts have another set of standards that differ from one part of the country to another. That means that the journalist cannot tell sources whether promises of confidentiality have any teeth. And that, in turn, means that information vital to the public concerning the integrity of government, or of the national pastime, may never see the light of day.

It certainly doesn't have to be this way. Reporters do not expect to be above the law. But they should be accorded some protection so that they can perform their public service in ensuring the free flow of information and exposing fraud, dishonesty and improper conduct without being exposed to an unanticipated jail sentence. A free society depends on access to information and on a free and robust press willing to dig out the truth and spread it around. This requires some ability to deal from time to time with sources who, for one reason or another, require the capacity to speak freely but anonymously.

This is not a novel or threatening concept. Forty-nine states and the District of Columbia have laws protecting the confidentiality of reporters' sources. The Justice Department has had internal standards providing protection to journalists and their sources for 30 years. Yet no such protection exists in federal law. Thus reporters may be protected if they are subpoenaed in state court, but not protected at all if the same subpoena is issued by a federal court. No one benefits from that patchwork of legal standards.

Congress is moving forward to regularize the rules for reporters, their sources, publishers, broadcasters and judges. The Senate Judiciary Committee will soon take up a bill entitled the Free Flow of Information Act of 2006, sponsored by a bipartisan group of legislators and modeled in large part on the Justice Department guidelines. It does not provide an absolute privilege for confidential sources, but it does require, among other things, that a party seeking information from a journalist be able to demonstrate that the need for that information is real and that it is not available from other sources. Matters involving classified information and national security are treated differently. The current controversy over publications relative to the administration's efforts to deter terrorists does not, therefore, provide any basis for delaying or rejecting this needed legislation.

This legislation is long overdue and should be enacted. It will not, contrary to its opponents' arguments, hamper law enforcement. The 49 states and the District of Columbia that have such protection have experienced no diminution of law enforcement efforts as a result of these shield laws. Nor will it give reporters any special license beyond the type of common-sense protection we already accord to communications between lawyers and clients, penitents and clerics, doctors and patients and among spouses—where we believe that some degree of confidentiality of communications furthers broad social goals.

The same is true for journalists and their sources. We all know of stories that we might never have heard but for hardworking reporters who were able to pry vital information from reluctant sources. Watergate, of course, is the most memorable and important example, but others occur every day.

There is utterly no value served by the current state of confusion regarding when a meaningful promise of confidentiality may be made, or when it will simply be a prelude to a jail sentence for a conscientious reporter.

SMITH'S DECISION ON SHIELD LAW CRUCIAL

[From the San Antonio Express-News, June 28, 2007]

Freedom of the press is crucial to the survival of American democracy.

And part of that freedom must be allowing journalists to protect confidential sources.

Whistle-blowers aren't as likely to reveal what is actually happening in government if they are forced to risk all through exposure.

Knowing as much as possible about government activities is the best way for the public to get a true picture and protect itself from official malfeasance.

That's why a federal shield law is crucial to preserving a free press.

Media organizations have been hit with an exponential number of subpoenas from public and private entities seeking to learn about confidential sources in recent years. The harassment is costly, time-consuming and carries a chilling effect on the flow of important information to the public.

San Antonio Rep. Lamar Smith, the ranking Republican on the House Judiciary Committee, is in a position to protect the free press and the flow of information to the public.

The panel is scheduled to consider a proposed federal shield law, known as the Free Flow of Information Act, this week.

As the senior GOP leader on the judiciary panel, Smith's vote will be closely watched.

The Bush administration opposes the bipartisan legislation, but committee leaders already have made changes to deal with administration concerns about national security. Other objections forwarded by the Justice Department frankly are far-fetched.

The legislation would allow prosecutors and others to compel a journalist to testify if the information can't be obtained elsewhere and they convince a judge that the testimony is necessary.

The legislation would not provide blanket protection for journalists. But it would reduce efforts by lawyers to undermine confidentiality agreements and take shortcuts in the discovery process of routine cases.

Smith has a record as a friend of a free press and open government. He has advocated improvements in the Freedom of Information Act to allow journalists and the public better access to government records.

It is vital that Smith again stand up for the public's right to know by preserving the flow of information with the shield law.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 5 minutes to the gentleman from Iowa (Mr. KING), who is the ranking member of the Immigration Subcommittee of the Judiciary Committee.

Mr. KING of Iowa. Mr. Speaker, I thank the ranking member from Texas (Mr. SMITH) for yielding to me. I do appreciate the privilege to serve on this committee.

Mr. Speaker, I rise in opposition to H.R. 2102, the Free Flow of Information Act. It would protect journalists in most circumstances from having to reveal their sources or produce documents and notes to government.

This is not a problem. The press has flourished for over 200 years without a Federal privilege. The Department of Justice reports that since 1991 they have issued only 19 subpoenas to reporters seeking information. Only 19 since 1991. No one is above the law. Even reporters, as the Supreme Court has held, sometimes need to divulge information during the investigation of crimes. We have not seen the level of professionalism in journalism that we see in the medical profession, for example, and I think that is an argument we ought to weigh also.

Mr. Speaker, I would bring up the issue of our national security. Some of the people who hide behind the shield of journalism today routinely release classified national security data and publish it as if it were their patriotic duty and hide behind the shield of journalism.

H.R. 2102 places a heavy burden on the Department of Justice to demonstrate a compelling need for a reporter's source, which can be negated by the personal whims of hundreds of Federal judges who would handle these cases. The shield bill also makes it more difficult for the Department of Justice and other government agencies to fight crime and protect our national security. For example, the bill contains a limited number of examples where the privilege doesn't apply. Most of the Department of Justice crime fighting activity, such as efforts to combat child pornography or alien smuggling, is not addressed under this bill.

For example, there is a flaw in the bill because the Department of Justice could obtain source information to prevent a terrorist attack but not acquire the same information after the fact, after an attack, say, on the Twin Towers or on the Capitol. Additionally, H.R. 2102's definition of a journalist is so broad it would protect the media outlets of designated terrorist organizations, even terrorists themselves. I know the chairman has addressed that issue, but the language still remains broad.

Congress, State legislatures, and the courts have taken significant steps in certain circumstances to assure confidentiality, as have 49 States. Examples of protected information include pre-patent research, a person's medical records, the fact that someone may have sought medical health care, information related to a victim of sexual violence. The list goes on.

Mr. Speaker, with these very private subjects, there are significant legal, moral, or fiduciary obligations granted to protect people when their disclosure could cause serious and irrevocable hardships. People who improperly disclose them should not be protected through a media shield law just because they gave the information to a reporter or blogger, not someone else.

Historically, when Congress has enacted public access legislation, it has balanced the competing rights of personal and business privacy. Consider the Freedom of Information Act. It is one of the most important ''public right to know'' statutes in this country's history. FOIA specifically exempts from disclosure information protected by law, proprietary or privileged business information, and information that could lead to unwarranted invasions of personal privacy. Similarly, whistle-blower laws only protect the reporting of information related to suspected wrongdoing, not the disclosure of all private information. Congress's long-standing commitment to these distinctions in protecting confidential and proprietary information can and should be continued.

Mr. Speaker, H.R. 2102 protects the inappropriate leaking of a good deal of legitimately private information in the same way it protects a source who has disclosed information in an appropriate situation. For example, if a source told a reporter the name of a victim of a sexual assault, H.R. 2102 would block the victim from holding the leaker-source accountable for any harm such a story could cause.

The same would be true for information related to the location of a domestic violence safe house or employee records that might include Social Security numbers and credit information from stores and credit bureaus. It could also provide an absolute privilege when a source for purely personal purposes leaked information in violation of a specific court order protecting the contents of discovery or settlements that were sealed by a court. When and if such information appears in the media, the person harmed would be unable to use the judicial process to assure that the law fulfilled its purpose, even when every other avenue had been pursued to no avail.

So my question is, Mr. Speaker, what are we trying to fix? What is the problem? Nineteen subpoenas since 1991, a handful of cases stacked up against a mountain of information that has been pored through in the public media, classified information leaked into the New York Times, for example, jeopardizing our national security, and what is Congress doing about that? We are coming here to produce a shield law to protect even more of the same behavior.

Mr. CONYERS. Mr. Speaker, it is now my privilege to recognize the Speaker of the House, Ms. NANCY PELOSI, for 1 minute.

Ms. PELOSI. Mr. Speaker, I thank the distinguished chairman for yielding, and I appreciate his strong leadership in protecting and defending the Constitution of the United States. He leads us well in honoring our oath of office that we take.

I commend the cosponsors of this bipartisan legislation, Mr. BOUCHER and Mr. PENCE, for their leadership and commitment to working in a bipartisan way on an issue central to our democracy.

Thomas Jefferson once wrote, ''Our liberty depends on the freedom of the press, and that cannot be limited without being lost.'' Freedom of the press, protected by the first amendment, has been a cornerstone of our democracy, one that we cherish and promote around the world.

A free press keeps our Nation informed and holds those of us in government accountable. It is critical to freedom of speech and expression in our country. Freedom of the press is fundamental to our democracy and it is fundamental to our security.

Speaking truth to power is vital to our democracy today, as it has been throughout our history.

Mr. Speaker, the recent contracting scandals in Iraq, the appalling care of our wounded soldiers at Walter Reed Hospital, and the hidden Medicare drug prescription estimates a few years ago are several of the many examples where press coverage shaped our debate and our actions. These stories are central to accountability, the accountability necessary to make our Nation stronger and to be better stewards of the taxpayers' dollars.

However, the essential work of the press has been severely hampered by the lack of a consistent Federal standard or a federally recognized privilege concerning the disclosure of confidential sources by journalists. As a result, in recent years, more than 40 reporters have been subpoenaed for the identities of confidential sources in nearly a dozen cases.

Former Solicitor General Ted Olson, who served under President George W. Bush, wrote recently in The Washington Post, ''Journalists reporting on high-profile controversies cannot function effectively without offering some measure of confidentiality to their sources. Their ability to do so yields substantial benefits to the public in the form of stories that might otherwise never be written about corruption and abuse of power.''

Nearly all States have some form of press shield protecting the confidentiality of journalist sources; however, that protection is lacking at the Federal level and in the Federal courts.

It is for this reason that I have long supported a Federal press shield law, without which freedom of the press is threatened. The Federal Government's policies and actions should protect and preserve the press's ability to speak

truth to power. And this legislation does so with appropriate national security safeguards, striking a careful balance between liberty and security.

Freedom of the press has long been an issue of importance to many of us in this body. When I was the ranking member of the Intelligence Committee, I encouraged President Clinton to veto the Intelligence Committee authorization bill one year because it made it easier to prosecute journalists. We fixed those provisions and passed a bill that both protected our Nation and protected our fundamental freedoms.

Mr. Speaker, we seek today to protect the freedom of the press that has served our Nation so well. We also seek to make clear to confidential sources that they will be protected in most circumstances when they bring forward public evidence of waste, fraud and abuse in government and in the private sector.

As we protect and defend our Nation, we must now protect and defend the Constitution by enabling our press to be free, as our Founders envisioned.

I urge my colleagues to support this legislation.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 2 minutes for the purpose of engaging in a colloquy with my friend from Indiana (Mr. PENCE). I have a question I would like to ask him.

The bill states that the determination as to whether the testimony or document is critical to the underlying matter is to be made ''based on information obtained from a person other than the covered person,'' the covered person being the journalist. There has been some confusion as to what is meant by ''information from the covered person.''

In the Washington Post on October 4, Patrick Fitzgerald, who was the U.S. Attorney in the Scooter Libby case, wrote, ''The bill puzzlingly requires that agents prove that the leak occurred without relying on the newspaper article.''

Is Mr. Fitzgerald right? Does this provision mean that the party seeking the subpoena cannot use the very newspaper article at issue in the lawsuit to show why the reporter's testimony is needed?

I yield to the gentleman from Indiana.

Mr. PENCE. I thank the gentleman for yielding, and I thank him for a thoughtful question.

The answer would be no, that was not our intent and it is not how this provision should be read. This provision is meant to close a potential loophole in the bill. Without this provision, we were concerned that a person would be able to call a journalist to testify or provide documents for the purpose of showing why the journalist's testimony or documents are needed in the litigation. That obviously would short-circuit the statute and would not make sense.

The news article would be a matter of public record and would not be obtained from the journalist, and therefore could be used at such a hearing.

Mr. SMITH of Texas. I thank the gentleman from Indiana for his answer to my question. That is much appreciated.

Mr. Speaker, I am the last speaker on this side, and I know the chairman of the Judiciary Committee has the right to close. I wonder if he has any additional speakers.

Mr. CONYERS. I have none.

Mr. SMITH of Texas. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, let me summarize the objections to this legislation. The White House, the Justice Department, the Acting Director of National Intelligence and many law enforcement officials oppose H.R. 2102 because they believe it diminishes legal rights, public safety and endangers national security. The Department of Justice is concerned that this legislation will impede its efforts to conduct investigations and prosecute criminals.

For 200 years, information has flowed freely to the press. Congress need not enact H.R. 2102, when the status quo is working and the legislation's potential harm to our national security is so significant.

Our Founders created a legal system where no one is above the law. But if the media shield bill passes, we will be carving out a special exception to that rule for reporters, tabloids and bloggers.

□ 1645

This is not what our Founders intended when they created a free press. No one should be above the law, not even the press. We must err on the side of caution and not support legislation that could make it harder to apprehend criminals and terrorists or deter their activities. I urge my colleagues to oppose this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time and just want to say that we have not given up on the possibility of winning some modest support from the ranking member of the Judiciary Committee. He has negotiated with us in good faith. We continue to work on any improvements. I am very proud of the work that the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Indiana (Mr. PENCE) have put forward, and I want to thank Members of the House on both sides. There is apparently a large number of bipartisan supporters for this measure. I want to assure the House that we are moving forward with deliberate speed, and it is in that sense that I continue to urge support for the measure.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise to speak in strong support of H.R. 2102, the Free Flow of Information Act of 2007, which I am proud to co-sponsor. This legislation provides a qualified immunity from prosecution or contempt to journalists for refusing to disclose confidential sources or information.

Let me say, Mr. Speaker, that I am confident that this legislation adequately addresses and resolves the conflict between society's competing interests in a free and vigorous press, on the one hand, and not unduly hampering the ability of law enforcement to investigate and prosecute crimes.

Mr. Speaker, when it comes to the freedom of the press, the Department of Justice's Statement of Policy is clear. It states ''Because freedom of the press can be no broader than the freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues.'' 28 C.F.R. 50.10.

I have long been a strong proponent of a qualified privilege for journalists. Indeed, in 2001 I spoke out in favor of the need for such a privilege when I went to the Federal Detention Center in Houston today to support the efforts of Professor Vanessa Leggett, a 33-year-old freelance non-fiction writer who had been jailed without bond since July 20, 2001 for asserting her journalistic privilege and First Amendment right not to reveal confidential source information.

After visiting Professor Vanessa Leggett I became convinced of the justice of her cause and the importance of her case. Professor Leggett had spent four years researching the 1997 murder of Doris Angleton. When she refused to give in to threats and intimidation by an overzealous prosecution, and asserted her First Amendment rights in a grand jury investigation, she was found in contempt and jailed.

Mr. Speaker, like you I believe the First Amendment is the most important amendment in the Bill of Rights. And it is not a coincidence that the freedoms of speech and press are the first freedoms listed in the First Amendment.

I believe allowing journalists the right to maintain the confidentiality of their sources when doing research must be protected because it is indispensable to a free press which is the sine qua non of a free society. We must heed the counsel of Justice

Douglas's dissent in Branzburg v. Hayes, 408 U.S. 665 (1972): ''The people, the ultimate governors [of our democracy], must have absolute freedom of and therefore privacy of their individual opinions and beliefs.'' Justice Douglas reminds us that ''effective self-government cannot succeed unless the people are immersed in a steady, robust, unimpeded, and uncensored flow of opinion and reporting which are continuously subjected to critique, rebuttal, and re-examination.''

Again, this principle, codified at Title 28 CFR 50.10 of the Department of Justice Statement of Policy, clearly recognizes and protects one of our most sacred democratic institutions: the media. It requires, for example, that the Department of Justice ''strike the proper balance between the public's interest in effective law enforcement and the fair administration of justice,'' while other subsections clearly require that sanctions, such as those administered by the Department of Justice in this case, shall be reviewed by the Attorney General. As such, this Section presents a tension with the Court precedents set in Branzburg and in Jascalevich.

The Supreme Court's decisions in Branzburg v. Hayes, 408 U.S. 665 (1972), and New York Times v. Jascalevich, 439 U.S. 1331 (1978) establish the precedent that a

journalist cannot rely upon an absolute First Amendment-based privilege to justify refusal to testify when called by a grand jury, unless the grand jury investigation is instigated in bad faith. However, since the Court handed down its decision in Branzburg, 49 states and the District of Columbia now recognize some version of a shield law protecting the press, to varying degrees, from unfettered disclosure of sources, work product, and information generally.

These various state protections range in type and scope, from broad protections that provide an absolute journalistic privilege to shield laws that offer only qualified protection. The majority of state shield laws currently in place offer some form of a qualified privilege to reporters, protecting source information in judicial settings, unless the compelling party can establish that the information is: (1) relevant or material; (2) unavailable by other means, or through other sources; and (3) a compelling need exists for that information. There is considerable variation among the states on the last prong, with some requiring the party seeking disclosure to establish a compelling need for the information. Other states require a compelling showing that disclosure is needed to achieve a broader and greater public policy purpose.

In Federal courts, however, there is no current uniform set of standards to govern when testimony can be sought from reporters. Rather, the Federal jurisprudence has developed on an ad hoc, case-by-case basis. That is why we need, and I support, H.R. 2102.

H.R. 2102 establishes a procedure by which disclosure of confidential information from a journalist may not be compelled to testify or provide documents related to information obtained or created by the journalist unless the following conditions are met by a preponderance of the evidence and after notice to be heard: (1) The party seeking production must have exhausted all reasonable alternative sources of the information; (2) in the case of a criminal investigation, the party seeking production must have reasonable grounds to believe a crime has occurred and the information sought is critical to the case; (3) disclosure is necessary to: prevent an act of terrorism against the United States or other significant specified harm to national security or to prevent imminent death or significant bodily harm or to identify a person who has disclosed a trade secret actionable under 18 U.S.C. § 1831 or § 1832; or (4) the party seeking production must prove that the public interest in compelling disclosure outweighs the public interest in gathering or disseminating news or information.

Mr. Speaker, section 4 of the bill defines the key terms used in this bill. A ''Covered Person'' is a person who, for financial gain or livelihood, is engaged in journalism, including supervisors, employers, parents, subsidiaries, or affiliates of a covered person. ''Journalism'' is defined as the ''gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.''

Mr. Speaker, I applaud and commend Mr. BOUCHER's efforts to address the many concerns of his colleagues relating to the scope of a ''covered person'' and the definition of ''journalism.'' Initially, I was troubled that one day in the future some runaway court or wayward judge may construe these definitions so narrowly that situations like the one involving Vanessa Leggett that I have previously discussed would be excluded. However, based on my consultations with the lead sponsors, as well as my detailed discussions and consultations with groups like the Reporters Committee for Freedom of the Press, I am satisfied that the proposed language is broad enough to cover journalists who are in Vanessa Leggett's situation.

Under this legislation, a freelance journalist facing a similar subpoena will be able to represent to a judge that at the time she was talking to sources, she represented to them that she was working on a story or non-fiction book that she planned to sell to a newspaper or magazine or publisher. A reasonable judge would have little choice but to find her to be covered by the statute.

Mr. Speaker, it is interesting to note that the District Court and the 5th Circuit never questioned Vanessa Leggett's status as a journalist. Rather, the court assumed she was a journalist using the test of In re von Bulow, 828 F2d 94 (2d Cir. 1987). If the issue of a freelancer being covered was found to be vague in the statute, I believe a court would revert to the von Bulow standard, which holds someone is a journalist if she represented to her sources at the time of the interview that she was a journalist and was gathering information intending to write a story to disseminate to an audience.

In short, Mr. Speaker, because I believe the language of the bill now leaves no doubt that the Congress specifically intends the Free Flow of Information Act to cover situations similar to the Vanessa Leggett case, I strongly support this legislation and urge my colleagues to join me in voting for H.R. 2102.

Mr. UDALL of Colorado. Mr. Speaker, I support this legislation and urge its passage.

The bill is intended to provide journalists with a limited, qualified shield against efforts by prosecutors or other officials to compel public disclosure of the identities of whistleblowers or other sources of information.

Like 48 other States (and the District of Columbia), Colorado has already provided a similar protection for journalists, but of course that State law does not apply in Federal cases—for that a Federal statute is required, which is the purpose of this legislation.

And while I recognize that the Justice Department thinks no such law is needed—their view is that their own guidelines adequately deal with the subject—I think our experience in Colorado shows that it is possible to provide the assured protection that comes with a statutory shield without compromising the investigation of wrongdoing or the vigorous prosecution of crime.

I think this legislation does a good job of achieving a similar balance between protection for investigative journalists and their sources while maintaining the ability of the government to protect national security and conduct effective law enforcement.

Under the bill, journalists would be required to testify if a judge finds that a prosecutor, criminal defendant or civil litigant has shown by a preponderance of the evidence that an applicable test for compelled disclosure has been met.

For a prosecutor, that means showing that he or she had exhausted alternative sources before demanding information, that the sought-after material was relevant and critical to proving a case, and that the public interest in requiring disclosure would outweigh the public interest in news gathering.

The bill includes special rules for cases involving leaks of classified information or involving a journalist's being an eye witness to a crime.

The bill will enable federal law enforcement authorities to obtain an order compelling disclosure of the identity of a source in the course of an investigation of a leak of properly classified information. It also provides that disclosure of a leaker's identity can be compelled whenever the leak has caused or will cause ''significant and articulable harm to the national security.''

And the bill also permits law enforcement to obtain an order compelling disclosure of documents and information obtained as the result of eyewitness observations by journalists of alleged criminal or tortious conduct, as well as cases involving alleged criminal conduct by journalists themselves.

And, in addition to provisions designed to guard against impairing efforts to prevent acts of terrorism, threats to national security, and death or bodily harm to members of the public, there are similar provisions to guard and make sure the legislation will not thwart efforts to identify those who disclose significant trade secrets or certain financial or medical information in violation of current law.

Mr. Speaker, the need for this legislation was well expressed by former Solicitor General Theodore B. Olsen in an article published in the October 4th edition of the Washington Post.

In that article, Mr. Olsen said:

> . . . journalists reporting on high-profile controversies cannot function effectively without offering some measure of confidentiality to their sources. Their ability to do so yields substantial benefits to the public in the form of stories that might otherwise never be written about corruption and abuse of power. A person with information about wrongdoing is often vulnerable to retaliation if exposed . . . Yet it has become almost routine for journalists to be slapped with federal subpoenas seeking the identity of their sources.
>
> Reporters do not expect to be above the law. But they should receive some protection so they can perform their public service in ensuring the free flow of information and exposing improper conduct without risking jail sentences.
>
> The lack of federal protection makes for an especially strange state of affairs because the Justice Department has had internal standards providing protection to journalists and their sources for 35 years, and Special Counsel Patrick J. Fitzgerald claimed to be adhering to those standards when he subpoenaed reporters in the Plame affair. Thus, as Judge Robert Sack of the U.S. Court of Appeals for the 2nd Circuit has noted, the only real question is whether federal courts should be given some supervisory authority to ensure that prosecutors have, in fact, met governing standards before forcing reporters to testify. The answer seems obvious: yes.
>
> The District and the 49 states with shield laws have experienced no diminution of law enforcement efforts as a result of those laws. The legislation would not give reporters special license beyond the type of commonsense protection we already accord to communications between lawyers and clients, between spouses and in other contexts where

we believe some degree of confidentiality furthers societal goals.

This legislation is well balanced and long overdue, and it should be enacted.

I agree with Mr. Olson, and I urge all our colleagues to join me in voting for this bill.

Mr. ISSA. Mr. Speaker, I rise in opposition to H.R. 2102, the Free Flow of Information Act. This bill goes too far in jeopardizing our national security.

The freedom of the press is an immensely important principal in our democratic society. That is why the Department of Justice (DOJ) has for the past 35 years followed a policy that strictly limits when Federal prosecutors are allowed to issue subpoenas to the press. These standards are so difficult to meet that prosecutors, under this current policy, are commonly discouraged from even seeking a subpoena for a reporter in the first place.

These protections, which are far reaching, should not be absolute. When critical, highly sensitive national security information is illegally disclosed to members of the news media and published for every enemy of America to see—Federal prosecutors must be empowered to aggressively investigate the disclosure of that information and the prosecution of those responsible. We simply cannot erect obstacles which hamstring Federal law enforcement when sensitive government secrets are divulged. Such disclosure can be treasonous, and reporters should not be able to protect individuals who jeopardize our national security. American lives are more important than the privilege of anonymity that reporters promise to a source who is compromising our nation's secrets.

According to the DOJ, the ''unduly narrow exception to the legislation's broad prohibition on compelled disclosure would hinder efforts to investigate and prosecute those who have leaked classified information, undermine the ability of law enforcement to investigate national security breaches that have already occurred, and weaken Federal efforts to mitigate damage to national security that has already taken place.'' As a member of both the Committees on Judiciary and the Permanent Select Committee on Intelligence, I find these faults with the bill unacceptable.

While I do not stand in opposition to my friends Representatives MIKE PENCE and RICK BOUCHER, the primary sponsors of this legislation, I must ask my colleagues to vote no on this bill. H.R. 2102 establishes new dangers without sufficient justification.

Mr. STARK. Mr. Speaker, I rise today in support of freedom of the press and an informed public.

The Free Flow of Information Act (H.R. 2102) is a straightforward bill that will protect journalists from being legally obligated to disclose their confidential sources of information. This will allow sources to speak more freely, allowing for the vibrant exchange of important information between reporters, their contacts and the public.

Predictably, George Bush's Department of Injustice opposes today's legislation, in part because the Administration issued more than 300 subpoenas last year alone. That's understandable. If I had a track record of wasting money on a failing war, abusing civil liberties, suppressing scientific research, and failing to enforce important consumer protections and environmental regulations, I too would want to keep the press and the public in the dark.

But it is also despicable. Forty-nine states and the District of Columbia already recognize a reporter's privilege to keep confidential sources, and to do so without risking interrogation or prosecution. A federal media shield law would further protect the public's right to know about corruption, waste and mismanagement in and out of government.

In the past few years, journalists have depended on confidential sources to inform them about the torture of Iraqi prisoners at Abu Ghraib, the disclosure of CIA prisons in Eastern Europe, and the President's warrantless wiretapping program. If we left it up to the administration to decide what went into news stories, we would have headlines that told us the war in Iraq is a smashing success and that DICK CHENEY's hunting technique is unparalleled.

The Constitution guarantees the right to a free press. That freedom depends on not having to worry about being punished for revealing information that the public has a right to know. I urge my colleagues to vote in support of this bill.

Mr. HOLT. Mr. Speaker, I am pleased the House is taking action today to help protect reporters from prosecutions simply for doing their jobs.

Over the last few years, more than forty reporters have been subpoenaed for the identities of confidential sources in nearly a dozen cases. Although the Department of Justice has promulgated voluntary guidelines for issuing subpoenas to the media and reporters, these guidelines do not apply to civil litigants in federal court and give unreviewable discretion to special prosecutors.

H.R. 2102 would establish a Federal standard for all parties—prosecutors, civil litigants, journalists and sources—and send a signal to potential sources that they will be protected in most circumstances when they pass to news organizations evidence of waste, fraud and abuse in government and in the private sector.

The bill requires journalists to testify at the request of criminal prosecutors, criminal defendants and civil litigants who have shown by a preponderance of the evidence that they have met the various tests for compelled disclosure. The bill contains provisions to ensure that the privilege would not impair law enforcement's efforts to identify a person who has disclosed significant trade secrets or certain financial or medical information in violation of current law.

In the case of national security issues, the test is that ''disclosure of the identity of such a source is necessary to prevent an act of terrorism against the United States or its allies or other significant and specified harm to national security with the objective to prevent such harm.'' It is the latter half of this clause that would allow the Justice Department to compel testimony from reporters in national security leak cases.

It is important that we ensure that information that is properly classified be protected from unauthorized disclosure. However, as we've seen repeatedly over the last century, too often government officials will misuse the classification system to hide evidence of their own lawbreaking. It will be important for Congress to carefully monitor how this particular provision is employed by the Department of Justice to ensure it is not abused in a way that prevents Congress and the public from learning about violations of law carried out in the name of protecting the nation's security.

Organizations representing publishers, broadcasters, and journalists agree that this legislation provides a suitable framework for balancing the needs of a free press with the need to uphold our laws, and on balance, so do I. I urge my colleagues to vote for this important legislation.

Mr. SHAYS. Mr. Speaker, as a cosponsor of H.R. 2102, the Free Flow of Information Act, I am pleased to support this legislation on the House floor today.

I support this bill because I believe news reporting fosters public awareness of important public issues and is an important means of ensuring government accountability.

This legislation would create criteria that must be met before a Federal entity may subpoena a member of the news media in any government, criminal or civil case.

H.R. 2102 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, I believe this legislation strikes a balance between the public's need for information and the fair administration of justice.

Mr. Speaker, I urge support for this bill.

Mr. CONYERS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the bill has expired.

AMENDMENT NO. 1 OFFERED BY MR. BOUCHER

Mr. BOUCHER. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in House Report 110–338 offered by Mr. BOUCHER:

Page 3, line 24, strike ''to prevent'' and insert ''to prevent, or to identify any perpetrator of,''.

Page 4, line 6, strike ''or''.

Page 4, line 22, strike ''and'' and insert ''or''.

Page 4, after line 22, insert the following:

(D)(i) disclosure of the identity of such a source is essential to identify in a criminal investigation or prosecution a person who without authorization disclosed properly classified information and who at the time of such disclosure had authorized access to such information; and

(ii) such unauthorized disclosure has caused or will cause significant and articulable harm to the national security; and

Page 5, after line 19, insert the following:

(d) EXCEPTION RELATING TO CRIMINAL OR TORTIOUS CONDUCT.—The provisions of this section shall not prohibit or otherwise limit a Federal entity in any matter arising under Federal law from compelling a covered person to disclose any information, record, document, or item obtained as the result of the eyewitness observation by the covered person of alleged criminal conduct or as the result of the commission of alleged criminal or tortious conduct by the covered person, including any physical evidence or visual or audio recording of the conduct, if a Federal court determines that the party seeking to compel such disclosure has exhausted all other reasonable efforts to obtain the information, record, document, or item, respectively, from alternative sources. The previous sentence shall not apply, and subsections (a) and (b) shall apply, in the case that the alleged criminal conduct observed

by the covered person or the alleged criminal or tortious conduct committed by the covered person is the act of transmitting or communicating the information, record, document, or item sought for disclosure.

Page 7, strike lines 14 through 18 and insert the following:

(2) COVERED PERSON.—The term ''covered person'' means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person. Such term shall not include—

Page 7, line 22, strike ''or''.

Page 7, line 26, strike the period and insert a semi-colon.

Page 7, after line 26, insert the following:

(C) any person included on the Annex to Executive Order 13224, of September 23, 2001, and any other person identified under section 1 of that Executive order whose property and interests in property are blocked by that section;

(D) any person who is a specially designated terrorist, as that term is defined in section 595.311 of title 31, Code of Federal Regulations (or any successor thereto); or

(E) any terrorist organization, as that term is defined in section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

The SPEAKER pro tempore. Pursuant to House Resolution 742, the gentleman from Virginia (Mr. BOUCHER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. BOUCHER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, the amendment I am pleased to offer at this time, along with the principal coauthor of this legislation, the gentleman from Indiana (Mr. PENCE), incorporates recommendations that were made to us by a number of members of the House Judiciary Committee and other interested Members of the House both during the extensive markup of this legislation in the committee and in the time intervening between then and now.

The legislation was broadly supported in that committee and was approved by voice vote in that committee, and the recommendations that we have received now incorporated into this manager's amendment came from members of the committee and other Members of the House both on the Democratic and Republican sides. We have folded those various recommendations into the manager's amendment.

These amendments that are folded into the manager's amendment further limit the scope of the privilege that is conferred by the legislation itself.

First, the amendment expands the instances in which source disclosure can be compelled to include a leak by the source of properly classified information where the leak has caused a significant and articulable harm to national security.

Secondly, source disclosure could be compelled when the reporter personally witnesses criminal conduct or when the reporter is himself involved in criminal conduct.

Third, source disclosure could occur when necessary to identify any perpetrator of an act of terrorism against the United States or other significant and specified harm to national security.

The amendment also narrows the definition of the individuals who may assert the privilege to refrain from revealing confidential sources in Federal court proceedings. Under the amendment, only people who are regularly engaged in news gathering and reporting and who receive substantial financial gain or receive a substantial portion of their livelihood from the journalistic activity will qualify.

The amendment will also deny the privilege to journalists who have been designated as terrorists pursuant to law or who are employed by a terrorist organization as designated pursuant to law.

We offer this amendment on a bipartisan basis, and we ask for its approval by the House.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, although I am not opposed to the amendment, I ask unanimous consent to control the time in opposition to the amendment.

The SPEAKER pro tempore. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, under the provisions of the Free Flow of Information Act where a reporter is being asked to reveal the identity of a confidential source, the underlying bill here provides several exceptions where a reporter may be compelled to reveal a source. Sources can be revealed under exceptions for the prevention of terrorism, other harm to the Nation's security, to prevent bodily harm, in cases where trade secrets and personal health information are revealed.

As a result of Chairman CONYERS' bipartisan working group, we have conceived of the Boucher-Pence bipartisan manager's amendment, and I rise to support it.

It adds additional exceptions to the bill. Under it, compelled disclosure of a source will be permitted in cases of unauthorized leaks of national security secrets. Also, if a journalist is an eyewitness to a crime or tortious conduct, the journalist cannot claim the privilege of the shield and can be required to turn over information documents.

Also, as Mr. BOUCHER said, the amendment makes two changes regarding the definition of a covered person. Covered persons are those who are able to use the shield, and we have been discussing how we define journalists throughout the history of this debate. In the manager's amendment, we restrict coverage to those people who regularly engage in journalism for substantial financial gain or a substantial part of their livelihood. And this way, the definition will exclude casual bloggers but not all bloggers, criminal offenders or the media wings of terrorist groups who are not practicing journalism. It also adds further exclusions to the list of terrorist organizations which are excluded in order to supplement the language already there to make it 100 percent clear that terrorists cannot claim the privilege of this bill.

I believe the Boucher-Pence manager's amendment, as the entirety of the bill, is a result of bipartisan cooperation. I believe the Boucher-Pence manager's amendment improves the Free Flow of Information Act. I urge my colleagues on both sides of the aisle to support it.

Mr. SMITH of Texas. Mr. Speaker, I yield myself the balance of my time.

I support the manager's amendment offered by the gentleman from Virginia (Mr. BOUCHER). The provisions of the amendment do improve the bill by addressing some of the Justice Department's concerns. Despite this, it still does not cure the bill's fundamental flaws.

The legislation will still make it impossible to enforce certain criminal laws and will impede national security investigation. While I commend the sponsors of the amendment for trying to address the Justice Department's concern, even if the amendment is adopted, the bill should still be opposed. So I urge Members to support the amendment and oppose the underlying bill.

Mr. Speaker, I yield back the balance of my time.

Mr. BOUCHER. Mr. Speaker, I am pleased to yield such time as he may consume to the distinguished chairman of the House Judiciary Committee, the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I am delighted and I congratulate the ranking member for joining us in supporting the Boucher-Pence manager's amendment. We think that we can move even further. Here is an amendment that alters the standard for piercing the shield where national security is involved. Also, it enables law enforcement to obtain an order compelling disclosure of the identity of a source in the course of a leak investigation.

So I am very happy about this. I think that it portends that there may be other areas of agreement that we will be able to reach. I thank the gentleman for yielding me the time.

Mr. BOUCHER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 742, the previous question is ordered on the bill, as amended, and on the further amendment by the gentleman from Virginia (Mr. BOUCHER).

The question is on the amendment offered by the gentleman from Virginia.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SMITH OF TEXAS

Mr. SMITH of Texas. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SMITH of Texas. I am opposed in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Smith of Texas moves to recommit the bill H.R. 2102 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Page 5, after line 2, insert the following subsection (and redesignate subsequent subsections accordingly):

(b) AUTHORITY TO CONSIDER NATIONAL SECURITY INTEREST.—For purposes of making a determination under subsection (a)(4), a court may consider the extent of any harm to national security.

Mr. SMITH of Texas (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas is recognized for 5 minutes in support of his motion.

Mr. SMITH of Texas. Mr. Speaker, H.R. 2102 presumes that a journalist is entitled to a reporter's privilege unless the government can show a court otherwise. The government can only do this by meeting certain threshold requirements set forth in the bill.

After all those requirements are met, the judge must then apply a balancing test. The judge must find that ''the public interest in compelling disclosure of the information or document involved outweighs the public interest in gathering or disseminating news or information.''

My motion to recommit provides further guidance to the judge as to what criteria should be considered in weighing that decision.

The motion to recommit simply states that the judge may consider the extent of any harm to national security. It does not dictate any result.

The manager's amendment partly addresses this issue by creating an additional exception to the privilege that excludes from the privilege leaks of classified information that harm national security in criminal cases. I agree with that idea as far as it goes.

This motion to recommit, though, goes further. It allows the judge to consider this factor in any case, not just a criminal case. It allows a judge to consider any leak that harms national security, not just a leak in violation of the laws on classified information.

There are many kinds of information that can harm national security. One example is grand jury information. Suppose that the government is conducting a grand jury investigation of a suspected terrorist ring. If a grand juror were to reveal that to a reporter, it might allow the terrorist to escape to strike another day.

Another example is information covered by various common law privileges like the attorney/client privilege. Suppose that an attorney knew his client, a former terrorist, was cooperating with authorities to avoid prosecution. If he revealed this to the press, it could reveal to the terrorist's former compatriots that they needed to change their plans.

Another example is confidential business information that is protected by contractual relationships. Employees of a computer company might know and reveal without authorization that a certain new chip is coming to the market in a matter of months. This might allow a foreign enemy to stop their research on that type of chip and devote their resources to some other project.

The problem is that any of these kinds of information could harm national security. If they do, a judge ought to be able to consider that in deciding what the public interest requires.

In short, I think we are going in the same direction, but the manager's amendment does not go far enough. The motion to recommit protects national security against harmful leaks in all cases, not just criminal cases. When national security is threatened by leaks, we must protect ourselves in all cases, not just criminal cases.

I urge my colleagues to adopt this motion and protect our national security.

Mr. Speaker, I yield back the balance of my time.

□ 1700

Mr. CONYERS. Mr. Speaker, I rise in support of the motion to recommit.

The SPEAKER pro tempore. Without objection, the gentleman from Michigan is recognized for 5 minutes.

There was no objection.

Mr. CONYERS. Mr. Speaker, I thank the Speaker and note his surprise, and I want everyone to know that this motion is one that we on this side can concur with. We think it's thoughtful and appropriate and indicates the kind of rapprochement that we are trying to reach on any other matters of difference that might be outstanding.

Allowing a court to take into account national security when considering the balancing test and allowing the court to retain full discretion on whether to consider this information, and it may consider this along with any other information it deems relevant, means that the ranking member's continued commitment to work on this issue is going on even now, and I thank him for his constructive efforts.

Mr. Speaker, I yield to the author of the manager's amendment, Mr. BOUCHER of Virginia.

Mr. BOUCHER. Mr. Speaker, I thank the gentleman from Michigan for yielding to me, and I concur in his statement that this motion to recommit is acceptable on our side, and in accepting this motion to recommit, we are clearly acting in furtherance of the bipartisan rapport that underlays the construction of the Free Flow of Information Act and its consideration here in the House today.

The motion to recommit provides that in performing the balancing test under the bill, which weighs whether the public interest in disclosure outweighs the public interest in news gathering and dissemination, the court may consider the extent of any harm to national security.

The extent of any harm to national security is clearly a relevant consideration when determining key questions relating to what is or is not in the public interest, and for that reason, Mr. Speaker, I'm pleased to join with the gentleman from Michigan in urging acceptance of the motion to recommit.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SMITH of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—yeas 388, nays 33, not voting 10, as follows:

[Roll No. 972]

YEAS—388

Ackerman	Bartlett (MD)	Boehner
Aderholt	Barton (TX)	Bonner
Akin	Bean	Bono
Alexander	Becerra	Boozman
Allen	Berkley	Boren
Altmire	Berman	Boswell
Andrews	Berry	Boucher
Arcuri	Biggert	Boustany
Baca	Bilbray	Boyd (FL)
Bachmann	Bilirakis	Boyda (KS)
Bachus	Bishop (GA)	Brady (PA)
Baird	Bishop (NY)	Brady (TX)
Baker	Bishop (UT)	Braley (IA)
Baldwin	Blackburn	Broun (GA)
Barrett (SC)	Blumenauer	Brown (SC)
Barrow	Blunt	Brown, Corrine

Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carter
Castle
Chabot
Chandler
Cleaver
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Fallin
Farr
Fattah
Feeney
Ferguson
Flake
Forbes
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gilchrest
Gillibrand
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Hall (NY)
Hall (TX)
Hare
Harman
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Hobson
Hodes
Hoekstra
Holden
Honda
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jefferson
Johnson (GA)
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kuhl (NY)
LaHood
Lamborn
Lampson
Langevin
Lantos
Larson (CT)
Latham
LaTourette
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mitchell
Mollohan
Moore (KS)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Neal (MA)
Neugebauer
Nunes
Oberstar
Obey
Ortiz
Pallone
Pascrell
Pastor
Pearce
Pence
Perlmutter
Peterson (MN)
Petri
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Sutton
Tanner
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Watson
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Yarmuth
Young (AK)
Young (FL)

NAYS—33

Abercrombie
Castor
Clarke
Clay
Davis (IL)
Dingell
Filner
Grijalva
Gutierrez
Hastings (FL)
Hinchey
Hinojosa
Hirono
Holt
Jackson-Lee (TX)
Kucinich
Larsen (WA)
Lee
Lewis (GA)
Meeks (NY)
Miller, George
Moore (WI)
Napolitano
Olver
Paul
Payne
Rangel
Schakowsky
Slaughter
Stark
Velázquez
Wasserman Schultz
Waters

NOT VOTING—10

Carson
Clyburn
Cubin
Jindal
Johnson, E. B.
Peterson (PA)
Tancredo
Taylor
Wilson (OH)
Woolsey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1727

Ms. MOORE of Wisconsin, Messrs. HOLT, DAVIS of Illinois, HINCHEY, GUTIERREZ, Ms. VELÁZQUEZ, and Mr. MEEKS of New York changed their votes from ''yea'' to ''nay.''

Ms. DEGETTE, Mrs. CAPPS, and Mr. JACKSON of Illinois changed their votes from ''nay'' to ''yea.''

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

Mr. CONYERS. Mr. Speaker, pursuant to the instructions of the House in the motion to recommit, I report the bill, H.R. 2102, back to the House with an amendment.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment:

Page 5, after line 2, insert the following subsection (and redesignate subsequent subsections accordingly):

(b) AUTHORITY TO CONSIDER NATIONAL SECURITY INTEREST.—For purposes of making a determination under subsection (a)(4), a court may consider the extent of any harm to national security.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 398, noes 21, not voting 12, as follows:

[Roll No. 973]

AYES—398

Ackerman
Aderholt
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Braley (IA)
Broun (GA)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gilchrest
Gillibrand
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Grijalva
Hall (NY)
Hall (TX)
Hare
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Heller
Hensarling
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Jones (NC)
Jones (OH)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lamborn
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)

Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Nunes
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pence
Perlmutter
Peterson (MN)
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schakowsky
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Space
Spratt
Stark
Stearns
Stupak
Sullivan
Sutton
Tanner
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Yarmuth
Young (AK)
Young (FL)

NOES—21

Abercrombie
Akin
Barton (TX)
Brown (SC)
Buyer
Carter
Culberson
Herger
Issa
Johnson, Sam
King (IA)
King (NY)
Lungren, Daniel E.
Mica
Petri
Royce
Sali
Sensenbrenner
Smith (TX)
Thornberry
Weldon (FL)

NOT VOTING—12

Carson
Clyburn
Cubin
Gutierrez
Jindal
Johnson, E. B.
Peterson (PA)
Sherman
Tancredo
Taylor
Wilson (OH)
Woolsey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that there is 1 minute remaining on this vote.

□ 1736

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 106

Mr. JOHNSON of Georgia. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H. Res. 106.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 106

Mr. MITCHELL. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H. Res. 106.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE.

The SPEAKER pro tempore (Mr. CUELLAR). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken tomorrow.

RECOGNIZING THE 35TH ANNIVERSARY OF THE CLEAN WATER ACT

Mr. OBERSTAR. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 725) recognizing the 35th anniversary of the Clean Water Act, and for other purposes.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 725

Whereas clean water is a natural resource of tremendous value and importance to the Nation;

Whereas there is resounding public support for protecting and enhancing the quality of the Nation's rivers, streams, lakes, marine waters, and wetlands;

Whereas maintaining and improving water quality is essential to protect public health, fisheries, wildlife, and watersheds and to ensure abundant opportunities for public recreation and economic development;

Whereas it is a national responsibility to provide clean water for future generations;

Whereas since the enactment of the Clean Water Act in 1972, substantial progress has been made in protecting and enhancing water quality due to a deliberate and national effort to protect the Nation's waters;

Whereas substantial improvements to the Nation's water quality have resulted from a successful partnership among Federal, State, and local governments, the private sector, and the public;

Whereas serious water pollution problems persist throughout the Nation and significant challenges lie ahead in the effort to protect water resources from point and nonpoint sources of pollution and to maintain the Nation's commitment to a ''no net loss'' of wetlands;

Whereas the Nation's decaying water infrastructure and a lack of available funding to maintain and upgrade the Nation's wastewater infrastructure pose a serious threat to the water quality improvements achieved over the past 35 years;

Whereas the Environmental Protection Agency, the Congressional Budget Office, and other stakeholders have identified a funding gap of between $300,000,000,000 and $400,000,000,000 over the next 20 years for the restoration and replacement of wastewater infrastructure;

Whereas further development and innovation of water pollution control programs and advancement of water pollution control research, technology, and education are necessary and desirable; and

Whereas October 18, 2007, is the 35th anniversary of the enactment of the Clean Water Act: Now, therefore, be it

Resolved, That the House of Representatives—

(1) recognizes the 35th anniversary of the Federal Water Pollution Control Act (commonly known as the Clean Water Act);

(2) recommits itself to restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters in accordance with the goals and objectives of the Clean Water Act;

(3) dedicates itself to working toward a sustainable, long-term solution to address the Nation's decaying water infrastructure; and

(4) encourages the public and all levels of government—

(A) to recognize and celebrate the Nation's accomplishments under the Clean Water Act; and

(B) to renew their commitment to restoring and protecting the Nation's rivers, lakes, streams, marine waters, and wetlands for future generations.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. OBERSTAR) and the gentleman from Tennessee (Mr. DUNCAN) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota.

GENERAL LEAVE

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution, H. Res. 725.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we meet on the 35th anniversary of the Clean Water Act from 1972; a bill that started out in the House, made its way through the Committee on Public Works, as it was known then, through the House, to the Senate Committee on Public Works, and then through a 10-month House-Senate conference, a remarkable meeting of Members of the House and Senate which, in a time very different from the times we experience recently, where Members actually participated, sat across the table from one another, not separated by staff, although I was a member of the staff at the time, not relegating their responsibilities to others, but actually participating vigorously with informed judgment, with strongly held views in shaping what everyone in that conference knew was going to be a new future for the waters of the United States.

That legislation was considered against a backdrop of 14 years of the Federal Water Pollution Control Act, crafted by my predecessor, John Blotnick, who was Chair first of the Subcommittee on Rivers and Harbors and then Chair of the Full Committee on Public Works, to clean up the Nation's waters.