

## Administration Should Respect Voice Of America's Autonomy

By **Lee Crain and Randi Brown** (June 12, 2020, 5:51 PM EDT)

On June 4, the U.S. Senate confirmed conservative filmmaker Michael Pack to lead the U.S. Agency for Global Media, the agency that oversees the Voice of America — a publicly funded global news radio broadcaster. His confirmation comes on the heels of multiple attacks on the VOA by President Donald Trump, who has called the VOA's reporting "disgusting," and has expressed a desire to control the news agency by installing Pack at the helm.

And Vice President Mike Pence's office punished the media outlet when its reporting about the administration was insufficiently complimentary. After a VOA reporter recently tweeted in a manner the administration deemed embarrassing, the reporter was banned from Air Force 2.

These attacks represent a particularly pernicious expansion of the administration's hostility toward the media. The president has attacked journalists as "enemies of the people," weaponized press credentialing and actively used litigation to chill journalistic expression. Like his approach to the media more generally, the president's desire to commandeer the VOA is dangerous, unlawful and unconstitutional.

The VOA is protected by the First Amendment and by statute, both of which ensure its freedom to provide accurate and sometimes even critical coverage of our government. The president and Pack must not attempt to improperly influence the VOA's reporting or undermine its well-earned global credibility.

Established in 1942, the VOA is a U.S. international broadcaster providing news in more than 40 languages to over 280 million people worldwide. Its first broadcast announced its mandate: "We bring you Voices from America. ...The news may be good for us. The news may be bad. But we shall tell you the truth."

Consistent with that pronouncement, the Smith-Mundt Act codified into law the requirement that the outlet's broadcasting "be conducted in accordance with the highest professional standards of broadcast journalism." Congress further directed that the VOA would serve as a "consistently reliable and authoritative source of news," whose "news will be accurate, objective and comprehensive."



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True to its mandate, the VOA has at times covered U.S. policies critically, including reporting about criticism of the Obama administration's drone policy and the Bush administration's failures to track immigrants wanted for terrorism questioning. Recently, however, the president has suggested that because this outlet is taxpayer-funded, it is an organ of government speech unentitled to First Amendment protection.

The president is wrong. American media is protected from government interference by the First Amendment, despite this administration's repeated attempts to curtail journalist access and demean reporters. The government cannot retaliate against journalists merely because it disagrees with the content of their reporting.

Indeed, the VOA's entitlement to all of the protections our country affords the press is clear both from federal law and the outlet's status as a journalistic organization which has adhered for decades to the highest standards of journalism. It reports on the government like any other organization, including by participating in the White House press pool.

The U.S. Supreme Court's recent decisions on government speech — *Matal v. Tam* and *Walker v. Texas Division, Sons of Confederate Veterans* — make clear that the First Amendment protects the VOA. The court has explained that speech is "government speech" beyond First Amendment protection only where (1) the government has "traditionally used [the medium] for government speech"; (2) the speech is "often closely identified in the public mind with the" government; and (3) the government "effectively controlled the messages [conveyed]."

Each of these factors suggests that — far from being a mouthpiece for the executive branch — the VOA is a card-carrying member of this nation's free press, fully entitled to First Amendment protection.

First, the government has not historically used broadcast journalism to project its own viewpoint, at least not domestically. The government speaks to its citizens through officials, press secretaries and spokespeople. This country lacks a state propaganda arm, which would be anathema to American values — values Congress codified into law when the Smith-Mundt Act decreed the VOA would "serve as a consistently reliable and authoritative source of news," with "balanced," "accurate, objective and comprehensive" programming.

Second, the VOA's reporting is not closely identified in the public mind with the government. Many media organizations are taxpayer funded, but the Supreme Court recently, in *Manhattan Community Access Corporation v. Halleck*, reaffirmed that government funding alone does not render an organization government-run.

Likewise, any features of the VOA the public might associate with the government are common to numerous private organizations. For example, although the name Voice of America might connote government association, a host of other private media organizations' names reference geography without having any state connection, such as the American Broadcasting Company and The New York Times.

Third, since at least the Smith-Mundt Act's enactment, the government has consistently eschewed exerting control over the VOA's reporting. In fact, the VOA's supervising agency itself says its role is to "serve ... as a firewall between U.S. government policymakers and journalists" to allow the media outlet to achieve its statutorily-required journalistic mission.

Like any other American news organization, then, the VOA is entitled to the robust First Amendment protections that ensure our nation's press can function as a vital check on governmental power. Thus, government retaliation against the VOA would constitute textbook unconstitutional content-based discrimination, blatantly infringing upon the freedom of the press.

Government efforts to influence and stifle the work of bona fide journalists amid a global pandemic undermine the freedom of the press at a moment when the accuracy and integrity of news reporting could not be more important. The VOA brings high-quality journalistic coverage about the United States to the world. Its independence and control over its content must continue unabated. The administration's attempt to convert the VOA into a propaganda network is illegal and unconstitutional, and neither the organization itself nor any court should stand for it.

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