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[Protecting confidential sources](#)

Rep. Mike Pence

In this great nation, it falls on each generation of Americans to preserve, protect and defend our freedoms. We are at a critical juncture with the freedom of the press in America, and the Congress has before it the opportunity to ensure this freedom for generations to come by sending the Free Flow of Information Act to the president for his signature.

As a conservative committed to limited government, I believe the only check on government power in real time is a free and independent press. A free press ensures the flow of information to the public, and let me say, during a time when the role of government in our lives and in our enterprises seems to grow larger every day, ensuring the vitality of a free and independent press is more important than ever.

My conviction in this regard led me, more than four years ago, to author the Free Flow of Information Act with Rep. Rick Boucher, Virginia Democrat. The bill, also known as a federal media shield, provides a qualified privilege of confidentiality to journalists, which enables them to bring forward information to the public that might otherwise never see the light of day. However, there should be no confusion: This bill is not about protecting journalists; this bill is about protecting the public's right to know.

Reading the words of the First Amendment to the Constitution, "Congress shall make no law ... abridging the freedom of speech, or of the press," it would seem that our Founding Fathers provided us with a clear and simple guarantee of a free press that would protect the public's right to know. However, over time that freedom eroded, specifically with regard to the protection of confidential sources.

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

More than 30 years later, journalists cannot assure confidentiality to sources without risking fines or time in jail. Since 2001, five journalists have been sentenced or jailed for refusing to reveal their confidential sources in federal court. Two reporters were sentenced to 18 months in prison and one reporter faced up to \$5,000 a day in fines. A 2006 study estimated that in that year alone, 67 federal subpoenas sought confidential material from reporters, with 41 of those subpoenas seeking the name of a confidential source.

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

However, there are instances when the operation of our democracy must come first. The federal government is responsible for protecting our country and each and every one of our citizens. National security concerns must always be given the highest consideration. In the House, we addressed the national security concerns head-on by providing only qualified protection for journalists against compelled disclosure of confidential sources.

The House bill takes a reasonable and measured approach, allowing for compelled disclosure when national security, terrorism or the disclosure of classified information that harms national security is at issue. There also are other exceptions that allow, for example, compelled disclosure to prevent death or bodily harm. In these situations, a judge will determine whether the public interest in compelling disclosure outweighs the public interest in gathering or disseminating the news or information. With these exceptions written into the House bill, I am confident that nothing in the Free Flow of Information Act will prevent the federal government from fulfilling its national security responsibility.

Forty-nine states and the District have various statutes or judicial decisions that protect reporters from being compelled to testify or disclose sources and information in their courts. The federal government does not, but it is close at hand.

On March 31, the Free Flow of Information Act unanimously passed the House of Representatives. Companion legislation is moving through the Senate now. And, while serving in the Senate, President Obama pledged his support for a federal media shield bill.

Abraham Lincoln said, "Give the people the facts and the Republic will be saved." The Free Flow of Information Act will make certain that the American people are given the facts. The time for ensuring the free flow of information is now. The time for protecting the public's right to know is now. The time for passing the Free Flow of Information Act through both chambers of Congress is now. It is time for this generation to do its duty and put a stitch in this tear in the First Amendment freedom of the press.