

IN THE  
**Supreme Court of the United States**

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BOB DROGIN, H. JOSEF HEBERT, and JAMES RISEN,  
*Petitioners,*

v.

WEN HO LEE, DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION,  
DEPARTMENT OF ENERGY,  
*Respondents.*

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PIERRE THOMAS,  
*Petitioner,*

v.

WEN HO LEE,  
*Respondent.*

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**ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**BRIEF OF THE STATES OF NEW YORK, ARKANSAS, CALIFORNIA,  
CONNECTICUT, HAWAII, IOWA, MAINE, MARYLAND, NORTH DAKOTA,  
OHIO, OKLAHOMA, UTAH, WASHINGTON, WEST VIRGINIA, AND THE  
DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF THE  
PETITIONS FOR WRITS OF CERTIORARI**

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**UNITED STATES CONSTITUTION**

First Amendment .....*passim*

**FEDERAL RULES AND REGULATIONS**

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**STATEMENT OF INTEREST OF THE AMICI CURIAE**

This case raises essential questions about whether and to what extent journalists are protected against compelled disclosure of confidential source information. The amici States (and virtually all others) recognize such a privilege, whether it arises under the First Amendment or their own constitutional, statutory, or common law.

The States care about this case, first of all, because they care about the reporter's privilege. They recognize that the free flow of information is vital to the workings of a healthy democracy; that journalists play a crucial role in gathering and reporting such information; that the most important information must often come from sources who need or prefer to remain confidential; and that without the confidentiality guaranteed by the reporter's privilege, the sources will remain silent and their information secret. That is why the States and the District of Columbia protect the privilege, as set forth in the Appendix to this brief: thirty-two of them through statute, and eighteen others through judicial decision.

Most federal courts, including the court below, recognize some form of a reporter's privilege that is rooted in the First Amendment. But two of the circuits have refused to recognize any privilege, and the courts that do recognize a privilege differ widely about its scope. Meanwhile, this Court has never addressed the existence or scope of a reporter's privilege in civil litigation. And its one pronouncement on any aspect of the reporter's privilege is the famously cryptic *Branzburg v. Hayes*, 408 U.S. 665 (1972), so far the Court's last word on this subject and no clearer now than it was 34 years ago.

It is thus uncertain whether there is a federal reporter's privilege or what that privilege is. Potential speakers cannot know whether their communications will receive any protection in federal court, let alone how much that protection might differ from the protection accorded by state courts. Such uncertainty chills speech almost as much as outright denial of the privilege would. It accordingly undermines efforts by amici States to protect the flow of information through recognition of the privilege, and only review by this Court can alleviate the problem.

The States also have a more direct interest in seeing *Branzburg* clarified. They are concerned not just with the interplay between federal and state law but with federal law as a *source* of state law. The courts in most of the eighteen States that recognize the privilege by virtue of judicial decision rely extensively on *Branzburg* in doing so. State courts need to know what the case means — especially if the First Amendment requires *more* protection of the privilege than the States already offer.

Finally, the States' interest in resolving the uncertainty of federal law extends not just to the reporter's privilege under the Constitution — which was the sole issue in *Branzburg* — but also to the privilege under federal common law. By addressing it, the Court can provide the full measure of clarity about the journalist's privilege that the States need and the subject deserves.

## SUMMARY OF ARGUMENT

The decision below reflects sharp and entrenched divisions on the existence and scope of a federal reporter's privilege among the federal circuit courts. These courts are split over whether a reporter's privilege even exists in light of this Court's decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972). Two circuits have refused to recognize any privilege. Six other circuits have recognized some form of protection for reporters, though they differ on whether the source of the protection is the First Amendment or the common law. These circuits are further divided on the scope of the reporter's privilege in civil cases. Some take the position, urged by petitioners, that the qualified privilege can be overcome only after consideration of the First Amendment interests of the reporter and the public in the free flow of information. Others side with the court below, which declined to consider any First Amendment concerns in determining whether the privilege applies. These circuit splits create uncertainty, chill speech, and should be resolved by this Court.

A grant of certiorari is also warranted because the decision below clashes with and thus undermines most States' policies with respect to the reporter's privilege. The D.C. Circuit below agreed with some, but not all, of the other circuits in concluding that only factors connected with the litigation may be considered in determining whether the privilege attaches. This narrow approach provides less protection for reporters than do the vast majority of states under their own privilege laws. The disparity between state and federal law in itself chills speech, since a weak or nonexistent federal privilege undermines even the strongest state privilege. This gap in protection between the states and

the federal courts has much the same effect as the split among the circuits, and provides another reason for addressing the existence and scope of a federal reporter's privilege without further delay.

## ARGUMENT

### **I. The Substantial Split among the Circuits on the Existence and Scope of a Federal Reporter's Privilege Requires Resolution by this Court.**

The federal circuit courts are split on every aspect of a reporter's privilege: its existence, its sources, and its application. Two circuits deny the existence of any reporter's privilege, while the rest offer varying degrees of protection, and nearly all of them cite *Branzburg v. Hayes*, 408 U.S. 665 (1972), in support of their very different outcomes. The result is a clear circuit split that warrants prompt resolution by this Court.

#### **A. The Circuits Are Split on the Existence of a First Amendment Privilege.**

The circuits are split on the existence of a privilege under the First Amendment largely because they are divided about the meaning of the 5-4 decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972). In *Branzburg*, this Court considered journalists' claims that they had a qualified privilege against testifying before a grand jury about confidential sources. The majority said that "there is no First Amendment privilege to refuse to answer the relevant and material questions asked during a good-faith grand jury investigation." *Id.* at 708. Justice Powell joined the majority's opinion, but wrote a concurring opinion "to emphasize . . . the limited nature of the Court's holding." *Id.* at 709. He believed that the privilege

can be asserted: a reporter's claim to the privilege, he said, "should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct." *Id.* at 710. Four Justices dissented. Justice Powell's vote apparently was decisive in *Branzburg*, but his concurrence, with its approval of balancing, has been interpreted in quite varied ways by lower courts considering claims of privilege before bodies other than a grand jury.

At one extreme of the divergent readings of *Branzburg* are the Sixth and Seventh Circuits' conclusions that the First Amendment contains no privilege for reporters in any proceeding. The Sixth Circuit has called the recognition of a qualified privilege "tantamount to our substituting, as the holding of *Branzburg*, the dissent . . . for the majority opinion." *Storer Communications, Inc. v. Giovan (In re Grand Jury Proceedings)*, 810 F.2d 580, 584 (6th Cir. 1987). Likewise, the Seventh Circuit, when confronted with a claim of reporter's privilege, drily noted that other Circuits' holdings are "rather surprising[] in light of *Branzburg*." *McKevitt v. Pallasch*, 339 F.3d 530, 532 (7th Cir. 2003). It concluded that subpoenas to the media should be treated like any other subpoena. *Id.* at 533. These two circuits have squarely held that the First Amendment, in light of *Branzburg*, does not include a reporter's privilege.

The other circuits all have found some form of protection for reporters. In sharp contrast to the Sixth and Seventh Circuits, six circuits read *Branzburg* as requiring a reporter's privilege. The four remaining circuits have found that reporters are entitled to some protection, but have not recognized a First Amendment privilege.

Six circuits have recognized a reporter's privilege in civil cases, relying on *Branzburg*'s interpretation of the First Amendment. For instance, the Fourth Circuit quite matter-of-factly spoke of "the reporter's privilege recognized by the Supreme Court in *Pell* [*v. Proconier*, 417 U.S. 817, 834 (1974)] and *Branzburg*." *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000). The Fifth, Ninth, Tenth, Eleventh, and District of Columbia Circuits also find that *Branzburg* requires the recognition of a qualified First Amendment privilege. *See Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 725 (5th Cir. 1980); *Shoen v. Shoen*, 48 F.3d 412, 414-15 (9th Cir. 1995); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 437 (10th Cir. 1977); *Price v. Time, Inc.*, 416 F.3d 1327, 1343 (11th Cir. 2005); *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981).

The First and Third Circuits have found that *Branzburg* requires protection of reporters, but have not specifically recognized a First Amendment privilege. The First Circuit employs a balancing test resulting from *Branzburg*'s consideration of First Amendment concerns. *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 595-97 (1st Cir. 1980). It has simply declined to answer the "semantic" question whether this protection is a privilege. *Bruno*, 633 F.2d at 595; *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 716 (1st Cir. 1998). In contrast, the Third Circuit has found that federal common law provides reporters with a privilege, but grounded its finding in *Branzburg*'s recognition of First Amendment concerns. *Riley v. City of Chester*, 612 F.2d 708, 715 (3d Cir. 1979).

Finally, two circuits have found that journalists have some protection against requests for confidential information, but decline to state authoritatively that *Branzburg* establishes

a privilege. The Second Circuit recognizes a qualified reporter's privilege, but said that it need not determine whether the privilege is rooted in the First Amendment or federal common law. *See Gonzales v. NBC*, 194 F.3d 29, 36 n.6 (2d Cir. 1998); *but see Am. Sav. Bank, FSB v. UBS PaineWebber, Inc. (In re Fitch, Inc.)*, 330 F.3d 104, 109 (2d Cir. 2003) (characterizing *Gonzales* as recognizing a common law privilege). The Eighth Circuit has discussed *Branzburg* as affording a certain amount of protection to journalists against revealing their confidential sources. *See Cervantes v. Time, Inc.*, 464 F.2d 986, 992 n.9 (8th Cir. 1972). But in recent dictum in a criminal case, it called "open" the question whether *Branzburg* establishes a reporter's privilege. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 918 n.8 (8th Cir. 1997).

In short, eight circuits have unequivocally split over whether *Branzburg* requires or forbids a reporter's privilege. These sharp disagreements should be reviewed and resolved by this Court.

**B. The Circuits that Recognize a First Amendment Privilege Are Split on its Scope.**

As the above discussion suggests, there are divisions even among the circuits that recognize a reporter's privilege that is based on the First Amendment. The division of greatest relevance here concerns what is needed to overcome the privilege in civil cases. This split further demonstrates the need for review by this Court.

The disagreement is centered on the question whether a civil court must consider First Amendment concerns before overcoming the reporter's privilege. The court below

answered this question in the negative, requiring only a showing that the information sought from the reporter goes “to the heart of the matter” and has been requested after “every reasonable alternative source of information” has been exhausted. Appendix to Drogin Petition for Certiorari at 11a (internal quotation omitted). Four other circuits — the Second, Fifth, Tenth, and Eleventh — apply similar tests. See *Gonzales v. NBC*, 194 F.3d 29, 36 (2d Cir. 1998) (non-confidential information); *In re Petroleum Prods. Antitrust Litig.*, 680 F.2d 5, 7 (2d Cir. 1982) (confidential information); *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 726 (5th Cir. 1980); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977); *Price v. Time, Inc.*, 416 F.3d 1327, 1343 (11th Cir. 2005). In addition, while the Eighth Circuit has not explicitly recognized a reporter’s privilege, it has said that a plaintiff in a libel action should be able to cross-examine anonymous sources “[w]here there is a concrete demonstration that the identity of defense news sources will lead to persuasive evidence on the issue of malice.” *Cervantes v. Time, Inc.*, 464 F.2d 986, 994 (8th Cir. 1972).

On the other hand, four circuits require consideration of the First Amendment interests of the reporter and the public. The First Circuit, for instance, directs courts to “place those factors that relate to the movant’s need for the information on one pan of the scales and those that reflect the objector’s interest in confidentiality and the potential injury to the free flow of information that disclosure portends on the opposite pan.” *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 716 (1st Cir. 1998); see also *Riley v. City of Chester*, 612 F.2d 708, 716 (3d Cir. 1979); *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000); *Farr v. Pritchess*, 522 F.2d 464, 468 (9th Cir. 1975) (setting forth a First Amendment balancing test for confidential sources in non-grand jury

cases).<sup>1</sup> There is thus a decided split between the Circuits on the scope of the First Amendment's protection of reporters, one that has a significant effect on the outcomes of controversies before the lower courts.

### **C. The Circuits Are Split on the Existence of a Common-Law Reporter's Privilege.**

The recognition of a common-law reporter's privilege is the subject of further substantial division among the circuits. In the Federal Rules of Evidence, Congress left it to the courts to develop federal privileges, providing that privileges in federal court "shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." Fed. R. Evid. 501. Eight of the twelve circuits have discussed the question of a common-law privilege, and they have variously recognized a privilege, denied a privilege, or declined to answer the question.<sup>2</sup>

The Third Circuit has squarely held that a federal common-law privilege protects reporters against compelled disclosure of confidential sources and unpublished information under certain circumstances. *Riley v. City of*

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1. However, when non-confidential information is sought in a civil case, the First Amendment interests of reporters and the public need not be weighed. *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995).

2. The common-law privilege was fully asserted in but not addressed by the courts below, and remains an issue in the case. *See, e.g., United States v. Williams*, 504 U.S. 36, 41 (1992) (certiorari precluded only when the question presented was neither "pressed [n]or passed upon below").

*Chester*, 612 F.2d 708, 715 (3d Cir. 1979); *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980). In addition, the Fourth Circuit adopted en banc a dissenting opinion that asserted the existence of a common-law privilege. *United States v. Steelhammer*, 539 F.2d 373, 377 n.\* (4th Cir. 1976) (Winter, J., dissenting), *rev'd*, 561 F.2d 539, 540 (4th Cir. 1977) (en banc). However, subsequent Fourth Circuit decisions have spoken of a reporter's privilege as stemming from *Branzburg* and the First Amendment, rather than from the common law. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000); *La Rouche v. National Broadcasting Co.*, 780 F.2d 1134, 1139 (4th Cir. 1986). Thus, at least one and possibly two circuits recognize a reporter's privilege with its source in common law.

In contrast, four circuits have rejected the existence of a privilege rooted solely in common law, though in one case the rejection focused narrowly on grand jury testimony. The Sixth and Seventh Circuits refuse to recognize any reporter's privilege, including one rooted in the common law. *See Storer Communications, Inc. v. Giovan (In re Grand Jury Proceedings)*, 810 F.2d 580, 584 & n.6 (6th Cir. 1987); *McKevitt v. Pallasch*, 339 F.3d 530, 531, 533 (7th Cir. 2003). The First Circuit has rejected the argument that a privilege exists in common law "wholly apart from the First Amendment." *United States v. LaRouche Campaign*, 841 F.2d 1176, 1178 n.4 (1st Cir. 1988). Finally, the Ninth Circuit has declined to find a common-law privilege that contradicts *Branzburg*'s mandate and permits reporters to remain silent before a grand jury. *In re Grand Jury Proceedings*, 5 F.3d 397, 403 n.3 (9th Cir. 1993).

Two circuits have considered but not decided whether a common-law privilege exists. The Second Circuit has said

that it “need not decide” the source of the reporter’s privilege until Congress speaks on the matter. *Gonzales v. NBC*, 194 F.3d 29, 36 n.6 (2d Cir. 1998); *but see Am. Sav. Bank, FSB v. UBS PaineWebber, Inc. (In re Fitch, Inc.)*, 330 F.3d 104, 109 (2d Cir. 2003) (characterizing *Gonzales* as recognizing a common law privilege).<sup>3</sup> The District of Columbia Circuit failed to decide the question when a panel split three ways, with one judge saying that a privilege exists, one saying that it does not, and one saying that there was no need to decide. *In re Grand Jury Subpoena (Miller)*, 397 F.3d 964, 973 (D.C. Cir. 2005). Finally, the Fifth, Eighth, Tenth, and Eleventh Circuits appear not to have considered the issue.

Overall, then, the question of a common law privilege is nearly as divisive as other questions about a reporter’s privilege. The circuits differ on whether a privilege exists under the First Amendment, whether it exists under common law, and how far it extends. These deep, long-standing divisions should be addressed by this Court.

## **II. The Court Should Grant Certiorari to Reconcile the Federal Privilege with the Reporter’s Privileges Offered by the States.**

The decision below calls attention to the troubling gap between the amount of protection offered by most States and that offered by many federal courts. The overwhelming majority of States would have provided more protection to the reporters in this case than the D.C. Circuit did or many

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3. A district court within the Second Circuit has recognized a common law privilege. *New York Times Co. v. Gonzales*, 382 F. Supp. 2d 457, 495 (S.D.N.Y. 2005). That decision is on appeal, 05-2639-cv, and was argued on February 13, 2006.

other circuits would. But state evidentiary privileges apply only to cases arising under state law, and as this Court has recognized, “any State’s promise of confidentiality would have little value if the [individual making the confidential communication] were aware that the privilege would not be honored in a federal court.” *Jaffee v. Redmond*, 518 U.S. 1, 13 (1996) (recognizing federal common-law psychotherapist-patient privilege). This Court should grant certiorari to consider the decision below in light of its potential to significantly undermine the policies of the 49 States and the District of Columbia that have recognized a reporter’s privilege.

A glance at the decision below indicates the nature of the problem. Petitioners were held in contempt for refusing to reveal confidential sources in a civil suit. The D.C. Circuit applied a two-part test in determining that their qualified privilege should be overcome, finding that the identity of their sources went “to the heart of the matter” and that it had been requested after “every reasonable alternative source of information” had been exhausted. Appendix to Drogin Petition for Certiorari at 11a (internal quotation omitted). If the same situation were presented in state court, thirty six States and the District of Columbia would have applied a test more protective of the First Amendment rights of the reporters and the public. As described in the Appendix to this brief, those jurisdictions would have either provided an absolute privilege against disclosure of the sources’ identities or applied a balancing test that considered the First Amendment interests in confidentiality and the free flow of information to the public. As *Jaffee* notes, though, a state privilege that is not recognized in federal court has “little value” because it cannot guarantee protection to the prospective speaker. 518 U.S. at 13. The decision below

therefore undermines most States' policy determinations that confidential sources are deserving of broader First Amendment protection in civil cases. Thus, even if the decision below reflected the unanimous conclusion of the lower federal courts — which, as shown above, it does not — it would merit this Court's review to address and resolve this problem.

### CONCLUSION

For the foregoing reasons, this Court should grant the petitions for certiorari and reverse the judgment of the District of Columbia Circuit Court of Appeals.

Respectfully submitted,

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**APPENDIX — STATES' PROTECTION OF  
REPORTERS AGAINST DISCLOSURE OF  
CONFIDENTIAL SOURCES IN CIVIL CASES\***

*Absolute Privilege (19 States)*

**State    Source**

AL	Ala. Code § 12-21-142 (2005).
AZ	Ariz. Rev. Stat. § 12-2237 (2006).
CA	Cal. Const., Art. I, § 2(b); Cal. Evid. Code § 1070 (2006).
DE	Del. Code Ann. tit. 10, §§ 4320 to 4326 (2005).
DC	D.C. Code Ann. §§ 16-4701 to 16-4704 (2006).
IN	Ind. Code §§ 34-46-4-1 to 34-46-4-2 (2005).
KY	Ky. Rev. Stat. § 421.100 (2005).
MD	Md. Code Ann., Cts. & Jud. Proc. § 9-112 (2006).
MN	Minn. Stat. §§ 595.021 to 595.025 (2004).
MT	Mont. Code Ann. §§ 26-1-901 to 26-1-903 (2005).
NE	Neb. Rev. Stat. §§ 20-144 to 20-147 (2005).

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\* Excluding actions for defamation.

*Appendix*

<b>State</b>	<b>Source</b>
NV	Nev. Rev. Stat. 49.275, 49.385 (2005).
NJ	N.J. Stat. Ann. §§ 2A:84A-21 to 2A:84A-21.8 (2006).
NY	N.Y. Civ. Rights Law § 79-h (2006).
OH	Ohio Rev. Code Ann. §§ 2739.04, 2739.12 (2006).
OK	Okla. Stat. tit. 12, § 2506 (2005).
OR	Or. Rev. Stat. §§ 44.510 to 44.540 (2003, as amended by 2005 Ore. Laws 797).
PA	42 Pa. Cons. Stat. § 5942 (2005).
RI	R.I. Gen. Laws §§ 9-19.1-1 to 9-19.1-3 (2006) (except where disclosure is necessary to prevent a threat to human life or where grand jury secrecy has been breached).

*Appendix****Qualified Privilege Requiring Consideration of First Amendment Concerns (18 States)*****State    Source**

- AK      Alaska Stat. §§ 09.25.300 to 09.25.390 (2006).
- AR      Ark. Code Ann. § 16-85-510 (2006).
- CO      Colo Rev. Stat. §§ 13-90-119, 24-72.5-101 to 24-72.5-106 (2005).
- ID      *In re Wright*, 700 P.2d 40, 43 (Idaho 1985) (citing First Amendment at 41).
- IL      735 Ill. Comp. Stat. §§ 5/8-901 to 5/8-909 (2005).
- KS      *State v. Sandstrom*, 581 P.2d 812, 815 (Kan. 1978) (citing *Branzburg*).
- LA      La. Rev. Stat. §§ 45:1451 to 45:1454 (2005).
- ME      *In re Letellier*, 578 A.2d 722, 726 (Me. 1990) (citing *Branzburg*).
- MA      *In re John Doe Grand Jury Invest.*, 574 N.E.2d 373, 375 (Mass. 1991) (citing state common law).
- MO      *State ex rel. Classic III Inc. v. Ely*, 954 S.W.2d 650, 655 (Mo. Ct. App. 1997) (citing *Branzburg*).

*Appendix*

<b>State</b>	<b>Source</b>
NM	N.M. R. Evid. 11-514 (2005); <i>see also</i> N.M. Stat. § 38-6-7 (2006).
ND	N.D. Cent. Code § 31-01-06.2 (2005).
SD	<i>Hopewell v. Midcontinent Broad. Corp.</i> , 538 N.W.2d 780, 782 (S.D. 1995) (citing no specific source).
TN	Tenn. Code Ann. § 24-1-208 (2005).
TX	<i>Dallas Morning News Co. v. Garcia</i> , 822 S.W.2d 675, 679 (Tex. App. 4th Dist. 1991) (citing <i>Branzburg</i> at 678); <i>cf. Dolcefino v. Ray</i> , 902 S.W.2d 163, 164-65 (Tex. App. 1st Dist. 1995) (per curiam) (disclaiming prior holding that <i>Branzburg</i> created a qualified privilege).
VT	<i>State v. St. Peter</i> , 315 A.2d 254, 256 (Vt. 1974) (citing <i>Branzburg</i> ).
WA	<i>State v. Rinaldo</i> , 689 P.2d 392, 395-96 (Wash. 1984) (en banc) (citing state common law).
WI	<i>State ex rel. Green Bay Newspaper Co. v. Circuit Court</i> , 335 N.W.2d 367, 372 (Wis. 1983) (citing state constitution).

*Appendix****Qualified Privilege Not Requiring Consideration of the First Amendment (13 States)*****State    Source**

- CT      *Conn. State Bd. of Labor Relations v. Fagin*, 370 A.2d 1095, 1097-98 (Conn. Super. Ct. 1976) (citing *Branzburg*).
- FL      Fla. Stat. § 90.5015 (2005).
- GA      Ga. Code Ann. § 24-9-30 (1995).
- HI      *In re Goodfader's Appeal*, 45 Haw. 317, 336, 367 P.2d 472, 483 (Haw. 1961) (holding that a confidential source is not necessarily subject to disclosure even in the absence of a privilege).
- IA      *Waterloo/Cedar Falls Courier v. Hawkeye Community Coll.*, 646 N.W.2d 97, 102-03 (Iowa 2002); *see also Winegard v. Oxberger*, 258 N.W.2d 847, 849-50 (Iowa 1977) (citing *Branzburg*).
- MI      *King v. Photo Marketing Association International*, 120 Mich. App. 527, 533, 327 N.W.2d 515, 518 (Mich. Ct. App. 1982); *see also Mich. Comp. Laws § 767.5a* (2005) (qualified privilege in grand jury investigations).

*Appendix*

<b>State</b>	<b>Source</b>
MS	Trial-level unpublished opinions citing <i>Miller v. Transamerican Press, Inc.</i> , 621 F.2d 721, 726 (5th Cir. 1980), collected by <i>New York Times Co. v. Gonzales</i> , 382 F. Supp. 2d 457, 503 & n.38 (S.D.N.Y. 2005) and Reporter's Committee for Freedom of the Press, <i>The Reporter's Privilege: Mississippi</i> (2002), available at <a href="http://www.rcfp.org/cgi-local/privilege/item.cgi?i=p&amp;st=MS&amp;sec=1">http://www.rcfp.org/cgi-local/privilege/item.cgi?i=p&amp;st=MS&amp;sec=1</a> .
NH	<i>State v. Siel</i> , 444 A.2d 499, 502-03 (N.H. 1982) (citing <i>Branzburg</i> ).
NC	N.C. Gen. Stat. § 8-53.11 (2005).
SC	S.C. Code Ann. § 19-11-100 (2005).
UT	Trial-level unpublished opinions citing <i>Silkwood v. Kerr-McGee Corp.</i> , 563 F.2d 433, 438 (10th Cir. 1977), collected by <i>New York Times Co. v. Gonzales</i> , 382 F. Supp. 2d 457, 503 & n.38 (S.D.N.Y. 2005) and Edward L. Carter, Note, "Reporter's Privilege in Utah," 18 B.Y.U. J. Pub. L. 163, 174-79 (2003).
VA	<i>Brown v. Commonwealth</i> , 204 S.E.2d 429, 431 (Va. 1974).
WV	<i>State ex rel. Hudok v. Henry</i> , 389 S.E.2d 188, 192 (W. Va. 1989) (citing <i>Branzburg</i> at 190-91).

*Appendix*

***No Privilege Recognized (1 State)***

**State    Source**

WY    The courts and legislature have remained silent. *See New York Times Co. v. Gonzales*, 382 F. Supp. 2d 457, 504 (S.D.N.Y. 2005); Reporter's Committee for Freedom of the Press, *The Reporter's Privilege: Wyoming* (2002), available at <http://www.rcfp.org/cgi-local/privilege/item.cgi?i=p&st=WY&sec=1>.