No. 26-461

In the Supreme Court of the United States

CATHERINE HERRIDGE, *Petitioner,*

v.

YANPING CHEN

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF *AMICUS CURIAE* PROTECT THE FIRST FOUNDATION SUPPORTING PETITIONER

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INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE*[1]

Confidentiality is the lifeblood of a free press. From Watergate to Harvey Weinstein, confidential sources have helped journalists bring to light malfeasance and hidden crimes that otherwise would have continued. But the D.C. Circuit has crippled journalists by instituting a two-pronged standard that will rarely protect confidential sources. Under the D.C. Circuit's two-factor test in *Zerilli* v. *Smith*, 656 F.2d 705, 713-714 (D.C. Cir. 1981), and *Lee* v. *Department of Justice*, 413 F.3d 53, 59-60 (D.C. Cir. 2005), the court asks only whether the information obtained from a confidential source is "central" to the claim of a private litigant and whether the litigant has exhausted reasonable alternative sources "without any broader balancing of private and public interests." App.12-13. That standard departs from other circuits' approaches, guts journalists' ability to promise confidentiality to critical sources, and abridges the freedom of the press that the First Amendment guarantees. To prevent these harms and establish uniformity, this Court should reverse.

The protection of journalists and their confidential sources is an issue of particular importance to *amicus* Protect the First Foundation ("PT1"), a nonprofit, nonpartisan organization that

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel or members has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of the intent of *amicus curiae* to file this brief.

advocates for protecting First Amendment rights in all applicable areas of law. PT1 advocates for people across the ideological spectrum, including those who may disagree with its views. PT1 agrees with Petitioner that the D.C. Circuit's decision below erodes protections that allow journalists to report on some of the most important issues in a democratic society.

PT1 writes separately to raise three points. First, support for journalistic protections is widespread. Nearly every state has enacted shield laws, and the U.S. House has twice unanimously passed the PRESS Act. This is the precise kind of reasoned judgment that supports recognition of a federal privilege. See *Jaffee* v. *Redmond*, 518 U.S. 1, 12-13 (1996).

Second, as this case shows, current protections are inadequate. State shield laws do not reach the federal civil claims at issue here. And Department of Justice regulations have not prevented administrations of both parties from using compulsory process against the press.

Third, this Court's intervention is necessary now. Without it, journalistic confidentiality will remain at the mercy of both circuit court variation and partisan political shifts. The right to free speech cannot be so transient. The First Amendment demands more.

The Court should grant the petition.

STATEMENT

Petitioner Catherine Herridge wrote a series of reports about counterespionage concerns regarding Respondent Yanping Chen, whom the FBI began investigating in 2010 over statements on her immigration forms. App.5-6, 65-81. Herridge's reports stated that Chen had been a colonel in China's People's Liberation Army and had concealed that fact on her immigration forms. App.66-68.

Chen sued the FBI and other agencies under the Privacy Act, alleging that officials leaked records about her to Fox News. App.50-51, 59-61. After years of discovery failed to identify a leaker, Chen subpoenaed Herridge, a non-party, in 2022 to identify her source. App.6-7, 24-25.

Herridge moved to quash, invoking the First Amendment reporter privilege and, alternatively, a federal common-law privilege. App.25. The district court denied the motion and ordered Herridge to reveal her source, in relevant part under the D.C. Circuit's two-factor test in *Zerilli* and *Lee*. App.12-13. When Herridge still declined to name her source at her deposition, the court held her in civil contempt and fined her $800 per day, although it stayed the fine pending appeal. App.7, 45-49.

The D.C. Circuit affirmed. App.3-14. This Court then denied a stay, with Justice Kavanaugh stating he would have granted it. App.2.

ADDITIONAL REASONS FOR GRANTING THE PETITION

I. State and Federal Legislatures Recognize the Dangers of Forced Disclosure.

Legislative bodies at both the state and federal levels have recognized that journalists should be protected from being forced to reveal their sources. That bipartisan, reasoned judgment supports recognition of a federal privilege, and therefore support this Court's review.

A. Forty-one state legislatures and the District of Columbia have press shield laws.

Forty-one states and the District of Columbia have enacted "shield laws," which protect journalists from forced disclosure of their journalistic sources.[2] The near unanimity with which states provide source protection[3] reflects a nationwide consensus on the vitality of the reporter's privilege. However, none of these state shield laws can assure confidentiality

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[2] See Reps. Comm. Staff, *Idaho, Reporter's Privilege Compendium*, Reps. Comm. for Freedom of the Press (updated Mar. 2026), https://www.rcfp.org/privilege-compendium/idaho/ (noting that Idaho became the forty-first state to enact a shield law in March 2025).

[3] When considering both statutory shield laws and court-recognized protections, at least 48 states and the District of Columbia protect journalistic sources. Pet.29. The absence of a statute in a state thus likely reflects recognition that the courts have protected sources, rather than legislative rejection of the privilege.

when federal privilege law governs.[4] Without federal protection, sources cannot rely on promises of confidentiality. The public will thus be less informed, officials less accountable, and abuses of power less likely to come to light.

1. Shield laws vary in scope. Some states provide an "absolute privilege", while others recognize only a "qualified privilege" subject to specified exceptions.[5] However, that variation strengthens, not weakens, the significance of the consensus. State legislatures have not reflexively adopted a single model. They have confronted competing interests in confidentiality and discovery and nevertheless overwhelmingly reached the same threshold conclusion: journalists require meaningful protection against compelled disclosure of confidential sources.

That is precisely the kind of considered legislative judgment Federal Rule of Evidence 501 treats as instructive. The Court has, after all, repeatedly "observed that the policy decisions of the States bear on the question whether federal courts should recognize a new privilege or amend the coverage of an existing one." *Jaffee* v. *Redmond*, 518 U.S. 1, 12-13 (1996). Although the precise balance struck differs from state to state, legislatures have overwhelmingly concluded that forced disclosure compromises journalistic independence. Marginal differences

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[4] See Margot Harris, *Is It Finally Time for a Federal Shield Law?*, News Media All. (July 26, 2018), https://tinyurl.com/4jzd9ww2.

[5] *Ibid.*

should not obscure that broad consensus. See Pet.31-32.

2. The practical force of that consensus is undermined by the lack of federal protection for confidential sources. Indeed, this case proves the point: Even though the District of Columbia provides absolute protection for source identity, see D.C. Code §§16-4702, 16-4703, the D.C. Circuit held that a reporter working in the District of Columbia could be compelled to disclose her source in connection with Respondent's small-stakes civil claim under federal law. See Pet.32. The legislative body governing the jurisdiction in which this dispute arose made the strongest possible judgment that compelled identification of a journalist's source is intolerable, yet federal law renders that judgment ineffective here.

As this Court recognized in *Jaffee,* "any State's promise of confidentiality would have little value if the patient were aware that the privilege would not be honored in a federal court." 518 U.S. at 13. This Court should intervene and recognize a federal privilege here for the same reason. Sources will not speak freely with reporters if they fear that promises of confidentiality will not be respected in federal court. As Ms. Herridge testified before Congress, "If you cannot offer a source a promise of confidentiality as a journalist, your toolbox is empty: No whistleblower's coming forward, no government official with evidence of misconduct or

corruption," and that "interrupts the free flow of information to the public."[6]

B. The U.S. House of Representatives has twice unanimously passed legislation recognizing the need for federal source protections.

Federal legislators, too, have recognized the need to protect journalists from compelled disclosure of confidential sources, and they have done so with extraordinary bipartisan support. The Protect Reporters from Exploitative State Spying (PRESS) Act, which the U.S. House of Representatives has unanimously passed twice, would establish a federal privilege against compelled disclosure of journalists' confidential sources, except in emergency situations. H.R. 4250, 118th Cong. § 3 (2024); H.R. 4330, 117th Cong. § 3 (2022).

The PRESS Act passed the House with unanimous bipartisan support in 2022, one year after it was introduced. See H.R. 4330, 117th Cong. (introduced July 1, 2021, passed Sep. 19, 2022). Although a motion to pass the bill through the Senate by unanimous consent stalled out, 168 Cong. Rec. S7160-S7161 (daily ed. Dec. 14, 2022), the PRESS Act was reintroduced during the following Congress, and the House of Representatives again unanimously

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[6] *Fighting for a Free Press: Protecting Journalists and Their Sources: Hearing Before the Subcomm. on the Const. & Ltd. Gov't of the H. Comm. on the Judiciary*, 118th Cong. 36 (2024) (statement of Catherine Herridge), https://tinyurl.com/yc76x7n2.

passed the bill.[7] These votes reflect an overwhelming bipartisan consensus that protecting journalistic confidentiality is essential to the free flow of information to the public. Although the PRESS Act has not yet become law, its repeated passage in the House shows that the need for meaningful federal source protections is neither novel nor controversial. Legislators across the political spectrum united around a fundamental principle: confidential sources are indispensable to a free press. As PT1 has emphasized elsewhere, this shows broad congressional consensus for a basic premise: It is unacceptable for courts to "hold journalists in contempt and even jail them for refusing to reveal their confidential sources."[8]

That legislative recognition should be particularly relevant under Rule 501 even though the PRESS Act has stalled for various reasons in the Senate. As this Court explained in *Jaffee*, legislatures are well positioned to weigh the importance of confidentiality against the ordinary interest in obtaining evidence, and their decisions to recognize privileges can inform the development of federal common law. 518 U.S. at 12-13. This Court need not adopt the PRESS Act's particular balance to conclude that reason and experience support a federal common-

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[7] See H.R. 4250, 118th Cong. § 3 (2024) (as passed by House, Jan. 18, 2024); Gabe Rottman, *House Passes PRESS Act*, Reps. Comm. for Freedom of the Press (Jan. 22, 2024), https://tinyurl.com/4yx9e9fn.

[8] *U.S. House Passes the PRESS Act*, Protect the 1st (Sep. 20, 2022) (quoting former U.S. Rep. Rick Boucher), https://www.protect1st.org/news/us-house-passes-the-press-act.

law privilege. Nor should the fact that the PRESS Act has not yet become law preclude that conclusion, just as the absence of a congressional enactment did not preclude recognition of a privilege in *Jaffee*. See *id.* at 8-15. Together, they represent a legislative judgment for a reporter's privilege and provide substantial support for this Court to intervene and recognize a federal reporter's privilege here.

II. Executive Protections Have Proven Inadequate.

Unfortunately, the executive branch has not been a reliable guardian of journalists' First Amendment rights. The Department of Justice has operated under policies intended to safeguard freedom of the press while allowing the Department to pursue threats to national security for more than fifty years.[9] But those policies have proved inadequate. First, executive protections are inherently fragile. Each administration may weaken or rescind the safeguards adopted by its predecessors. Second, even when strong policies have been in place, they have failed to prevent executive efforts to identify journalists' confidential sources. A review of the last several administrations' rulemaking and enforcement actions illustrates both problems.

A. Internal protections are fragile.

Executive rulemaking is not a long-term or stable means of protecting journalistic confidentiality. Any

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[9] See *Strengthening and Preserving the Attorney General Guidelines for Media Subpoenas*, Reps. Comm. for Freedom of the Press (Aug. 15, 2023), https://tinyurl.com/p9az2a4d.

administration can weaken or rewrite internal policies. And even purportedly strong protections have failed to constrain the executive. The history of executive policymaking across recent administrations demonstrates the limitations of these protections.

1. In 2014, following public outcry after aggressive leak investigations, the Department of Justice updated its guidelines for media subpoenas.[10] The new guidelines were intended to create more robust oversight, review, and standards for gathering information from journalists.[11] They were also designed to encourage more notice to and negotiation with members of the media.[12] But as PT1 explains in Section II.B, these rules were not enough to protect journalists from aggressive government attempts to identify confidential sources.

Protections increased again in 2021, when then-Attorney General Merrick Garland announced that the DOJ would "no longer use compulsory legal process" to obtain information from journalists "acting within the scope of newsgathering activities."[13] Where exceptions applied, the Deputy Attorney General had

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[10] See *id.*; see also Policy Regarding Obtaining Information from, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media, 79 Fed. Reg. 10,989 (Feb. 27, 2014) (to be codified at 28 C.F.R. pts. 50, 59).

[11] See 79 Fed. Reg. at 10,989.

[12] *Id.* at 10,989-10,990.

[13] Memorandum from Merrick Garland, U.S. Att'y Gen., to Deputy Att'y Gen. et al. on Use of Compulsory Process to Obtain Information from, or Records of, Members of the News Media, at 1 (July 19, 2021), available at https://tinyurl.com/2v5zjrha.

to give approval under the interim regulations.[14] The following year, the DOJ codified part of the directive, prohibiting compulsory legal process to obtain information from journalists except in limited circumstances.[15]

2. But that policy did not survive the next administration. In 2025, then-Attorney General Bondi rescinded the 2022 protections, restoring a modified version of the less protective 2014 regulations and once again permitting the Department to compel disclosures from journalists under specified circumstances.[16] True, then-Attorney General Bondi promised that warrants should "limit the scope of intrusion."[17] But what counts as "*limit[ed]*" is open to interpretation and may turn on political considerations. And that seems to be the whole point:

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[14] *Id.* at 2.

[15] Policy Regarding Obtaining Information From or Records of Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media, 87 Fed. Reg. 66,239 (Nov. 3, 2022) (to be codified at 28 C.F.R. pt. 50).

[16] Policy Regarding Obtaining Information From, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media, 90 Fed. Reg. 18,785 (May 2, 2025) (codified at 28 C.F.R. §50.10).

[17] Memorandum from Pam Bondi, U.S. Att'y Gen. to all Dep't of Just. Employees, Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media, at 3 (Apr. 25, 2025), available at https://tinyurl.com/yfzvepcw ["Bondi Apr. 25 Mem."]; see also *DOJ Reverses Rule Protecting Journalists from Ratting Out Their Sources*, Protect the 1st (Apr. 29, 2025), https://www.protect1st.org/news/doj-reverses-rule-protecting-journalists-from-ratting-out-their-sources.

the rescission memorandum framed its concern as leaks that "undermine" the President's agenda.[18]

Regardless, these shifting winds show the perilous state of federal protections for journalistic sources. What one Attorney General adopts, the next may rescind.

B. Regulations have not prevented efforts to uncover confidential sources.

Worse, even when the Department of Justice has adopted policies to protect journalists and their confidential sources, those protections have proved inadequate in practice.

1. Across administrations of both political parties, federal officials have subpoenaed reporters, secretly obtained their communications, and employed other compulsory measures to uncover confidential sources. In some instances, the Department has disregarded its own procedural safeguards. In others, its policies have permitted precisely the intrusions they purported to restrain. Even a cursory review of the history shows that internal executive rules, however protective on paper, cannot reliably safeguard journalists' promises of confidentiality against government efforts to identify their sources.

Under the George W. Bush Administration, a federal court jailed *New York Times* reporter Judith Miller for protecting her confidential sources.[19] Miller

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[18] Bondi Apr. 25 Mem., *supra* note 17 at 2.

[19] See *Judith Miller Freed from Jail After Agreeing to Testify*, Reps. Comm. for Freedom of the Press (Sep. 30, 2005), https://tinyurl.com/yhuma7dx.

refused to testify before a federal grand jury investigating the disclosure of a covert CIA officer's identity.[20] She spent 85 days in jail for civil contempt before agreeing to testify after receiving assurance from her source that he had voluntarily released her from her promise of confidentiality.[21]

2. A change in presidential administration did not end federal efforts to compel journalists to identify confidential sources. President Obama, who "promised to run the most 'open' and 'transparent' government possible, prosecuted more leak cases than all previous administrations combined."[22] During the Obama Administration, prosecutors subpoenaed *New York Times* reporter James Risen to identify his confidential sources who spoke to him about a CIA effort to sabotage Iran's nuclear program.[23] The subpoena proved unnecessary. Before Risen had to testify, a jury convicted Risen's source, Jeffrey

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[20] *Ibid.*

[21] *Ibid.*

[22] Judith Miller, Opinion, *Reporters—and the Public—Need a Federal Shield Law*, Wall St. J. (July 27, 2026), https://tinyurl.com/4m74c2vw.

[23] Charlie Savage, *Subpoena Issued to Writer in C.I.A.-Iran Leak Case*, N.Y. Times (May 24, 2011), https://tinyurl.com/y43extds; see *United States* v. *Sterling*, 724 F.3d 482 (4th Cir. 2013) (criminal appeal for charges brought against former CIA agent Jeffrey Sterling indicted under the Espionage Act based on communication with Risen).

Sterling, for the unauthorized disclosure of national security information.[24]

The Obama Administration did not limit its efforts to identify confidential sources through subpoenas directed at journalists. Two years after subpoenaing Risen, the Obama Administration secretly obtained two months of phone records from more than twenty telephone lines belonging to *Associated Press* ("AP") journalists and offices.[25] The records were obtained as part of an investigation into the source of classified information disclosed in an AP report about a foiled terrorist plot.[26] The sweeping seizure threatened to expose the source of that report and confidential sources across the AP's broader newsgathering.[27] And in another investigation seeking to identify the source of leaked classified information, the Obama DOJ seized two days of a *Fox News* reporter's personal emails and all of his emails with a government adviser suspected of providing the information.[28]

3. Despite 2014 and 2015 regulations purporting to give strong protection to journalists, see Section II.A, the first Trump Administration secretly obtained

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[24] Matthew Barakat, *Ex-CIA Officer Convicted of Leaking Secrets to Reporter*, Associated Press (Jan. 26, 2015), https://tinyurl.com/mt46w67x.

[25] *Gov't Obtains Wide AP Phone Records in Probe*, Associated Press (May 13, 2013), https://tinyurl.com/57d2njxn.

[26] *Ibid.*

[27] *Ibid.*

[28] Ann E. Marimow, *A Rare Peek into a Justice Department Leak Probe*, Wash. Post (May 19, 2013), https://tinyurl.com/yc2bvh22.

Washington Post reporters' phone records to identify confidential sources who had disclosed classified information regarding Russia's role in the 2016 presidential election.[29] The records covered more than three months of communications, including calls made from the reporters' work, home, and cellular phones.[30] The Department also obtained a court order to obtain non-content email communication records from the reporters' work accounts but ultimately did not obtain those records.[31]

These intrusions were not simply the product of policies that afforded insufficient protection. A subsequent investigation revealed that the Department had also failed to comply with safeguards already in place. The DOJ Office of the Inspector General found that, in response to 2017 news articles reporting leaked classified information, between 2017 and 2020 the DOJ "issued compulsory process to third parties for the non-content communications records of 8 reporters from 3 publications."[32] The DOJ "complied with some but not all of the then applicable provisions of DOJ's News Media Policy," just a few years after the

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[29] Devlin Barrett, *Trump Justice Department Secretly Obtained Post Reporters' Phone Records*, Wash. Post (May 7, 2021), https://tinyurl.com/52u6x856.

[30] *Ibid.*

[31] *Ibid.*

[32] Press Release, Off. of Inspector Gen., Dep't of Just., DOJ OIG Releases Report on DOJ Obtaining Records of Members of Congress, Congressional Staffers, and Members of the News Media Using Compulsory Process (Dec. 10, 2024), https://tinyurl.com/2p5sef54.

2014 and 2015 policy revisions had been implemented.[33]

In the first Trump Administration's final weeks, the DOJ obtained a court order seeking email logs from Google, which operated the accounts of four *New York Times* reporters in an effort to identify their confidential sources.[34] The Biden Administration continued pursuing those records even after Google resisted the order.[35] Only in June 2021, after months of litigation, did DOJ abandon its effort to obtain the email records.[36]

4. The second Trump Administration has continued this pattern. In March 2026, DOJ issued grand jury subpoenas to *Wall Street Journal* reporters in connection with an article reporting that senior military officials had warned President Trump about the risks of a prolonged war with Iran.[37] President Trump subsequently pressed Acting Attorney General Todd Blanche to pursue leak investigations more aggressively, and Blanche reportedly promised to seek subpoenas targeting journalists' records.[38] These efforts threatened to expose the identities of

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[33] *Ibid.*

[34] *U.S. Justice Department Got Gag Order on NY Times Execs in Fight Over Email Logs–NYT*, Reuters (June 5, 2021), https://tinyurl.com/msf76u33.

[35] *Ibid.*

[36] *Ibid.*

[37] Sadie Gurman et al., *Trump's Complaints About Iran War Leaks Prompt Aggressive DOJ Investigations*, Wall St. J. (May 11, 2026), https://tinyurl.com/5eu5w9et.

[38] *Ibid.*

confidential sources who provided information about the Administration's national security decisions.[39] The Department ultimately withdrew the subpoenas in June 2026.[40] But its efforts to uncover sources underscore the precariousness of source confidentiality when its protection depends on executive discretion.

Most recently, the Trump Administration subpoenaed *New York Times* reporters concerning their Air Force One coverage.[41] Department guidelines still call for subpoenaing journalists "only as a last resort and after a thorough investigation fails to determine the source of the leak."[42] Yet prosecutors issued the July 2026 subpoenas to *New York Times* reporters "two days after the paper published the first of two stories" concerning Air Force One.[43] Prosecutors also sought telephone records of the reporters and some relatives, including a reporter's mother and

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[39] *Ibid.*

[40] Alanna Durkin Richer & Eric Tucker, *Justice Department Withdraws Subpoenas that Sought Reporters' Grand Jury Testimony, Sources Say*, Associated Press (June 23, 2026), https://tinyurl.com/2xpaujk9.

[41] Ana Faguy, *Trump Administration Subpoenas New York Times Journalists Over Air Force One Reporting*, BBC (July 11, 2026), https://tinyurl.com/ymytfwvm.

[42] *Speaking of the First: How the PRESS Act Looks from Behind Bars*, Protect the 1st (July 29, 2026) (quoting journalist Judith Miller), https://www.protect1st.org/news/speaking-of-the-first-how-the-press-act-looks-from-behind-bars.

[43] *Ibid.* (quoting Miller).

journalists' spouses.[44] They later conceded that they had not notified the reporters as Department rules require.[45] The government withdrew the subpoenas only after a federal judge sharply questioned its conduct, and it reserved the option to issue new ones.[46]

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These troubling episodes across five presidential administrations show that even strengthened internal regulations have not been enough. Reporters have been left vulnerable to government prying into confidential sources without their knowledge or an opportunity to challenge the disclosure in advance. Until this Court intervenes, the pattern will continue.

III. This Court Must Intervene to Ensure First Amendment Protections Do Not Depend on Shifting Political Priorities.

Only this Court can protect the free press from the shifting winds of the political branches. And it should do so here. In principle the rights to "free speech [and] a free press * * * may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 638 (1943). Yet, as shown, when federal law governs, journalists are regularly left dependent on the whims of the political branches for protections that may change with each election.

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[44] *The Air Force One Subpoenas Don't Fly*, Protect the 1st (July 28, 2026), https://www.protect1st.org/news/the-air-force-one-subpoenas-dont-fly.

[45] *Ibid.*

[46] *Ibid.*

This case illustrates the gap. Ms. Herridge faces an order compelling disclosure of her confidential sources not in a federal criminal investigation, but in a private civil action. No Department of Justice policy, however protective, could prevent a private litigant from seeking that disclosure. And while the District of Columbia and almost every other state has provided protections for confidential sources, they cannot protect Petitioner here. Without a sufficiently protective federal privilege, journalists and their sources remain vulnerable to compelled disclosure.

Beyond the outcome of this case, any protection offered by the political branches can change at any time as presidential administrations and majorities shift. And a shifting standard does not provide the assurance of confidentiality that whistleblowers and those who would shine a light on corruption may require. A source must decide whether to speak in the moment, but disclosure may not be compelled until years later, when administrations and legislative majorities have changed.

This case shows how long that interval can be. Ms. Herridge's reports ran in 2017, Respondent subpoenaed her in 2022, the contempt order followed in 2024, and this Court declined a stay in 2026, a span of three administrations. See App.2, 24-25, 43-44, 65-81. A source cannot predict what protections will remain in place years later, much less whether the government will honor them. That uncertainty is felt long before any subpoena issues. Sources who cannot trust that their identities will remain confidential may simply choose not to speak. The resulting silence deprives journalists of information necessary to expose

abuses of power and hold the government accountable. A judicially recognized privilege would provide the stability and predictability that shifting political protections cannot.

This Court must decide whether protection for confidential sources will continue to hinge on the choices of individual officials, the happenstance of jurisdiction, and the changing priorities of the political branches, or whether federal courts will provide the crucial bulwark of judicial protection. The freedom of the press protected by the First Amendment demands that this Court choose the latter option. This Court should grant certiorari and recognize a meaningful federal reporter's privilege so that this crucial First Amendment interest does not depend on ever-shifting political priorities.

CONCLUSION

Promises of confidentiality are only as meaningful as the protections that endure when disclosure is demanded. Only this Court can offer lasting First Amendment protection for such confidentiality that does not wax and wane with the swing of the political pendulum. This Court should grant the petition to clarify the federal protections governing compelled disclosure of journalists' confidential sources.

Respectfully submitted,

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