IN THE SUPREME COURT OF ALABAMA

THE NEW YORK TIMES COMPANY	)	
Petitioner,	)	**NO. SC-2025-0370**
v.	)	
KAI SPEARS	)	**ORAL ARGUMENT REQUESTED**
Respondent.	)	

Certification from the United States District Court for the Northern District of Alabama – Case No. 7:23-cv-00692-ACA

THE NEW YORK TIMES COMPANY'S BRIEF REGARDING CERTIFIED QUESTIONS

John G. Thompson
jthompson@lightfootlaw.com
Matthew J. Winne
mwinne@lightfootlaw.com
Lightfoot, Franklin & White, L.L.C.
The Clark Building
400 North 20th Street
Birmingham, AL 35203-3200
(205) 581-0700
(205) 581-0799 (facsimile)

Jay Ward Brown (*pro hac vice*)
brownjay@ballardspahr.com
Chad R. Bowman (*pro hac vice*)
bowmanchad@ballardspahr.com
Emmy Parsons (*pro hac vice*)
parsonse@ballardspahr.com
Ballard Spahr LLP
1909 K Street NW, 12th Floor
Washington, DC 20006
(202) 661-2200
(202) 661-2299 (facsimile)

Attorneys for
The New York Times Company

STATEMENT REGARDING ORAL ARGUMENT

The Times respectfully requests that the Court hold oral argument regarding the two certified questions at issue in this case, pursuant to Alabama Rule of Appellate Procedure Rule 34(a). The certified questions regarding the interpretation of Alabama's Shield Statute, Ala. Code § 12-21-142, involve matters of first impression in this Court, and oral argument would aid in their disposition. The Court's answers to these questions will be essential not only to the parties to this litigation, but also to the wider press and public for whose benefit the Shield Statute was enacted.

TABLE OF CONTENTS

Page

STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to Alabama Rule of Appellate Procedure 18, as it has consented to answer the two questions certified to it by the U.S. District Court for the Northern District of Alabama. *See* July 2 Order. These certified questions regarding the interpretation of Alabama's Shield Statute, Ala. Code § 12-21-142, involve "questions or propositions of law of this State which are determinative" and "there are no clear controlling precedents in the decisions of the Supreme Court of this State," and the questions therefore are properly answered by this Court. ARAP 18(a); Tab A.

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

STATEMENT OF THE CASE

Alabama affords absolute and unambiguous protection against the compelled disclosure of confidential sources by newspaper reporters when information from the source is published in a newspaper. Alabama's Shield Statute provides in relevant part that "[n]o person engaged in, connected with or employed on any newspaper . . . shall be compelled to disclose in any legal proceeding . . . the sources of any information procured or obtained by him and published in the newspaper[.]" Ala. Code § 12-21-142. The Shield Statute protects not only journalists and their sources, but also the free flow of information to the public. When potential sources are assured that their identities will not be forcibly disclosed, they are more likely to come forward with information of vital public importance.

When the Shield Statute was enacted in 1935, newspapers published only on printed paper. Today, the format has changed. Most newspapers, including Petitioner The New York Times Company ("The Times"), publish in print and online. Some have transitioned to exclusively publish online—including in Alabama, where the flagship newspapers no longer publish print editions.

However, as discussed more fully below, whether publishing on paper or on the internet, a newspaper continues to have the same readily recognizable form and function: an organization employing professional journalists bringing regular updates to readers on current events and other general-interest topics in their communities and beyond. And, accordingly, the Shield Statute's protections should continue to apply to such publications.

The underlying litigation in the U.S. District Court for the Northern District of Alabama is a defamation case arising from an article that was published in The Times online and, the next day, in print. The article relied, in part, on two confidential sources. After the District Court granted in part and denied in part The Times's motion to dismiss, the parties entered discovery. The Times has invoked the Shield Statute to guard against the disclosure of information that would identify its two confidential sources. In connection with that dispute, the District Court certified two questions to this Court, asking (1) whether the Shield Statute applies to newspapers that are also published online, and (2) if so, whether the Shield Statute protects against the disclosure

not only of the source's name, but also other information that would lead to identification of the source.

The Times submits that the answer to both certified questions is yes: The plain meaning of "any newspaper" in the Shield Statute includes newspapers published online and the plain meaning of "source" includes source-identifying information. Any other result would be inconsistent with the text and purpose of the statute and would fatally undermine its protections for the press and public.

STATEMENT OF THE ISSUES

This Court has accepted the following two certified questions regarding the Alabama Shield Statute, Ala. Code § 12-21-142:

1. Is the identity of a source, whose information is published online by a corporation that also publishes a newspaper, protected from compelled disclosure by a court?
2. If Question 1 is answered affirmatively: Does the Shield Statute protect any and all information that could lead to the identification of a source whose identity is protected from compelled disclosure under Alabama's Shield Statute?

The Times respectfully submits that the answer to each question is yes.

STATEMENT OF THE FACTS

The underlying lawsuit arises from an instance of mistaken identification. On the evening of January 14, 2023, a group of young men

connected to the University of Alabama ("UA") basketball team went out in Tuscaloosa to celebrate a recent win. *See* Tab B ¶¶ 21, 27; Tab C 61:14-63:20. But what started as a festive outing ended in tragedy during the early hours of January 15, with some of the young men caught up in a shooting that killed a young woman. Tab B ¶¶ 16-19. Precisely what happened that night is the subject of ongoing civil and criminal proceedings.

What is not in dispute is that the plaintiff, Kai Spears, and his friend, Cooper Lee, were part of the group out celebrating. *Id.* ¶¶ 26-32. Spears was a freshman guard on the UA men's basketball team; Lee was a student manager for the team. *Id.* ¶¶ 2, 37. The group spent the evening at various bars and restaurants popular with students. *Id.* ¶¶ 26-32. And then, a few minutes before the shooting, the two young men made an inadvertently significant decision: Cooper Lee got into a car driven by Brandon Miller that ended up in the shooting crossfire; Kai Spears got into a car driven by a high school friend that passed through the scene within seconds of the shooting, unscathed. *Id.* ¶¶ 32-33; Tab C 134:11-135:1.

The Times also made an inadvertently significant decision. In reporting on the shooting, it relied on an anonymous source who—it is now known—made a mistake. *See* Tab B ¶¶ 43-44; Tab D at 12. The source identified Spears as the passenger in Miller's car, rather than Lee. Tab D at 12, 25. A second anonymous source provided information that corroborated that mistaken identification. *Id.* at 15. And when The Times approached Spears for comment, the exchange failed to clear up the misunderstanding. Tab B ¶¶ 40-43.

As a result, in an article published on March 15, 2023, titled "A Fourth Alabama Player Was at a Deadly Shooting, in a Car Hit by Bullets," The Times wrongly identified Spears as the passenger in Miller's car. *Id.* ¶ 20; Tab E (the "Article"). The Times published the Article online at approximately 8:10 p.m. on March 15, 2023, and in print the next morning. Tab B ¶ 43; Tab F.

Spears ultimately brought suit against The Times for false light and defamation, asserting that the Article's erroneous identification of him defamed him. *See* Tab G. And as part of that proceeding, he seeks discovery into the two confidential sources on whom The Times relied. Having granted anonymity to the sources, The Times refused to provide

information that might lead to their identification, relying on the Shield Statute and the First Amendment reporter's privilege. Tab H at 3-5. Spears then moved to compel. The Times opposed Spears' motion. *See generally id.*

On April 22, 2025, the District Court ordered the parties to submit supplemental briefing on the question of "whether the Alabama shield statute protects a reporter from being compelled to identify 'the source of any information procured or obtained by him and published' online. Ala. Code § 12-21-142." Tab I. On April 23, Spears filed a supplemental brief "conced[ing] that Source A provided The Times with information 'published in the newspaper' within the meaning of Ala. Code § 12-21-142" but reiterating that he believes the Shield Statute "does not protect the information provided by Source A" or the identity of Source B. Tab J at 2. The Times filed its supplemental brief on April 24, arguing that (i) the Shield Statute protects the identities, and all identifying information, regarding both of its confidential sources; (ii) in any event, Plaintiff had waived the question by failing to raise it at any point in the litigation; and (iii) Plaintiff had expressly disclaimed wanting to know the identity of Source A. Tab K.

During a status conference later that day, the District Court and the parties appeared to agree that: (i) The Times *is* a newspaper, (ii) The Times published the challenged Article in print, and (iii) the text of the Shield Statute does not limit its protections to *only* articles that are published *first* or *exclusively* in print. Tab L at 5-6.[1] The District Court, however, then entered an order holding that Spears' "supplemental brief was not responsive to the court's order," directing Spears to file an amended supplemental brief by the next day, and permitting The Times to also file a further supplemental brief by the next day. Tab I; Tab M.

In its amended supplemental brief, The Times argued that it is a newspaper protected by the Shield Statute and that the District Court should certify the questions of whether the Shield Statute applies to newspaper articles published online and protects source-identifying information. Tab L; Tab N. Spears argued that the Shield Statute does not apply online, and does not protect The Times from compelled disclosure of its confidential sources and information provided by them.

[1] No court reporter was present to make a transcript of this proceeding.

Tab O. The District Court then certified the two questions to this Court. Tab A.

STATEMENT OF THE STANDARD OF REVIEW

The Court's review of the certified questions, which "involve only the application of law to undisputed facts," is *de novo*. *Nationwide Mut. Ins. Co. v. Wood*, 121 So. 3d 982, 984 (Ala. 2013).

SUMMARY OF THE ARGUMENT

I.

The Shield Statute, in relevant part, protects a person employed "on *any* newspaper" from compelled disclosure of confidential sources that provided information that was "published in the newspaper." Ala. Code § 12-21-142 (emphasis added). It contains neither a "first in print" temporal requirement nor an "only in print" exclusivity requirement. On its face, the statute encompasses newspapers published in print or online (or both, as was the case here). The Court need look no further than the statutory text to hold that the Shield Statute's protections apply to newspaper articles published online.

Reviewing the statute's plain meaning, as the U.S. Court of Appeals did in *Price v. Time, Inc.*, underscores that "any newspaper" does not mean only newspapers published on paper. 416 F.3d 1327, 1342

(11th Cir. 2005). That outcome is only reinforced by analyzing, as the federal appellate court did in *Price*: 1) the statute's use of the word "any" before "newspaper"; 2) dictionary definitions; 3) the usage of the term in the publishing industry; 4) The Times' definition of itself; and 5) the term's usage in other Alabama statutes and Alabama court decisions.

Although the Shield Statute was enacted in 1935, before the internet, a statute's plain meaning can, and indeed must, be assessed with the understanding that general terms such as "any newspaper" encompass later technological developments unforeseen to their drafters. Otherwise, for example, the Second Amendment would only protect the right to bear muskets, and the First Amendment would not apply to radio, television, or the internet. Applying these principles, courts nationwide repeatedly have held that analogous state shield laws apply to online publications, even when those state statutes were enacted long before the internet existed.

As other courts also have done, this Court should construe the Shield Statute broadly in light of its First Amendment roots and its purpose of increasing the flow of information to the public. But even

under a narrow construction of the Shield Statute, the plain meaning of "any newspaper" would also encompass online newspapers.

Holding that Alabama's Shield Statute applies only to newspaper articles published first, or exclusively, on paper would lead to illogical and capricious results. It would be contrary to the Legislature's purpose in enacting the statute, which was to "safeguard and protect the professional confidence of newspaper and newspaper men"—with the public as the ultimate beneficiary. *Price*, 416 F.3d at 1335 (cleaned up) (quoting 1935 Ala. Acts 649). And, at a time when more and more newspapers are published online first, or online only, the Shield Statute must be read to cover newspaper articles published in either format if it is to have any effect.

II.

The Court also should answer the second certified question in the affirmative and hold that the Shield Statute provides an absolute privilege against the disclosure of both a confidential source's *name* and also other information that could reasonably lead to the identification of the source. Functionally, the privilege would be meaningless if it did not protect contact information, personal data, or descriptive details that,

individually or in combination, would narrow the pool of potential sources to the point where their identity could be discerned.

For that reason, courts nationwide have interpreted similar shield laws and the First Amendment reporter's privilege to protect source-identifying information. Courts also have taken the same approach with respect to the privilege that permits the government to withhold the identities of confidential informants. This Court should do the same and answer the second certified question in the affirmative.

ARGUMENT

I. The Alabama Shield Statute Applies To Newspapers Published Online, Including The New York Times.

The Alabama Shield Statute protects all persons employed by "any newspaper" from compelled disclosure of confidential sources of information published "in the newspaper." Ala. Code § 12-21-142. Examination of the statute's plain meaning makes clear that the law covers newspapers that publish articles both in print and online, as did The Times here.

This is not the first time a court has been called on to interpret the plain meaning of "newspaper" as used in the Shield Statute. The U.S. Court of Appeals for the Eleventh Circuit did so twenty years ago, in

Price v. Time, Inc. 416 F.3d at 1336. There, the question was whether the plain meaning of "any newspaper" included magazines—in that case, Sports Illustrated. *Id.* Although *Price* held that magazines were not newspapers, *id.* at 1343, that court's careful application of Alabama law and this Court's rules of statutory interpretation compel the conclusion that newspapers published online *are* newspapers.

Specifically, to determine the plain meaning of "any newspaper," the Eleventh Circuit looked to: (i) the wording of the statute; (ii) "[g]eneral dictionaries, legal dictionaries, [and] other reference works;" (iii) "the common understanding of the publishing industry;" (iv) the publication's "own understanding of itself;" and (v) the term's usage in "other statutes enacted by the Alabama Legislature" and Alabama court decisions. *Id.* at 1335-43. Each of these sources confirms that newspapers published online plainly fall within the term "any newspapers" as used in the Alabama Shield Statute.

In conducting this analysis, this Court should construe the Shield Statute broadly in light of its roots in the First Amendment's protections for newsgathering and its purpose of increasing the flow of information to the public by encouraging sources to come forward. Other courts have

done the same. Yet even construed narrowly, the plain meaning of "any newspaper" as used in the Shield Statute includes newspapers published online.

Holding otherwise and restricting the scope of the Shield Statute to cover only newspaper articles published first, or exclusively, in print, would be to eviscerate the essential protections of the statutory reporter's privilege. It would also lead to a series of illogical results, with sources fearing coming forward to reporters for newspapers that are published online, and newspapers being forced to publish different reporting in their online and print editions.[2]

A. The plain meaning of "any newspaper" as used in the Shield Statute includes newspapers published online.

i. The specific words used by the Legislature must be construed to include newspapers published online.

When it comes to statutory interpretation, this Court begins with "the plain meaning of the words as written by the legislature." *DeKalb*

[2] It bears emphasis that answering the first certified question does not require the Court to wade into thorny issues about who counts as a journalist in the digital age, or whether blogs and social media accounts can qualify as "newspapers." Rather, the Court need only decide whether the Shield Statute applies to an established newspaper publishing company such as The Times.

Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998). Accordingly, "[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning." *Id.* (quoting *Blue Cross & Blue Shield v. Nielsen*, 714 So.2d 293, 296 (Ala. 1998)). Alabama's Shield Statute provides, in full:

> No person engaged in, connected with or employed on ***any newspaper***, radio broadcasting station or television station, while engaged in a news-gathering capacity, shall be compelled to disclose in any legal proceeding or trial, before any court or before a grand jury of any court, before the presiding officer of any tribunal or his agent or agents or before any committee of the Legislature or elsewhere the sources of any information procured or obtained by him and ***published in the newspaper***, broadcast by any broadcasting station, or televised by any television station on which he is engaged, connected with or employed.

Ala. Code § 12-21-142 (emphasis added).

This statute was enacted in 1935, prior to the advent of modern publishing. As this Court has demonstrated in cases interpreting decades-old legislation, applying historical statutes requires understanding whether the modern circumstance is analogous to the historical one. For example, in *Wal-Mart Stores, Inc. v. City of Mobile*, the Court was required to determine whether, under a 1958 provision of

Alabama's tax code, computer software was taxable as "tangible personal property." 696 So. 2d 290, 290-91 (Ala. 1996). In a 1977 decision, the Court had held that software was *in*tangible, and therefore not taxable. *Id.* (citing *State v. Cent. Computer Servs., Inc.*, 349 So.2d 1160 (Ala. 1977)). In reversing that earlier decision, this Court noted that the "proliferation" of "computer software" was "perhaps not reasonably [] anticipated in 1977," but reasoned that its sale is analogous to the "sale of tangible property, like the sale of a book," and therefore the provision of the tax code at issue applied to software. *Id.* at 291; *see also, e.g.*, *Op. Of The Justices*, 795 So. 2d 630, 643 (Ala. 2001) (determining that video-machine gambling was barred under 1901 constitutional provision banning "lotteries").

As the U.S. Supreme Court similarly has explained, when determining how "historically fixed meaning applies to new circumstances," courts should consider whether the new circumstance is "relevantly similar" to its historical analog. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28-29 (2022). Or, as Justice Antonin Scalia once explained, "the oldest and most commonsensical interpretive principle" requires that "words mean what they conveyed to

reasonable people at the time they were written—with the understanding that general terms may embrace later technological innovations." Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 16 (2012). Using that analytic framework, "a 2012 statute referring to aircraft, if still in effect in 2112, would embrace whatever inventions the label fairly embraces, even inventions that could not have been dreamed of in 2012." *Id.* at 16. Likewise, "[a] 19th-century statute criminalizing the theft of goods is not ambiguous in its application to the theft of microwave ovens." *Id.* at 86.

Accordingly, when determining how 18th century language in the Constitution should apply to modern life, the U.S. Supreme Court has concluded that, "[j]ust as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Bruen*, 597 U.S. at 28 (quoting *Dist. of Columbia v. Heller*, 554 U.S. 570, 582 (2008)). The plain text "can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* "Holding otherwise would be as mistaken as

applying the protections of the [Second Amendment] right only to muskets and sabers." *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

Here, the Legislature's insertion of the word "any" before "newspaper" reinforces that the Shield Statute was intended to apply broadly going forward, with doubts to be resolved in favor of the statute's protection. As a rule, "a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams*, 553 U.S. 285, 294 (2008). "The United States Supreme Court and this Court have recognized on many occasions that the word 'any' is a powerful and broad word, and that it does not mean 'some' or 'all but a few,' but instead means 'all,'" thereby "sweep[ing] in all of the noun category that follows." *Price*, 416 F.3d at 1336 (collecting cases); *see, e.g.*, *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (holding that "the word 'any' has an expansive meaning," such that "any other term of imprisonment" included federal and state prison sentences); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (statutory reference to "any law enforcement officer" included "federal, state, or local" officers); *Fuller v. Assocs. Commercial Corp.*, 389 So. 2d 506, 507, 509 (Ala. 1980) (holding that reference to "any loan" included consumer and

non-consumer loans, and stating that "[t]his Court must give effect to the legislature's choice of the word 'any,'" which is an "all inclusive word," "rather than judicially rewriting the statute").

Simply put, given the Legislature's decision to extend this protection to "any newspaper," to answer the first certified question in the negative, this Court would have to hold that a newspaper that publishes an article both online and in print (or exclusively online) is no longer a newspaper at all.

ii. Dictionary definitions support finding newspapers published online are "newspapers."

Dictionary definitions, as well as encyclopedias, show that the word "newspaper" commonly is defined to include those published online. "[T]his Court regularly looks to dictionary definitions to ascertain the plain meaning of words used in a statute." *State v. City of Birmingham*, 299 So. 3d 220, 226 (Ala. 2019) (referencing as authority Black's Law Dictionary, Merriam Webster's Collegiate Dictionary, and the Oxford English Dictionary) (citing *Ex parte Christopher*, 145 So. 3d 60, 64 (Ala. 2013)); *see also Price*, 416 F.3d at 1337 (finding that "[t]he use of dictionaries to define words used in statutes is" an "accepted and [] defensible approach to determining the plain meaning of statutory

language," which has "been employed for that purpose by the Alabama Supreme Court," including "both general purpose dictionaries and legal dictionaries," and collecting Alabama cases).

The Oxford English Dictionary defines "newspaper" as

> a printed publication, now usually issued daily or weekly, consisting of folded unstapled sheets and containing news, frequently with the addition of advertisements, photographs, articles, and correspondence; the organization or office issuing such a publication. ***Also now: the digital version of such a newspaper, made available online.***

Newspaper, Oxford English Dictionary, https://www.oed.com/dictionary/newspaper_n (emphasis added). Similarly, the Cambridge Dictionary defines a newspaper as "a regularly printed document consisting of large sheets of paper that are folded together, ***or a website***, containing news reports, articles, photographs, and advertisements." *Newspaper*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/newspaper (emphasis added). Dictionary.com defines a newspaper as "a printed publication issued at regular and usually close intervals, especially daily or weekly, and commonly containing news, news comment, features, and advertising" and "***an online version of a newspaper***." *Newspaper*,

Dictionary.com, https://www.dictionary.com/browse/newspaper (emphasis added).

Merriam-Webster defines "newspaper" as both "a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising" and "an organization that publishes a newspaper." *Newspaper*, Merriam-Webster, https://www.merriam-webster.com/dictionary/newspaper. Black's Law Dictionary defines "newspaper" as a "publication for general circulation, usu. in sheet form, appearing at regular intervals, usu. daily or weekly, and containing matters of general public interest, such as current events." *Newspaper*, Black's Law Dictionary (12th ed. 2024). Although these definitions describe a newspaper as "usually" appearing on paper or in "sheet form," they leave open that a newspaper can and sometime does distribute its reporting in other ways. These definitions focus primarily on the purpose, content, and cadence of a newspaper's publication, rather than its physical properties. Those are the factors that define a newspaper and that differentiate it from the magazine at issue in *Price*, not whether the publication is printed on shiny or matte paper, or whether the pages are stapled together.

Encyclopedias likewise demonstrate that the word "newspaper" commonly is understood to include those published online. *Price*, 416 F.3d at 1338-39 (considering encyclopedia entries for "newspaper"); *see also Zeigler v. Baker*, 344 So. 2d 761, 766 (Ala. 1977) (referencing Encyclopedia Britannica in interpreting statute). For example, Encyclopedia Britannica defines "newspaper" as "a publication and form of mass communication and mass media usually issued daily, weekly, or at other regular times that provides news, views, features, and other information of public interest and that often carries advertising." *Newspaper*, Britannica, https://www.britannica.com/topic/newspaper. The entry goes on to recount the various forms newspapers have taken from ancient Rome to now, ending by noting that "[n]early all the world's major newspapers began publishing online editions of their newspapers in the early 21st century." *Id.*

By any of these definitions, The Times is a "newspaper." Whether in print or online, it has a general circulation, appears daily, and reports on current events, general interest topics, as well as articles of opinion, features, and advertising. And the Times's online news content—like any other online newspaper—continues to have the same purpose,

function, and quick cadence that dictionaries and encyclopedias have long pointed to as the defining aspects of newspapers.

iii. The common understanding of the publishing industry supports finding newspapers published online are "newspapers."

Because a statute's plain meaning is also its "commonly understood meaning," "Alabama courts have looked to the common understanding of the industry when deciphering terms in a statute." *Price*, 416 F.3d at 1339 (citing *State Dep't of Revenue v. Delta Air Lines, Inc.*, 549 So.2d 1352, 1354 (Ala. Civ. App. 1989) (considering "the common usage of the disputed words as used in the industry")). Accordingly, as the court did in *Price*, it is useful to look to the common understanding of the term "newspaper" within the publishing industry. This undertaking is particularly relevant in a state whose flagship newspapers are now published exclusively online. Debbie Elliott, *For 3 Big Alabama Newspapers, The Presses Are Grinding to a Halt*, NPR (Dec. 29, 2022), https://www.npr.org/2022/12/29/1143410955/newspaper-alabama-digital-journalism-birmingham-huntsville-mobile (noting that *The Birmingham News*, *The Huntsville Times* and Mobile's *Press-Register*

would publish online-only, and quoting journalist as saying, "the distribution method might have changed, but the mission remains").

To assess the industry's understanding of "newspapers," the court in *Price* examined, for example, how trade associations define the word and how industry prizes are awarded. *Price*, 416 F.3d at 1339-40.[3] In that case, the court found that magazines and newspapers were treated quite differently by industry. *Id.* Here, the opposite is true: the industry does not draw a significant distinction between newspapers published online or in paper.

As to trade associations, the National Newspaper Association Foundation—"one of the largest newspaper associations in the country," established in 1885—counts as members, and awards its annual prizes to, newspapers published online. *See, e.g.*, *National Better Newspaper*

[3] In its 2005 opinion assessing whether "magazines" were "newspapers," the court in *Price* highlighted the non-overlapping membership of two flagship groups at the time: the Newspaper Association of America ("NAA") and Magazine Publishers of America. In doing so, the federal appellate court noted that the NAA represented "newspapers with a combined total of about ninety percent of all newspaper circulation in the country, including the *Wall Street Journal*, the *Washington Post*, and the *New York Times*." Each of those newspapers had websites at the time, and were still "newspapers" according to the NAA and the Eleventh Circuit. *Id.*

Contest Winners Announced, Nat'l Newspaper Ass'n Found. (July 9, 2025), https://www.nna.org/2025-national-better-newspaper-contest-winners-announced. The same is true of the New England Newspaper & Press Association. *See About the New England Newspaper of the Year Competition*, N. England Newspaper & Press Ass'n, https://www.nenpa.com/awards-recognition/newspaper-of-the-year. America's Newspapers, created in 2019 after a merger between the Southern Newspaper Publishers Association and the Inland Press Association, also counts newspapers published online as members. *See Become a Publication Member*, Am.'s Newspapers (May 7, 2025), https://newspapers.org/stories/membership,4156681 (determining membership dues by circulation, including digital).

Industry research reports on newspapers likewise study both digital and print newspapers. *See, e.g.*, *Newspapers Drive Highly Engaged Voters*, America's Newspapers (2023), https://newspapers.org/newspapers-deliver-engaged-voters (counting as "newspaper readers" "American adults reading print or digital newspapers");

Newspapers Fact Sheet, Pew Rsch. Ctr. (Nov. 10, 2023), https://www.pewresearch.org/journalism/fact-sheet/newspapers (measuring both "print and digital" "newspaper circulation").

Next, the court in *Price* looked to "the Pulitzer Prize in Journalism, which is the nation's most prestigious prize for newspaper content." *Price*, 416 F.3d at 1339. Since 1999, the Pulitzer Board has awarded prizes to journalism published by newspapers both in print and online. *See* Seymour Topping, Sig Gissler & Sean Murphy, *History of The Pulitzer Prizes*, Pulitzer, https://www.pulitzer.org/page/history-pulitzer-prizes; Bridget O'Brian, *Pulitzer Prizes Celebrate 100 Newsworthy Years*, Columbia Univ. (Feb. 16, 2016), https://news.columbia.edu/news/pulitzer-prizes-celebrate-100-newsworthy-years. Newspaper articles published online only, or online first, now win Pulitzer Prizes in the same categories as print journalism. For example, The Times's series that won the 2025 prize in Explanatory Reporting included articles that appeared online only or online first. *See, e.g.*, *Azam Ahmed, Matthieu Aikins, Contributing Writer, and Christina Goldbaum of The New York Times*, Pulitzer, https://www.pulitzer.org/winners/22663 (2025); Azam Ahmed,

Investigating a Monster: What We Found and How We Did It, N.Y. Times (May 22, 2024), https://www.nytimes.com/2024/05/22/world/asia/abdul-raziq-afghanistan-investigation.html; Azam Ahmed, *The Once Booming Drug Town Going Bust Under Taliban Rule*, N.Y. Times (Dec. 18, 2024), https://www.nytimes.com/2024/12/18/world/asia/afghanistan-opium-heroin-taliban.html. The same is true of recent Pulitzer Prize-winning coverage from the Washington Post and AL.com. *See Staff of The Washington Post*, Pulitzer (2025), https://www.pulitzer.org/winners/22690; *AL.com Wins Two Pulitzer Prizes, One For Local Reporting, One For Commentary*, AL.com (May 8, 2023), https://www.al.com/news/2023/05/alcom-wins-two-pulitzer-prizes-one-for-local-reporting-one-for-commentary.html.

Other prestigious journalism prizes likewise do not distinguish between newspapers published in print and online, and are regularly awarded to both. *See, e.g.*, *Past Awards & Winners*, Nat'l Press Club, https://www.press.org/club/national-press-club-journalism-awards#past-awards-&-winners; *Scripps Howard Journalism Awards*, Scripps, https://scripps.com/fund/journalism/scripps-howard-awards.

"When it comes to organizing the publishing industry, publishers recognize what is what." *Price*, 416 F.3d at 1340. And as the above-cited industry organizations have made clear, a newspaper that publishes online is a newspaper.

iv. The Times's understanding of itself supports finding it is a "newspaper."

"There is another way to find out whether" The Times "is a newspaper within the plain, ordinary, everyday, common sense meaning of that term, and that is to ask it." *Price*, 416 F.3d at 1340. The Times has referred to itself as a "newspaper" since its founding in 1851, continued to do so after its website launched in 1996, and to this day is often referred to as a national "newspaper of record." *See, e.g.*, *History*, N.Y. Times Co., https://www.nytco.com/company/history/our-history; Sarah Diamond, *A History of 'Record' in the Newspaper of Record*, N.Y. Times (May 21, 2023), https://www.nytimes.com/2023/05/21/insider/a-history-of-record-in-the-newspaper-of-record.html; Peter H. Lewis, *The New York Times Introduces a Web Site*, N.Y. Times (Jan. 22, 1996), https://www.nytimes.com/1996/01/22/business/the-new-york-times-introduces-a-web-site.html; Adam Nagourney, *The Times: How the Newspaper of Record Survived Scandal, Scorn, and the Transformation*

of Journalism (2023); *see also N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 256 (1964) (The Times is the publisher of "a daily newspaper"); *The New York Times*, Britannica, https://www.britannica.com/topic/The-New-York-Times (describing The Times as a daily newspaper, with print and digital content); *New York Times*, Roper Ctr., https://ropercenter.cornell.edu/new-york-times ("The Times is long regarded within the industry as a national 'newspaper of record.'").[4]

Indeed, when The Times launched its website in January 1996, it described the offering as an "electronic newspaper (address: http:/www.nytimes.com)" that would give "readers around the world immediate access to most of the daily newspaper's contents." Lewis, *supra.* The Times's publisher added, "[w]e see our role on the Web as being similar to our traditional print role – to act as a thoughtful,

[4] For his part, throughout most of this litigation, Spears agreed that The Times was a newspaper. His Complaint describes The Times as "a daily newspaper provided in both print and digital formats." Tab G ¶ 5; Tab B ¶ 5; *see also* Tab J at 2 (stating, in Spears' brief on motion to compel, that "Spears is willing to concede that Source A provided The Times with information 'published in the newspaper' within the meaning of Ala. Code §12-21-142.").

unbiased filter and to provide our customers with information they need and can trust." *Id.*[5]

Additionally, The Times's annual reports, SEC filings, and court filings describe "[o]ur core news product" as "The New York Times, which is available on our mobile applications, on our website (NYTimes.com) and as a printed newspaper." *The New York Times Company 2024 Annual Report* at 6, N.Y. Times Co. (Feb. 27, 2025), https://nytco-assets.nytimes.com/2025/03/The-New-York-Times-Company-2024-Annual-Report.pdf; *see also, e.g.*, Compl. ¶ 14, *N.Y. Times Co. v. Microsoft Corp.*, No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023),

[5] Likewise, the Wall Street Journal introduced its website as an "an electronic newspaper," which would "publish its first edition, with news, editorials and other features from the next morning's print newspaper, at about midnight eastern time" and update throughout the day. *The Wall Street Journal Launches Interactive Edition*, Wall St. J. (Apr. 29, 1996), https://www.wsj.com/articles/SB849581696318836500. Similarly, when the Washington Post launched its website, making "the early edition of each day's Post available at 1 a.m.," it noted that, "[w]ith its Web site, The Washington Post Co. joins about 300 other U.S. newspaper publishers now on the new medium." Mike Mills, *Post Launches Web-Based News, Information Service*, Wash. Post (June 18, 1996), https://www.washingtonpost.com/archive/business/1996/06/19/post-launches-web-based-news-information-service/20bc0900-c682-4f1c-94f3-dcb280524c1e. As these announcements underscore, newspapers' websites typically publish online *before* the print edition's publication—as The Times did with the article at issue in this case.

https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf

(repeating this description of The Times).

v. Other Alabama court decisions and statutes support finding newspapers published online are "newspapers."

The common usage of the term "newspaper" in other decisions by this Court also is instructive. *See, e.g.*, *Adams v. Atkinson*, 2025 WL 1416851, at *5 (Ala. May 16, 2025) (examining how "our Court . . . treat[s]" the term being interpreted). Across contexts, this Court and its members have referred to newspaper articles published online as being published in a "newspaper." *See, e.g.*, *Dolgencorp, LLC v. Smith*, 353 So. 3d 527, 530 (Ala. 2021) (Shaw, J., dissenting) (mentioning "an online newspaper article"); *LEAD Educ. Found. v. Alabama Educ. Ass'n*, 290 So. 3d 778, 782 (Ala. 2019) (mentioning "online articles from a local newspaper"); *Prudential Ballard Realty Co. v. Weatherly*, 792 So. 2d 1045, 1068 n.2 (Ala. 2000) (Hooper, C.J., dissenting) (quoting editorial in *The Huntsville Times*, "as appearing on the 'Alabama Live' website"); *Ex parte Monsanto Co.*, 862 So. 2d 595, 625 (Ala. 2003) (referencing "Internet newspaper articles"); *Creque v. State*, 272 So. 3d 659, 720 (Ala.

Crim. App. 2018) (discussing articles in the "online version of the local daily newspaper").

This Court also sometimes reviews "the common usage of the term [at issue] in Alabama law," by undertaking "[a] perusal of Alabama statutes." *Startley Gen. Contractors, Inc. v. Water Works Bd. of City of Birmingham*, 294 So. 3d 742, 756 (Ala. 2019). "A word or phrase is presumed to bear the same meaning throughout a text." Scalia & Garner, *supra*, at 170 (describing the "presumption of consistent usage"). While this exercise does not always "have much force," "the more connection the cited statute has with the statute under consideration, the more plausible the argument becomes." *Id.*

In this case, a relevant Alabama statute is the one on the publication of public notices, which provides that "[a] newspaper publishing a notice shall also place the notice on an Internet website operated by the newspaper, if the newspaper publishes a website." Ala. Code § 6-8-62(c); *see also id.* § 6-8-62(b) (same). The statute treats newspapers' websites as part of the newspaper. *Id.* Other states' public notice laws similarly require publication on newspapers' websites. *See Web Posting Laws*, Pub. Notice Resource Ctr. (June 11, 2024),

https://www.pnrc.net/subscribers/statutes-comparative-by-state/statutes-requiring-web-posting.[6]

* * *

As the Shield Statute's wording, dictionaries, the industry's understanding, The Times' definition of itself, and other Alabama authorities demonstrate, the "natural, plain, ordinary, and commonly understood meaning," *DeKalb Cnty. LP Gas Co.*, 729 So. 2d at 275, of "any newspaper" necessarily includes one published online. Although the Shield Statute's drafters could not have foreseen online newspapers when writing the law in 1935, "[d]rafters of every era know that technological advances will proceed apace and that the rules they create will one day apply to all sorts of circumstances that they could not possibly envision." Scalia & Garner, *supra*, at 86. The key is that newspapers published on paper and newspapers published online are "relevantly similar," *Bruen*, 597 U.S. at 28—they serve the same purpose

[6] Although Alabama's administrative code does contain one definition of a newspaper as being printed, the rule dates to 1975, before the advent of online publication, and therefore offers no guidance for the Court's analysis here. *See* Ala. Admin. Code § 180-6-1-.110, Code of Ala. 1975 § 40-23-31.

and function and deliver the same substantive information, in the same quick cadence. When The Times publishes an article on its website, regardless of when or whether that article appears in print, it is indisputably published "in the newspaper" under the Shield Statute.

B. Other courts apply analogous state shield statutes to online publications.

This Court would be far from alone by answering the first certified question in the affirmative. Courts nationwide repeatedly have held that the term "newspaper," in the context of similar state shield statutes, applies to both print and digital publications even when the statute was enacted long before the advent of digital publishing. For example, the Nevada Supreme Court considered the same statutory construction issue: whether that state's reporter's privilege applied to digital media, when by its terms, the 1971 statute applies to journalists with a "newspaper, periodical or press association or employee of any radio or television station." *Toll v. Wilson*, 135 Nev. 430, 433 (2019) (quoting Nev. Rev. Stat. § 49.275). The court concluded that, while the drafters of the statute

> knew what a newspaper was, they likely did not contemplate it taking digital form. But just because a newspaper can exist online, it does not

> mean it ceases to be a newspaper. To hold otherwise would be to create an absurd result in direct contradiction to the rules of statutory interpretation.

Id. at 435.

Similarly, a California appellate court held that that state's statutory reporter's privilege, which protects persons employed by "a newspaper, magazine, or other periodical publication" extended to an online magazine. *O'Grady v. Super. Ct*., 139 Cal. App. 4th 1423, 1462 (Cal. Ct. App. 2006). As the court observed, "the operator of a public Web site is a publisher for purposes of [the statute]." *Id.* at 1459. It went on to explain that "[i]t is established without contradiction that they gather, select, and prepare, for purposes of publication to a mass audience, information about current events of interest and concern to that audience," and "are reporters, editors, or publishers entitled to the protections of the constitutional privilege." *Id.* at 1467-68. "If their activities and social function differ at all from those of traditional print and broadcast journalists, the distinctions are minute, subtle, and constitutionally immaterial." *Id*. at 1468.

The California court further observed that engaging in "the open and deliberate publication on a news-oriented Web site of news gathered

for that purpose by the site's operators," is "conceptually indistinguishable from publishing a newspaper." *Id.* at 1459. The court also noted that, while a newspaper was "a regularly appearing publication printed on large format, inexpensive paper," and magazines were also traditionally printed, "[a]s with newspapers, the nature of magazines has changed because of the internet. Magazines may be published solely on the internet, or as electronic adjuncts of a print magazine." *Id.* at 1460 (quoting 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 5)). Indeed, the same treatise on which that court relied when defining "magazines" makes clear that "[t]he courts accept that an 'internet newspaper' is a newspaper," and "the edition of a newspaper on an internet website is in fact an 'edition' of the 'newspaper,'" and digital newspapers "may be viewed as in fact superior to printed versions in many ways" due to their broad reach. 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 2.

Likewise, Florida's reporter's privilege has been extended to online publications. A federal court held that Buzzfeed, an online publication, was entitled to protection under Florida's reporter's privilege because "[t]here is nothing in the statute that limits the privilege to traditional

print media. Because BuzzFeed writes stories and publishes news articles on its website, it qualifies as a 'news agency,' 'news journal' or 'news magazine' . . . covered under the Florida Shield Law." *Gubarev v. Buzzfeed, Inc.*, 2017 WL 6547898, at *4 (S.D. Fla. Dec. 21, 2017) (citing Fla. Stat. § 90.5015(2) (emphasis added)); *see also TheStreet.com, Inc. v. Carroll*, 20 So. 3d 947, 950 (Fla. Dist. Ct. App. 2009) (applying same statute to online publication).

This Court, like others nationally, should hold that Alabama's Shield Statute applies to newspapers published online.

C. The Court should construe Alabama's Shield Statute broadly, in light of its press-protective aims.

The Court should construe the Shield Statute broadly in order to effectuate its purpose of "safeguard[ing] and protect[ing] the professional confidence of newspaper and newspapermen," which benefits the public by increasing the flow of information. 1935 Ala. Acts 649; *see also infra* Part I(D) (describing policy behind Shield Statute).

Courts in other states repeatedly have held that, in order to fulfill such public policies, reporters' shield laws should be interpreted broadly. For example, "Pennsylvania courts have repeatedly emphasized the important interests served by the Shield Law" as a basis for holding that

the law "is to be broadly construed in favor of newspapers and news media." *Fox v. Lackawanna Cnty.*, 2018 WL 4002900, at *1 (M.D. Pa. Aug. 22, 2018). Absent the protection of a shield law, "important information, tips and leads will dry up and the public will often be deprived," making it "vitally important that this public shield against governmental inefficiency, corruption and crime be preserved against piercing and erosion." *Sprague v. Walter*, 516 A.2d 706, 713 (Pa. Super. 1986) (quoting *In re Taylor*, 193 A.2d 181, 185 (Pa. 1963)), *aff'd*, 543 A.2d 1078 (1988).

New Jersey courts, too, have recognized that, although their shield law "is a statute which is therefore in derogation of the common law and one which would normally be narrowly construed[,] . . . the courts generally afford a broad interpretation to the newsperson's privilege" because "society demands the open and full flow of information and ideas whatever they may be and from wherever they may come." *Petition of Burnett*, 635 A.2d 1019, 1024 (N.J. Super. 1993). "Unlike most other privileges," moreover, the "newsperson's privilege has a constitutional foundation," as "the United States Supreme Court has unanimously recognized that a reporter's gathering of information receives some First

Amendment protection." *Maressa v. N.J. Monthly*, 445 A.2d 376, 380 (N.J. 1982) (citing *Branzburg v. Hayes*, 408 U.S. 665, 691 (1972)); *see also Rosato v. Super. Ct.*, 124 Cal. Rptr. 427, 445 (Ct. App. 1975) (finding that drafters of California's shield law "recognized the importance of maintaining a free flow of information and intended that the statute be given a broad rather than a narrow construction").

The federal appellate court in *Price* erred in concluding that this Court would construe the Shield Statute narrowly. Its determination was based on this Court's narrow construction of Alabama's spousal communications privilege. 416 F.3d at 1342 (citing *Arnold v. State*, 353 So. 2d 524, 526 (Ala. 1977)). The court in *Price*, however, failed to consider that shield laws are distinct from other evidentiary privileges. In addition to their First Amendment roots, they are also unique in that they increase, not decrease, "the free flow of information to the public" by way of the news media. *Pinkard v. Johnson*, 118 F.R.D. 517, 520 (M.D. Ala. 1987). Whereas "the general public is deemed to be the overall beneficiary of the Shield Law's protections" because it "protect[s] the free flow of information," "[t]he attorney-client privilege," for example, "renders an attorney incompetent to testify as to communications made

to him by his client in order to promote a free flow of information only between attorney and his or her client[.]" *Castellani v. Scranton Times, L.P.*, 956 A.2d 937, 951 (Pa. 2008) (explaining broad construction of Pennsylvania's shield law). Similarly, "the privilege for confidential marital communications . . . protects the confidences of the individual partners to the marriage," *Arnold*, 353 So. 2d at 526, not the public. Moreover, Alabama courts have been hesitant to narrowly construe other evidentiary privileges given the important policies they serve. *See, e.g.*, *Ex parte United Service Stations, Inc.*, 628 So. 2d 501, 504 (Ala. 1993) (citing "[t]he strength of the public policy on which the statutory psychotherapist-patient privilege is based" in declining to find exception to privilege). This Court should construe the Shield Statute broadly in light of its important, information-increasing purpose.

But even if this Court elected to construe the Shield Statute narrowly, the Shield Statute still plainly should be read to include newspapers published online. As discussed above, the plain meaning of "any newspaper" as used in the statute includes both print and online newspapers. *See supra* Part I(A).

D. Excluding online newspapers from the Shield Statute's definition of "newspaper" would eviscerate the statute's protections and lead to nonsensical results.

Answering the first certified question in the negative and holding that Alabama's Shield Statute applies only to articles first or exclusively published in a newspaper's print edition would fatally undermine the law and lead to absurd and nonsensical results.

The Legislature enacted the statute to "safeguard and protect the professional confidence of newspaper and newspaper men." *Price*, 416 F.3d at 1335 (cleaned up) (quoting 1935 Ala. Acts 649). "If newspaper reporters are invariably required to reveal the sources of their stories and the processes of their newsgathering whenever such information is sought by litigants, their ability to develop information to report to the public would be severely hampered." *Pinkard*, 118 F.R.D. at 520.

The Shield Statute provides robust assurance to confidential sources that they will not be identified. *Id.* at 521 n.3 (citing "Alabama's policy of giving protection to confidential 'sources of information' obtained by reporters"). Protecting confidential sources is in the public interest because it serves "an important societal interest in protecting the free flow of information *to* the public." *Id.* at 520 (emphasis added);

see also Ex parte Sparrow, 14 F.R.D. 351, 353 (N.D. Ala. 1953) (describing the law as "a clear and unequivocal pronouncement of the public policy of the state"). As Justice Stewart once explained, without a clear and reliable reporter's shield law, "[a] public-spirited person inside government, who is not implicated in any crime, will now be fearful of revealing corruption or other governmental wrongdoing, because he will now know he can subsequently be identified by use of compulsory process." *Branzburg*, 408 U.S. at 731 (Stewart, J., dissenting).

As a matter of basic principle, when interpreting a statute, "[a] textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored." *State ex rel. Allison v. Farris*, 194 So. 3d 214, 219 (Ala. 2015) (quoting Scalia & Garner, *supra*, at 63); *Ex parte United Serv. Stations, Inc.*, 628 So. 2d at 504 (declining to find exception to psychotherapist-patient privilege because doing so "would conflict with the public policy underlying the psychotherapist-patient privilege"). The Court should seek an interpretation that "is both reasonable and faithful to the purposes of the" statute. *Webb Wheel Prods., Inc. v. Hanvey*, 922 So. 2d 865, 873 (Ala. 2005).

Construing protections for a "newspaper" to exclude the online versions of articles would not be reasonable or faithful to the statute's purposes. Instead, as the Nevada Supreme Court reasoned, holding that a newspaper published online is outside the bounds of that state's shield law protection for "newspapers" "would be to create an absurd result in direct contradiction to the rules of statutory construction." *Toll*, 135 Nev. at 435; *see also O'Grady*, 139 Cal. App. 4th at 1458 (observing, in holding shield statute covered online publication, that "courts ought not to cling too fiercely to traditional preconceptions").

First, it would result in the same article—and the same source—being subject to different legal privileges depending on whether the article was published in paper only, paper first, online only, or online first. There is no discernable reason why such significant legal privileges should turn on the timing and physical medium of a newspaper publication. It would mean that breaking news stories—which almost always appear online before print—would not receive the privilege at all, potentially delaying the public's receipt of important information. It would mean that a source would have no meaningful assurance about confidentiality when speaking with a news organization that publishes

online, deterring sources from engaging with most modern news organizations. And that, in turn, would mean that subscribers to the paper edition might receive very different news than those who subscribe online—even when subscribing to the same publication. Such a result harms journalists, sources and—significantly—the public.

These outcomes are even more at odds with the Legislature's intent when the Court considers how they intersect with the modern news industry. Restricting the Shield Statute's protections to a single format of newspapers would protect only an ever-shrinking group of publishers and readers. *See Newspapers Fact Sheet*, *supra*; Elliott, *supra*. Alabama would be particularly hard-hit, as the first "state in the country to have its primary paper move completely online." Tracy Tully, *A Storied Newspaper Prepares to Print Its Own Obituary*, N.Y. Times (Feb. 1, 2025), https://www.nytimes.com/2025/02/01/nyregion/new-jersey-star-ledger-prints-final-edition.html; *see also* Elliott, *supra*. The University of Alabama's 130-year-old student newspaper, the Crimson White, also now publishes only online. *See About*, Crimson White, https://thecrimsonwhite.com/about. As one veteran Alabama journalist put it, print newspapers will soon be as antiquated as "the Pony

Express." Elliott, *supra*. His "advice to longtime print readers: This is the digital age, so come along." *Id.* The Shield Statute must come along, too, or else newspapers without print editions will be less and less able to obtain vital information, with the public ultimately paying the price.

* * *

The Times respectfully submits that Alabama's statutory privilege applies to articles published online by newspapers regardless of whether they were published in print.

II. The Alabama Shield Statute Protects Against the Compelled Disclosure of Source-Identifying Information.

Turning to the second certified question, the protection afforded by the Shield Statute is *not* narrowly limited to a confidential source's *name* only, but necessarily includes information that reasonably would lead to identification of the source. This result is compelled by the plain meaning of the statute, consistent with this Court's principles of statutory interpretation. Courts nationwide also have interpreted similar shield laws and the First Amendment reporter's privilege to guard against the disclosure of identifying information, and have taken the same approach to the privilege that permits the government to

withhold the identities of confidential informants. A contrary result would render the statute's important protections for confidential sources entirely meaningless.

A. The plain language of the statute is not limited to only a source's name.

The law prevents the compelled disclosure of "the sources of any information procured or obtained by him and published in the newspaper." Ala. Code § 12-21-142. Had the Legislature wanted to limit protection to the name of the source alone, it could have said so, providing protection only for "the name of the source." But the Legislature did not so limit the statute for the obvious reason that, if it shielded only the source's *name*, but not his or her email address, phone number, physical location, or other identifying information, the statute would be pointless.

Indeed, reading "source" as used in the Shield Law to include both the source's name and other identifying information is the only result consistent with the rule that "[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning." *DeKalb Cnty. LP Gas Co.*, 729 So. 2d at 275. Interpreting the law to protect only against the disclosure of the name itself but not, for

example, the source's picture or phone number, would be "an absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute," violating this Court's rules of statutory construction. *Lane v. State*, 66 So. 3d 824, 828 (Ala. 2010) (quoting *City of Bessemer v. McClain*, 957 So. 2d 1061, 1074-75 (Ala. 2006)).

While Alabama state and federal courts have not interpreted the precise scope of what constitutes "sources of any information," they have ruled consistently with the interpretation that the plain text of the statute protects more than the source's name. Specifically, an Alabama Circuit Court quashed a subpoena seeking the *location* of a television interview, where such information might allow a litigant to discern the identity of a child in a custody proceeding. *Brothers v. Brothers*, 1989 BL 178, 16 Media L. Rep. 1031 (Marshall Cnty. Cir. Ct. Jan. 9, 1989). As the court noted, the reporter was "'shielded' by statute from legal proceedings to disclose any sources of information procured by her or obtained by her in her 'newsgathering' activity and televised or published by her." *Id.* at *1-2.

B. Courts apply analogous state shield statutes and the First Amendment reporter's privilege to source-identifying information.

Courts construing analogous statutes in other states have found them to encompass far more than simply the *name* of a confidential source. Pennsylvania's reporter's privilege is identical to Alabama's statute in that it affords an absolute privilege against disclosure of "the source of any information procured or obtained" by a reporter. 42 Pa. Cons. Stat. Ann. § 5942(a). As the Pennsylvania Supreme Court articulated in a pair of decisions, the "source of information" "means not only the identity of the person, *but likewise includes documents*, inanimate objects *and all source[s] of information*" that would "reveal sources of information which the Act intended to protect." *In re Taylor*, 193 A.2d at 185-86 (emphases in original). What falls outside the scope of this privilege is "documentary information [that] does *not* reveal the identity of a personal source of information or [that which] may be redacted to eliminate the revelation of a personal source of information." *Hatchard v. Westinghouse Broad. Co.*, 516 Pa. 184, 195 (1987) (emphasis added).

Other courts have reached the same conclusion with respect to similar statutes. *See, e.g.*, *Aspen Fin. Servs., Inc. v. Eighth Jud. Dist. Court of State*, 313 P.3d 875, 877, 879 (Nev. 2013) (privilege barred discovery requests regarding relationship between journalist and sources, which were "effectively seeking to confirm the identities of [reporter's] sources" by seeking information regarding investors' gifts to reporter, work they did on his home, and hiring of investor's son by news station); *In re April 7, 1999 Grand Jury Proceedings*, 749 N.E.2d 325, 332 (Ohio App. 2000) (holding, in state where shield law covered only "forced disclosure of the *identity* of the source of information," that the law permitted journalist to refuse to answer question about the date he received documents from the confidential source because it "could very likely have led to [his] source"); *FMC Corp. v. Capital Cities/ABC, Inc.*, 915 F.2d 300, 306 n.4 (7th Cir. 1990) (holding that Illinois shield statute, which in relevant part covers "the source of any information obtained by a reporter," protected against disclosure of documents that would place media organization "in danger of revealing its sources"); *Rosato*, 124 Cal. Rptr. at 445 (California's shield law "extends not only to the identity of the source but to the disclosure of any information, in whatever form,

which may tend to reveal the source of the information"); *see also* 23A Fed. Prac. & Proc. Evid. § 5426 (1st ed.) ("It has been argued that the journalist privilege should apply to any evidence that would tend to reveal the identity of the informant.").[7]

Applying this rationale, a federal court in D.C. barred discovery of newsgathering materials after recognizing that, "[b]y requesting materials that might be used to piece together the identities of off-the-record sources," including "[t]ravel [r]ecords, [t]elephone [b]ills, [e]xpense [v]ouchers and [s]imilar [m]aterials," plaintiffs could discover the identities of "confidential sources which they are not entitled to obtain from defendants." *Tavoulareas v. Piro*, 93 F.R.D. 35, 39-40 (D.D.C. 1981).[8]

---

[7] Although Nevada's and California's shield statutes also protect against the disclosure of unpublished information in addition to sources' identities, Nev. Rev. Stat. Ann. § 49.275; Cal. Evid. Code § 1070, the cited decisions specifically addressed sources' identities, and recognized that compelled disclosure of a "source" necessarily includes more than just the source's name.

[8] Courts interpreting the First Amendment and common law reporter's privileges have likewise held that they extend to disclosure of information that could lead to the confidential source being identified. *See, e.g., Miller v. Mecklenburg Cnty.*, 602 F. Supp. 675, 679 (W.D.N.C. 1985) (recognizing "a qualified privilege under the First Amendment for the reporter both against revealing the identity of confidential sources

C. Courts apply the confidential informant's privilege to information that would reasonably identify the informant.

Courts in Alabama and elsewhere take a similar approach to the government's privilege against revealing the identities of confidential informants to law enforcement, extending the privilege both to the informant's name and to other information that would "tend to" identify them. *See, e.g.*, *Ex parte Pugh*, 493 So. 2d 393, 394-95 (Ala. 1986) (finding government's "object[ions] to every defense question directly concerning the identity of the informant or which might tend to reveal the identity of the informant" were proper) (citing *Roviaro v. United States*, 353 U.S. 53, 60 (1957) (privilege turns on whether disclosure would "tend to reveal the identity of an informer")); *see also, e.g.*, *In re Kleberg Cnty., Texas*, 86 F. App'x 29, 33 (5th Cir. 2004) (privilege protected against

---

and against revealing material that is supplied to the reporter by such confidential source," and ordering disclosure only of information that "would not force the reporter to break a promise of confidentiality") (emphasis omitted); *Los Angeles Memorial Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 489, 491 (C.D. Cal. 1981) (quashing subpoena to reporters for "any and all notes, file memoranda, tape recordings or other materials reflecting" conversations with listed individuals); *see also N.Y. Times Co. v. Gonzales*, 459 F.3d 160, 168 (2d Cir. 2006) (because subpoena seeking reporter's phone records "is a first step of an inquiry into the identity" of the source, applying balancing test to determine whether a qualified common law reporter's privilege barred compelled disclosure).

"[r]equiring an informant to appear at a particular time at a particular place" because it would permit third parties to "easily discern [informants'] identities, or at least gain significant clues as to those identities"); *In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 2013 WL 2456217, at *3 (E.D. La. June 5, 2013) ("The privilege 'protects more than just the name of the informant and extends to information that would tend to reveal the identi[t]y of the informant,'" such as "all communications" with the investigating government agency (quoting *United States v. Napier*, 436 F.3d 1133, 1136 (9th Cir. 2006))); *Solis v. Saraphino's Inc.*, 2010 WL 4941953, at *1 (E.D. Wis. Nov. 30, 2010) ("The privilege also protects the contents of communications with government investigators if the contents would tend to reveal the informant's identity," such as communications with cooperating employees at investigated company) (citing *United States v. Herrero*, 893 F.2d 1512, 1525 (7th Cir. 1990)); *Commw. v. Whitfield*, 208 N.E.3d 1278, 1286, 1288 (Mass. 2023) ("[T]he privilege 'not only protects the release of the name of the informant but also forbids the disclosure of details that would in effect identify the informant,'" such as "dates, times, and locations of all

meetings" with informant and other information allowing one "to retrace their activities") (citations omitted) (emphasis in original).

As the U.S. Supreme Court observed, the purpose of the confidential informant privilege is to "maintain the Government's channels of communication by shielding the identity of an informer from those who would have cause to resent his conduct," and this purpose would be wholly undermined if it did not cover both an informant's name and other identifying information. *Roviaro*, 353 U.S. at 60 n.8. Like the Shield Statute, the confidential informant's privilege ultimately benefits the public by encouraging individuals to come forward with information needed to investigate wrongdoing and hold others to account. *Cf. Pinkard*, 118 F.R.D. at 520.

D. Holding that the Shield Statute protects more than merely a source's name is necessary to effectuate the legislative purpose.

Narrowly construing Alabama's Shield Statute to protect only against disclosure of the source's name would contradict the Legislature's plain intent—to protect the identity of reporters' sources. "Otherwise, through a series of indirect questions, the identity of the informant could be obtained without the need to ask for the informant's

name directly, resulting in subversion of the reporter's privilege." *In re Burns*, 484 So. 2d 658, 659 (La. 1986).

For example, in this matter, The Times withheld the following material from production: (i) phone numbers from the reporter's call records; (ii) meeting logistics that would reveal where Source A was located; (iii) photographs that contain visual cues that would identify, or reasonably lead to the identification of, Source A; and (iv) information from the reporter's handwritten notes (produced in redacted form) that would tend to identify either Source A or Source B. The Times produced, however, portions of the reporter's notes in unredacted form that *do not* reveal the identity of either source. In depositions, Times witnesses also refused to testify about who they had not spoken to off the record, so as to avoid identifying the source by process of elimination.

Permitting The Times, and other newspapers, to withhold only their confidential sources' names, but ordering journalists and newspapers to disclose a source's phone number or physical location, for example, would identify the source if the requester could simply look up the number, call and ask whose it was, or knock on a door and see who answers. Similarly, protecting only the name of the specific confidential

source relied on in a particular article but requiring a reporter to answer (in the negative) about whether a reporter had off-the-record communications with *other* individuals in a pool of potential confidential sources would, if answered for everyone *except* for the actual confidential sources, be source-identifying through process of elimination. Indeed, that is the very concept of the classic board game "Clue": Knowledge of what *to eliminate* from a set of possibilities eventually provides identifying information.

In sum, interpreting the Shield Statute to protect only sources' names would run afoul of the law's "express purpose of 'safeguard[ing] and protect[ing] the professional confidence of newspaper and newspapermen,'" *Price*, 416 F.3d at 1335 (quoting 1935 Ala. Acts 649), with the result that reporters' "ability to develop information to report to the public would be severely hampered," *Pinkard*, 118 F.R.D. at 520. When interpreting statutes, the Court should avoid an "absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute." *Lane*, 66 So. 3d at 828. Here, that principle requires answering this certified question in the affirmative, and holding that the

Shield Statute prevents the compelled disclosure of information that would reasonably lead to the revelation of sources' identities.

CONCLUSION

For all of the foregoing reasons, The Times respectfully requests that the Court answer both certified questions in the affirmative.

Dated: July 30, 2025

Respectfully submitted,

/s/ *John G. Thompson*

John G. Thompson
jthompson@lightfootlaw.com
Matthew J. Winne
mwinne@lightfootlaw.com
Nikaa Jordan
njordan@lightfootlaw.com
Lightfoot, Franklin & White, L.L.C.
The Clark Building
400 North 20th Street
Birmingham, AL 35203-3200
(205) 581-0700
(205) 581-0799 (facsimile)

Jay Ward Brown (*pro hac vice*)
brownjay@ballardspahr.com
Chad R. Bowman (*pro hac vice*)
bowmanchad@ballardspahr.com
Emmy Parsons (*pro hac vice*)
parsonse@ballardspahr.com
Ballard Spahr LLP
1909 K Street NW, 12th Floor

Washington, DC 20006
(202) 661-2200
(202) 661-2299 (facsimile)

Attorneys for
The New York Times Company

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document contains 10,447 words, is written in Century Schoolbook 14-point font, and is in compliance with the font and word limitations of Rule 32 of the Alabama Rules of Appellate Procedure. In preparing this certification, I relied on the word count feature of the word-processing system used to prepare this document.

/s/ John G. Thompson
John G. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, a true and correct copy of the foregoing was served on counsel of record by electronic mail as indicated below. It is further certified that the filing party will mail two hard copies of the e-filed document to the Alabama Supreme Court within 24 hours of e-filing, along with a copy of the transaction confirmation.

R. Matt Glover
PRINCE GLOVER HAYES
1 Cypress Point
701 Rice Mine Road North
Tuscaloosa, AL 35406
Phone: (205) 345-1234

Fax: (205) 752-6313
Email: mglover@princelaw.net

Stephen P. New
NEW, TAYLOR & ASSOCIATES
430 Harper Park Drive
P.O. Box 5516
Beckley, WV 25801
Telephone: 304-250-6017
Facsimile: 304-250-6012
Email: steve@newlawoffice.com

/s/ John G. Thompson
John G. Thompson

INDEX TO APPENDIX

VOLUME I

VOLUME II

VOLUME III

Documents and Answers to Interrogatories (Doc. 104)

Tab M April 24, 2025 Text Order (Doc. 102)

Tab N The New York Times Company's Supplemental Briefing Regarding Plaintiff's Motion to Compel Production of Documents and Answers to Interrogatories (Doc. 101)

Tab O Plaintiff Kai Spears' Second Response to Order for Supplemental Briefing on Motion to Compel (Doc. 103)

Dated: July 30, 2025

Respectfully submitted,

/s/ *John G. Thompson*

John G. Thompson
jthompson@lightfootlaw.com
Matthew J. Winne
mwinne@lightfootlaw.com
Nikaa Jordan
njordan@lightfootlaw.com
Lightfoot, Franklin & White, L.L.C.
The Clark Building
400 North 20th Street
Birmingham, AL 35203-3200
(205) 581-0700
(205) 581-0799 (facsimile)

Jay Ward Brown (*pro hac vice*)
brownjay@ballardspahr.com
Chad R. Bowman (*pro hac vice*)
bowmanchad@ballardspahr.com

Emmy Parsons (*pro hac vice*)
parsonse@ballardspahr.com
Ballard Spahr LLP
1909 K Street NW, 12th Floor
Washington, DC 20006
(202) 661-2200
(202) 661-2299 (facsimile)

Attorneys for
The New York Times Company