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 REPLY BRIEF REGARDING CERTIFIED QUESTIONS

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SUMMARY OF THE ARGUMENT

I.

The Shield Statute protects individuals employed "on any newspaper" from compelled disclosure of confidential sources who provide information "published in the newspaper." Ala. Code § 12-21-142. In answering the first certified question, the Court should hold that the Shield Statute's protection applies regardless of whether the information was published by the newspaper in print or online. Spears himself concedes that "the statute applies where a news organization did publish, in a traditional printed newspaper, information obtained from a source after first publishing that information online," which is precisely what The Times did in this case. *See* Pl.'s Opposition Brief ("Op.") at 42.

Contrary to Spears's contention, The Times does *not* argue that the Shield Statute applies to *all* online content. Rather, The Times argues that a newspaper—like The Times or The Birmingham News—is still a newspaper when it is published online and therefore still subject to the Shield Statute. This is true regardless of whether this Court interprets the law broadly or narrowly.

Spears fails to offer any persuasive argument to the contrary. He ignores a fundamental principle of statutory interpretation that general terms such as "newspaper" must be read to encompass later technological developments. He does not engage with the factors set out in *Price v. Time, Inc.* for determining when the Shield Statute applies. 416 F.3d 1327, 1342 (11th Cir. 2005). Instead, he relies on only a few dictionary definitions that do not support his argument. Spears's attempts to distinguish the instructive decisions of other states applying their shield statutes to online publications are unavailing. And he points to *no case* that adopts his position that information from an anonymous source published by a newspaper, in its online edition, is protected only if the information is *also* published by the newspaper in its print edition. At bottom, limiting Alabama's Shield Statute to newspaper articles published exclusively on paper would undermine the law and lead to absurd results at odds with its plain text and statutory purpose.

II.

The Court also should answer the second certified question in the affirmative and hold that the Shield Statute prevents the compelled disclosure of not only a confidential source's *name* but also information

that could reasonably identify the source. The statute's plain meaning, Alabama decisions, other courts' interpretations of equivalent shield laws, and common sense compel this result.

Spears himself concedes that the statute logically cannot apply only to names: He argues that the statute covers additional "information that is facially source-identifying, such as Source A's phone number" and a "source's home address." Op. at 56, 64. But he offers no rational basis for limiting "source-identifying" information to only phone numbers and addresses and he points to no decision that has ever interpreted a shield law so narrowly.

Spears also raises a number of irrelevant arguments in an apparent effort to overcome the statutory privilege, citing to inapposite cases addressing the qualified First Amendment reporter's privilege and airing grievances about discovery disputes that belong with the District Court. None of these arguments are relevant to the questions before this Court.

III.

Spears also attempts to put a third question to this Court: whether Source B is protected by the Shield Statute. This is improper and should be rejected. Certified questions may only come from the federal court, not

the parties. Ala. R. App. P. 18(a). And the question is not appropriate for certification because it requires adjudication of disputed facts. *Id.* If the Court does address the question, however, it should find the Shield Statute applies to Source B because, prior to publication, Source B provided information that was included in the article at issue.

ARGUMENT

I. Spears Fails To Establish That The Shield Statute's Protections Are Limited To Newspaper Articles Published In Print.

The Shield Statute's protection for individuals employed "on any newspaper" from compelled disclosure of confidential sources who provide information "published in the newspaper," Ala. Code § 12-21-142, properly applies to newspapers published in print or online. Nothing in Spears's opposition brief compels a contrary conclusion. Spears concedes that the statute applies if a newspaper publishes an article in print *after* publishing the article online—which is precisely what occurred here—but, Spears contends, the statute does not apply if a newspaper publishes an article *only* online. The plain text of the statute makes clear, however, that Spears's tortured reading cannot stand: The statute protects *all*

anonymous sources of information published in a newspaper, whether in print or online.

A. The plain meaning of the Shield Statute includes newspapers published online.

i. The Times asks this Court to follow the statute's plain meaning, not rewrite it.

Spears's arguments rest on his erroneous claim that The Times "ask[s] this Court to take on the task of expanding the statute" to broadly "apply to online publications" from "internet blogger[s]" to "any other new technology that might come along." Op. at 37-38. Not so. This case does not ask the Court to decide those questions. The only question before the Court is whether a typical, obvious newspaper like The Times or The Birmingham News is still a "newspaper" within the meaning of the Shield Statute when published online.

For the reasons set out previously, the answer is yes. Times's Opening Brief ("Br.") at 22-55. The Shield Statute provides 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 (emphasis added). Consistent with

that text and pursuant to well-established principles of statutory interpretation, "any newspaper" includes newspapers published online, and articles published in a newspaper's digital edition *are* "published in the newspaper."

Spears offers no persuasive argument to the contrary. First, he argues that the Shield Statute should be construed narrowly as one in derogation of the common law. Op. at 33. That is incorrect; the law should be construed broadly in light of its First Amendment roots and statutory purpose of increasing the flow of information to the public. *See* Br. at 47-50. But whether construed broadly or narrowly, the answer is the same: the plain meaning of "any newspaper" necessarily includes print and online newspapers.

Spears also ignores "the oldest and most commonsensical interpretive principle": that a statute's plain meaning must be assessed with the understanding that general terms encompass technological advancements unforeseen by their drafters. *See* Br. at 25-28 (quoting Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 16 (2012)); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28-29 (2022)) (explaining that "historically fixed

meaning applies to new circumstances" when a new circumstance is "relevantly similar" to its historical analog—or else the Second Amendment would only protect the right to bear muskets, and the First Amendment would not apply to radio, television, or the internet).

Here, the plain meaning of "any newspaper" includes both the print newspapers read by the Shield Statute's drafters in 1935 and the equivalent digital newspapers read by today's Alabamians, which continue to serve the same purpose and function of delivering daily coverage of general-interest news, sports, and more. Spears does not address this Court's precedents following that principle in holding that, for example, software is "tangible property" and video-machine gambling is a "lottery" under statutes enacted before those technologies existed. *See* Br. at 25-26 (citing *Wal-Mart Stores, Inc. v. City of Mobile*, 696 So. 2d 290, 290-91 (Ala. 1996); *Op. Of The Justices*, 795 So. 2d 630, 643 (Ala. 2001)).

Instead, Spears quotes only a student-written law review Comment that speculates on how the 11th Circuit might interpret the Shield Statute in the future, based on the *Price* decision. Op. at 37 (quoting Comment, L. Michael Higgins Jr., *Rusty Shields for Those Who Wield the*

Pen: The State of Alabama's Reporter Shield Law in the Aftermath of Price v. Time, 37 Cumb. L. Rev. 263, 282 (2006-2007)). That Comment does not address the factors set out by *Price* in assessing the protections available to newspapers published online, and, as the author notes, "[t]he *Price* decision did nothing to alter the protection of the shield privilege as it applies to newspaper reporters in Alabama." *Id.* at 280.

Spears also ignores the principle that a word's plain meaning is shaped "by the neighboring words with which it is associated." *United States v. Williams*, 553 U.S. 285, 294 (2008). Here, the Legislature's use of the word "any" before "newspaper" cements the Shield Statute's broad sweep. *See* Br. at 28-29. As the court in *Price* explained, "'any' is a powerful and broad word, and . . . means 'all,'" "sweep[ing] in all of the noun category that follows." 416 F.3d at 1336 (collecting cases). This Court, too, has recognized that it "must give effect to the legislature's choice of the word 'any,'" which is an "all inclusive word," "rather than judicially rewriting the statute." *Fuller v. Assocs. Commercial Corp.*, 389 So. 2d 506, 507, 509 (Ala. 1980). Given the protection for "any newspaper," answering the first certified question in the negative would require this Court to hold that a newspaper that publishes an article

online is no longer a newspaper at all.

ii. Spears ignores the Price *factors for interpreting the Shield Statute.*

Spears ignores almost entirely the five factors set out in *Price* for assessing the meaning of "any newspaper": 1) the statute's use of the word "any" before "newspaper"; 2) dictionary and encyclopedia definitions; 3) the usage of the term in the publishing industry; 4) The Times's definition of itself; and 5) the term's usage in other Alabama statutes and cases. *Price*, 416 F.3d at 1335-43. Of these factors, Spears considers only the second: dictionaries. *See* Op. at 34-35. But all five factors must be taken into consideration and each powerfully supports finding that the meaning of "any newspaper" includes newspapers published online. *See* Br. at 28-43.

First, as noted, the Legislature's insertion of the word "any" before "newspaper" reinforces that the Shield Statute applies broadly. *Second*, dictionaries and encyclopedias commonly define "newspaper" to include those published online. *See infra* Part I.A.iii. *Third*, the newspaper industry treats print and digital newspapers as indistinguishable when it comes to trade associations, prizes, research, and more. Br. at 33-38. *Fourth*, The Times has referred to itself as a "newspaper" since its

founding in 1851, including after the launch of its "electronic newspaper" www.nytimes.com. *See id.* at 38-41. *Fifth*, and finally, in other contexts, both this Court and Alabama statutes characterize online newspaper articles as being published in the newspaper. *Id.* at 41-43 (citing, *e.g.*, *Ex parte Monsanto Co.*, 862 So. 2d 595, 625 (Ala. 2003) (referencing "Internet newspaper articles")).

These sources, which Spears ignores, reinforce that the "natural, plain, ordinary, and commonly understood meaning," *DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc.*, 729 So. 2d 270, 275 (Ala. 1998), of "any newspaper" includes one published online.

iii. Spears's proffered dictionary definitions are unavailing.

Spears argues that dictionaries do not define newspapers published online as "newspapers." Op. at 34-35. For this, he relies exclusively on three dictionary definitions quoted by the *Price* court in 2005, none of which support his argument, and one of which has since been updated. First, Spears quotes the *1989* edition of the Oxford English Dictionary ("OED"), which was published before the internet even existed, *see* Op. at 35, and has since been updated. Today, as The Times noted, the OED's definition of "newspaper" includes "the digital version of such a

newspaper, made available online." Br. at 30 (quoting *Newspaper*, Oxford English Dictionary, https://www.oed.com/dictionary/newspaper_n).

Spears also quotes Black's Law Dictionary, but he misreads the definition. Black's 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"; and Ballentine's Law Dictionary, which defines newspaper as "[a] publication appearing at regular, or almost regular, intervals at short periods of time, as daily or weekly, ***usually*** in sheet form, and containing news." Op. at 34 (quoting *Price*, 416 F.3d at 1337) (emphasis added). Spears reads "usually" out of both definitions. *Id.* While both say newspapers "usually" appear in "sheet form"[1] – this is not required. These definitions instead focus on the publication's purpose, content, and cadence, which is what makes a newspaper a newspaper.

Spears ignores the many other current dictionaries quoted by The Times, including the Cambridge Dictionary, which defines a newspaper

[1] *See, e.g.*, https://www.newspaperclub.com/create/design-guides/pages-spreads-sheets ("A sheet is one double-sided piece of newsprint. It contains four pages (two on each side) and two spreads (one on each side).").

as "a regularly printed document consisting of large sheets of paper that are folded together, ***or a website***," *Newspaper*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/newspaper (emphasis added), and Dictionary.com, whose definition is "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). *See* Br. at 30-31. He also disregards Encyclopedia Britannica, which notes that "[n]early all the world's major newspapers began publishing online editions of their newspapers in the early 21st century." *Newspaper*, Britannica, https://www.britannica.com/topic/newspaper; *see* Br. at 32.

By any current definition, both the print and digital editions of The Times are "newspapers," with general circulation, daily publication, and reporting on news, general interest topics, and more.

B. Spears points to no case that has ever held that a publication loses a shield law's protection merely because it is published online.

As The Times set out previously, courts in other jurisdictions

consistently have applied pre-internet shield laws to publications on the internet. Br. at 44-47. In opposition, Spears points to *no case* in *any* jurisdiction holding that a publication loses a state shield statute's protections merely because it is published online. And Spears's efforts to distinguish precedent from other jurisdictions is unavailing.

First, Spears argues that the Nevada Supreme Court's decision in *Toll v. Wilson*, 135 Nev. 430 (2019), is not relevant because the Nevada Supreme Court noted that statutes should be "construed in light of the policy and spirit of the law," instead of according to their plain text. Op. at 38 (quoting *Toll*, 135 Nev. at 433). But the *Toll* court held that *all* canons of statutory construction—including the plain meaning of the statute—compelled the same result: Under the state's 1971 shield law, a newspaper does not "cease[] to be a newspaper" "just because [it] can exist online." 135 Nev. at 435.[2] The court did not, as Spears claims, hold that

[2] Nor in any event is the word "spirit" anathema to Alabama courts. *See, e.g.*, *Ex parte Phillips*, 771 So. 2d 1066, 1068 (Ala. 2000) (observing that its interpretation of statutory text "also protects the spirit and intent of the statute"); *Graddick v. McPhillips*, 448 So. 2d 333, 336 (Ala. 1984) (considering "both the spirit and the letter of" the law). "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).

the statute "could apply to an internet blogger"—the court expressly "decline[d] to resolve whether or not a blog falls under the definition of a newspaper." *Id.* Rather, *Toll* is instructive in this instance because it resolved the same question now before this Court: whether an online newspaper constitutes a newspaper for purposes of the state's shield statute. *Toll* resoundingly answered that question in the affirmative, holding that a publication "should not be disqualified from the news shield statute . . . merely on the basis that [it] is digital, rather than appearing in an ink-printed, physical form." *Id.* As the court opined, "[d]rafters of every era know that . . . the rules they create will one day apply to all sorts of circumstances that they could not possibly envision." *Id.* at 434 (quoting Scalia & Garner, *supra*, at 86). It concluded, "[t]o hold otherwise would be to create an absurd result in direct contradiction to the rules of statutory interpretation." *Id.* at 435.

Next, Spears seeks to distinguish *O'Grady v. Superior Court*, in which the California Court of Appeals held that the California shield law's protections for persons employed by "a newspaper, magazine, or other periodical publication" covered an online magazine. 139 Cal. App. 4th 1423, 1462 (Cal. Ct. App. 2006); *cf.* Op. at 38-39. Spears argues the

case is not pertinent because it concerned an online magazine, not a newspaper. Op. at 38. This misses the point.

The issue in *O'Grady* was whether a pre-internet shield statute protecting magazines should be interpreted to also apply to modern magazines published online. 139 Cal. App. 4th at 1462. Again, this is the same question before this Court: whether a publication lost protection merely because it was published online. It did not. The court held that the shield statute protected website operators as "publishers" who "gather, select, and prepare, for purposes of publication to a mass audience, information about current events of interest and concern," like "traditional print and broadcast journalists." *Id.* at 1459, 1467-68. While "[p]resumably the Legislature was not prescient enough to have consciously intended to include digital magazines within the sweep of the term" in 1974, the California court reasoned "it cannot have meant to *ex*clude them" either "because they did not yet exist." *Id.* at 1461.

Moreover, the court in *O'Grady* did consider how the pre-internet statute should apply to newspapers. It found that engaging in "the open and deliberate publication on a news-oriented Web site of news gathered for that purpose" is "conceptually indistinguishable from publishing a

newspaper." *Id.* at 1459. The court noted that, while a newspaper was traditionally defined as "a regularly appearing publication printed on large format, inexpensive paper," that "has changed because of the internet." *Id.* at 1460 (quoting 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 5 (2002)). The treatise *O'Grady* cited adds that "courts accept that an 'internet newspaper' is a newspaper." 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 2.

Finally, Spears argues The Times errs in relying on *Gubarev v. Buzzfeed, Inc.*, which applied Florida's reporter's privilege to online news publications. 2017 WL 6547898, at *4 (S.D. Fla. Dec. 21, 2017); *see* Op. at 39-40. There, a federal court held that Buzzfeed, a digital publication that "writes stories and publishes news articles on its website," was covered by Florida's shield law, which protects professional journalists working for "a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or newsmagazine." Fla. Stat. § 90.5015(1)(b). The court held that "[t]here is nothing in the statute that limits the privilege to traditional *print* media," and that "[b]ecause BuzzFeed writes stories and publishes news articles on its website, it qualifies as a 'news agency,' 'news journal' or 'news magazine.'" *Gubarev*,

2017 WL 6547898, at *4 (citing Fla. Stat. § 90.5015(2) (emphasis added)). While Spears argues that the case is not pertinent because the court was not required to decide whether Buzzfeed is a "newspaper," Op. at 40, the issue before this Court is the same as in *Gubarev*: Does a shield law, enacted in the pre-internet era, apply to equivalent internet publications? The Florida federal court readily held that it does: a print edition is not required to invoke the shield statute's protections. *Gubarev*, 2017 WL 6547898, at *4; *see also TheStreet.com, Inc. v. Carroll*, 20 So. 3d 947, 950 (Fla. Dist. Ct. App. 2009) (applying statute to online publication). This Court should reach the same conclusion.

C. Spears does not refute that excluding online newspapers would eviscerate the Shield Statute's protections and lead to nonsensical results.

Spears offers no rebuttal to the point that limiting Alabama's Shield Statute to articles first or exclusively published in a newspaper's print edition would fatally undermine the law and lead to absurd results. He says only that this argument "should be made to the Alabama Legislature." Op. at 37. But courts routinely are called upon to determine how old laws should apply to modern circumstances. It is this Court's role to interpret statutes and to do so in a way 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).

And here, limiting "any newspaper" to print newspapers would not be reasonable or faithful to the Legislature's stated intent 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); *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"). Rather, the result Spears urges would wholly undermine these safeguards and the *same* article and *same* source would receive different legal protections depending on whether the newspaper article was published on paper or *only* online. Spears offers no reason why such significant legal privileges should turn on the timing and format of an article's publication. Nor does he acknowledge the harm this would cause to sources and whistleblowers, who have no control over the timing or format of publication.[3] *See* Br. at 53-54.

[3] Newspaper journalists themselves may not know whether every article they are reporting is going to be published in print or only online, such that, even if asked by a source to guarantee *print* publication, they likely could not.

Spears likewise does not even acknowledge that increasingly few newspaper publishers have a "traditional printed newspaper," and therefore limiting the law's protections to those that do would fatally undermine the Legislature's intent. Alabama's flagship newspapers are now published online-only, as is UA's student newspaper. *See* Br. at 54. Just last month, the Atlanta Journal-Constitution announced it was ceasing print publication. *See* J. Scott Trubey, *AJC to move to fully digital publication, phase out print Dec. 31*, Atlanta Journal-Constitution (Aug. 28, 2025), https://www.ajc.com/business/2025/08/ajc-to-move-to-fully-digital-publication-phase-out-print-dec-31. A Shield Statute that protects only print newspapers would, today, protect very little.

* * *

The Times submits that, contrary to Spears's arguments, Alabama's Shield Statute applies to articles published in newspapers' online editions regardless of whether they were published in print.

II. Alabama's Shield Statute Protects Against The Compelled Disclosure Of Information That Would Reasonably Lead To The Identification Of The Source.

As to the second certified question, the Shield Statute necessarily protects not only a confidential source's *name*, but also information that

reasonably would lead to identification of the source. The statute's plain meaning, courts' interpretations of this shield law and others, and simple logic compel this result.

In opposition, Spears concedes that the statute's protections *must* go beyond a source's name. He acknowledges that it would also cover, for example, "information that is facially source-identifying, such as Source A's phone number" and a "source's home address." Op. at 56, 64. And Spears offers no viable reason why the statute would not also cover other contextual information that would reasonably identify the source. Instead, Spears makes arguments wholly irrelevant to the questions before the Court, apparently attempting to argue that the Shield Statute should be treated as a qualified privilege and improperly delving into factual and discovery disputes that are before the District Court. The Court need not and should not engage with these issues.

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

As Spears himself concedes, the Shield Statute's protections for "the sources of any information," Ala. Code § 12-21-142, must be read to include more than sources' names. Op. at 29, 63. If the Legislature had wanted to protect only names, it could have said so. It did not, nor would

doing so have made sense, as shielding only sources' *names*, but not other identifying information such as phone numbers, address, job title, physical appearance, or other similarly identifying information, would render the statute meaningless. Regardless of whether the Court construes the Shield Statute narrowly or broadly, *see* Br. at 47-50, no plausible interpretation can limit "source" to only a source's name.

Despite his concession that the Shield Statute protects information such as a "phone number" or "home address," Op. at 56, 64, Spears nevertheless argues that "'additional information [that] would unavoidably disclose the identity of the source'" is not privileged, *id.* at 54 (quoting *Higgins*, *supra*). This is plainly contradictory and illogical. To give a practical example: Under Spears's theory, Bob Woodward and Carl Bernstein could have withheld Deep Throat's name, phone number and home address. But they could have been compelled to disclose that the source for their Watergate reporting was the Deputy Director of the FBI,[4]

[4] *See* John D. O'Connor, "*I'm the Guy They Called Deep Throat*," VanityFair.com (July 2005) https://archive.vanityfair.com/article/2005/7/im-the-guy-they-called-deep-throat (revealing that W. Mark Felt, Deputy Director of the F.B.I. in the 1970s, had been Woodward and Bernstein's near-mythical anonymous source during the Watergate scandal).

which plainly would have identified him. Under Spears's theory, they could have been compelled to describe that the source was a tall white man with distinguished gray hair whom they first met at the White House, what car he drove, where they met and when they met. Under Spears's theory, they also could have been compelled to say who they did *not* use as a source, thus identifying Felt by process of elimination.[5] As this example illustrates, the only viable interpretation of the Shield Statute's plain text is that it protects the source's name *and* other information that would reasonably identify the source.

In the limited precedent available, Alabama courts have followed this interpretation. For example, a circuit court quashed a subpoena seeking the location of a television interview, reasoning that it could identify a child in a custody proceeding. *Brothers v. Brothers*, 1989 BL 178, 16 Media L. Rep. 1031 (Marshall Cnty. Cir. Ct. Jan. 9, 1989). Alabama courts also adopt a similar interpretation of the government's privilege against revealing the identities of confidential informants to

[5] As the Vanity Fair article explained on page 131 of the print edition (also available online), Felt was among the list of at least 17 government officials and Nixon associates who were discussed over the years "as plausible Deep Throat suspects." *See id.*

law enforcement, protecting all information "directly concerning the identity of the informant *or* which might tend to reveal the identity of the informant." *Ex parte Pugh*, 493 So. 2d 393, 394-95 (Ala. 1986) (emphasis added) (citing *Roviaro v. United States*, 353 U.S. 53, 60 (1957)); *see also* Br. at 61-63. The same logic should apply here.

B. Courts consistently interpret analogous state shield laws to apply to more than names.

As set out previously, courts in other jurisdictions consistently have held that their states' shield laws protect information that would reasonably lead to the identification of the source. Br. 57-63. Spears's efforts to distinguish the many cases cited by The Times are entirely unavailing. And Spears does not identify a single case limiting a state shield law's protections to just a confidential source's name, or phone number, or home address.

First, Spears misconstrues *Hatchard v. Westinghouse Broadcasting Co.*, 532 A.2d 346 (Pa. 1987). Importantly, the *Hatchard* court agreed with the earlier holding in *In re Taylor*, 193 A.2d 181, 185 (Pa. 1963), that "any documentary information that could lead to the discovery of the identity of a confidential informant *is* shielded from disclosure." *Hatchard*, 532 A.2d at 350 (emphasis added). The court in *Hatchard* then

merely clarified that such a holding was not intended "to make it close to impossible for individuals to seek redress against the media," and noted that the privilege does not afford the media "an absolute shield from *any* discovery in civil proceedings." *Id.* (emphasis added).

Contrary to Spears's claims, *Hatchard* did not "severely abrogate[]" the core holding of *In re Taylor*, Op. at 61, but rather "adhere[d] to that view" that the statute's protection for "source of information" "means not only the identity of the person, *but likewise . . . all source[s] of information*" that would reveal confidential sources. 193 A.2d at 185-86 (emphases in original). That is, while media defendants must participate in discovery, they are not required to produce source-identifying information. The Times does not contest such a balance, and indeed, has participated in the discovery in this matter consistent with the approach outlined in *Hatchard* and *Taylor*. Such a system permits defamation plaintiffs to obtain discovery while upholding "[t]he obvious purpose of the Shield Law[:] to maintain a free flow of information to members of the news media." *Hatchard*, 532 A.2d at 350 (citing *In re Taylor,* 193 A.2d at 185).

Next, Spears urges this Court to discount *Tavoulareas v. Piro*, 93 F.R.D. 35 (D.D.C. 1981), because the court in that matter found that the qualified First Amendment reporter's privilege had been overcome with respect to the journalists' *non-confidential* sources. Op. at 62-64. Spears entirely glosses over the relevant holding from *Tavoulareas*: Even under a *qualified* privilege, the plaintiff was not entitled to discovery of "[t]ravel [r]ecords, [t]elephone [b]ills, [e]xpense [v]ouchers and [s]imilar [m]aterials" that "may lead plaintiffs to confidential sources," 93 F.R.D. at 39-40. In other words, the federal court reasoned that protecting the identity of a confidential source requires protecting more than merely an address or phone number.

Similarly, Spears sets up a strawman in an attempt to distinguish the holding in *Aspen Financial Services, Inc. v. Eighth Judicial District Court,* 313 P.3d 875, 877, 879 (Nev. 2013). *See* Op. at 64-65. Spears argues that the case is not on point because Nevada's shield law is broader than Alabama's, extending even to published information. *Id*. at 64. But the decision remains instructive for its examination of what *kind* of information would identify a source. There, the defendant company alleged that a reporter had helped the plaintiff investors prepare their

lawsuit and received personal favors in return for publishing news articles that would embarrass the company. The court denied discovery requests regarding the investors' gifts to the reporter, work they did on her home, and the hiring of an investor's son by the news station because they were "effectively seeking to confirm the identities of [the reporter's] sources." *Aspen Fin. Servs.*, 313 P.3d at 879.

Spears also errs in criticizing The Times's citation to *FMC Corp. v. Capital Cities/ABC, Inc.*, 915 F.2d 300 (7th Cir. 1990). Op. at 65-66. Spears argues the case is not on point because the Illinois shield statute is worded differently from Alabama's. *Id.* (citing 735 ILCS 5/8-902(c)). But the Seventh Circuit's holding that the statute protects information that would functionally reveal the identity of a confidential source did not turn on the wording of the statute and is plainly instructive here. *See FMC Corp.*, 915 F.2d at 306 n.4.

Finally, Spears entirely ignores numerous other instructive cases cited by The Times. *See* Br. at 59-60, 63-64 (citing *In re April 7, 1999 Grand Jury Proceedings*, 749 N.E.2d 325, 332 (Ohio App. 2000) (holding shield law covering only "forced disclosure of the *identity* of the source of information" permitted journalist to withhold date he received

documents from confidential source which "could very likely have led to [his] source"); *In re Burns*, 484 So. 2d 658, 659 (La. 1986) ("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."); *Rosato v. Super. Ct.*, 124 Cal. Rptr. 427, 445 (Ct. App. 1975) (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").

At bottom, Spears fails both to distinguish any of the decisions relied upon by The Times and to cite a *single* opinion supporting his interpretation of Alabama's Shield Statute.

C. Alabama's Shield Statute provides an absolute privilege—not a qualified privilege.

Perhaps seeking to distract from the absence of case law to support his legal argument, Spears spends much of his opposition "examin[ing] the importance of the information Spears seeks and its relevance to his claims." Op. at 44. That "examination," however, is legally irrelevant, as this Court is tasked with answering "questions or propositions of law of this State," *see Blackburn v. Shire U.S., Inc.*, 380 So. 3d 354, 358 (Ala.

2022). As this Court has explained, facts in the parties' supporting briefs "are not within the purview of" the Court's assessment. *Id*. at 365. That is, this Court answers questions of law, and the District Court then applies the law to the facts of this case.

Moreover, even if this question were properly before the Court, Alabama's Shield Statute provides absolute protection: It is not a balancing test. *See, e.g.*, *Price*, 416 F.3d at 1335. Spears's purported need for discovery is not part of the legal analysis. If information falls under the law's protections—*i.e.*, information that would identify the source of information published in any newspaper—the reporter cannot be compelled to disclose that source-identifying information. *Id.* That is true regardless of the "importance" or "relevance" of the source-identifying information to the requester. *Cf.* Op. at 44. Spears himself concedes as much elsewhere. *Id*. at 30 ("Alabama's statute, though limited in scope, is absolute.").

Only if "the absolute privilege of the Alabama shield law does not apply," do courts "next turn to the limited privilege the First Amendment offers for protection of a reporter's confidential sources." *Price*, 416 F.3d at 1343 (citing *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 725 (5th

Cir.) ("*Miller I*"), *modified on reh'g*, 628 F.2d 932 (5th Cir. 1980) (per curiam) ("*Miller II*")). The First Amendment privilege *is* qualified and may be overcome upon certain showings, including the plaintiff's need for the information. *See id.* (quoting *Miller II*, 628 F.2d at 932).

But the applicability of the First Amendment privilege is not before this Court—nor is the question of how to apply the Shield Statute to the particular facts of this case. Accordingly, Spears's long discussion of his need for the requested discovery, and his cited cases where a party's need for discovery has overcome a qualified reporter's privilege, are irrelevant. *See* Op. at 44-47 (citing *Price*, 416 F.3d at 1343 (constitutional "privilege is not absolute"); *Miller I*, 621 F.2d at 726-27 ("the First Amendment privilege . . . is not absolute"); *Desai v. Hersh*, 954 F.2d 1408, 1412 (7th Cir. 1992) (addressing Illinois' qualified statutory reporter's privilege)).

Equally irrelevant is Spears's argument that media companies are not exempt from discovery. *See, e.g.*, Op. at 45 (citing *Herbert v. Lando*, 441 U.S. 153, 160 (1979)). As a general matter, that is undisputed. But litigants also have privileges and, like the doctor-patient and priest-

penitent privileges, the First Amendment privilege[6] and Alabama's shield law are industry-specific privileges. The general obligation to engage in discovery, an obligation with which The Times has robustly complied before the District Court, must give way to that specific privilege.

While this Court is not charged with resolving the underlying discovery disputes, Spears's mischaracterization of the record requires correction. The pending motion to compel, which will be informed by this Court's answers to the certified questions, addresses only limited information withheld by The Times: (i) phone numbers from Witz's call records; (ii) meeting logistics that would reveal Source A's location; (iii) photographs with visual cues that could reasonably identify Source A; (iv) portions of Witz's notes that would tend to identify Sources A or B; and (v) who Witz did or *did not* speak to off-the-record—information that

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[6] *Branzburg v. Hayes* is the relevant Supreme Court decision, underlying Alabama's and the Eleventh Circuit's recognition of the qualified First Amendment reporter's privilege. 408 U.S. 665, 710 (1972) (Powell, J., concurring) ("[T]he courts will be available to newsmen under circumstances where legitimate First Amendment interests require protection" against compelled disclosure); *see Miller I*, 621 F.2d at 725 (citing *Branzburg* and recognizing privilege); *Cowan v. Cmty. Home Banc Inc.*, 2003 WL 22965488, at *2-4 (Ala. Cir. Ct. Feb. 26, 2003) (same).

would identify the source by process of elimination. With answers to the certified questions of law from this Court, the District Court will then apply those answers to these matters still in dispute.[7]

* * *

While Spears may be frustrated by the Shield Statute's protections, Op. at 67, he has failed to distinguish any of the cases relied upon by The Times and has failed even to cite a *single* opinion supporting his interpretation of the statute. Narrowly construing Alabama's Shield Statute to safeguard only against disclosure of the source's name would leave sources' identities functionally exposed, undermining the Legislature's speech-protective aims. *See Price*, 416 F.3d at 1335 (quoting 1935 Ala. Acts 649). Such a result finds no support in the statutory text,

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[7] In his extensive—and again, legally immaterial—discussions of the evidence, Spears mischaracterizes certain key facts. First, he claims The Times's opening brief overstated the proximity of his car to the shooting. Op. at 15 n.3. Yet Spears testified that he was in a car traveling down the Strip, passing Grace Street, under a minute before gunfire erupted on Grace Street, and was about a block away when the shooting occurred. *See* Times Rep. App. Tab Q (Spears Tr. at 140:12-142:21). Second, Spears claims "Witz admitted in his deposition there was no reason The Times had to rush out a story identifying Spears." Op. at 50. In fact, Witz testified that The Times published when it did because it was confident in the article's accuracy at the time, and because it was the eve of March Madness. *See* Times Rep. App. Tab P (Witz Tr. at 259:13-260:9).

Alabama precedent, or other courts' decisions. This Court should answer the second certified question in the affirmative.

III. There Is No Certified Question Regarding Source B.

Spears improperly asks this Court to address a third question: whether Source B is protected by the Shield Statute. Yet "a certified question is, by definition, one that is propounded and certified to this Court by a *federal court*," not a party. *Travelers Cas. & Sur. Co. v. Alabama Gas Corp.*, 117 So. 3d 695, 699 (Ala. 2012) (citing Ala. R. App. P. 18(a)) (emphasis added). Spears's citation to the District Court's statement that its proposed certified questions were "only suggestive" is inapposite. Op. at 68 (quoting Doc. 105). It is for federal courts to certify questions, not the parties.

Moreover, Spears's proposed third question does not meet the criteria for certification. This Court accepts certified questions regarding novel "questions or propositions *of law* of this State." Ala. R. App. P. 18(a) (emphasis added). "The certification of a question of law does not place this Court in a position to decide questions of fact." *Brown Mach. Works & Supply Co. v. Ins. Co. of N. Am.*, 659 So. 2d 51, 52 (Ala. 1995). Here, it is for the District Court to apply this Court's expert guidance on the

Shield Statute to the facts of the underlying discovery disputes, including as to Source B.

If the Court nevertheless elects to address Source B, it should find the Shield Statute applies to Source B. This is because Source B is a confidential source who gave The Times information "published in the newspaper." Ala. Code §12-21-142. Reporter Billy Witz and editor Oskar Garcia testified unequivocally that Source B—prior to publication—provided "partial confirmation" that Spears was in Miller's car during the shooting, by disclosing that Miller's passenger was another member of the basketball team. *See* Times Rep. App. Tab P (Witz Tr. at 68:25-69:7, 82:11-21, 294:20-295:12); Spears App. Tab 32 (Garcia Tr. at 155:16-21). Spears contends this information was not "published in the newspaper" because The Times did not specifically attribute the information to a second confidential source—*i.e.*, The Times did not write "according to a second anonymous source." Op. at 70-71. Yet the Shield Statute asks whether the source's "information" was "published in the newspaper," Ala. Code §12-21-142, not whether the source was "mention[ed]," "referenced," or "name[d]" in the newspaper, as Spears claims. *Cf.* Op. at 70-71.

While Spears also emphasizes that The Times did not publish Source B's later statement to Witz that the article was "likely wrong," *see id.*, that is irrelevant. This statement came *after publication*, when Witz was following up with his sources. (Source A, meanwhile, remained "steadfast." Times Rep. App. Tab P (Witz Tr. at 292:16-293:15).) Because The Times relied on Source B's partial confirmation in publishing the March 15 article, the Shield Statute protects information that would tend to identify Source B.

CONCLUSION

For the foregoing reasons and those stated in its opening brief, The Times respectfully requests that the Court answer both certified questions in the affirmative. The Times further requests that the Court decline to answer Spears's improper additional question regarding Source B, or, alternatively, hold that information identifying Source B is protected by the Shield Statute.

Dated: September 12, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document contains 6,843 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.

September 12, 2025 */s/ John G. Thompson*
John G. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, a true and correct copy of the foregoing was served on counsel of record by electronic mail as indicated below. I further certify that the filing party will mail hard copies of the e-filed document to the Supreme Court of Alabama within 24 hours of e-filing the document, along with a copy of the transaction confirmation.

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