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

APPENDIX TO THE NEW YORK TIMES COMPANY'S BRIEF REGARDING CERTIFIED QUESTIONS VOL. III (TABS I-O)

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Dated: July 30, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This is to certify that the above document is filed pursuant to Rule 18(e) of the Alabama Rules of Appellate Procedure.

/s/ John G. Thompson
OF COUNSEL

CERTIFICATE OF SERVICE

This is to 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.

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Tab I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

KAI SPEARS,	]	
	]	
Plaintiff,	]	
	]	
v.	]	**Case No. 7:23-cv-00692-ACA**
	]	
THE NEW YORK TIMES COMPANY,	]	
	]	
Defendant.	]	

ORDER

Before the court is Plaintiff Kai Spears's motion to compel production of documents and answers to interrogatories. (Doc. 77). The court **ORDERS** the parties to provide supplemental briefing, on or before **April 28, 2025**, on 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.

DONE and **ORDERED** this April 22, 2025.

ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

Tab J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

KAI SPEARS,	*	
Plaintiff,	*	
vs.	*	**NO. 7:23-CV-00692-ACA**
THE NEW YORK TIMES CO.	*	
Defendant.	*	

PLAINTIFF KAI SPEARS' RESPONSE TO ORDER FOR SUPPLEMENTAL BRIEFING ON MOTION TO COMPEL

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Comes now the Plaintiff, Kai Spears, and offers the following response to this Court's Order for supplemental briefing on the Plaintiff's motion to compel production of documents and answers to interrogatories:

1. On April 22, 2025, this Court issued an Order (Doc. 98) directing the Parties to provide supplementing briefing on Spears' pending motion to compel production of documents and answers to interrogatories directed toward The Times. (Doc. 77). In particular this Court wanted the Parties to address the applicability of Ala. Code §12-21-142 to online publications.
2. In the interest of providing complete candor toward the Court, 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. While the defamatory article accusing Spears of being in the vehicle which delivered the murder weapon to the scene of the shooting first appeared online on the evening of March 15, 2023, the article was also published the following day in the print version of the New York Times. (Ex. 2 to Doc. 78). Therefore, Spears concedes that Source A is a person who provided The Times with information "published in the newspaper," and the identity of Source A is privileged under §12-21-142.
3. Spears reiterates his position, asserted in the motion to compel, that the statute does not protect the information provided by Source A, nor does the statute

protect the identity of any other person who was interviewed by any agent of The Times in connection with the article, or the information provided by such other persons.

4. Spears appreciates this Court's thorough and thoughtful analysis of the issues presented by the application of Ala. Code §12-21-142 to the facts of this case.

Respectfully submitted this 23rd day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to Participants in the case who are registered CM/ECF users.

/s/ R. Matt Glover (asb-7828-a43g)
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Tab K

From: Matthew J. Winne
To: Kathryn L. Florey
Subject: FW: Activity in Case 7:23-cv-00692-ACA Spears v. The New York Times Company et al Order
Date: Thursday, April 24, 2025 10:36:00 AM

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U.S. District Court

Northern District of Alabama

Notice of Electronic Filing

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Case Name: Spears v. The New York Times Company et al
Case Number: 7:23-cv-00692-ACA
Filer:
Document Number: 100(No document attached)

Docket Text:
TEXT ORDER - The court SETS a Telephone Conference for April 24, 2025, 3:00 PM before Judge Annemarie Carney Axon. Counsel will receive the numbers needed to participate by email. Signed by Judge Annemarie Carney Axon on 4/24/25. (SAC)

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Tab L

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA WESTERN DIVISION

KAI SPEARS	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION NO.**
v.	)	
	)	**7:23-CV-00692-ACA**
THE NEW YORK TIMES COMPANY	)	
	)	
Defendant.	)	

THE NEW YORK TIMES COMPANY'S AMENDED SUPPLEMENTAL BRIEF REGARDING PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES

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Pursuant to this Court's April 24 Order (Doc. 102), Defendant The New York Times Company ("The Times") submits this amended supplemental brief on the question of whether Alabama's statutory reporter's privilege applies online.

PRELIMINARY STATEMENT

The overarching question at issue is whether Plaintiff can compel The Times to produce redacted material and interrogatory responses that would identify either of two confidential sources who provided information published by The Times—a newspaper—in both print and digital form. As stated herein, and in The Times's previous briefing on Plaintiff's motions (*see* Docs. 75, 80 and 101), the answer is "no." The Alabama legislature afforded absolute and unambiguous protection against compelled disclosure of confidential sources by persons employed with "any newspaper" if the source was "published in the newspaper." Ala. Code § 12-21-142. By its express terms, the statute protects The Times's ability to maintain the confidential status of the sources of information published in the newspaper article at issue in this case (the "Article").

During an April 24, 2025 status conference, the Court and the parties appeared to agree on three key propositions: (1) The Times *is* a newspaper, (2) The Times published the challenged Article in print, and (3) the text of the Alabama statutory reporter's privilege does not expressly contain either a temporal

or exclusivity clause limiting its protections to *only* articles that are published *first* or *exclusively* in print.

Despite this, the Court appears poised to find that The Times lost its absolute protection under the Alabama privilege by publishing the Article online shortly before it published the Article in print. Respectfully, such a holding would constitute error. The Times is entitled to protection under Alabama's reporter's privilege both because it published the Article in print and, more broadly, because The Times constitutes a "newspaper" regardless of whether it publishes an article in print or online. Any ruling to the contrary would eviscerate the protection afforded newspapers under the statute as contemplated by the Alabama legislature in 1935.

ARGUMENT

I. The Times's confidential sources are protected by the Alabama statutory privilege and the First Amendment privilege

As stated herein, and in The Times's previous briefing on this question (*see* Docs. 75, 80 and 101), the identity of The Times's confidential sources, who provided information published in the print and online versions of the newspaper, are protected by both Alabama's absolute privilege against compelled disclosure of confidential sources published in a newspaper and by the qualified First Amendment privilege.

A. Plaintiff waived any argument that Alabama's reporter's privilege does not apply to newspaper articles published online

In his April 23, 2025 supplemental brief, Plaintiff explicitly conceded that "Source A provided The Times with information 'published' within the meaning of Ala. Code § 12-21-142" because the challenged article was published "in the print version of the New York Times." Doc. 99 ¶ 2 (citing Doc. 78-2). This concession is consistent with every previous brief he has filed in this action.

Plaintiff has filed in this action two motions to compel discovery regarding The Times's confidential sources and 159 pages of briefing (excluding attachments) to support his motions. In none of that briefing has Plaintiff argued, or even suggested, that The Times is not entitled to protection under Alabama's reporter's privilege as a newspaper. To the contrary, while Plaintiff has argued that the information he seeks is not privileged, he has consistently asked that the Court apply Alabama law and has implicitly conceded that The Times is entitled to protection under the privilege, just not in this particular instance. *See* Doc. 72 at 25-40; Doc. 76 at 20-30; Doc. 78 at 29-44. In fact, across all of Plaintiff's briefing, he has instructed the Court to look to *Price v. Time, Inc.*, 416 F.3d 1327 (11th Cir. 2005), applying Alabama's reporter's privilege, to determine whether The Times is entitled to withhold from discovery source-identifying materials and interrogatory responses.

As courts within the Eleventh Circuit have made clear, "a party waives an argument if the party fails to elaborate or provide any citation of authority in support of the argument." *See King v. CVS Caremark Corp.*, 2015 U.S. Dist. LEXIS 183346, at *10 (N.D. Ala. Feb. 8, 2015) (quoting *Flanigan's Enters., Inc. v. Fulton Cnty., Ga.*, 242 F.3d 976, 987 n.16 (11th Cir. 2001) (cleaned up)); *see also Marek v. Singletary*, 62 F.3d 1295, 1298 n.2 (11th Cir. 1995) ("Issues not clearly raised in the briefs are considered abandoned.").

Yesterday, the Court held a conference with the parties in which the Court queried why Plaintiff had not argued that the Alabama shield law does not apply to an online publication, acknowledging that this is an argument Plaintiff has never raised. Plaintiff's counsel then further acknowledged making a deliberate decision *not* to raise the argument, because they did not believe they could do so in good faith. The Court then issued an order finding that Plaintiff's "supplemental brief was not responsive to the court's order," *see* Doc. 102, apparently instructing Plaintiff to brief this issue or risk adverse holdings with respect to Plaintiff's claims. Pursuant to the Court's instruction, Plaintiff has now dutifully complied, arguing for the first time that "The New York Times' initial online publication of the subject article does not constitute a 'newspaper.'" Doc. 103 at 3. But it would be improper for the Court to ground its decision on Plaintiff's motion on an issue

neither raised by Plaintiff before ordered to do so by the Court nor, as discussed below, required by the facts of this case.

B. The Times—a newspaper—does not stop being a newspaper when it publishes an article online

The parties and the Court agreed to two key propositions at the April 24 status conference. ***First***, The Times is a newspaper.[1] ***Second***, the Article was published in the print edition of The Times on March 16, 2023. Thus, the only remaining question presented by the Court's request for supplemental briefing is whether The Times somehow lost its protection under Alabama's absolute statutory privilege either because (1) The Times also published the Article online; (2) The Times published the Article online hours before distribution of the print article; (3) online newspaper articles are not entitled to protection under Alabama's shield law; or (4) Plaintiff's decision to file his claims against The Times on the basis of the online publication stripped The Times of its statutory privilege. The answer to this question, regardless of factor, is "no."

1. There is neither a temporal nor exclusivity requirement embedded in the Alabama reporter's privilege.

As the Alabama Supreme Court has repeatedly held:

> In ascertaining the legislature's intent in enacting a statute, this Court will first attempt to assign plain meaning to the language used by the legislature. . . . When the language of a statute is plain

[1] Indeed, Plaintiff's Amended Complaint describes The Times as publisher of "a daily newspaper provided in both print and digital formats." Doc. 28 ¶ 5.

> and unambiguous . . . courts must enforce the statute as written by giving the words of the statute their ordinary plain meaning – they must interpret that language to mean exactly what it says and thus give effect to the apparent intent of the Legislature.

Ex parte Birmingham Airport Auth., 274 So. 3d 964, 967 (Ala. 2018) (internal quotations omitted).

Alabama's reporter's privilege unambiguously states, 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 or trial . . . the sources of any information procured or obtained by him and published in the newspaper[.]" Ala. Code § 12-21-142. As is clear on the face of the statute, there is no requirement that the source be published *first* or *exclusively* in the newspaper, and the Court should not read into the statute limitations that do not exist either explicitly or implicitly.

The Times published the Article in its March 16 print edition under the headline "*On Eve of Tournament, Fourth Alabama Player is Placed at Shooting*." *See* Doc. 78-2. As in the online version, the print version of the Article stated that "two players were in a car struck by bullets in the crossfire," including "Kai Spears, a freshman walk-on whose presence at the scene had not been previously reported." The print edition, the same as the online version, attributed this information to "[a] person familiar with the case" who "spoke on condition of anonymity to discuss sensitive matters in this case." *Id*.

Accordingly, because the Article was published by The Times in print, the statute affords The Times an absolute privilege from compelled disclosure of the "sources of information" published in the Article, and nothing about publication of the article online changes that fact. The Times published information from confidential sources "in a newspaper," and The Times is entitled to an absolute privilege against compelled disclosure of those sources.

2. Newspaper articles published online are entitled to protection under Alabama's reporter's privilege.

Turning to the broader question of whether Alabama's privilege applies to newspaper articles published online, the answer is "yes." As explained by the Eleventh Circuit, the intent of Alabama's reporter's privilege as adopted by the state legislature in 1935 was to "safeguard[] and protect[] the professional confidence of newspaper and newspaper men." *Price v. Time*, 416 F.3d 1327, 1335 (11th Cir. 2005) (cleaned up) (quoting 1935 Ala. Acts 649). Just as "newspapermen"—a now anachronistic term—obviously encompasses today's women journalists, so too does "newspaper" encompass today's newspapers, which are now almost universally published in a digital format. Any other outcome would fatally undermine the statute's protections.

While no Alabama court has directly addressed this issue, other courts have considered analogous statutes and have been uniform in holding that they continue to apply in the modern digital world. The Nevada Supreme Court, for example,

considered the same statutory construction issue: whether that state's reporter's privilege applied to digital media when, by its terms, the 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); *see also* 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 construction." *Toll*, 135 Nev. at 435.

Nevada is not an outlier. Courts around the country applying similar shield laws adopted before the advent of digital publishing have reached the same conclusion. For example, in *O'Grady v. Super. Ct.*, 139 Cal. App. 4th 1423, 1462 (Cal. Ct. App. 2006), the California Court of Appeals held that the state's statutory reporter's privilege, which protects persons employed by "a newspaper, *magazine*, or other periodical publication" extended to an *online magazine*.[2] As the court stated, "the operator of a public Web site is a publisher for purposes of [the statute]." *Id.* at 1459. "It is established without contradiction that they gather,

[2] While Plaintiff protests that The Times's reliance on *O'Grady* is "puzzling," *see* Doc. 103 at 7, Plaintiff ignores that the *O'Grady* court comfortably concluded that an *online* magazine is a "magazine" within the meaning of the California privilege, which is precisely the question at issue here.

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.

Similarly, a New York federal court applying Florida's reporter's privilege held that an online publication was entitled to protection under Florida's statute 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.' Accordingly, BuzzFeed is covered under the Florida Shield Law." *Gubarev v. Buzzfeed, Inc.*, 2017 U.S. Dist. LEXIS 209697, at *10 (S.D.N.Y. Dec. 21, 2017). *See also In re January 11, 2013 Subpoena by the Grand Jury of Union Cnty.*, 75 A.3d 1260, 1267 (N.J. Super. 2013) (adopting a functional test for evaluating whether bloggers and other online publishers were engaging in activities akin to "traditional media" and thus within the scope of the state's privilege, which defined "news media" as "newspapers, magazines, press associations, news agencies, wire services, radio, television, or other similar printed, photographic, mechanical, or electronic means of disseminating news to the general public.");

TheStreet.com Inc. v. Carroll, 20 So. 3d 947 (Fla. Dist. Ct. App. 2009) (applying Florida shield law to "a financial media company, internet website and publisher" and overturning order compelling production of journalistic materials); *Republic of Kazakhstan v. Does 1-100*, 368 P.3d 524, 525 (Wash. Ct. App. 2016) (applying Washington statutory privilege for "news media" to newspaper "published online since September 2008"); *Matter of Holmes v. Winter*, 3 N.E.3d 694, 695 (N.Y. 2013) (applying New York shield law to Fox News journalist who published online report); *Charcholla v. Channel 13 News,* No. E2020006583 (Sup. Ct. Monroe Cnty. June 29, 2022) (New York's privilege applied to notes and other newsgathering materials relating to two local news stories that were both broadcast and published online), *aff'd* 219 A.D.3d 1716, 195 N.Y.S.3d 850 (4th Dep't 2023); *NYC Med. Practice v. Shokrian,* 2020 U.S. Dist. LEXIS 154386, at *5 (E.D.N.Y. Aug. 25, 2020) ("Whether an individual qualifies as a 'journalist' for purposes of invoking the [New York] privilege is determined based on intent and activity.").

The Times recognizes that *Price*'s holding that *Sports Illustrated* is a *magazine* not entitled to protection under an Alabama privilege extends to articles published by the magazine on its website, www.si.com. By the same rationale, however, it would be the very type of "absurd result" cautioned in *Toll* to strip The Times of its status as a newspaper merely because its articles are also

published on www.nytimes.com; such a holding would gut Alabama's privilege and abrogate its statutory purpose.[3]

The Times therefore respectfully submits that Alabama's privilege protects information published online by newspapers regardless of whether they were published in print and/or online.

3. The Times can find no support for the proposition that a plaintiff's pleadings inform the scope of a statutory privilege.

Finally, the Court appeared to suggest at the April 24 status conference that The Times may not be entitled to protection under Alabama's reporter's privilege because Plaintiff's Amended Complaint is premised on the online version of the challenged Article. Any such holding, however, would be contrary to both the facts and the law.

As to the facts, Plaintiff has placed the *print* version of the Article squarely at issue in this matter. Indeed, Plaintiff's very first request for production to

[3] Almost all print newspapers now also publish an online edition, and the vast majority of readers and subscribers read newspapers online. According to a study by the Pew Research Center, only 25 percent of U.S. adults reported that they "often" or "sometimes" get news from print publications, compared with 86 percent of U.S. adults who reported that they "often" or "sometimes" get news from digital devices. *See* News Platform Fact Sheet, PewResearch.org (Sept. 17, 2024) *available at* https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/ (last accessed April 24, 2025). Similarly, 65 percent of U.S. adults reported that they "often" or "sometimes" get news from news websites or apps. *Id*.

The Times was for "a print copy of the article published by The New York Times on March 15, 2023, identifying Kai Spears as being present at the scene of a deadly shooting. Specifically, plaintiff seeks an actual, physical copy of the newspaper containing the article" and data regarding The Times's "digital and print subscriptions." Doc. 78-13 at 2. More recently, Plaintiff attached to his motion to compel deposition testimony from The Times's journalists a copy of the print copy of the Article. *See* Doc. 72-4. And during the April 24 status conference, Plaintiff's counsel made clear that it is their position that Plaintiff was defamed not only by The Times's online Article, but also by The Times's printed Article.

As to the law, on its face the Alabama reporter's privilege does not contemplate that a plaintiff could somehow, through creative pleading, limit the scope of the privilege to exclude a newspaper article, and any privilege holding premised on the allegations of Plaintiff's Amended Complaint would be contrary to the widely recognized principle that parties cannot circumvent statutory requirements or protections through their pleadings. As the Texas Supreme Court made clear, "[p]laintiffs cannot use artful pleading to avoid" statutory requirements. *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 543 (Tex. 2004); *see also McKenzie Cnty. v. United States*, 2025 U.S. App. LEXIS 6474, at *16 (8th Cir. Mar. 20, 2025) ("Parties cannot use other statutes or rules to end-run" a separate statute's "limitations" (cleaned up)); *N. Am. Specialty Ins. Co. v. Royal*

Surplus Lines Ins. Co., 541 F.3d 552, 561 (5th Cir. 2008) ("a plaintiff's legal theories and labels do not control" a statutory question); *Wayne v. Jarvis*, 197 F.3d 1098, 1103 (11th Cir. 1999) ("John Doe" pleadings cannot be used to circumvent statutes of limitations). Moreover, as Plaintiff acknowledged at the April 24 hearing, the reporter's privilege routinely arises in contexts where the newspaper is not even a party to the proceedings and is instead the target of third-party discovery. There is no question that the privilege applies in those circumstances.

Regardless of whether Plaintiff placed the printed Article at issue in this litigation (which he did), The Times is still entitled to protect its confidential sources published in the newspaper article.

II. Construing the Alabama statute by its plain terms also comports with the First Amendment privilege

It is persuasive that the First Amendment privilege provides a similar scope. Of course, even were the Court to conclude that The Times lost its absolute protection under Alabama's reporter's privilege by publishing the Article online, as well as in print, The Times is still entitled to the protection afforded by the First Amendment qualified privilege, which evaluates the assertion of privilege on the basis on acts of journalism rather than the medium of publication. *See Price*, 416 F.3d at 1343 (addressing the First Amendment privilege after finding that Alabama's privilege did not apply).

In *Branzburg v. Hayes*, Justice Powell referenced the "newsman['s]" qualified right to protect his sources. 408 U.S. 665, 710 (Powell, J., concurring). As the U.S. Court of Appeals for the Ninth Circuit explained, the question is whether the party claiming the privilege "is gathering news for dissemination to the public," since "[w]hat makes journalism is not its format but its content." *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993) (emphasis added). Thus, as a judge in this Court recognized, the First Amendment privilege applies to "traditional reporters." *Univ. of Ala. Bd. of Trs. v. New Life Art*, 2006 U.S. Dist. LEXIS 115807, at *6 (N.D. Ala. Apr. 10, 2006); *see also United States v. Capers*, 708 F.3d 1286, 1303 (11th Cir. 2013) ("Our Circuit recognizes a qualified privilege for journalists, allowing them to resist compelled disclosure of professional newsgathering efforts."); *United States v. Caporale*, 806 F.2d 1487, 1504 (11th Cir. 1986) (where the privilege applies, a requesting party must show the information sought is "highly relevant, necessary to the proper presentation of the case, and unavailable from other sources.").

III. The Alabama reporter's privilege protects the identity of a source, not just the source's name

The Times also briefly responds to Plaintiff's contention that the statute does not protect anything more than Source A's name. *See* Doc. 99 ¶ 3.

First, the plain text of the statute provides that persons employed by a newspaper may not be compelled to disclose "the ***sources*** of any information

procured or obtained by him and published in the newspaper." Ala. Code § 12-21-142 (emphasis added). The provision does not limit itself to a source's name. There can be no dispute that the plain text of the statute would similarly bar disclosure of a source's address, or phone number, or other identifying detail that would "disclose … the sources." *Id.* And Alabama courts have interpreted the statute in that fashion. *See Brothers v. Brothers*, 1989 BL 178 (Ala. Cir. Ct. 1989) (quashing subpoena for location of interview) (attached to Doc. 75 at Ex. 4).

Second, the relevant material withheld by The Times in response to the written discovery requests at issue in this motion were (1) contact information for Source A and Source B, such as email addresses and telephone numbers that would obviously be source-identifying; (2) meeting logistics, which are similarly source-identifying; (3) source-identifying photographs; and (4) source-identifying information from Billy Witz's conversations with Source A and Source B. Doc. 30 at 15, *see also* Doc. 78 at Ex. 3.[4] While Plaintiff has claimed he is entitled to this information, he has not claimed (and nor could he) that there is any reason to doubt the accuracy of The Times's representation that disclosure of any of this material would actually identify its confidential sources, and nor has he articulated why he believes that the material disclosed in The Times's privilege log contains the

[4] The Times also withheld source-identifying information about confidential sources for other stories, not related to the Subject Article.

information he seeks. Therefore, The Times properly withheld this material pursuant to Alabama's absolute privilege.[5]

Third, regarding Source B, the editor who worked with Witz on the Article testified during his deposition that Source B told Witz that "someone with Alabama was in the car." Doc. 78-14 at 155:16-21. Plaintiff's counsel then immediately demonstrated he understood that the editor meant someone with Alabama's basketball team was in the car by asking the editor twice to confirm that "Source B was correct in saying somebody with Alabama's basketball team." *Id.* at 155:22-156:4.[6] That information is published in the Subject Article, which reported that another member of the basketball team was at the scene. Therefore, Source B is protected by the Alabama privilege. The fact that Source B's information was corroborated by Source A, who also provided additional details, does not deprive Source B of the protections of the privilege. If it were otherwise,

[5] If the Court concludes either that Alabama's statutory privilege does not apply to newspaper content published online, or that it does not protect some or all of the material withheld by The Times, a separate First Amendment privilege analysis is required. To overcome that privilege, Plaintiff must demonstrate that he is unable to obtain the information he seeks "by alternate means," a standard he cannot meet where he has not taken a *single* deposition of any non-journalist witness, even those identified in his own discovery disclosures. *See* Doc. 76 at 29-36 (citing *Price*, 416 F.3d at 1343 and *Pinkard v. Johnson*, 118 F.R.D. 517, 521 (M.D. Ala. 1987)); *see also* Doc. 80 at 16-20.

[6] Notably, Plaintiff's counsel did not ask Witz at any point during his deposition what Source B told Witz.

it would provide news organizations with a perverse *disincentive* to seek corroboration from multiple sources, an outcome that clearly would be illogical and contrary to any public interest.

IV. If the Court rules against The Times, it should stay its order and certify the relevant question to the Alabama Supreme Court

While The Times submits that the Court can decide Plaintiff's motion on the narrow basis that the challenged Article *was* published in print, if the Court holds either that newspaper articles published online are somehow *not* protected by Alabama's reporter's privilege, or that the Alabama reporter's privilege protects literally only a confidential source's name and not source-identifying information, The Times requests that the Court stay its order and certify the relevant question to the Alabama Supreme Court as a novel one of statutory interpretation.

In *Price*, the Eleventh Circuit recounted the history of the district court proceedings and noted that while the district court granted plaintiff's motion to compel the journalist's confidential sources, "the district court reconsidered, stayed its initial order, and certified to the Alabama Supreme Court" the question of whether magazine journalists were protected by the state's reporter's privilege. *See Price*, 416 F.3d at 1333. The district court asked the Alabama Supreme Court to grant its request "because there was no clear, controlling, precedents in the decisions of the Supreme Court of Alabama on this issue, and its significance

extends beyond this case." *Id*. at 1334.[7] So too here. Seeking such review makes sense because a privilege ruling cannot easily be undone later, on a merits appeal.

While The Times maintains that Plaintiff's motion should be denied on the basis of the First Amendment qualified privilege even if the Court determines that the Alabama privilege does not apply, the Court indicated at the April 24 status conference that resolution of the state privilege is "dispositive" to Plaintiff's motion. Accordingly, because such a holding would entail deciding an "uncertain and dispositive issue of Alabama law," *see LeFrere v. Quezada*, 582 F.3d 1260, 1268 (11th Cir. 2009), the Court should stay any order it might issue compelling The Times to disclose its confidential sources or source-identifying material and certify the relevant question to the Alabama Supreme Court.

CONCLUSION

For the foregoing reasons, and those stated in The Times's previous briefing on this question, *see* Docs. 75, 80 and 101, The Times respectfully requests that

[7] As the Eleventh Circuit went on to explain, it was "disappoint[ed]" by the Alabama Supreme Court's decision to not answer the certified question, and it therefore acted on the district court's grant of the "defendants' motion to certify the two privilege issues for interlocutory appeal under 28 U.S.C. § 1292(b)." During the pendency of the Eleventh Circuit's consideration, the district court stayed its proceedings, and ultimately, the Eleventh Circuit *reversed* the district court's order, holding that *even though* the Alabama privilege did not apply, the withheld material was still protected by the First Amendment privilege, which the plaintiff had failed to overcome. *Id*.

this Court deny Plaintiff's motion in full. In the alternative, The Times respectfully requests that the Court stay any order compelling The Times to produce material or interrogatory responses and certify the relevant question of the interpretation of the statutory state privilege to the Alabama Supreme Court.

Dated: April 25, 2025

Respectfully submitted,

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Tab M

From:	Matthew J. Winne
To:	Kathryn L. Florey
Subject:	FW: Activity in Case 7:23-cv-00692-ACA Spears v. The New York Times Company et al Order
Date:	Thursday, April 24, 2025 3:55:23 PM

From: cmecf_ALND@alnd.uscourts.gov <cmecf_ALND@alnd.uscourts.gov>
Sent: Thursday, April 24, 2025 3:54:10 PM (UTC-06:00) Central Time (US & Canada)
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U.S. District Court

Northern District of Alabama

Notice of Electronic Filing

The following transaction was entered on 4/24/2025 at 3:54 PM CDT and filed on 4/24/2025
Case Name: Spears v. The New York Times Company et al
Case Number: 7:23-cv-00692-ACA
Filer:
Document Number: 102(No document attached)

Docket Text:
TEXT ORDER: As discussed in the status conference, Plaintiff Kai Spears's supplemental brief was not responsive to the court's order. (Docs. [98]-[99]). Accordingly, the court ORDERS Mr. Spears to FILE an amended supplemental brief on or before April 25, 2025. Defendant The New York Times Company may also file an amended supplemental brief on or before April 25, 2025. Signed by Judge Annemarie Carney Axon on 4/24/2025. (CLC)

7:23-cv-00692-ACA Notice has been electronically mailed to:

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Tab N

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA WESTERN DIVISION

KAI SPEARS	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION NO.**
v.	)	
	)	**7:23-CV-00692-LSC**
THE NEW YORK TIMES COMPANY	)	
	)	
Defendant.	)	

THE NEW YORK TIMES COMPANY'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES

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Attorneys for
The New York Times Company

Pursuant to this Court's April 22 Order (Doc. 98), Defendant The New York Times Company ("The Times") submits this supplemental brief on the question of whether Alabama's statutory reporter's privilege applies online. The Times respectfully submits that the Court can decide this issue on the narrower basis that the challenged Article *was* published in print, as conceded by Plaintiff. More broadly, and to answer the question presented, the privilege *does* apply to newspapers published online.

1. The Times published the Article in its March 16 print edition under the headline "*On Eve of Tournament, Fourth Alabama Player is Placed at Shooting*." *See* Doc. 78-2. As in the online version, the printed version of the Article stated that "two players were in a car struck by bullets in the crossfire," including "Kai Spears, a freshman walk-on whose presence at the scene had not been previously reported." *Id*. As in the online version, the print edition attributed this information to "[a] person familiar with the case" who "spoke on condition of anonymity to discuss sensitive matters in this case." *Id*.

2. Alabama's privilege provides journalists "engaged in, connected with, or employed on any newspaper" against compelled disclosure of "sources of any information procured or obtained by him and published in the newspaper[.]" Ala. Code § 12-21-142. Accordingly, because the Article was published by The Times

in print, the statute affords The Times an absolute privilege from compelled disclosure of the "sources of information" published in the Article.

3. Turning to the Court's question regarding whether Alabama's privilege applies to online publications, the answer is "yes." ***First***, The Times, itself, is unquestionably a newspaper. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 256 (1964) (The Times is the publisher of "a daily newspaper"); *see also The New York Times*, Brittanica.com, *available at* https://www.britannica.com/topic/The-New-York-Times (last accessed Apr. 24, 2025) (The Times is a daily newspaper).

4. ***Second***, it has been repeatedly determined by courts that the term "newspaper," in the context of the statutory reporter's privilege, applies to both print and digital publications. Any holding to the contrary would fatally undermine such statutes, including Alabama's, which was intended to "safeguard and protect the professional confidence of newspaper and newspaper men." *Price v. Time*, 416 F.3d 1327, 1335 (11th Cir. 2005) (cleaned up) (quoting 1935 Ala. Acts 649).

5. 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 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); *see also* 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 construction." *Toll*, 135 Nev. at 435.

6. Courts applying their states' reporter's privileges that were adopted long before the advent of digital publishing have reached similar results. For example, a California appellate court held that the 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 stated, "the operator of a public Web site is a publisher for purposes of [the statute]." *Id.* at 1459. "It 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; *see also Gubarev v. Buzzfeed, Inc.*, 2017 U.S. Dist.

LEXIS 209697, at *10 (S.D.N.Y. Dec. 21, 2017) (online publication entitled to protection under New York'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.' Accordingly, BuzzFeed is covered under the Florida Shield Law.").

7. While the Court can decide this matter on the narrow basis that the Article was published in print, construing protections for a "newspaper" to exclude the online versions of newspapers would lead to the "absurd result" cautioned in *Toll*. Almost all print newspapers now also publish an online edition, and the vast majority of readers and subscribers read newspapers online.[1] If Alabama's statutory privilege did not apply to digital publications, it would effectively be rendered meaningless. The Times respectfully submits that Alabama's statutory privilege protects information published online by newspapers regardless of whether they were published in print.

[1] According to a study by the Pew Research Center, only 25 percent of U.S. adults reported that they "often" or "sometimes" get news from print publications, compared with 86 percent of U.S. adults who reported that they "often" or "sometimes" get news from digital devices. *See* News Platform Fact Sheet, PewResearch.org (Sept. 17, 2024) *available at* https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/ (last accessed April 24, 2025). Similarly, 65 percent of U.S. adults reported that they "often" or "sometimes" get news from news websites or apps. *Id*.

8. The Times also briefly responds to Plaintiff's contention that the statute does not protect anything more than Source A's name. *See* Doc. 99 ¶ 3. ***First***, regarding Source B, as previously argued by The Times, Source B told a reporter for The Times that another member of the basketball team was in Brandon Miller's car at the time of the shooting, although Source B did not name him. *See* Doc 75 at 9-13. That information is published in the Subject Article, which reported that another member of the basketball team was at the scene. Therefore, Source B is protected by the Alabama privilege.

9. The fact that Source B's information was corroborated by Source A, who also provided additional details, does not deprive Source B of the protections of the privilege. If it were otherwise, it would provide news organizations with a perverse *disincentive* to seek corroboration from multiple sources, an outcome that clearly would be illogical and contrary to any public interest.

10. ***Second***, the relevant material withheld by The Times in response to the written discovery requests at issue in this motion were (1) contact information for Source A and Source B, such as email addresses and telephone numbers that would obviously be source-identifying; (2) meeting logistics, which are similarly source-identifying; (3) source-identifying photographs; and (4) source-identifying information from Billy Witz's conversations with Source A and Source B. Doc. 30

at 15, *see also* Doc. 78 at Ex. 3.[2] While Plaintiff has claimed he is entitled to this information, he has *not* claimed (and nor could he) that there is any reason to doubt the accuracy of The Times's representation that disclosure of any of this material would actually identify its confidential sources. Therefore, The Times properly withheld this material pursuant to Alabama's privilege.[3]

Dated: April 24, 2025

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[2] The Times also withheld source-identifying information about confidential sources for other stories, *not* related to the Subject Article.

[3] If the Court concludes either that Alabama's statutory privilege does not apply to newspaper content published online, or that it does not protect some or all of the material withheld by The Times, a separate First Amendment privilege analysis is required. To overcome that privilege, Plaintiff must demonstrate that is unable to obtain the information he seeks "by alternate means," a standard he cannot meet where he has not taken a *single* deposition of any non-journalist witness, even those identified in his own discovery disclosures. *See* Doc. 76 at 29-36 (citing *Price*, 416 F.3d at 1343 and *Pinkard v. Johnson*, 118 F.R.D. 517, 521 (M.D. Ala. 1987)); *see also* Doc. 80 at 16-20.

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Tab O

FILED
2025 Apr-25 AM 10:3
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

KAI SPEARS,	*	
Plaintiff,	*	
vs.	*	**NO. 7:23-CV-00692-ACA**
THE NEW YORK TIMES CO.	*	
Defendant.	*	

PLAINTIFF KAI SPEARS' SECOND RESPONSE TO ORDER FOR SUPPLEMENTAL BRIEFING ON MOTION TO COMPEL

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Attorneys for Plaintiff

Comes now the Plaintiff, Kai Spears, in response to further guidance from this Court provided during the April 24, 2025 telephone conference, and in response to the brief filed by The New York Times on April 24, 2025 (Doc. 101), offers the following supplemental brief on the issue of the applicability of Ala. Code §12-21-142 to online publications.

PRELIMARY ARGUMENT

On April 22, 2025, this Court issued an Order directing the Parties to provide supplemental briefing to address "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." (Doc. 98).

The answer to that question is no. Ala. Code § 12-21-142, strictly construed, cannot be interpreted as having any application to online publications. The Times, in arguing to the contrary, ignores both *Price v. Time, Inc*., 416 F.3d 1327 (11th Cir. 2005) and the history of the statute.

Nor do any of the cases cited by The Times provide support for its contention that an online publication should be considered a "newspaper" within the meaning of Alabama's reporter's privilege.

Finally, The Times' arguments with regard to the statute's application to the identity of Source B or the information provided by Source A are both misleading and wrong.

ARGUMENT

I. ALA. CODE § 12-21-142 DOES NOT APPLY TO ONLINE PUBLICATIONS

A. THE TIMES IGNORES *PRICE V. TIME*

While there is no precedent within this jurisdiction as to whether Ala. Code §12-21-142 applies to online publications, there is binding precedent from the Eleventh Circuit dictating that the word "newspaper" in the statute be construed narrowly. In *Price v. Time, Inc*., 416 F.3d 1327 (11th Cir. 2005), the court noted §12-21-142 must be strictly and narrowly construed since it is in derogation of the common law. The court explained, "Under Alabama law, '[s]tatutes in derogation or modification of the common law are strictly construed." 416 F.3d at 1342 (quoting *Arnold v. State*, 353 So.2d 524, 526 (Ala. 1977). The court concluded,

> The Alabama shield law is "in derogation or modification of the common law." [1] … ***At common law, a reporter did not have a privilege to withhold the identity of a confidential source*** of information, and a court could compel disclosure in proceedings before a court, grand jury, or other governmental body.
>
> … Because the common law is that there is no confidential source privilege, Alabama courts would ***construe the shield statute***, which provides one, ***narrowly***. … ***Where there is any doubt*** about the meaning of statutes in derogation of the common law, Alabama courts ***interpret the statute to make the least***, rather than the most, ***change in the common law***.

Id. (emphasis added)(internal citations omitted).

[1] *Arnold*, 353 So.2d at 526

The court in *Price*, in finding that a magazine is not a "newspaper" within the meaning of §12-21-142, looked to the definition of "newspaper" provided by two legal dictionaries:

> In its most recent edition, *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." *Black's Law Dictionary* 1069 (8th ed.2004). Ballentine's has a similar definition. *Ballentine's Law Dictionary* 848 (3d ed. 1969) ("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 ...."). This definition of "newspaper" tends ***not to cover Sports Illustrated, which is not in sheet form*** but instead is stapled and bound into individual pages, as magazines usually are.

Id. at 1337 (emphasis added).

The court also noted,

> The most recent edition of the *OED* defines "newspaper" as: "A printed publication, now usually issued daily or weekly, consisting of ***folded*** unstapled ***sheets*** and containing news, freq. with the addition of advertisements, photographs, articles, and correspondence ...." ... Of course, ***Sports Illustrated does not consist of folded unstapled sheets***.

Id. at 1338 (emphasis added).

Likewise, in the present case, The New York Times' initial online publication of the subject article does not constitute a "newspaper." Online publications are not "in sheet form" nor do they consist of "folded unstapled sheets." 416 F.3d at 1338. Interpreting §12-21-142 strictly and narrowly, as *Price* dictates, this Court must

conclude that an online publication is simply not a "newspaper" within the meaning of §12-21-142.

The Times' arguments to the contrary are unpersuasive. First, The Times ignores *Price's* direction to construe §12-21-142 narrowly and strictly in urging this Court to follow *Toll v. Wilson*, 453 P.3d 1215 (Nev. 2019). There the court applied the cannon "'[t]he words of the statute should be construed in light of the policy and ***spirit*** of the law'" to conclude that Nevada's shield statute could apply to an internet blogger. 453 P.3d at 1218 (quoting *Desert Valley Water Co. v. State*, 766 P.2d 886, 887 (Nev. 1988)(emphasis added).

For this Court to try to divine the "spirit" of §12-21-142 in determining its applicability to online publications would be to run afoul of *Price's* admonition to apply the statute narrowly and strictly as the *Price* court did in finding that because a magazine does not "consist of folded unstapled sheets," it is not a "newspaper."

B. THE TIMES IGNORES THE HISTORY OF ALABAMA'S REPORTER'S SHIELD STATUTE

The Times also ignores the history of §12-21-142 in urging this Court to expand the statute by judicial fiat since "the vast majority of readers and subscribers read newspapers online." (Doc. 101, ¶7). As the history of §12-21-142 makes clear, "The Legislature knows how to change the law when it is inclined to do so." *Laidlaw Transit, Inc. v. Alabama Educ. Ass'n*, 769 So.2d 872, 883 (Ala. 2000). The original statute did not encompass radio or television broadcasts. However, in 1949 the

Alabama Legislature decided to expand the statute to embrace the changing ways in which people were receiving their news. As explained by L. Michael Higgins Jr., in *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 (2006-2007),

> The 1949 revision of the statute took notice that the statute was commonly called the Newspaper Privilege, and took action to extend this privilege to include persons engaged in newspaper, radio broadcasting stations, and television stations. While no other legislative history exists to provide a more explicit rationale for the broadening language, it is reasonable to infer that the increased number of televisions and radios in Alabama homes meant that more people were receiving their news from these emerging sources, and that the Alabama legislature believed it appropriate to extend journalistic protection to these media sources.

37 Cumb. L. Rev. at 281-182.

However, the author notes that the Alabama Legislature has declined to create any further expansion of the statute since that time: "***Despite the advent*** of cable news channels, computers, the ***internet***, satellite radio, and wireless communications, ***no further expansion of Alabama's shield law has occurred***." *Id.* at 282 (emphasis added).

The Legislature could have included open-ended language in the 1949 modification to embrace any other new technology that might come along, but it did not. It limited the 1949 expansion to add only radio and television broadcasts. The Legislature has had ample opportunity to amend the statute again to embrace online media publications, but it has declined to do so. The Times' argument that the statute

will "effectively be rendered meaningless" if it is not expanded to apply to online publications should be made to the Alabama Legislature, not this Court.

C. THE TIMES' OTHER AUTHORITIES ARE DISTINGUISHABLE

Spears has already distinguished *Toll v. Wilson*, *supra*. The Times' two other cases are equally inapplicable.

In *Gubarev v. Buzzfeed, Inc.*, No. 1:17-cv-60426, 2017 WL 6547898 (S.D.N.Y. Dec. 21, 2017), the court was interpreting Florida's reporter's shield statute which ***broadly*** defines "professional journalist" as

> a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a ***newspaper***, ***news journal***, ***news agency***, press association, wire service, radio or television station, network, ***or news magazine***.

2017 WL 6547898 at *3 (emphasis added).

In finding that this broad definition encompassed digital media, the court concluded, "There 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***.'" 2017 WL 6547898 at *4 (emphasis added). Nowhere in the case does the court opine that BuzzFeed would be considered a "newspaper" within the meaning of the statute.

Alabama's statute does not similarly extend broadly to any sort of a "news agency," "news journal" or "news magazine." Therefore, *Gubarev* provides no

support for The Times' argument that "newspaper" includes an online publication within the meaning of Alabama's reporter's privilege.

The Times' reliance on *O'Grady v. Super. Ct*., 139 Cal. App. 4th 1423 (Cal. Ct. App. 2006) is even more puzzling given that court's observation that the online publication in question was not a "newspaper." In that case, the court addressed the question of whether a web publisher was "[a] publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication" within the meaning of California's reporter's shield statute. In going through each term in the statute, the court had "little difficulty" in determining that the website was not a "newspaper" within the meaning of the statute: "The term 'newspaper' presents little difficulty; it has always meant, and ***continues to mean***, a regularly appearing publication ***printed on large format, inexpensive paper***." 139 Cal. App. 4th at 1460 (emphasis added). The court went on, however, to find that the website did fit under the broader category of "other periodical publications."

The Alabama statute, of course, contains no such general language which would extend the privilege beyond newspapers, radio broadcasts, and television broadcasts. Therefore, this Court, like the court in *O'Grady*, should have "little difficulty" in determining that an online publication is not a "newspaper" within the meaning of Alabama's shield statute.

Accordingly, the cases cited by The Times provide no support for its argument that an online publication is a "newspaper" within the meaning of §12-21-142.

For these reasons, The Times' argument that its false assertion about Spears constituted information "published in the newspaper" for purposes of the initial online publication of the article is due to be rejected. Ala. Code §12-21-142, therefore, provides no privilege with regard to either the identity of any source or the information provided as it relates to the online publication of the article.

II. THE TIMES' OTHER ARGUMENTS ARE MISLEADING AND WRONG

The Times asserts, as it has before, that the identity of Source B is protected under §12-21-142 because, "Source B told a reporter for The Times that another ***member of the basketball team*** was in Brandon Miller's car at the time of the shooting, although Source B did not name him." (Doc. 101, ¶7)(emphasis added). It is shocking that The Times would again make this misrepresentation after previously being called out in open court by Your Honor. Oskar Garcia's testimony was, "Source B corroborated that ***someone with Alabama*** was in the car." (Depo. of Garcia, p. 155). As this Court pointed out during the previous hearing, "someone with Alabama" is not corroboration that the passenger was a basketball player by the name of Kai Spears.

The Times also asserts, with regard to the information provided by Source A, "While Plaintiff has claimed he is entitled to this information, he has not claimed

(and nor could he) that there is any reason to doubt the accuracy of The Times's representation that disclosure of any of this material would actually identify its confidential sources." (Doc. 101, ¶10). There are at least two problems with this argument. First, it is untrue. Spears has expressly argued,

> ***The Times has made no showing that disclosing this information would necessarily reveal the identity of Source A***: "The party asserting the privilege bears the burden to provide a factual basis for its privilege assertion and ***blanket and general assertions*** of a claim of privilege are ***insufficient***." *Drummond Co., Inc. v. Collingsworth*, Case No.: 2:11-cv-3695-RDP, 2022 WL 89175, *8 (N.D. Jan. 7, 2022).

(Doc. 78, p. 37 of brief, p. 42 of 67 filed document)(emphasis added).

Second, The Times' "nor could he" parenthetical highlights the very basis of the rule placing the burden on the proponent. ***Of course*** Spears has no way of showing that the information which The Times has refused to disclose would or would not reveal the identity of Source A. That is the whole point. Neither Spears nor this Court knows what The Times means when it claims the information is "source identifying." Is it a selfie of Source A at the crime scene purporting to show Spears in Miller's car? Or is this simply more of The Times' nonsense that it is "source identifying" because it might "narrow the universe" as to who in the world Source A is? That is why the law puts the burden on The Times to ***prove*** this. They have made zero effort to do so beyond wanting all of us to simply take their word for it. The Times has not satisfied its burden in this regard.

CONCLUSION

For all these reasons, Spears contends Ala. Code §12-21-142 does not apply to online publications, including the initial publication of the subject article in this case. Spears further contends The Times' other arguments regarding the identity of Source B and the information provided by Source A are without merit.

Respectfully submitted this 25rd day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to Participants in the case who are registered CM/ECF users.

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