

No. SC-2025-0370

IN THE SUPREME COURT OF ALABAMA

THE NEW YORK TIMES COMPANY,

Petitioner-Defendant

v.

KAI SPEARS,

Respondent-Plaintiff.

MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE BY
THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS, ALABAMA PRESS ASSOCIATION, GANNETT,
ADVANCE PUBLICATIONS, THE WASHINGTON POST,
DOW JONES & CO., TRIBUNE PUBLISHING, AND
LOS ANGELES TIMES COMMUNICATIONS

CERTIFIED QUESTIONS FROM THE U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
WESTERN DIVISION, NO. 7:23-cv-00692-ACA

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July 30, 2025

COME NOW, the Reporters Committee for Freedom of the Press (“Reporters Committee”), Alabama Press Association, Advance Publications, Inc., Gannett Co., Inc., Dow Jones & Co. (The Wall Street Journal), The Washington Post, Tribune Publishing Co., and Los Angeles Times Communications LLC (together, “amici”), pursuant to Rule 29 of the Alabama Rules of Appellate Procedure, hereby seek leave of the Court to appear in this matter as amici curiae in support of Petitioner-Defendant The New York Times Company.

The questions certified for this Court’s review concern the proper interpretation of the Alabama’s Journalists Source Privilege, Ala. Code § 12-21-142 (the “Shield Law”). Amici are news and media organizations that gather and report news in Alabama or defend the newsgathering rights of journalists working in the state and have an interest in the resolution of this matter, which will impact the press’s ability to obtain and report news in Alabama.

Amici respectfully submit that this brief, addressing issues of great importance on which amici have unique perspective, will aid the decisional process. *See Holcombe v. State ex rel. Chandler*, 200 So. 739, 746 (Ala. 1941). Amici offer knowledge and experience both on the law

and on the day-to-day work of gathering and disseminating news, including on the role of confidential sources in publishing. Lead amicus, the Reporters Committee, is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 amidst a wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. It regularly files amicus briefs in state and federal courts concerning the interpretation and application of reporter's shield statutes and the federal qualified reporter's privilege. *See, e.g.,* Br. of Amici Curiae Reporters Comm. for Freedom of the Press, et al., *Energy Transfer LP v. Greenpeace Int'l.*, No. A23-1284 (Minn. 2024); Br. of Amici Curiae Reporters Comm. for Freedom of the Press, et al., *People v. Juarez (In re Robles)*, APL-2017-57 (NY 2017); Br. of Amici Curiae Reporters Comm. for Freedom of the Press, et al., *Chen v. FBI*, No. 24-5050 (D.C. Cir. 2024).

The Alabama Press Association is a non-profit trade organization comprised of almost every daily and weekly newspaper in the State of Alabama. It has sought to further the common interests of Alabama

newspapers for more than 150 years. A common function of member newspapers is to report upon activities and events where, for various reasons, sources wish to remain anonymous or confidential. Alabama Press Association members commonly rely on, and assert when necessary, the Shield Law at issue in this matter. Further, Alabama Press Association members regularly publish articles online and in print that rely on reporting from confidential or anonymous sources. The Alabama Press Association respectfully submits that this Court will benefit from briefing on these issues from members of the media in this State.

Advance Publications, Inc. is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. This includes Alabama Media Group and its website, AL.com, which with 11 million visitors a month, is Alabama's largest news site and one of the largest local sites in the country. Three of Alabama's oldest premiere newspapers, The Birmingham News, The Huntsville Times, and Press-Register, are published digitally on AL.com.

Gannett Co., Inc., which publishes, in print and online, USA Today and Alabama newspapers Tuscaloosa News, Montgomery Advisor, and Gadsden Times, among other titles around the country.

Dow Jones & Company, a News Corp company, is the world's leading provider of news and business information. Through The Wall Street Journal (print and online), Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations.

The Washington Post (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes The Washington Post newspaper and the website www.washingtonpost.com, and produces a variety of digital and mobile news applications. The Post has won Pulitzer Prizes for its journalism, including the award in 2020 for explanatory reporting.

Tribune Publishing Co. is one of the country's leading media companies with daily newspapers, including the Chicago Tribune, the Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, and the Virginian Pilot. These papers' popular news and

information websites, including www.chicagotribune.com, complement Tribune Publishing's publishing properties and extend the company's nationwide audience.

Los Angeles Times Communications LLC is one of the largest daily newspapers in the United States. Its popular news and information website, www.latimes.com, attracts audiences throughout California and across the nation.

For the foregoing reasons, amici respectfully request that this motion for leave to appear as amici be granted and that the accompanying brief be accepted for filing.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Leave to Appear as Amici Curiae and accompanying brief, which were electronically filed today, will be served electronically under Rules 25(c)(1)(D) and 57(h)(5), Ala. R. App. P., by email or AlaFile, under Rule 25(c), Ala. R. App. P., on this 30th day of July, 2025, on the following counsel:

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STATEMENT REGARDING ORAL ARGUMENT

Proposed amici curiae (“amici”) adopt in full the statement of Petitioner-Defendant The New York Times regarding oral argument. Amici do not seek to participate in oral argument unless the Court should so direct.

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INTEREST OF PROPOSED AMICI CURIAE

Amici are the Reporters Committee for Freedom of the Press (“Reporters Committee”) and the following news and media organizations that gather and report news in Alabama or defend the newsgathering rights of journalists working in the state: Advance Publications, Inc., which publishes, *inter alia*, The Birmingham News, The Huntsville Times, and Press-Register at AL.com; Gannett Co., Inc., which publishes, in print and online, USA Today as well as Alabama newspapers The Tuscaloosa News, Montgomery Advisor, and Gadsden Times; Dow Jones & Co. (Wall Street Journal); The Washington Post; Tribune Publishing Co.; Los Angeles Times Communications LLC; and the Alabama Press Association, which represents nearly every daily newspaper in the state.

Lead amicus the Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 amidst wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee regularly files amicus briefs in

state and federal courts concerning the interpretation and application of reporter's shield statutes and the federal qualified reporter's privilege. *See, e.g.*, Br. of Amici Curiae Reporters Comm. for Freedom of the Press, et al., *Energy Transfer LP v. Greenpeace Int'l.*, No. A23-1284 (Minn. 2024); Br. of Amici Curiae Reporters Comm. for Freedom of the Press, et al., *People v. Juarez (In re Robles)*, APL-2017-57 (NY 2017); Br. of Amici Curiae Reporters Comm. for Freedom of the Press, et al., *Chen v. FBI*, No. 24-5050 (D.C. Cir. 2024).

SUMMARY OF THE ARGUMENT

The Alabama legislature in 1935 enacted a statutory privilege for newspaper reporters. It was among the earliest states to do so, but it was not alone. Within a few decades, dozens of states had seen the wisdom of, and codified, a privilege protecting the “confidence” between a reporter and his source. State and federal courts around the country also began to recognize a journalist’s privilege to shield certain information based on the First Amendment, state constitutions, and the common law. Both the statutory and the judicial privilege were borne from the recognition that freedom of the press is a crucial right created “not for the benefit of the press so much as for the benefit of all of us.” *Time Inc. v. Hill*, 385 U.S. 374, 389 (1967). The press “serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were elected to serve.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966) (observing that the “Constitution specifically selected the press” to fulfill an “important role” in our democracy).

The press historically “has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences.” *Estes v. Texas*, 381 U.S. 532, 539 (1965). As one federal Court of Appeals in an oft-cited decision has put it, “[t]he press was protected so that it could bare the secrets of government and inform the people.” *Zerilli v. Smith*, 656 F.2d 710, 710-11 (D.C. Cir. 1988) (quoting *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring)). “Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices. But [its] function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired.” *Id.* Robust “news gathering is essential to a free press,” *id.*, a recognition shared by this state when it enacted a statute to protect reporters’ sources.

Courts tasked with applying a statute written many decades prior—in this instance nearly a century prior—are sometimes required to resolve difficult questions where the passage of time has clouded a statute’s meaning. Amici respectfully submit that this is not one of those times. While the outcome is of critical importance to the press reporting in

Alabama, the questions to be resolved are straightforward: First, is an article that was published by and in a traditional newspaper, written by the newspaper's reporter, still a newspaper article if it appeared in the newspaper's digital edition; and second, does the statute's absolute protection for a confidential source by its own terms encompass questions that would inevitably point to—and thus, disclose—the source? Amici agree with Petitioner-Defendant The New York Times (“The Times”) that the answer to both questions is yes. A decision to the contrary would be to the detriment of the interests of the public and the press and would undermine reporting in circumstances that extend far beyond this case.

Amici, including news organizations that report on news and information—online and in print—important to Alabamians, write to emphasize the significant consequences for a broad swath of traditional newsgatherers if “newspaper” were interpreted to exclude any newspaper article that also is published on the newspaper's website, and if the protection for confidential sources could be so easily evaded by a litigant who may demand answers of a newspaper reporter that out the reporter's source. Amici respectfully urge the Court instead to issue a decision consistent with the text and purpose of the statute and that accounts for

the practical importance of these questions to everyday newsgathering in the state.

ARGUMENT

I. Alabama’s absolute Shield Law was among the earliest reporter’s privilege statutes and continues its historic protection for confidential sources.

Ninety years ago, the Alabama legislature enacted the state’s reporter’s privilege statute “to safeguard and protect the professional confidence of newspaper[s] and newspapermen.” Act of Aug. 21, 1935, No. 253, § 2, 1935 Ala. Acts 649 (subsequently codified as Ala. Code § 370 (1940)). The law afforded newspaper reporters an absolute protection from forced disclosure of their confidential sources. *Id.* That protection, now embodied in the Journalists Source Privilege, Ala. Code § 12-21-142 (the “Shield Law”), remains vital for covered journalists who report on issues in the state. It provides in relevant part that “[n]o person engaged in, connected with or employed on any newspaper, . . . while engaged in a news-gathering capacity, shall be compelled to disclose . . . the sources

of any information procured or obtained by him and published in the newspaper.” *Id.*¹

Little legislative history accompanied the 1935 law or its subsequent amendment, yet the historical record supplies context for Alabama’s decision to protect speech and the free flow of information to the public by granting absolute protection for journalists from compelled disclosure of their sources. Nearly forty years prior, the first shield law was enacted by Maryland’s legislature in 1896 after a *Baltimore Sun* reporter was jailed for refusing to reveal to a grand jury how he was accurately reporting on its secret proceedings regarding alleged bribery of elected officials. See Walter A. Steigleman, *Newspaper Confidence Laws: Their Extent and Provisions*, 20 Journalism Q. 230 (1943); see also *Knew the Grand Jury's Secrets: A Reporter of a Baltimore Paper Imprisoned for Contempt of Court*, Chi. Daily Trib., Dec. 23, 1886, at 1. Three decades later, amidst the Great Depression, a series of contempt citations were issued to journalists in the wake of their refusals to reveal

¹ The original statute has been amended just once, in 1949, to extend its protection to reporters for “any newspaper, or radio broadcasting station or television station, while engaged in a news-gathering capacity.” Ala. Code § 12-21-142.

their sources, in separate cases across the country. These contempt proceedings garnered wide national interest and prompted a strong legislative reaction in some states: Between 1933 and 1937, seven “confidence” statutes were enacted. *See Note, The Right of a Newsman to Refrain from Divulging the Sources of His Information*, 36 Va. L. Rev. 61, 71 (1950).

Alabama’s law was among these original seven enacted as a protective response to attempts in other states to subpoena and jail reporters. *See Steigleman, Newspaper Confidence Laws, supra*, (chronicling the evolution of shield or “confidence” statutes). It was aimed at reversing this concerning trend, which threatened to chill news reporting. *Id.* Like five of its early sister states, Alabama codified an absolute protection for journalists where the Shield Law applied. And, except for the 1949 amendment that expanded its protection to television and radio broadcasters, *see supra* n.1, the Alabama legislature has never amended the Shield Law to provide any exceptions to its absolute protection, as some other states have done. *See, e.g., The Reporter’s Privilege Compendium*, Reporters Comm. for Freedom of the Press, <https://www.rcfp.org/reporters-privilege/> (last visited Jul. 29, 2025).

The judiciary recognized Alabama's policy goals from the outset. The earliest reported judicial examination of the Shield Law came four years after the statute's coverage was expanded, when a federal court in Alabama considered whether Alabama's Shield Law or the law of a state with no shield governed a "claim of privilege by a journalist with respect to the sources of his information." *Ex parte Sparrow*, 14 F.R.D. 351, 353 (N.D. Ala. 1953). The journalist in that case had for years written articles for *The Birmingham News* about the state prison and parole systems, and he relied in part on confidential sources for this reporting. *Id.* at 352. While sitting for a deposition in Alabama, he answered most of the questions but invoked the Shield Law's absolute privilege as to "certain" questions about his sources. *Id.* When the plaintiff thereafter moved to compel testimony on those questions, the plaintiff argued that the other state's law should apply, in which case the Shield protections would be unavailable to the journalist. *Id.* at 353. The court was unpersuaded, noting that the Shield Law is "such a clear and unequivocal pronouncement of the public policy of the state." *Id.* The court resolved the choice of law question in favor of applying Alabama's law and applying its absolute protection to deny the motion to compel.

Now as then, the Shield Law remains a well-calibrated tool to ensure that reporters at established news organizations working in Alabama do not become targets of discovery issued by litigants or the government and can resist intrusion into confidential source relationships that allow them to fulfill the press's constitutional role.

II. This Court should hold that the Shield Law encompasses an article published online by a newspaper.

A. A newspaper article written by one of its journalists is no less a newspaper article because it was published in print and online.

The Times published the challenged article in its print and digital editions. *See* Petitioner's Br. at 10; *Spears v. The New York Times*, 7:23-cv-692-ACA, ECF No. 78-2 (print article). In doing so, it is like countless other newspapers in Alabama and around the country that over the past several decades have expanded their distribution to include online platforms. Today, nearly all traditional newspapers—as well as television and radio broadcasters—provide their content online in addition to their original mediums. *See* Dana A. Scherer & Clare Y. Cho, Cong. Rsch. Serv., R47018, *Stop the Presses? Newspapers in the Digital*

Age 3 (2022), <https://perma.cc/W3G6-TUZW>.² Of the 106 Alabama newspaper members of the Alabama Press Association (many serving a single county or community), only four lack a website that publishes the digital editions of their newspapers. *Alabama Newspapers*, Alabama Press Ass’n, <https://alabamapress.org/active-papers/> (last visited Jul. 28, 2025). Typically, newspaper websites for national and state publications mirror or replicate content that appears in print.³

² For example, Fox News, originally a television channel, now maintains an online edition. So does National Public Radio. In other words, news outlets that started as newspapers are not alone in publishing their work product in multiple formats. See *Scherer & Cho, Stop the Presses?* at 3 n.10.

³ This was the case here and is true of innumerable stories from thousands of newspapers. By way of a few examples, The Pine Belt News of Brewton, Alabama printed an article about a Hattiesburg attorney’s arrest the same week it posted the identical story online. Amanda D. Lee, *Hattiesburg Attorney Turns Himself in Hoping to Avoid Incarceration: Held Without Bail in Perry County*, The Pine Belt News (July 17, 2025), <https://perma.cc/D2XC-A56B>. The Choctaw Sun-Advocate printed an article about a local man honored by the U.S. Army in its July 23, 2025, edition and posted it in its “e-edition” as well. Dee Ann Campbell, *Chaney Honored for Service*, The Choctaw Sun-Advocate (July 23, 2025), <https://perma.cc/ATZ9-ZQYA>. Further from home, a recent article about the market for diamonds ran in the Wall Street Journal’s Thursday, July 17, 2025 print edition as well as on its website. See Jenny Strasburg & Suzanne Kapner, *Are Diamonds Even a Luxury Anymore? De Beers Battles Diamond Price Plunge*, Wall St. J. (July 17, 2025), <https://perma.cc/NA4C-YV8E>. And for its part, The Times posted its story about a runaway Alabama kangaroo on its website on April 30,

This digital migration is reflected in common, modern usage of the term “newspaper,” without a loss of understanding about the inherent nature of newspapers. The Oxford English Dictionary now defines “newspaper” to include “the digital version of such a newspaper, made available online.” “Newspaper,” Oxford English Dictionary, https://www.oed.com/dictionary/newspaper_n?tab=meaning_and_use#34741259 (last visited Jul. 28, 2025). And Merriam-Webster defines a newspaper broadly as “an organization that publishes a newspaper.” “Newspaper,” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/newspaper> (last visited Jul. 28, 2025).⁴ The audience’s understanding of what it means to be a newspaper subscriber also demonstrates that while the methods of delivery may have

2025, before it appeared in print the next day in its May 1, 2025 paper edition. Victor Mather, *Pet Kangaroo Runs Away and Causes Chaos on Alabama Interstate*, N.Y. Times (Apr. 30, 2025), <https://perma.cc/8PU2-TB4M>.

⁴ While dictionaries from 1935, when the Shield Law was enacted, could not of course have anticipated new publishing technologies such as the internet, this Court has elsewhere recognized that dictionaries “tend to lag behind linguistic realities,” and it may be “entirely proper to consult a dictionary published many years after the enactment of a statutory text” to discern its meaning. *Ex parte Tutt Real Estate, LLC*, 334 So. 3d 1249 (Ala. 2021) (Mitchell, J., concurring) (quoting Scalia & Garner, *Reading Law, infra*, at 419).

expanded, the core editorial product remains. Readers can now subscribe to the newspaper without receiving a hard copy delivered to their front door, without sacrificing any of the content—and those readers are subscribers, just the same. *See* Al.com, *Stay Informed with Alabama's Go-To News Source*, <https://www.al.com/subscribe/> (last visited Jul. 28, 2025) (offering digital-only subscriptions to news coverage from The Birmingham News, Huntsville Times, and Press-Register newspapers); N.Y. Times, *Home Delivery Subscriptions*, <https://help.nytimes.com/4415714735892-Home-Delivery-Subscriptions> (last visited Jul. 28, 2025) (offering digital or digital plus print subscription option); Wall St. J., *Choose Your WSJ Subscription*, <https://bit.ly/41dYyPY> (last visited Jul. 29, 2025) (same).

Even before newspapers were easily accessible on the publishers' websites, electronic editions of some newspapers existed. As early as 1980, outlets such as The Times and The Atlanta Journal-Constitution offered content via dial-up services. *See* AP to Test Home Computer Service, Huntsville Times, June 15, 1980, <https://www.newspapers.com/image/1185070470/?match=1&terms=%22CompuServe%22> (last visited Jul. 28, 2025). By 1983, newspapers were

delivering electronic news through proprietary terminals and receivers. See John Sanburn, *A Brief History of Digital News*, Time (Feb. 1, 2011), <https://perma.cc/2E5B-X7AK>. These predated even the World Wide Web.

In 1994, the first newspaper launched a website. Scherer & Cho, *supra*, at 2. Several of Alabama's top newspapers followed three years later. The Birmingham News, founded in 1888, The Mobile Press-Register, founded in 1813, and The Huntsville Times, founded in 1910, launched websites with their news content in 1997. See *Timeline: The 125-Year History of the Birmingham News*, AL.com (Mar. 14, 2013), <https://perma.cc/AE9X-SDBR>; Angela Levins, *Mobile Press-Register 200th Anniversary*, AL.com (Jul. 7, 2013), <https://perma.cc/B46S-KXMM>; Steve Doyle, *A look at The Huntsville Times' 103-year history*, AL.com (Aug. 23, 2013) <https://perma.cc/ZGW4-6787>. Around the same time, The Times introduced its own website. See Peter R. Lewis, *The New York Times Introduces a Web Site*, N.Y. Times (Jan. 22, 1996), <https://perma.cc/9ALD-FK9U>.

Today, nearly every U.S. newspaper is online in full or part. Some, like The Times, continue to offer print and digital versions. There are others whose news is now delivered entirely online, while still retaining

a traditional newsroom and news staff. For example, three of Alabama's marquee newspapers moved exclusively online in 2023. *Alabama Media Group Shifts to All-Digital, Will Stop Publishing Newspapers in 2023*, AL.com (Nov. 3, 2022), <https://perma.cc/B28X-GE46>.

Observers have noted that newspapers followed their readers online, as much as the other way around. In 1995, only 14% of Americans had internet access; today, that figure exceeds 96%. Susannah Fox & Lee Rainie, *Part 1: How the Internet has Woven Itself into American Life*, Pew Rsch. Ctr. (Feb. 27, 2014), <https://perma.cc/HN8S-D2WX>; *Internet, Broadband Fact Sheet*, Pew Rsch. Ctr. (Nov. 13, 2024), <https://perma.cc/EBX4-6P8W>. This expansion of internet use reshaped how Americans get their news, but it has not altered the need for, interest in, or fundamentals of newspaper reporting. As of 2024, 86% of adults access news from a smartphone, computer, or tablet. *News Platform Fact Sheet*, Pew Rsch. Ctr. (Sep. 17, 2024), <https://perma.cc/63KN-8A6J>. Newspapers face many financial challenges in the age of AI, search, and

social media, but providing digital editions of the news on the internet remains an indispensable way for newspapers to reach readers.⁵

Given the foregoing, interpreting the Shield Law to exclude reporters who work for newspapers that post their content online would make little policy sense, nor is it required by the statute itself. To remove protection from journalists employed by newspapers that publish an online edition does not give effect to the statute, and in fact, would contravene established interpretative canons. Alabama courts favor a plain-text reading, and a plain reading here supports the conclusion that the challenged article is a newspaper article, and the journalist who wrote it is as entitled to the absolute protections of the Shield Law as a journalist publishing in print would have been when the statute was enacted. *See Ex parte Triad of Alabama, LLC*, 396 So. 3d 191, 198 (Ala.

⁵ The erosion of the financial foundations of the newspaper business is well documented. As more readers migrated to digital platforms, print advertising revenues plummeted. Newspaper revenue, which peaked at \$89 billion in 2000, fell by 80% over the next two decades. Scherer & Cho, *supra*, at 3. This collapse has hit local news especially hard: Since 2005, more than 3,200 newspapers have disappeared “at a rate of more than two per week.” Zach Metzger, *The State of Local News: The 2024 Report*, Local News Initiative (Oct. 23, 2024), <https://perma.cc/E36B-EABN>. Today, some 55 million Americans live in what some scholars describe as “news deserts,” with little or no local press coverage. *Id.* Offering news online has been a necessity for journalism to survive.

2024) (applying a plain-text interpretation over an interpretation that introduces surplusage into a statute). The term “newspaper” from the statute encompasses the regular reporting and publishing in which The Times engages today, and The Times here comfortably fits within the plain meaning of the word.

Moreover, interpreting the Shield Law to exclude publications with online editions would, in effect, make the word “newspaper” in the statute superfluous. A court has the duty “to give effect, if possible, to every clause and word of a statute” especially when “the term occupies so pivotal a place in the statutory scheme.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (cleaned up); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) (“If possible, every word and every provision is to be given effect None should be ignored.”). But given that almost no newspapers remain entirely offline, under Spears’ reading, “newspaper” would have no operative effect.⁶ This would occasion a seismic shift in the law and have unintended

⁶ The same is true for television and radio broadcasters, which typically operate and post their content to their websites. *See, e.g.*, ABC 33/40, <https://abc3340.com/> (last visited Jul. 29. 2025); WBRC 6 News, <https://www.wbrc.com/> (last visited Jul. 29. 2025); WBHM 90.3 FM, <https://wbhm.org/> (last visited Jul. 29. 2025).

results. After all, the Shield Law lists newspapers first among the news organizations it protects, Ala. Code § 12-21-142, and for the first 14 years of its existence protected *only* newspapers, demonstrating that industry’s pivotal role in the statutory scheme. Under that scheme, journalists at traditional news organizations receive the benefit of the statute, but if Spears’ interpretation is adopted, most such journalists could no longer qualify, even though their reporting work remains exactly the same. Such an interpretative change is particularly disfavored when the word made superfluous is pivotal in the statute and should be rejected here. *See Duncan*, 533 U.S. at 174 (noting that the canon against surplusage applies with special force to words occupying central positions in a statute).

Excluding those news outlets that maintain a website from the Shield Law’s protection would effectively write them out of the statute—and ignore the realities of the digital age. This Court should look dubiously on any argument that the publishing industry’s adoption of new technology to increase the dissemination of information alters its fundamental character and, in turn, its protections afforded by law.

B. Other states have held that articles published online by newspapers are newspaper articles under their respective shield laws.

Many states with statutes that, like Alabama's, do not define "newspaper" have held that a newspaper publisher may offer its content online without losing its identity as a newspaper. The reasoning of those decisions applies here.

For example, the Nevada Supreme Court recently considered whether the portion of the state's 1975 statute protecting newspaper journalists from subpoenas included digital publications. *See Toll v. Wilson*, 453 P.3d 1215 (Nev. 2019). It reasoned that "just because a newspaper can exist online, it does not mean it ceases to be a newspaper. *Id.* at 1219. "To hold otherwise," the court continued, "would be to create an absurd result in direct contradiction to the rules of statutory interpretation." *Id.* The Nevada court recognized that an artificially limited definition of newspaper would misrepresent drafters' intent and affirmed that the state's shield law can apply to the digital news media.

This rationale is reflected in the decisions of other courts as well. In Pennsylvania, the shield law covers reporters with "any newspaper of general circulation or any press association or any radio or television

station, or any magazine of general circulation.” 42 Pa. Cons. Stat. § 5492(a). Like Alabama’s, the statute does not reference internet publications—nor does it define newspaper or otherwise limit newspaper by distribution platform. The Pennsylvania appellate court has applied the statute to news articles that appeared both online and in print. *See DiPaolo v. Times Publ’g Co.*, 142 A.3d 837, 844-45 (Pa. Super. Ct. 2016) (analyzing whether plaintiff had overcome privilege but accepting without discussion that privilege applied to article despite the fact that it appeared online). In doing so, it did not suggest there was or should be a legal distinction between these forms. *See also* Times Br. at 44-45 (discussing additional state cases).

As these and other states recognize, online newspapers are still newspapers. Alabama courts have, in other contexts, ruled in ways consistent with that reasoning. *See White v. City of Birmingham*, 96 F. Supp. 3d 1260, 1274 (N.D. Ala. 2015) (asserting that, for the purposes of admissibility as evidence, “AL.com news articles are analogous to traditional newspaper articles”); *Jones v. BuzzFeed, Inc.*, 591 F. Supp. 3d 1127, 1152 (N.D. Ala. 2022) (applying fair report privilege to BuzzFeed News, an entirely online publication, and suggesting that it is a

newspaper); *DolgenCorp, LLC v. Smith*, 353 So. 3d 527, 530 (Ala. 2021) (Shaw, J., dissenting) (referring to an “online newspaper article” as a “newspaper article”); *see also Ex parte Smith*, 282 So. 3d 831, 847, 853 (Ala. 2019) (Mendheim, J., concurring in part and dissenting in part) (describing stories posted by AL.com as “news articles”). Given that Alabama courts use print and online articles so interchangeably, the plain reading of “newspaper” in the Shield Law should reflect this consensus. *See supra* at 14-16.

The Eleventh Circuit’s decision in *Price v. Time, Inc.*, holding that Sports Illustrated magazine is not a “newspaper” under the Shield Law, is not to the contrary. 416 F.3d 1327 (11th Cir. 2005), *as modified on denial of reh’g*, 425 F.3d 1292 (11th Cir. 2005). *Spears* focuses on the court’s description of the physical appearance of a newspaper versus a magazine. *Spears*, 7:23-cv-692-ACA, ECF No. 103 at 3-4. Yet, that was just one consideration the *Price* court offered to distinguish two long-established forms of physical media. The *Price* court also emphasized the plain understanding of the words newspaper and magazine. 416 F.3d at 1336 (“It seems to us plain and apparent that in common usage ‘newspaper’ does not mean ‘newspaper and magazine.’”). Here, readers

understand that The Times article, whether it appears in the print or online edition, is a Times newspaper article. And they understand themselves to be subscribers to the newspaper, even if they receive The Times digitally instead of in print. The court also considered industry customs and pointed out that magazine articles are often not eligible for the same awards as newspaper articles, noting the Pulitzer Prize for Journalism does not consider magazines alongside newspapers. *Id.* at 1339. In contrast, Pulitzer Prizes for newspaper articles that appear online are by now commonplace. *See, e.g., The 2009 Pulitzer Prize Winner in Investigative Reporting, The Pulitzer Prizes*, <https://www.pulitzer.org/winners/david-barstow> (last visited Jul. 28, 2025); *see also The 2024 Pulitzer Prize Winner in Breaking News Reporting, The Pulitzer Prizes*, <https://www.pulitzer.org/winners/staff-lookout-santa-cruz-california> (last visited Jul. 28, 2025); *The 2023 Pulitzer Prize Winner in Commentary, The Pulitzer Prizes*, <https://www.pulitzer.org/winners/kyle-whitmire-alcom-birmingham> (last visited Jul. 28, 2025). Applying the Shield Law to the challenged article here is not inconsistent with the reasoning in *Price*.

Indeed, in 2025, the understanding of older laws need not be “trapped in amber,” such that only those newspapers which operated like they did in 1935 can receive protection under the shield law. *Cf. United States v. Rahimi*, 602 U.S. 680, 691 (2024) (refusing the assertion that laws can only extend to devices and subjects that were contemplated at the time of enactment). One can easily imagine the kind of absurd result such an interpretation would mandate: In order to fully protect its journalists under Alabama’s statutory scheme, The Times and other publishers could be forced to abandon their internet presence and stick to print. Or alternatively, a journalist employed by a newspaper and who writes a single article that appears in print and online could be compelled to answer source-revealing questions merely because his article was *also* uploaded to his newspaper’s website. An anachronistic interpretation of the law could lead to these ridiculous outcomes, as other states that have considered the issue have held. *See supra* at 19-20.

A decision holding that a newspaper journalist who writes an article that is published online is not entitled to the protections of the Shield Law would contravene the statute’s plain language and common sense, and would make Alabama an outlier among state courts. It would

also undermine local Alabama newspaper publishers and other news organizations reporting in the state. This Court's opinion interpreting the Shield Law should confirm that The Times' reporter did not lose the protections of the Shield Law when The Times published the challenged article to its website.

III. The Shield Law protects information disclosing confidential sources, and were it otherwise, it would not have the intended effect.

The Shield Law protects a covered journalist from being “compelled to disclose . . . the sources of any information obtained by him and published.” Ala. Code § 12-21-142, which is a result of the legislature’s effort to “protect . . . newspaper[s] and newspapermen,” 1935 Ala. Acts 649. Well before most of the country, Alabama recognized the “interrelationship between newsgathering, news dissemination and the need for a journalist to protect his or her source.” *Riley v. City of Chester*, 612 F.2d 708, 714 (3d Cir. 1979); *see Price*, 416 F.3d 1327 (describing Alabama’s decision to protect sources); *Ex parte Sparrow*, 14 F.R.D. at 352-53 (same).

A chief facet of the press’s constitutional role is to gather information. Journalists generally prefer to identify their sources and

quote them on the record, but in some instances, the only way to obtain and report important information is to promise a particular source that he or she will not be identified. Such confidentiality is often essential for obtaining sensitive information, and honoring those promises sustains existing relationships while enabling the cultivation of new sources and, thus, future information. *See, e.g., Baker v. F & F Inv.*, 470 F.2d 778, 782 (2d Cir. 1972), *cert. denied*, 411 U.S. 966 (1973) (“Compelled disclosure of confidential sources unquestionably threatens a journalist’s ability to secure information that is made available to him only on a confidential basis.”); *Riley*, 612 F.2d at 714 (“A journalist’s inability to protect the confidentiality of sources . . . will jeopardize the journalist’s ability to obtain information on a confidential basis.”); *Zerilli*, 656 F.2d at 711 (same).⁷ As influential legal scholar Alexander Bickel observed about the newsgathering process in a widely-cited essay, “[i]ndispensable

⁷ For this reason, even where courts are applying the qualified federal reporter’s privilege, “the more confidential the information sought, the greater the First Amendment protection” that is “[g]enerally” afforded to it, and “if information was given to a reporter on a promise of confidentiality, a court would be more reluctant to compel a betrayal of such a confidence.” *Pinkard v. Johnson*, 118 F.R.D. 517, 521 (M.D. Ala. 1987) (citing *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 597 (1st Cir. 1980)).

information comes in confidence from” a great variety of people in many different positions. Alexander Bickel, *The Morality of Consent* 84 (1975). These may be “officeholders fearful of superiors,” “businessmen fearful of competitors,” “informers operating at the edge of the law who are in danger of reprisal from criminal associates,” “people afraid of the law and of government,” and “men in all fields anxious not to incur censure for unorthodox or unpopular views.” *Id.*; see also The Editorial Board, *A Reporter’s Shield Law is Vital to Prevent Abuses of Power*, N.Y. Times (Oct. 14, 2024), <https://perma.cc/TZB7-MSJP> (“Even when their disclosures are clearly in the public interest, [sources] often hide their identities to avoid punishment or retaliation. In this way, bringing essential information to the public often depends on protecting the identity of the person sharing it.”). For such potential sources, a promise of confidentiality can be the difference between providing or withholding truths that need to be widely aired.

Given the news media’s reliance on sources, and the unwillingness of some sources to be identified, to force “reporters to divulge [] confidences would dam the flow to the press, and through it to the people, of the most valuable sort of information: not the press release, not the

handout, but the firsthand story based on the candid talk of a primary news source.” *The Morality of Consent, supra*, at 84. And just as there are recognized benefits that flow to the public when confidential sources can trust journalists not to disclose information that will reveal their identities, there are foreseeable consequences for individual reporters, and for the profession as a whole, if reporters cannot keep their promise to protect sources. *See Baker*, 470 F.2d at 782 (recognizing “deterrent effect [compelled] disclosure is likely to have upon future ‘undercover’ investigative reporting, the dividends of which are revealed in articles such as [the reporter’s], threatens freedom of the press and the public’s need to be informed”); *Pinkard*, 118 F.R.D. at 521 (explaining that a “betrayal [of a promise of confidentiality] would tend to prevent the reporter from obtaining information later which he could then pass on to the public”). The news process is compromised if litigants can invoke the power of the courts to compel journalists to identify their sources.

Federal courts in Alabama have observed these truisms in the context of federal reporter’s privilege cases, noting that “people will more freely give information to reporters on a promise of confidentiality when they know that such a promise will not be broken. This trust that

reporters can establish with informants leads to the free flow of information to the public.” *Abrams v. Tuberville*, No. 2:12CV177-MHT, 2013 WL 12244457, at *1 (M.D. Ala. Aug. 15, 2013) (cleaned up). “Consequently, the public has a heightened interest where disclosure of confidential information is sought.” *Pinkard*, 118 F.R.D. at 521. An abrogation of the Shield Law would thus not be in the public interest. *See also Riley*, 612 F.2d at 714 (compelled that compelled disclosure “in turn will seriously erode the essential role played by the press in the dissemination of information and matters of interest and concern to the public.”); *In re Taylor*, 193 A.2d 181, 185 (Pa. 1963) (“[I]mportant information, tips and leads will dry up and the public will often be deprived of the knowledge of ... crimes committed or possibly committed by public officials or by powerful individuals or organizations, unless newsmen are able to *fully and completely* protect the sources of their information.” (emphasis in original)).

The court in *Ex parte Sparrow* articulated the informed policy choice the state had made. There, a Birmingham News journalist had for years relied on confidential sources for numerous investigations concerning the state’s prisons and the board for pardons and parole. 14

F.R.D. at 352. In a deposition, the journalist “refused to answer certain questions” put to him, “raising the claim of privilege against disclosure of his sources of information.” *Id.* Specifically, he would not answer “those questions which would have required disclosure of the source of information procured or obtained by him and published in the newspaper on which he was employed.” *Id.* The court agreed that the law did not require him to answer such questions. Writing that the “Alabama statute clearly privileges” the “sources of [the journalist’s] information,” the court denied the motion to compel. *Id.* at 353.⁸

Spears argues that the statute permits him to ask any question except perhaps the name of a confidential source. This is incorrect for the reasons set forth by The Times in its brief. Times Br. at 56-65. The Shield Law protects against the disclosure of confidential sources, which by its terms necessarily means information that will disclose the identity

⁸ Spears decries the challenges he faces as a result of the Shield Law, but courts “recognize that the plaintiff’s burden” in a case such as this “is weightier because of [the] ‘shield’ law, which allows employees of the media to refuse to divulge their sources.” *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 779 n.3 (1986) (applying Pennsylvania’s shield law and citing to Alabama’s as an example of another state that had made the policy choice to protect confidential sources, even if that placed additional burden on a plaintiff).

of the source. Were it otherwise, the statute would be of no effect. *See, e.g.,* Steigleman, *Newspaper Confidence Laws*, *supra*. Phone numbers, addresses, and other basic biographical information can easily be traced to specific individuals—even without their full names. *See generally* Latanya Sweeney, *Simple Demographics Often Identify People Uniquely*, Working Paper, Carnegie Mellon University (2000), <https://dataprivacylab.org/projects/identifiability/paper1.pdf> (explaining how large swaths of the U.S. population are “likely to be uniquely identified” by only their ZIP code, gender, and date of birth).

Courts applying their respective state privileges have recognized that to protect effectively the identity of a source, a shield law must necessarily apply to information that could reasonably lead to revealing the source’s identity. *See, e.g., In re Paul*, 270 Ga. 680, 684 (1999) (holding that Georgia’s shield statute protects both the identity of sources and any records that would tend to reveal them); *In re Burns*, 484 So. 2d 658, 659 (La. 1986) (concluding that Louisiana’s reporter’s privilege covers not only a source’s name, but also “any disclosure of information, such as place of employment, which would tend to identify him”); *Lightman v. State*, 294 A.2d 149 (Md. Ct. Spec. App. 1972), *aff’d*,

295 A.2d 212 (Md. 1972), *cert. denied*, 411 U.S. 951 (1973) (finding that Maryland reporters may not be compelled to answer questions aimed, directly or indirectly, at determining a source’s identity). As these courts understood, a shield law that protects a name only is a shield law in name only.

Alabama, in other contexts, has likewise recognized that merely preventing the disclosure of an individual’s name does little to protect the individual’s identity. For this reason, when statutes seek to conceal identity, they generally do so by including a range of identifiers that must be redacted, anonymized or withheld. *See, e.g.*, Ala. Code § 41-13-7(2) (protecting the “identifying information” of state employees by withholding the disclosure of, among other things, “date of birth,” “Social Security number,” “parents’ legal surname prior to marriage,” and “home address or phone number”); Ala. Code § 6-4-115.8 (“to protect” drug-related nuisance witnesses, courts can withhold their “name, address, or any other identifying information”); Ala. Code § 30-3-167 (withholdable “identifying information” for children at risk of domestic violence or abuse includes “the specific residence and address and telephone number” of a potential victim); Ala. Code § 13A-11-38(a)(4) (Alabama’s

doxing statute criminalizes the disclosure of “personal identifying information,” including a victim’s “home address,” “photographs or information of the victim’s children,” and “any other information that would enable the victim to be harassed, threatened, or harmed”); *accord* Health Insurance Portability and Accountability Act (“HIPAA”), 45 C.F.R. § 164.514(b)(2) (shielding categories of information that could identify an individual, including telephone numbers, email addresses, and internet protocol addresses); Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(b)(1) (prohibiting release of any “personally identifiable information” which includes information that would allow reader to easily deduce student’s identity).

The foregoing cases and statutory regimes reflect a shared recognition: To preserve confidentiality, laws must protect not only an individual’s name but also other information that could reasonably lead to his or her identification. A statute reducible to a game of elimination—and unable to give sources confidence that their identities can be protected—would not encourage people with important information to come forward. *Supra* at 26-27. An empty privilege was not what the Alabama legislature intended. *See Ex parte Sparrow*, 14 F.R.D. at 353

(observing that “in clothing the sources of a journalist's information with secrecy . . . the State of Alabama” had “crystallized” its public policy on confidential reporter-source relationships).

That confidential source relationships, protected by state shield laws or the federal reporter's privilege, allow for reporting in the public interest can be easily ascertained. The Washington Post's cultivation of Deep Throat, and his revelations that led to the Watergate scandal, is one particularly famous example. But it is just one testament among countless others to important journalism incorporating confidential sources, including just a few notable examples from this state:

- The *Montgomery Advertiser* relied on confidential sources for its award-winning 1969 investigation into pharmaceutical firms using state prisoners for drug testing and blood plasma harvesting. See, e.g., Harold E. Martin, *Private Firm Here Uses Convicts for Drug Tests*, The Montgomery Advertiser, Jan. 10, 1969, A1; see also Harold E. Martin, *Prisoners Get \$1 for Blood Draw*, The Montgomery Advertiser, Jan. 10, 1969, A1 (“I joined the program because I was broke,” one inmate said.”); Harold E. Martin, *Blood Programs Use Prisoners in Several States*, The Montgomery Advertiser, Jan. 12, 1969, A1, A3 (“The names of all convicts who are quoted in Advertiser-Journal articles on drug testing programs in state prisons are fictitious. The names were changed in order to protect the prisoners.”). Importantly, this reporting “sparked an inquiry by the Alabama Medical Association and led to a shakeup at the Department of Corrections.” Andrew Erickson, *Modern-day Muckrackers*, Am. U. Mag., July 2019, <https://perma.cc/F5W7-GSRG>. The *Advertiser* was recognized in 1970 with the Pulitzer Prize for Local Investigative Specialized Reporting for the series.

- Two of the works that earned reporter and commentator John Archibald the 2018 Pulitzer Prize in Commentary relied in part on confidential sources. For the analysis, *How could Robert Bentley fall so hard? Now we know*, information from sources helped Archibald piece together the picture of how former Governor Robert Bentley's political prospects cratered following scandal. John Archibald, *How could Robert Bentley fall so hard? Now we know*, *AL.com* (Apr. 16, 2017), <https://perma.cc/KQZ2-SNPX> ("Staff members were stunned in April of 2014 when Bentley stormed into a meeting exclaiming, 'It is illegal to record the governor!' 'We didn't know what he was talking about,' a former confidante said."). And for another 2017 editorial, also part of the series that earned the Pulitzer, Archibald interviewed alleged sexual assault survivors, who spoke to him confidentially to relate their harrowing experiences. See John Archibald, *What women have been trying to tell us*, *AL.com* (Nov. 17, 2017), <https://perma.cc/C5E4-34XK> ("A 53-year-old told me she was plied with alcohol as a teen while serving as a page in the Alabama Legislature, that she was pawed by politicians and paraded around like meat. She says she was later raped by another man, only to be 'humiliated' when she found the strength to report it."); *id.* ("A 61-year-old woman can't even tell her family members of the abuse she suffered from the man she thought she loved. The shame - the embarrassment of her own bad judgment about the man - keeps her silent and suffering."); *id.* ("A formidable lawyer describes her own trauma, recalling that it was only other women who helped her escape her abuser. Not the male judges or lawyers or cops.").
- A 1991 series published by *The Birmingham News* relied on confidential sources and pseudonyms to report on the procedural, financial, and custodial difficulties surrounding divorce proceedings in Alabama. See, e.g., Michelle Chapman, *Custody Decisions Strictly Judges' Call*, *Birmingham News/Birmingham Post-Herald*, Mar. 23, 1991, C1. As a result, sources were able to speak about sensitive topics, and the newspaper could publish a more comprehensive and detailed examination of state divorce and child custody matters and how the system might be reformed.

- A news website reported that then-Governor Bentley ordered a state helicopter to fly his forgotten wallet to him at the beach. See Cliff Sims, *Whistleblowers: Bentley ordered state helicopter to fly his forgotten wallet to the beach*, Yellowhammer News (April 12, 2016), <https://yellowhammernews.com/whistleblowers-bentley-ordered-state-helicopter-fly-forgotten-wallet-beach/>. The news site’s reporting on this use of tax dollars and on other allegedly concerning dynamics within the Governor’s Mansion, relied in part on confidential sources within the state government “who requested anonymity for fear of retribution.” *Id.* Governor Bentley eventually resigned.
- A news report about a police department’s review of social media for law enforcement critics that was published on AL.com, the website for *The Birmingham News*, *Huntsville Times*, and *Press-Register*, included information from a confidential source. See John Archibald, *Brookside police patrolled social media, threatening town’s critics*, AL.com (Jan. 27, 2022), <https://perma.cc/LD4Z-U59Z> (“And a Brookside man told AL.com police in the town pulled him over with blue lights and told him there would be consequences if he posted more about the police on Facebook. The man is still afraid of retaliation and asked for anonymity.”). Part of the body of work that earned the 2023 Pulitzer Prize in Local Reporting for AL.com, the series led to police resignations and reforms in the town. See John Archibald, *Inside the remarkable rise and fall of Alabama’s most predatory police force*, AL.com (Apr. 26, 2022), <https://perma.cc/X99T-YCUG>.

As courts and legal scholars alike have recognized—and as amici know first-hand—the ability of a reporter to make and keep a promise of confidentiality is essential if the press is to obtain sensitive information, report important stories, and effectively perform its constitutional

mission. To allow a party to compel information that the reporter knows will disclose a confidential source would render the Shield Law a nullity. This Court should reject that entirely unwarranted result.

CONCLUSION

For the foregoing reasons, The Times' reporter was entitled to invoke the Shield Law, which applies to questions regarding the sources of the published article when answering would require disclosing source-identifying information. For 90 years, the Shield Law has provided a critical protection to newspaper journalists covering Alabama, all to the benefit of the public that the press serves. It embodies Alabama's long-standing commitment to protecting confidential sources, and the Court should reject the invitation to construe it now in a matter that restricts its application. Amici respectfully urge the Court to answer yes to the questions certified for review and provide guidance to the District Court consistent with the arguments set forth herein and in the brief of The Times.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the word limitations set forth in Ala. R. App. P. 28(j)(1). According to the word count function of Microsoft Word, this amici curiae brief contains 7,448 words. *See* Ala. R. App. P. 32(d). I further certify that this filing, prepared in Century Schoolbook font using 14-point type, complies with the font requirements set forth in Ala. R. App. P. 32(a)(7). *See* Ala. R. App. P. 32(d) (certificate of compliance).

/s/ James P. Pewitt

James Pewitt

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Proposed Amici Curiae Brief, which was electronically filed today, will be served electronically under Rules 25(c)(1)(D) and 57(h)(5), Ala. R. App. P., by email or AlaFile, under Rule 25(c), Ala. R. App. P., on this 30th day of July, 2025, on the following counsel:

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