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No. 2024-_____

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF MISSISSIPPI

PHIL BRYANT & DEBORAH BRYANT,

Plaintiffs-Respondents,

v.

**DEEP SOUTH TODAY d/b/a MISSISSIPPI TODAY, MARY MARGARET
WHITE, ADAM M. GANUCHEAU, ANNA L. WOLFE & JOHN DOE,**

Defendants-Petitioners.

On Appeal From The Circuit Court Of Madison County, Mississippi
Case No. 45CI1:23-cv-238-JM
The Honorable M. Bradley Mills

**PETITION FOR INTERLOCUTORY APPEAL AND MOTION FOR
STAY**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal:

1. Deep South Today d/b/a Mississippi Today, Defendant-Petitioner
2. Mary Margaret White, Defendant-Petitioner
3. Adam M. Ganucheau, Defendant
4. Anna L. Wolfe, Defendant
5. John Doe, Defendant
6. Phil Bryant, Plaintiff-Respondent
7. Deborah Bryant, Plaintiff
8. Henry Laird, Counsel for Defendants-Petitioners
9. Theodore J. Boutrous, Jr., Counsel for Defendants-Petitioners
10. Katherine Moran Meeks, Counsel for Defendants-Petitioners
11. Sasha Dudding, Counsel for Defendants-Petitioners
12. William M. Quin II, Counsel for Plaintiff-Respondent
13. W. Thomas McCraney III, Counsel for Plaintiff-Respondent
14. Hon. M. Bradley Mills, Madison County Circuit Court, Trial Judge

/s/ Henry Laird

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Henry Laird w/ permission lsw

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF FACTS AND PROCEEDINGS.....	3
STATEMENT OF QUESTIONS PRESENTED.....	5
CURRENT STATUS OF THE CASE	5
TIMELINESS OF THE PETITION	6
RELATED CASES	6
LEGAL STANDARD.....	6
REASONS INTERLOCUTORY APPEAL SHOULD BE GRANTED	7
I. The Circuit Court’s Order Presents an Unsettled Question of Law As To Which There Is a Substantial Basis for Difference of Opinion.....	7
II. Interlocutory Review Would Protect Petitioners from Substantial and Irreparable Injury and Avoid Exceptional Expense.....	11
III. This Court Should Stay the Circuit Court’s Order Pending Resolution of the Appeal.	14
CONCLUSION.....	15

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Ashcraft v. Conoco, Inc.</i> , 218 F.3d 282 (4th Cir. 2000).....	10
<i>Branzburg v. Hayes</i> , 408 U.S. 665 (1972).....	10
<i>Brinston v. Dunn</i> , 919 F. Supp. 240 (S.D. Miss. 1996)	7, 9
<i>City of Jackson v. Greene</i> , 869 So. 2d 1020 (Miss. 2004)	14
<i>Dall. Morning News Co. v. Garcia</i> , 822 S.W.2d 675 (Tex. App. 1991)	8, 13
<i>Earl v. Boeing Co.</i> , 21 F.4th 895 (5th Cir. 2021).....	15
<i>Favre v. Sharpe</i> , 2023 WL 7132949 (S.D. Miss. Oct. 30, 2023).....	3
<i>Gubarev v. BuzzFeed, Inc.</i> , 2017 WL 6547898, (S.D. Fla. Dec. 21, 2017)	8
<i>Gulf Publ'g Co. v. Lee</i> , 434 So. 2d 687 (Miss. 1983)	8
<i>Harte-Hanks Commc'ns, Inc. v. Connaughton</i> , 491 U.S. 657 (1989).....	12
<i>Haynes v. Anderson</i> , 597 So. 2d 615 (Miss. 1992)	6
<i>In re Knapp</i> , 536 So. 2d 1330 (Miss. 1988)	11
<i>Lousteau v. City of Canton</i> , 2013 WL 1827738 (S.D. Miss. Apr. 30, 2013)	7, 9
<i>Miller v. Transamerican Press, Inc.</i> , 621 F.2d 721 (5th Cir.), <i>as modified on reh'g</i> , 628 F.2d 932 (5th Cir. 1980).....	7, 9, 10, 13

TABLE OF AUTHORITIES *(continued)*

	<u>Page(s)</u>
<i>Miss. St. Bar v. Att’y L</i> , 511 So. 2d 119 (Miss. 1987)	6, 11
<i>Nationwide Mut. Fire Ins. Co. v. Hess</i> , 814 So. 2d 1240 (Fla. Dist. Ct. App. 2002).....	11
<i>O’Neill v. Oakgrove Const., Inc.</i> , 523 N.E.2d 277 (N.Y. 1988).....	8
<i>Pierce v. Clarion-Ledger</i> , 2005 WL 8174870 (S.D. Miss. Oct. 24, 2005).....	9, 10
<i>Price v. Time, Inc.</i> , 416 F.3d 1327 (11th Cir. 2005).....	6, 13
<i>Riley v. City of Chester</i> , 612 F.2d 708 (3d Cir. 1979)	8
<i>In re Selcraig</i> , 705 F.2d 789 (5th Cir. 1983).....	10
<i>State Oil & Gas Bd. v. McGowan</i> , 542 So. 2d 244 (Miss. 1989)	6
<i>United States v. Cuthbertson</i> , 630 F.2d 139 (3d Cir. 1980)	13
<i>Zerilli v. Smith</i> , 656 F.2d 705 (D.C. Cir. 1981).....	10
 Constitution, Statutes, and Rules	
U.S. Const. amend. I.....	1, 2, 5, 8, 9, 10, 13
Miss. Const. art. 3, § 13	8
Miss. R. App. P. 5(a).....	6, 7, 11, 13
 Other Authorities	
Jim Magill, <i>Congress May Soon Pass Federal Shield Law</i> , Quill (Mar. 14, 2024).....	8
Reporters Comm. for Freedom of the Press, <i>Reporter’s Privilege Compendium—Mississippi</i> (2024)	7

TABLE OF AUTHORITIES *(continued)*

Page(s)

Ben Smith, *Not Today*, Semafor (June 2, 2024) 14

Pursuant to Mississippi Rule of Appellate Procedure 5, petitioners Deep South Today d/b/a Mississippi Today and Mary Margaret White respectfully petition this Court for permission to appeal the May 16, 2024 interlocutory order of the Circuit Court of Madison County directing them to produce newsgathering materials over which they assert a “confidential informants” privilege for *in camera* review. Dkt. 207, at 2 (App.). This case presents a question of first impression in this Court: whether the First Amendment or state law supplies a reporter’s privilege that shields the identity of confidential sources, along with notes, interviews, drafts, communications, and other journalistic raw materials, from discovery in a defamation action where the news organization is a defendant. Although federal courts in this state have long recognized a First Amendment privilege, Mississippi stands among a small minority of states that have not expressly provided a newsgathering or confidential source privilege under the First Amendment, state constitution, or common law. The circuit court’s order in this case all but invited this Court to intervene to decide the question, observing that “Mississippi appellate courts have not yet recognized a First Amendment reporter’s privilege which protects the refusal to disclose the identity of confidential informants.” Dkt. 207, at 2 (App.).

This Court should grant review to address the existence and scope of the reporter’s privilege in a defamation action where a news organization is a defendant. This case presents the ideal vehicle for delineating the outlines of the privilege. The plaintiff, former Governor Phil Bryant, has used his defamation complaint against Mississippi Today, the state’s largest news organization, as leverage to seek discovery into a series of Pulitzer Prize-winning news reports not actually at issue in this

litigation. Mississippi Today published this five-part series in April 2022 to expose “the depth of the former governor’s involvement within a sprawling welfare scandal that plagued his administration.” Anna Wolfe, *Mississippi Today Investigation Exposes New Evidence of Phil Bryant’s Role in Welfare Scandal*, Miss. Today (Apr. 3, 2022). Although Bryant indisputably cannot bring a defamation claim over the series itself, which falls outside the statute of limitations, he has attempted an end-run around the one-year time bar by suing over Mississippi Today’s commentary about that reporting—its 2022 mid-year report, its 2023 Pulitzer announcement, and its CEO’s remarks at a journalism conference. And even though he cannot possibly recover for Mississippi Today’s Pulitzer Prize-winning series, he has attempted to probe the sources and newsgathering techniques behind that reporting.

This Court should enforce a privilege over Mississippi Today’s unpublished newsgathering materials. Bryant’s overbroad discovery requests seek the entire “investigative file” of Mississippi Today’s reporter and ask petitioners to “identify each person your employees spoke with regarding the plaintiff within the past three years.” These discovery requests exceed any legitimate need and appear designed to chill sources from providing information to Mississippi Today. Absent intervention by this Court, Mississippi Today will need to furnish any confidential source material to the circuit court for *in camera* review, and may need to produce other, unpublished notes, interviews, or source materials for news stories over which Bryant has no right to sue. This Court’s review is urgently needed to prevent this brazen invasion of the newsgathering process and bring Mississippi in line with its sister states that have provided robust protections for news reporting in the public interest. Given the

importance of the issues and the First Amendment rights at stake, petitioners also respectfully request that this Court stay discovery and related proceedings in the circuit court pending the outcome of this appeal.

STATEMENT OF FACTS AND PROCEEDINGS

In February 2020, the state auditor arrested John Davis, the former director of the Mississippi Department of Human Services, and five others for misspending federal welfare funds in what has been called “one of the largest public fund fraud scandals in Mississippi history.” *Favre v. Sharpe*, 2023 WL 7132949, at *1 (S.D. Miss. Oct. 30, 2023). In April 2022, Mississippi Today published a five-part series called *The Backchannel* that addressed Governor Bryant’s “entanglement with the welfare agency’s spending,” including “his personal business dealings” and “his relationships with players in the scheme.” Wolfe, *Mississippi Today Investigation Exposes New Evidence of Phil Bryant’s Role in Welfare Scandal*, *supra*. As Mississippi Today disclosed to its readers, reporter Anna Wolfe based this Pulitzer Prize-winning investigation on “thousands of pages of text messages gathered by law enforcement” and “shared with our news organization,” along with documents gathered through 80 public records requests. *Id.* Mississippi Today reproduced those texts throughout its five-part series, and Bryant has not alleged that they are inaccurate or inauthentic.

Bryant sued Mississippi Today in July 2023 for defamation and false light invasion of privacy. Bryant did not seek recovery for *The Backchannel* series itself, which falls outside the one-year statute of limitations, but for Mississippi Today’s statements about its own reporting—its 2022 mid-year report; its Pulitzer Prize announcement; and its CEO’s remarks at a panel discussion organized by the Knight

Foundation. Dkt. 18 ¶¶ 5.10, 5.21, 5.40. Although The Backchannel is not the target of Bryant’s claims, Bryant served expansive discovery requests that would force Mississippi Today to disclose unpublished newsgathering materials from both that series and any other reporting related to Bryant. RFP No. 13 demands that Mississippi Today “produce *all* communications your employees have had about the plaintiff within the past two years, including emails and text messages between Anna Wolfe and sources.” Dkt. 63-2, at 4 (emphasis added). Interrogatory No. 5 asks Mississippi Today to “identify each person your employees spoke with regarding the plaintiff within the past three years.” Dkt. 63-1, at 2. And the requests for admission would require Mississippi Today to confirm that Wolfe spoke with certain individuals in reporting The Backchannel series.

After Mississippi Today and its chief executive, Mary Margaret White, invoked the reporter’s privilege, Bryant moved to compel.¹ Dkts. 34–35, 61–64. Petitioners in turn moved for a protective order. Dkt. 66. On May 16, 2024, the circuit court held the motion for protective order in abeyance and entered an order directing petitioners to create a privilege log and submit the materials over which they are claiming a “confidential informants” privilege for *in camera* review. Dkt. 207, at 2–3 (App.).²

¹ Wolfe and Mississippi Today’s editor-in-chief Adam Ganuchau had not yet been named as defendants at the time Bryant moved to compel and Mississippi Today sought a protective order. They therefore are not parties to the court’s order. Bryant added them as parties to his second amended complaint, which also added new counts based on Wolfe’s follow-up reporting on the welfare scandal. The deadline for defendants to move to dismiss those new counts has not yet passed.

² The circuit court’s order was stamped May 16, 2024, but was not actually docketed until May 20, 2024.

The circuit court observed that “Mississippi appellate courts have not yet recognized a First Amendment reporter’s privilege which protects the refusal to disclose the identity of confidential informants.” *Id.* at 2. And the court found that the requested material was “relevant” because Bryant must prove either that petitioners “lied about having a confidential source” or that the confidential source was “unreliable.” *Id.* The court’s order did not address Mississippi Today’s argument that notes, interviews, and other unpublished newsgathering material not related to the publications at issue are also entitled to the reporter’s privilege, even if they do not involve a confidential source.

Petitioners timely filed a petition for interlocutory review to this Court. Petitioners also filed a motion asking the circuit to stay its order pending the outcome of this petition. That motion remains pending.

STATEMENT OF QUESTIONS PRESENTED

1. Whether Mississippi recognizes a constitutional or common law reporter’s privilege against the compelled disclosure of a reporter’s newsgathering materials and sources, including both confidential and non-confidential sources, in civil cases to which a news organization is a party.

2. Whether the circuit court erred in declining to recognize and apply the reporter’s privilege and instead directing petitioners to produce confidential source materials for *in camera* review.

CURRENT STATUS OF THE CASE

This appeal arises from the circuit court’s May 16, 2024, order directing petitioners to submit documents over which they claim a “confidential informants”

privilege for *in camera* review accompanied by a privilege log. Dkt. 207, at 2–3 (App.). Respondents filed a second amended complaint (“SAC”) on April 11, 2024, adding Bryant’s wife, Deborah Bryant, as a plaintiff and Wolfe and Mississippi Today editor-in-chief Adam Ganucheau as defendants. Dkt. 194. Petitioners’ deadline to respond to the SAC is June 10, 2024. Dkt. 198. A trial date has not been set.

TIMELINESS OF THE PETITION

This petition was timely filed within 21 days of the entry of the May 16, 2024, order from which interlocutory review is sought. *See* Miss. R. App. P. 5(a).

RELATED CASES

Petitioners are not aware of any pending cases or petitions for interlocutory appeal related to the above-captioned matter.

LEGAL STANDARD

Interlocutory review is appropriate where “a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:” (1) “materially advance the termination of the litigation and avoid exceptional expense to the parties”; (2) “protect a party from substantial and irreparable injury”; or (3) “[r]esolve an issue of general importance in the administration of justice.” Miss. R. App. P. 5(a). This Court will grant interlocutory review “when it appears that the appeal may settle the controlling principles of law in the case or to settle a new or unique proposition of law.” *State Oil & Gas Bd. v. McGowan*, 542 So. 2d 244, 246 (Miss. 1989). This includes resolving “substantial” questions on the law of privilege. *Haynes v. Anderson*, 597 So. 2d 615, 617 (Miss. 1992); *Miss. St. Bar v. Att’y L*, 511 So. 2d 119, 121 (Miss. 1987); *cf. Price v. Time, Inc.*, 416 F.3d 1327, 1330 (11th Cir. 2005) (granting interlocutory review to consider reporter’s privilege).

REASONS INTERLOCUTORY APPEAL SHOULD BE GRANTED

I. The Circuit Court's Order Presents an Unsettled Question of Law As To Which There Is a Substantial Basis for Difference of Opinion.

This petition satisfies the criteria for interlocutory review because it raises a question of first impression for this Court: whether a news organization and its journalists may assert a reporter's privilege to resist unreasonable discovery requests in a defamation action in which they are named as defendants. Mississippi Today believes that the existence of the privilege, which has been recognized by federal courts in Mississippi and across the country, should not be in doubt. *See Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 725 (5th Cir.), *as modified on rehr'g*, 628 F.2d 932 (5th Cir. 1980) ("*Miller II*"); *Lousteau v. City of Canton*, 2013 WL 1827738, at *2 (S.D. Miss. Apr. 30, 2013). But this Court has not yet given its own imprimatur to the reporter's privilege, and its precise contours in this state are thus necessarily subject to "a difference of opinion." Miss. R. App. P. 5(a). Indeed, even in federal court, "the outer limits of the privilege are not clear." *Brinston v. Dunn*, 919 F. Supp. 240, 243 (S.D. Miss. 1996).

Here, the circuit court's order directing petitioners to submit confidential source materials for *in camera* review all but cried out for this Court to define the reporter's privilege. As the trial court observed in its order, no state appellate court in Mississippi has considered the existence or scope of the reporter's privilege. Dkt. 207, at 2 (App.). Although a "majority" of trial courts in Mississippi have "recognize[d] a qualified privilege for reporters, . . . these trial court orders . . . carry no precedential value for state courts." Reporters Comm. for Freedom of the Press, *Reporter's Privilege Compendium—Mississippi* (2024) (collecting trial court orders),

<https://www.rcfp.org/privilege-compendium/mississippi>. This Court’s review is thus needed to address whether news organizations enjoy a privilege to fight discovery requests that would chill the exercise of constitutionally protected newsgathering activity, which this state holds “sacred.” Miss. Const. art. 3, § 13.

Although the Mississippi Constitution is “more protective” than the First Amendment of free speech and press rights, which it treats as “worthy of religious veneration,” *Gulf Publ’g Co. v. Lee*, 434 So. 2d 687, 696 (Miss. 1983), the absence of controlling precedent from this Court has effectively rendered Mississippi *less* solicitous of newsgathering rights than other jurisdictions. Forty states plus the District of Columbia have enacted statutory press shield laws. Jim Magill, *Congress May Soon Pass Federal Shield Law*, Quill (Mar. 14, 2024); *see also Gubarev v. BuzzFeed, Inc.*, 2017 WL 6547898, at *4 (S.D. Fla. Dec. 21, 2017) (applying Florida shield law to protect media defendant from having to identify confidential source to libel plaintiff). Multiple state and federal appellate courts have also recognized a reporter’s privilege rooted in either the federal or state constitutions or the common law. *See, e.g., O’Neill v. Oakgrove Const., Inc.*, 523 N.E.2d 277, 281 (N.Y. 1988) (recognizing a privilege for even nonconfidential newsgathering material, “consistent” with New York’s “tradition . . . of providing the broadest possible protection to the sensitive role of gathering and disseminating news”); *Dall. Morning News Co. v. Garcia*, 822 S.W.2d 675, 678 (Tex. App. 1991) (recognizing journalist’s privilege “based on both the First Amendment of the federal constitution and on article I, section 8 of our own constitution”); *Riley v. City of Chester*, 612 F.2d 708, 715 (3d Cir. 1979) (recognizing a federal common law privilege for journalists “to refuse

to divulge their sources”); *Brinston*, 919 F. Supp. at 242 (noting that nine federal appeals courts have embraced “a qualified privilege from compelled disclosure of information gathered in the course of their duties as journalists”). Without a reported appellate decision, Mississippi remains an outlier among its sister states.

Of particular importance here, the U.S. Court of Appeals for the Fifth Circuit, which hears appeals arising out of federal courts in Mississippi, has held that reporters enjoy a qualified First Amendment privilege “which protects the refusal to disclose the identity of confidential informants,” including in libel actions where the news organization is a defendant. *Miller*, 621 F.2d at 725. “The policy promoted by the privilege is to encourage informants to supply information without fear of exposure or reprisal.” *Lousteau*, 2013 WL 1827738, at *2. Absent protections for confidential sources, “a defamed plaintiff might relish an opportunity to retaliate against the informant,” which in turn would “deter informants from giving their stories to newsmen, except anonymously.” *Miller*, 621 F.2d at 725.

A grant of interlocutory review would permit this Court to decide whether the reporter’s privilege in Mississippi extends not just to confidential sources, as *Miller* held, but also to other unpublished newsgathering materials, such as interviews, notes, drafts, newsroom emails, and communications with non-confidential sources. *See Brinston*, 919 F. Supp. at 241 (holding that journalist enjoyed privilege to shield unpublished “documents, notes, records, and/or recordings” from subpoena in civil action). This question is particularly urgent in a case like this one, where the plaintiff seeks expansive discovery into the sources and newsgathering processes for publications that are not even the target of plaintiff’s libel claim. *See Pierce v.*

Clarion-Ledger, 2005 WL 8174870, *3–4 (S.D. Miss. Oct. 24, 2005), *reconsidered on other grounds*, 2005 WL 8174871, *1–2 (S.D. Miss. Nov. 17, 2005) (“a public official/public figure plaintiff in a defamation action may probe into the editorial process that developed the publication *about which he complains*” (emphasis added)).

A grant would also resolve the unsettled question of whether, if the privilege exists, this Court should adopt the three-part test from *Miller* to decide when the privilege may be overcome. That test requires “[1] substantial evidence that the challenged statement . . . is both factually untrue and defamatory; [2] that reasonable efforts to discover the information from alternative sources have been made and that no other reasonable source is available; and [3] that knowledge of the identity of the informant is necessary to proper preparation and presentation of the case.” *Miller II*, 628 F.2d at 932; *In re Selcraig*, 705 F.2d 789, 792 (5th Cir. 1983) (same); *see also Zerilli v. Smith*, 656 F.2d 705, 714 (D.C. Cir. 1981) (“disclosure should by no means be automatic in libel cases”).

In short, multiple open questions remain about when news organizations in Mississippi may claim the privilege when they are named as defendants in a libel action. Mississippi trails other jurisdictions that have delineated the scope of the privilege in reported decisions. This case presents an important opportunity for this Court to conform Mississippi’s law to that of other states and federal courts and provide critical protection for newsgathering activity at the heart of the First Amendment. *See Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) (“without some protection for seeking out the news, freedom of the press could be eviscerated”); *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000) (“If reporters were routinely

required to divulge the identities of their sources, the free flow of newsworthy information would be restrained and the public's understanding of important issues and events would be hampered in ways inconsistent with a healthy republic.”).

II. Interlocutory Review Would Protect Petitioners from Substantial and Irreparable Injury and Avoid Exceptional Expense.

This Court should grant the petition to “protect” Mississippi Today and White “from substantial and irreparable injury” resulting from the circuit court’s order. Miss. R. App. P. 5(a). As this Court has recognized, an order directing disclosure of privileged material is appropriate for interlocutory review because the harm resulting from compelled disclosure is irreparable and cannot be undone by review after final judgment. *See In re Knapp*, 536 So. 2d 1330, 1333 (Miss. 1988); *see also Miss. St. Bar*, 511 So. 2d at 121 (“appellate resolution may protect a party from substantial and irreparable injury” in case involving “a question of privilege”); *Nationwide Mut. Fire Ins. Co. v. Hess*, 814 So. 2d 1240, 1241 n.1 (Fla. Dist. Ct. App. 2002) (“An order compelling discovery of privileged material is subject to certiorari review, as such disclosure can cause irreparable harm.”).

The harm to Mississippi Today that would result from forced disclosure of confidential source and/or unpublished newsgathering materials is particularly unjustified because the expansive discovery Bryant is seeking has marginal, if any, relevance to his claims. The three publications at issue in the complaint are not news articles at all, but public statements about Mississippi Today’s reporting. It is clear from the face of these statements that their only source is The Backchannel articles themselves. *See, e.g., Anna Wolfe and Mississippi Today Win Pulitzer Prize for “The Backchannel” Investigation*, Miss. Today (May 8, 2023) (“The investigation . . .

revealed for the first time how former Gov. Phil Bryant used his office to steer the spending of millions of federal welfare dollars . . . to benefit his family and friends”); Mary Margaret White, *Reporting with Impact: 2022 Mid-Year Report*, Miss. Today (Aug. 11, 2022) (“Each part of the series delved further into Bryant’s misuse and squandering of at least \$77 million in federal funds”). Bryant does not need to probe Mississippi Today’s sources or newsgathering processes for the circuit court to evaluate the elements of the defamation claim—including the “actual malice” element, which asks whether petitioners subjectively believed these statements to be false at the time they made them. *See Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 664 (1989). The court may simply compare the challenged statements against The Backchannel reporting itself.

Bryant argued in the circuit court that he needs to plumb the sourcing for The Backchannel series because, to prove his defamation claim, he “must present evidence that the defendants either lied about having a confidential source” or that the confidential source’s information was “unreliable.” Dkt. 35, at 21. But Bryant does not point to a single statement at issue in this case that Mississippi Today attributed to a confidential source, much less a source who may be unreliable. Bryant alleges only that Wolfe had a “confidential source” who “provided her with . . . text messages” on which she based her reporting. Dkt. 194 ¶¶ 6.187–88. But Bryant does not assert that these texts, many of which Bryant wrote and Mississippi Today reproduced in The Backchannel series, are inaccurate or inauthentic; he simply challenges Mississippi Today’s interpretation of their contents. *See, e.g., id.* ¶ 6.240–54 (“It is apparent from the face of the text exchange that Vanlandingham did not

offer stock to Bryant. . . . No reasonable person could read the text exchange as Vanlandingham offering and Bryant accepting stock.”). The circuit court may thus evaluate the defamation claim based on the texts themselves, which Mississippi Today publicly reported. Bryant has offered no compelling reason why “knowledge of the identity of the [alleged] informant” who supposedly provided the texts “is necessary to proper preparation and presentation of the case.” *Miller II*, 628 F.2d at 932; *see also Price*, 416 F.3d at 1345 (sustaining media defendant’s claim of First Amendment privilege, while recognizing the privilege may be overcome where the “only source for the allegedly libelous comments is the informant”).

The fact that the circuit court’s order requires Mississippi Today, for now, to submit any confidential source materials for *in camera* review does not minimize the harms from compelled disclosure. “When a party seeks to exclude materials from discovery on the basis of the invasion of constitutional rights, an *in camera* inspection is not necessary.” *Dall. Morning News*, 822 S.W.2d at 679; *United States v. Cuthbertson*, 630 F.2d 139, 148 (3d Cir. 1980) (holding that CBS News should not be required to submit newsgathering material for *in camera* inspection until moving party “first shows that he is unable to acquire the information from another source that does not enjoy the protection of the privilege”). Mississippi Today should not be required to surrender any confidential source materials to the circuit court when Bryant has not made even a minimum showing why such material is “necessary” to his claims. *Miller II*, 628 F.2d at 932.

Granting interlocutory review would prevent Bryant’s would-be intrusions on the sanctity of the newsgathering process and “avoid exceptional expense” to White

and Mississippi Today. Miss. R. App. P. 5(a)(1). Bryant’s fishing expedition for “all” of Mississippi Today’s “communications . . . about the plaintiff within the past two years,” Dkt. 63-2, at 4, sweeps in a potentially voluminous amount of notes, emails, texts, or other communications not tied to the publications at issue. Early resolution of whether Mississippi Today may claim a privilege over these materials could significantly limit the burden and expense this case imposes on a nonprofit newsroom—and avoid intangible but real harms to the newsgathering process.

III. This Court Should Stay the Circuit Court’s Order Pending Resolution of the Appeal.

Given the importance of the issues and the irreparable injury that would flow from forced disclosure of confidential source or unpublished newsgathering material, this Court should stay the circuit court’s order and any related discovery pending the outcome of this appeal. *See City of Jackson v. Greene*, 869 So. 2d 1020, 1022 (Miss. 2004) (granting stay pending appeal); Ben Smith, *Not Today*, Semafor (June 2, 2024) (noting discovery order has “alarmed staff at Mississippi Today”).³ Absent a stay, petitioners will be compelled to disclose material over which they assert a “confidential informants” privilege to the circuit court, Dkt. 207, at 2 (App.), and the circuit court will have to evaluate that claim of privilege without guidance from any “Mississippi appellate court[]” as to the nature or scope of the privilege, *id.* If the circuit court orders disclosure of this material to the plaintiff while the appeal remains pending, the harm to Mississippi Today will be irreparable. A stay would

³ <https://www.semafor.com/newsletter/06/02/2024/an-expensive-way-to-gain-relevance>.

also limit the burdens and expenses of discovery on this nonprofit dedicated to reporting in the public interest. *See Earl v. Boeing Co.*, 21 F.4th 895, 899 (5th Cir. 2021) (granting stay pending interlocutory review where “escalating discovery demands will impose . . . unrecoverable costs absent a stay”).

A stay will not prejudice Bryant. Discovery remains in its infancy, and Bryant himself has not begun producing documents. For the reasons explained above, the discovery that Bryant has moved to compel has limited, if any, relevance to the defamation and false light claims and appears principally designed to expose Mississippi Today’s sources and newsgathering techniques and chill individuals from speaking with the press. In these circumstances, a stay is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for interlocutory review of the circuit court’s May 16, 2024 order and stay the order pending resolution of this appeal.

Dated: June 6, 2024

Respectfully submitted,

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Mary Margaret White*

*Application for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused a true and correct copy of the above and foregoing petition, along with the trial court order which is included as an appendix to the petition, to be served by email on counsel for plaintiff-respondent Phil Bryant:

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Further, I hereby certify that I have mailed a copy of the petition to the Circuit Court of Madison County via the U.S. Postal Service at the following address:

Hon. M. Bradley Mills
Circuit Court of Madison County
28 West North Street
Canton, MS 39046

/s/ Henry Laird
Henry Laird
Henry Laird w/permission

**APPENDIX
TABLE OF CONTENTS**

	Page
Trial Court Order, Dkt. 207 (May 16, 2024)	1

MAY 16 2024

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

ANITA WRAY, CIRCUIT CLERK

BY AD D.C.

PLAINTIFF

PHIL BRYANT

VS.

CIVIL ACTION NO. CI-2023-238-JM

**MARY MARGARET WHITE &
DEEPSOUTH TODAY D/B/A MISSISSIPPI TODAY**

DEFENDANTS

ORDER ON PENDING MOTIONS

This Cause came before the Court for a hearing on January 31, 2024, whereafter the Court took the motions under advisement. Having now considered the issues presented, the Court makes the following rulings. The Court is holding the discovery motions in abeyance until a privilege log is received and reviewed. In accordance with MRCP 26(b)(6)(A), a privilege log should be submitted by June 6, 2024 for the Court's in-camera review which includes any request or interrogatory where a privilege has been raised.

Motion of Defendants Deep South Today d/b/a Mississippi Today and Mary Margaret White for Partial Summary Judgment Pursuant to § 95-1-5 and 15-1-35 Mississippi Code (Doc. 23) is granted, Miss. Code §15-1-35 provides a one-year statute of limitations. Defendants want to limit the claims to no more than one year before the complaint was filed; however, that would not necessarily limit discovery to one year out.

Plaintiff's Motion for Partial Summary Judgment Regarding the Inapplicability of Miss. Code Ann. § 95-1-5 To Claims 1-3 Of the First Amended Complaint (Doc. 48) and Defendants' Motion for Partial Summary Judgment Pursuant to Section 95-1-5 Mississippi Code (Doc. 86) are granted. Miss Code §95-1-5 applies to news reporting organizations, not individuals. Miss. Code 95-1-5 does not apply to the claim against White individually. Subsequent to this motion, Ganuchau was named in the Second Amended Complaint. Although the claims against

303/308

Ganuchau relate to statement(s) made in an article intended for publication and published by MS Today, § 95-1-5 does not apply to the claim against Ganuchau individually.

Plaintiff's Motion for Partial Summary Judgment on Claim 1 of the First Amended Complaint (Doc. 38); Plaintiff's Motion for Partial Summary Judgment on Claim 2 of the First Amended Complaint (Doc. 51); Plaintiff's Motion for Partial Summary Judgment on Claim 4 of the First Amended Complaint (Doc. 53); Plaintiff's Motion for Partial Summary Judgment on Claim 5 of the First Amended Complaint (Doc. 56); and Motion of Defendants Deep South Today d/b/a Mississippi Today and Mary Margaret White for Summary Judgment on Plaintiff's Claims of Defamation and False Light Invasion of Privacy (Doc. 117) are denied, genuine issues of material fact remain on the elements of Plaintiffs' claims of defamation and false light against White and Mississippi Today.

Motion of Defendants Deep South Today d/b/a Mississippi and Mary Margaret White for Protective Order Concerning Plaintiff's Motions to Compel Defendant Mary Margaret White to Answer and Respond to Plaintiff's First Set of Interrogatories and Responses to Requests for Production and Motion to Compel Defendant Deep South Today to Answer and Respond to Plaintiff's First Set of Interrogatories and Responses to Requests for Production (Doc. 66) is held in abeyance pending receipt and review of the privilege. However, the Court finds as to the reporter's privilege that Mississippi appellate courts have not yet recognized a First Amendment reporter's privilege which protects the refusal to disclose the identity of confidential informants. The information sought is relevant and Plaintiffs have shown a compelling interest, specifically that they must prove that Defendants either lied about having a confidential source or that source or the circumstances surrounding the source's information was so unreliable that it was reckless

363/869

for the defendant to rely on it. The requested items for which Defendants have raised this privilege should be produced as part of the privilege log for an in-camera determination.

SO ORDERED, this the 16 day of May, 2024.


CIRCUIT COURT JUDGE

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