Georgia's Shield Law
O.C.G.A. § 24-5-508

Introduction and History

Georgia's Shield Law is a qualified privilege granted to journalists in the state, allowing them to keep confidential any information, document, or item they obtain while gathering news. This legislated right is the only protection afforded to journalists in the state, as there is no state constitutional provision providing a reporter's privilege. The Shield Law, however, did not always exist in Georgia. In fact, there was no qualified reporter's privilege in the state until 1990. Before that time, Georgia courts repeatedly refused to recognize a reporter's right to keep news sources confidential. As far back as 1887, the Supreme Court of Georgia held reporters and news publishers in contempt of court or otherwise punished them for refusing to reveal their sources.[1] Indeed, this tradition continued in Georgia until two cases prompted the legislature to act.

In *Vaughn v. State*, the Georgia Supreme Court held that a reporter did not have a right under the Georgia constitution to refuse to disclose the identity of a confidential informant during a grand jury proceeding.[2] Similarly, in *Howard v. Savannah College of Art and Design, Inc.*, the Court held that a reporter did not have a qualified reporter's privilege allowing her to refuse to answer questions during a deposition in a civil case.[3] In response to the troubling outcome of these cases, the Georgia General Assembly enacted Georgia's Shield Law, first codified as O.C.G.A. § 24-9-30.[4]

The original version of Georgia's Shield Law "[granted] a qualified privilege against compelled disclosure of information to persons who gather and disseminate news."[5] Additionally, it signaled that the Georgia legislature realized the chilling effect compelled disclosure of confidential sources had on the free flow of information to the public.[6] The creation of the Shield Law also indicated that the legislature understood, as other state legislatures did, that "[n]ews stories based on confidential sources and information [enabled] citizens to make more informed decisions about the conduct of government and its respect for individual rights…"[7] However, Georgia's initial Shield Law did not make clear that the privilege protected electronic media.[8] Accordingly, "[i]n 2011, as part of a general overhaul of Georgia's evidence code that went into

[1] *See Pledger v. State*, 77 Ga. 242, 3 S.E. 320 (1887); *Plunkett v. Hamilton*, 136 Ga. 72, 70 S.E. 781 (1911).
[2] 259 Ga. 325, 381 S.E.2d 30 (1989).
[3] 259 Ga. 795, 387 S.E.2d 332 (1990).
[4] *In re Paul*, 270 Ga. 680, 684, 513 S.E.2d 219, 223 (1999).
[5] *Id*. at 681-82
[6] *Id*.
[7] *Id*.
[8] *See* Peter C. Canfield, Reporter's Privilege Compendium: Georgia Shield Laws Guide, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS (last updated Sept. 9, 2019).

effect in 2013, the privilege was recodified as O.C.G.A. § 24-5-508 with a change making clear that it protected electronic media."[9]

The Current Shield Law Statute

Today, Georgia's reporter's privilege is recognized by statute in O.C.G.A. § 24-5-508, which provides:

> Any person, company, or other entity engaged in the gathering and dissemination of news for the public through any newspaper, book, magazine, radio or television broadcast, or electronic means shall have a qualified privilege against disclosure of any information, document, or item obtained or prepared in the gathering or dissemination of news in any proceeding where the one asserting the privilege is not a party, unless it is shown that this privilege has been waived or that what is sought:
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> (1) Is material and relevant;
>
> (2) Cannot be reasonably obtained by alternative means; and
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> (3) Is necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.[10]

In plain language, the Shield Law protects a journalist from being compelled to be a witness or to produce their work product as evidence when a journalist is uninvolved in the case (i.e., is neither a plaintiff nor a defendant), has not waived the privilege by voluntarily disclosing the information, and when the information or item sought is not included in the Shield Law's three-prong exception. This exception provides that a journalist must supply the information, document, or item sought only if it is material and relevant to an issue in the case in which it is being sought; it cannot be reasonably obtained by alternative means; and it is necessary to the proper preparation or presentation of the case of the party seeking the information, document, or item. The existence of this three-prong exception explains why the Shield Law is considered a "qualified" privilege "in the sense that is may be overcome in cases of necessity…"[11]

The Scope of Protection

The Shield Law provides broad protection for journalists in Georgia. As the Georgia Supreme Court explained *In re Paul*, "the Georgia [Shield Law] does not limit the privilege solely to confidential sources, but protects against the disclosure of any information obtained or prepared [in the gathering or dissemination of news]. Thus, the statutory language does not distinguish

[9] *Id*.
[10] Ga. Code Ann. § 24-5-508 (2020).
[11] News Reporter's Privilege, Ctrm. Hbook. Ga. Evid. N2 (2020 ed.) (citations omitted).

between the source's identity and information received from that source or between non-confidential and confidential information."[12] In other words, "the privilege applies to [both] confidential and non-confidential information and to both testimony and records obtained in the process of gathering or delivering the news."[13] A reporter's personal observations are also protected by the privilege so long as they occurred as a part of the gathering or dissemination of news.[14]Moreover, the *Paul* Court clarified that "publication of part of the information gathered does not waive the privilege as to all of the information gathered on the same subject matter because it would chill the free flow of information to the public."[15]

Further offering broad protection, the Georgia Shield Law applies "in any proceeding where the one asserting the privilege is not a party."[16] This means it applies in both civil and criminal proceedings as well grand jury subpoenas. Specifically, in criminal cases, Georgia courts have repeatedly upheld the privilege against claims by criminal defendants that the privilege infringed their Sixth Amendment rights.[17]

Finally, while the Shield Law does not apply where a reporter with the sought-after information or material is a party to the case,[18] the Georgia Court of Appeals has nevertheless specificied that in defamation cases where a reporter is being sued for allegedly reporting false and damaging information about the plaintiff, the trial courts must still strictly control discovery seeking disclosure of confidential sources' identities.[19]

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[12] *In re Paul*, note 4, *supra*.
[13] Canfield, note 8, *supra*.
[14] Ga. Code Ann., note 10, *supra* (granting protection to "any information, document, or item obtained or prepared in the gathering or dissemination of news").
[15] *In re Paul*, note 4, *supra*.
[16] *Id*.
[17] *See Stripling v. State*, 261 Ga. 1, 8-9 (1991) (upholding the trial court's refusal to require a newspaper reporter to reveal sources in a death penalty case, noting that alternative sources existed to pursue allegations of illegal conduct by the sheriff's department.)
[18] Ga. Code Ann., note 10, *supra*.
[19] *See Atlanta Journal-Constitution v. Jewell*, 251 Ga. App. 808, 813 (2001).