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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE COURT'S ORIGINAL JURISDICTION

Case No. 2026-000713

(Associated Trial Court) Case No. 2021-CP-25-00392
Honorable R. Keith Kelly, presiding

Renee S. Beach, Phillip Beach, Robin Beach, Savannah Tuten, and Seth Tuten, …….
Plaintiffs,

Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation, Blake Greco, Jason D'Cruz, Vicky Ward, Max Fratoddi, Henry Rosado, and Private Investigation Services Group, LLC, ……………………………………………………………………
Defendants.

Of Whom,

Gregg Roman and Gravitas Synergy Solutions, LLC, ……………………..……......
Petitioners,

v.

PNC Financial Services Group, INC d/b/a PNC Bank, Renee S. Beach, Phillip Beach, Robin Beach, Savannah Tuten, and Seth Tuten ……………………………..
Respondents.

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

Three features of Respondents' brief decide this case, and none of them is an argument Petitioners make—each is something Respondents themselves have done or declined to do.

First, Respondents defend the circuit court's February 5, 2026 order by abandoning it. Their brief nowhere defends the order's description of the motion before it (a "Subpoena issued by the Plaintiff's for his deposition testimony" when the subpoena sought six-plus years of bank records from PNC); nowhere defends its recital that Petitioners' counsel was "[p]resent and appearing" at the November 26, 2025 hearing (Respondents now concede he was not); and nowhere identifies a single finding the circuit court made under any prong of S.C. Code Ann. § 19-11-100(B). Instead, Respondents ask this Court to sustain the result on a theory the circuit court never adopted—that the shield statute does not apply to Mr. Roman at all.

Second, that substitute theory is built almost entirely on matter outside the record. Respondents filed no counter-affidavit below in their answer and none here; their "Facts" section rests on unsworn characterizations and a newspaper article, with an appendix promised only "should the Court desire." (Resp. Br. 5 n.5.) When that Appendix arrived—served July 1, 2026, nine days after their brief, on the eve of this reply—it proved Petitioners' case, not theirs: its index shows the only subpoenas ever directed to Mr. Roman were "issued by Counsel for Investigators," shows Respondents already possess the contract, wire records, and deposition testimony they claim only PNC can supply, and marks "WITHHELD" the very "confidential" materials their merits argument describes as proof.

Third, Respondents' concessions resolve the due-process issue. Their brief admits that "Petitioner and his counsel both failed to appear at the hearing" (Resp. Br. 7), which necessarily means the order's contrary recital (and the denial of the motion to reconsider) is false—and means the circuit court denied the motion after hearing argument from one side only, in reliance on a scheduling email chain that, as shown below, identified a *different* non-party's motion as the one to be heard.

The remainder of Respondents' brief asks this Court to walk back orders it has already entered twice, or to inflict through procedure—a referee-supervised deposition of Mr. Roman—the very compulsion the statute forbids. The Court should decline, issue a wit of injunction as outlined by Petitioner and (if appropriate) reverse the alluded to lower court decisions and quash the subpoenas at issue.

REPLY AS TO THE STANDARD OF REVIEW

The parties' dispute over the standard of review is immaterial, because the February 5 order fails under every standard Respondents themselves articulate. Respondents agree that "[a]n abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." (Resp. Br. 3 (quoting *Aleksey v. State*, Op. No. 28333 (S.C. Sup. Ct. filed May 20, 2026)).) A ruling that recites the governing statute and *Matter of Decker*, 322 S.C. 215, 471 S.E.2d 462 (1995), and then decides the motion without applying either, is controlled by an error of law. "When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). Respondents likewise agree that constitutional conclusions are reviewed de novo. (Resp. Br. 4 (*quoting Gulfstream Café, Inc. v. Georgetown County*, 447 S.C. 1, 11, 923 S.E.2d 632, 637 (2025)).)

Respondents' reliance on Rule 52, SCRCP, and *Borg Warner* is misdirected. Petitioners' point is not that the order lacks the housekeeping findings Rule 52 contemplates; it is that § 19-11-100(B) conditions any compelled production on a showing, by clear and convincing evidence, that the statute's three requirements are met—a showing the order neither describes nor makes.

And in this Court's original jurisdiction the question is not whether to defer to findings; there are none to defer to. The operative record consists of Mr. Roman's two uncontroverted affidavits, the subpoena, the orders, and the email chain Respondents themselves rely upon.

ARGUMENT

I.

THE PETITION WAS PROVIDENTLY GRANTED: RESPONDENTS' OWN AUTHORITIES CONFIRM THAT PETITIONERS HAVE NO OTHER REMEDY

Respondents "reiterate the arguments they made when they first challenged this Petition." (Resp. Br. 8.) This Court has already considered and rejected them—first on March 20, 2026, when it agreed to hear the matter in its original jurisdiction and enjoined production, and again on April 20, 2026, when it extended the injunction "pending this Court's final decision in this matter" and ordered merits briefing. Respondents identify no changed circumstance and no new information; they simply ask a third time.

More fundamentally, Respondents' appealability authorities prove Petitioners' point. *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005), and the cases collected at pages 8 through 10 of Respondents' brief establish that no appeal lies from the denial of a motion to quash. If that is so, then far from being a forbidden "substitute" for appellate review, this petition is the *only* avenue of review that exists. *State v. Price*, 441 S.C. 423, 895 S.E.2d 633 (2023), forbids using an extraordinary writ in place of an available appeal; it says nothing about the situation its own premise excludes—where no appeal is available at all.

Nor is the "normal course" described in *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014)—"refuse to comply, suffer contempt, and appeal from the contempt finding"—available here. The subpoena is directed to PNC Bank, not to Petitioners. Petitioners cannot "refuse to comply" with a command addressed to their bank, and PNC, a disinterested custodian, has no incentive to stand in contempt to vindicate a customer's statutory privilege; the record reflects that PNC intended to comply imminently once the circuit court denied reconsideration. Once the records are produced, the privilege is destroyed and no later review can restore it. That is the definition of irreparable harm and the paradigmatic occasion for this Court's original jurisdiction under Rule 245, SCACR: a question of significant public interest—the first case addressing whether litigants may obtain a newsgatherer's complete financial records from a third-party bank without any § 19-11-100(B) showing—joined to an emergency no other court can remedy.

The posture of this Court's own orders confirms the point. The April 20, 2026 order continued the injunction "pending this Court's final decision in this matter" and directed full merits briefing—the architecture of a court that has retained a case for decision, not one awaiting a renewed motion to dismiss. Respondents' request to "remit this matter to Judge Kelly" without deciding it (Resp. Br. 20) would return the parties to the forum whose unreviewable orders created the emergency, with the injunction dissolved and the records produced before any court ever performed the statutory analysis. Nothing about that disposition would be "final," except the destruction of the privilege.

Respondents' own footnote removes any doubt. They observe that "Petitioners acknowledge that they were advised not to attempt an appeal." (Resp. Br. 9 n.10.) Just so—because no appeal lies. Candor about the absence of an appellate remedy is not evidence of forum-shopping; it is the jurisdictional predicate for original jurisdiction. Respondents cannot in one breath establish that every ordinary avenue of review is closed and in the next, fault Petitioners for using the only door the law leaves open.

Respondents' passing complaint about Petitioners' Designation of Matter—"nothing in Rule 245 provides for such" (Resp. Br. 5 n.5)—inverts the parties' positions. Petitioners identified, transparently and in advance, the documents on which they rely. Respondents briefed their merits case on materials not before the Court, then served a 543-page Appendix nine days *after* their brief, on the eve of Petitioners' reply deadline—stocked with unsworn dossiers, materials from other litigation, and an entry marked "WITHHELD." If Rule 245 disfavors either party's approach to the record, it is not Petitioners'.

The public-interest dimension is equally settled by events. The record documents two parallel campaigns of compulsion against the same non-party newsgatherer—a records subpoena enforced without findings or notice, and a deposition subpoena mailed to a United States Post Office and followed by a motion for contempt—each proceeding as though § 19-11-100 did not exist. Whether the shield statute can be evaded by directing process to a journalist's bank, and whether it can be enforced without the findings the General Assembly required, are questions of first impression that will govern every newsroom, freelancer, and documentarian whose work touches this State. The Court accepted this case to answer them. It should.

Respondents' observation that trial is scheduled for August 2026 cuts against them. If the records were truly "necessary" to their trial preparation, the statute told them exactly how to make that showing—by clear and convincing evidence, under a three-part test—fourteen months ago. They have never attempted it in any court including this one.

II.

RESPONDENTS CANNOT CARRY THEIR STATUTORY BURDEN WITH ARGUMENT, A NEWSPAPER ARTICLE, AND MATERIALS OUTSIDE THE RECORD

A. The burden under § 19-11-100(B) belongs to Respondents.

Respondents open their merits argument with the proposition that "[t]he burden of establishing entitlement to a privilege is on the proponent of such privilege," citing federal attorney-client privilege decisions. (Resp. Br. 10.) But § 19-11-100 is not a common-law privilege whose contours courts allocate; it is a statute that allocates the burden expressly, and it places the dispositive burden on *Respondents*:

> The person, company, or other entity may not be compelled to disclose any information or document or produce any item obtained or prepared in the gathering or dissemination of news *unless the party seeking to compel the production or testimony establishes by clear and convincing evidence* that this privilege has been knowingly waived or that the testimony or production sought: (1) is material and relevant to the controversy …; (2) cannot be reasonably obtained by alternative means; and (3) is necessary to the proper preparation or presentation of the case ….

S.C. Code Ann. § 19-11-100(B) (emphasis added). Respondents' own brief describes their own authority the same way: in their words, *Hartsock* "noted that the qualified privilege enjoyed by news media under Section 19-11-100(A) can be overcome when *the requesting party* establishes that the privilege was waived or fulfills the stringent balancing test articulated in Section 19-11-100(B)." (Resp. Br. 17 (emphasis added) (citing *Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 422 S.C. 643, 648 n.2, 813 S.E.2d 696, 699 n.2 (2018)).) The threshold showing under subsection (A)—that the movant is a person "engaged in or that has been engaged in the gathering and dissemination of news for the public"—was made below by sworn, detailed, and uncontroverted affidavit, twice. From that point forward, every burden in this case has belonged to Respondents. They have never carried any of them, in any forum.

The statute's remaining text confirms its application. Subsection (A) covers disclosure sought in "any judicial … proceeding … where the one asserting the privilege is not a party in interest." That is this case exactly: Petitioners are strangers to *Beach v. Parker*—the circuit court itself refused to let them be joined, denying the Investigators' third-party complaint in Section IV of the very order under review. *Matter of Decker* withheld the privilege because the *trial court itself*, not a party, sought the disclosure; Respondents' citation of it (Resp. Br. 17–18) only underscores that where *parties* seek compelled production from a non-party newsgatherer, the subsection (B) test governs. If "[e]very word in this statute has meaning," all of its words do—including "book," "other medium," "has been engaged," and "not a party in interest."

B. The only sworn evidence establishes the privilege; argument is not evidence.

Respondents' brief dismisses Mr. Roman's affidavits as "self-serving" and asserts that "[t]he only proof Petitioner Roman offers that he is a 'reporter' or 'journalist' is his own affidavit." (Resp. Br. 13.) An affidavit is sworn testimony under penalty of perjury; it is the ordinary evidentiary vehicle in injunction and extraordinary-writ practice. What Respondents offer against it is not evidence at all: counsel's narrative of a "public smear campaign," references to discovery materials from other proceedings that were never placed before the circuit court on this motion and are not in the record here, and a Wall Street Journal article. "Arguments of counsel are not evidence." *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997); *accord Cobb v. Benjamin*, 325 S.C. 573, 581 n.2, 482 S.E.2d 589, 593 n.2 (Ct. App. 1997). A newspaper article is unsworn hearsay. And Respondents' own footnote concedes the point by offering to file an appendix of "the extensive supporting materials" only "should the Court desire" to see them. (Resp. Br. 5 n.5.) A clear-and-convincing burden is not satisfied by materials a party holds in reserve.

Worse for Respondents, the one source they do quote undermines them. Their own footnote reports that the Journal article states: "Mr. Roman said his written and documentary work were independent of the research he was paid to conduct." (Resp. Br. 6 n.8.) In other words, the very article Respondents offer to prove that Mr. Roman's journalism is a paid front itself distinguishes his journalism from his paid research. Respondents cannot establish—by clear and convincing evidence or otherwise—that a decade of investigative reporting, more than 300 annual media appearances, editorial direction of a peer-reviewed journal, documentary work distributed on a national platform, and congressional testimony are all pretext, on the strength of a footnote that says the opposite.

The asymmetry runs through Respondents' entire presentation. They assert—without affidavit—that Mr. Roman "is actually a resident of the Commonwealth of Pennsylvania" (Resp. Br. 7), against two sworn affidavits attesting to his residence in Israel and a record showing "residence" service attempted at a United States Post Office. They call him a "purported security analyst" (Resp. Br. 5) in the same paragraph that concedes "over 300 annual media appearances on major television and radio networks." Every factual proposition Petitioners advance is sworn; none of Respondents' is. Under a statute demanding clear and convincing evidence from the compelling party, that asymmetry is dispositive.

C. Respondents' "intent test" authorities do not help them.

Respondents devote pages to federal decisions defining who may claim the First Amendment reporter's privilege—*In re Madden*, 151 F.3d 125 (3d Cir. 1998); *Shoen v. Shoen*, 5 F.3d 1289 (9th Cir. 1993); *von Bulow v. von Bulow*, 811 F.2d 136 (2d Cir. 1987). (Resp. Br. 11–13.) Those cases construe a judge-made privilege; the General Assembly wrote South Carolina's test into the statute: the privilege belongs to a person "engaged in *or that has been engaged in*" newsgathering and dissemination for the public. S.C. Code Ann. § 19-11-100(A). If, as Respondents insist, "[e]very word in this statute has meaning" (Resp. Br. 10), then the past-tense clause has meaning too: a person with a genuine newsgathering history does not shed the privilege's protection for materials "obtained or prepared in the gathering or dissemination of news" because opposing counsel disputes the character of one engagement.

In any event, the federal cases would not assist Respondents even on their own terms. In every decision they cite where protection was denied, the claimant had no journalistic record at all: a professional-wrestling color commentator (*Madden*), a party's intimate who compiled personal notes with no intent to publish at the inception (*von Bulow*), a crisis-communications firm retained to "manage the news rather than disseminate it" (*In re Napp Technologies*). Where the claimant was a working investigative author, the same intent test *protected* him: *Shoen* held that an author researching a book could not be compelled to disclose his materials, because "what makes journalism is not its format but its content." 5 F.3d at 1293. Mr. Roman's sworn and uncontroverted record—terrorism-financing investigations that prompted the termination of approximately three billion dollars in federal grants, chemical-weapons documentation in Syria, a nationally distributed documentary, a peer-reviewed policy journal—is the record of a person whose "intent at the inception of the newsgathering process" is to disseminate news to the public. If Respondents wish to prove that some discrete engagement was something else, the statute tells them where that showing belongs: in a § 19-11-100(B) proceeding, on evidence, under a clear-and-convincing standard—not in a merits brief unaccompanied by a single sworn word.

Respondents' own lead authority counsels against the enterprise they propose. The passage of *Branzburg v. Hayes* they quote (Resp. Br. 11) is not an endorsement of judicial gatekeeping over who counts as a journalist; it is Justice White's warning that defining "those categories of newsmen who qualif[y] for the privilege" is "a questionable procedure" given that liberty of the press belongs to "the lonely pamphleteer … just as much as of the large metropolitan publisher." 408 U.S. 665, 704 (1972). The General Assembly heeded that warning, extending the privilege to any "person, company, or entity" gathering news through any "medium." § 19-11-100(A). Respondents' proposed narrowing—under which a policy journal's editor, documentary producer, and congressional witness is not "legitimate" press because opposing counsel disapproves of one client—is the very line-drawing *Branzburg* cautioned against and the statute forecloses.

D. "For the public" is a description of the work, not a loyalty test.

Respondents argue separately that Petitioners' newsgathering was not "for the public" because it allegedly served a private client. (Resp. Br. 16–17.) The argument assumes its factual premise—addressed above—and misreads the statutory phrase. "For the public" describes the intended audience of the dissemination, not the purity of the journalist's funding. On the only evidence of record, Mr. Roman's work reached the public through nationally distributed programming, a peer-reviewed quarterly, hundreds of broadcast appearances, and published investigations; his financial records reflect the sources, travel, and research infrastructure behind that public output. *Castellani*'s observation that "the general public is deemed to be the overall beneficiary of the Shield Law's protections" (Resp. Br. 16) is an argument for protecting source-revealing records, not for stripping protection whenever a litigant calls the journalist's motives mixed. If funding or client relationships defeated the privilege, no commissioned documentary or sponsored investigation would ever be protected. The statute contains no such exception, and Respondents cite no case creating one.

E. The subpoena is not limited to the activity Respondents attack.

Respondents' remaining threshold arguments—"not newsgathering," "not for the public" (Resp. Br. 15–17)—share a single fatal defect: they attack one alleged engagement, while defending a subpoena that demands *everything*. The May 2, 2025 subpoena commands PNC to produce "any and all" account records for Mr. Roman and Gravitas from February 24, 2019 forward—statements, cancelled checks, deposits, withdrawals, wires, alerts, account-opening documents, and suspicious activity reports—sweeping in every payment to a confidential source, every reporting trip, every research subscription, and every media compensation arrangement across more than six years. Even if Respondents could someday prove that the alleged Parker-related work fell outside the statute, that would justify, at most, a targeted demand tied to that engagement. It could not justify blanket production of the financial map of a newsgatherer's entire professional life like what is presenting before the Court.

Respondents' own authorities confirm that the shield analysis is information-specific, not person-forfeiting. *State v. Brockmeyer*, 406 S.C. 324, 337 n.9, 751 S.E.2d 645, 652 n.9 (2013), turned on the conclusion that the *particular item sought*—an anonymous commenter's identity—was not obtained through newsgathering. *Delaney v. Superior Court*, 789 P.2d 934, 940 n.8 (Cal. 1990), asked whether the reporters were engaged in newsgathering "when they observed the events as to which their testimony is sought." *Diaz v. Eighth Judicial District Court*, 993 P.2d 50, 59 (Nev. 2000), extended protection to "the journalist's newsgathering and dissemination activities within the journalist's professional capacity." Every one of those decisions presupposes the inquiry the circuit court never conducted: an examination of *what is being sought* and its relationship to newsgathering. A subpoena that indiscriminately captures six years of everything cannot survive an information-specific privilege without the very findings that are missing here—which is presumably why Respondents themselves end their brief proposing in camera review to "segregate" protected material. (Resp. Br. 26.) That proposal is an admission that the subpoena, as written and as enforced, reaches privileged newsgathering material.

F. There was no knowing waiver.

Respondents' waiver theory—that "by entering into the private agreement with Defendant Parker through a series of transactions," Petitioners "have waived any qualified privilege" (Resp. Br. 19)—has no footing in the statute or their own case. Section 19-11-100(B) recognizes waiver only where the compelling party proves, by clear and convincing evidence, that the privilege was *knowingly* waived, and § 19-11-100(C) provides that even publication of information obtained in newsgathering "does not constitute a waiver." Signing a consulting agreement is not a disclosure of anything, much less a knowing relinquishment of the statutory privilege over six years of unrelated source payments and reporting expenditures. *In re Venezia*, 191 N.J. 259, 922 A.2d 1263 (2007), found waiver where a reporter had already disclosed the very information at issue—his source and his conversations—outside the newsgathering process, under oath to prosecutors; and even then, New Jersey law treats such waiver as limited to the materials actually disclosed. Respondents identify no disclosure by Petitioners of the contents of any financial record at issue, to anyone. There is nothing to which a waiver could attach.

G. Respondents' own brief defeats the three-prong test.

Because the circuit court made no findings, Respondents attempt the § 19-11-100(B) showing for the first time in their appellate brief. The attempt refutes itself.

Start with what the circuit court's order proves about the error below. The order correctly recites that a newsgatherer may not be compelled to produce "unless the moving party demonstrates, by clear and convincing evidence," waiver or the statute's three requirements, and correctly recites *Decker*'s three-part formulation. (Order of Feb. 5, 2026, at 3–4 (Pet. Exh. B).) The court thus identified the governing law precisely—and then denied the motion in a single sentence containing no finding under any prong, no reference to the movants' affidavit, and no description of the records. This is not a case where a court applied the right test imperfectly; it is a case where a court copied the test into its order and never used it. Respondents' appellate attempt to perform the analysis themselves concedes that it was never performed by anyone.

Alternative means. Respondents' brief recites—to the dollar and to the day—the wire transfers they say matter: $143,000 on June 1, 2020; $120,000 on July 1, 2020; $120,000 on July 30, 2020, from Defendant Parker's Truist account to Demoman International Ltd. (Resp. Br. 19 n.17.) They know these details because they already obtained them—from a party's bank, through ordinary discovery. The sender of every transfer (Parker), the attorney who allegedly "set up the transactions" (Defendant D'Cruz), the alleged intermediary (Demoman), and the alleged recipients of onward payments (the Investigator Defendants) are all parties or subject to targeted discovery. The journalist's records are the last resort. *Zerilli v. Smith*, 656 F.2d 705, 713 (D.C. Cir. 1981); *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 716–18 (1st Cir. 1998); *accord LaRouche v. Nat'l Broad. Co.*, 780 F.2d 1134, 1139 (4th Cir. 1986); *Church of Scientology Int'l v. Daniels*, 992 F.2d 1329, 1334–35 (4th Cir. 1993) (applying *LaRouche* to material sought from a non-party news organization and faulting the requester for making "no effort to pursue alternative sources").

The discovery history—as reflected in the record and in Respondents' own Appendix, served July 1, 2026—forecloses any claim of exhaustion. In five years of litigation, the record discloses not a single discovery instrument directed by Respondents to Petitioners: no records subpoena to Mr. Roman; no records subpoena to Gravitas; no deposition notice; no interrogatory; not so much as a letter requesting the information voluntarily. The only subpoenas to Mr. Roman appearing in Respondents' own Appendix are, in the words of their own index, "Subpoenas issued by Counsel for Investigators to Roman, Capelli and Ward." (Resp. App. 92.) Their assertion that Mr. Roman "has evaded all attempts to obtain his deposition" (Resp. Br. 7) thus describes attempts Respondents are not shown ever to have made: every "attempt" in the record belongs to the

Investigator Defendants, through the defective process detailed in Petitioners' initial brief. And as to Demoman International Ltd.—the entity at the center of Respondents' theory—and the other persons their Appendix identifies (Sara Capelli, the "Inquiry Agency"), the record contains no subpoena, no letters or interrogatory request, no discovery demand, and no evidence that any was ever attempted. The burden on this prong is Respondents', by clear and convincing evidence; if such efforts exist, documenting them was the office of the 543-page Appendix they chose to serve. It documents none. On this record, the journalist's bank was not the last resort—it is the only avenue Respondents are shown ever to have pursued.

Respondents' footnote 18 concedes the omission and supplies the excuse: they "would seek it directly from Petitioner," they say, but he has "evaded process," and in any event he "would raise the same spurious claims to protection under the Media Shield Statute or the First Amendment." (Resp. Br. 19 n.18.) In other words, Respondents bypassed the privilege holder because they predicted he would invoke the privilege. Section 19-11-100(B)(2) contains no futility exception for statutes the requesting party expects to encounter. A litigant cannot establish that information "cannot be reasonably obtained by alternative means" by declining to attempt any alternative on the ground that the alternative might require litigating the privilege—that is not exhaustion but anticipatory surrender, and it would read subsection (B)(2) out of the statute in every case involving the very persons the statute protects. A non-party's statutory privilege does not exist to underwrite a party's incomplete discovery, and the price of Respondents' choices cannot be visited on the newsgatherer the statute shields.

Worse, Respondents' Appendix demonstrates that they already possess the links they claim only PNC can supply: the "Contract Between Gregg Roman and the Investigators" (Resp. App. 184); the "Truist Bank Records of June and July 2020" documenting each wire (Resp. App. 72);

"Defendant Parker's Discovery Responses" (Resp. App. 38); and hundreds of pages of deposition excerpts from both Investigators (Resp. App. 311, 500). The sender's bank records, the alleged recipients' sworn testimony, and the governing contract are all in Respondents' hands. What remains is not a "gap"; it is a demand that a non-party's bank confirm what their own exhibits already show—cumulative, duplicative discovery that Rule 26(b)(1), SCRCP, restricts even without a privilege, and the statute's necessity prong forbids outright. Most telling, the one category Respondents describe as proving Petitioners' role—the discovery "designated 'confidential' by the Parker Defendants" (Resp. Br. 13)—appears in their own index marked "WITHHELD." (Resp. App. 43.) The claimed centerpiece of their merits argument has still never been placed before any court.

Respondents' litigation choices likewise refute their claim that "[c]onnecting Mr. Roman to Mr. Parker is at the heart of this lawsuit." (Resp. Br. 6 n.7.) They have never sued Mr. Roman or Gravitas: not in the 2021 complaint, and not by amendment after the August 2022 Wall Street Journal article put their present theory in the public record. Any such claim, arising from conduct they date to mid-2020, would now be barred by the three-year limitations period. S.C. Code Ann. § 15-3-530. The "heart" of a lawsuit is defined by its claims and parties; Petitioners are neither, and can never be either. The claims that exist run against the named defendants and rise or fall on what those defendants did, paid, and knew—matters provable, and on Respondents' own Appendix largely already proven, from those defendants' records, responses, and testimony.

Materiality and necessity. Respondents' theory is that a "gap" remains between Demoman and Petitioners "which can only be filled by the records controlled by Petitioners' bank." (Resp. Br. 18–19.) Take the theory at face value and it describes a subpoena Respondents never served: a request for wire transfers received from Demoman International Ltd. within a defined window in mid-2020. What they served instead demands every record of every account for both Petitioners over six-plus years—including categories (grocery purchases, utility payments, charitable gifts) with no conceivable connection to any "gap," and including suspicious activity reports that federal law flatly prohibits PNC from producing in civil litigation. 31 C.F.R. § 1020.320(e); 12 U.S.C. § 5318(g)(2). Respondents' brief does not mention the SAR problem, the temporal scope, or the categorical scope at all. A demand whose own proponents cannot connect it to their theory of need is not "necessary to the proper preparation or presentation" of anything; it is the fishing expedition the clear-and-convincing standard exists to prevent.

Temporal scope. The subpoena's own dates refute the "gap" rationale from both directions. It reaches back to February 24, 2019—nearly sixteen months before the June 1, 2020 engagement and first wire on which Respondents' theory turns—and forward to the present, six years after the last transfer they identify. No version of the "gap" explains why 2019 records are "material and relevant" to mid-2020 wires, or why 2024–2026 records are "necessary" to establish payments allegedly completed by July 30, 2020. A demand calibrated to their theory would span weeks; the demand they served spans the better part of a decade. That mismatch is not a drafting imperfection to be trimmed in camera—it is proof the subpoena was never the product of the analysis the statute requires.

The constitutional dimension. The same failures doom Respondents' position under the First Amendment. A civil litigant seeking newsgathering material must demonstrate relevance, unavailability by alternative means, and a compelling interest, *LaRouche*, 780 F.2d at 1139, and the privilege operates at its zenith where, as here, the newsgatherer is a stranger to the litigation. These are not incidental business papers: on the uncontroverted affidavits, the records map payments to confidential sources—including sources in Syria and Iran whose exposure carries physical risk—travel to conflict zones, and the research infrastructure of ongoing investigations, at a moment when Mr. Roman is living in an active conflict zone. Respondents' only answer is that the privilege does not apply; they make no attempt to satisfy the constitutional test if it does. If the First Amendment is implicated—and every federal circuit to consider the question in the civil context has so held—Respondents have forfeited any argument that they can overcome it.

Finally, Respondents' assertion that the records will expose payments "to Petitioners" for a smear campaign assumes the answer to the question the statute reserves for evidence. If the premise were provable, Respondents have had every opportunity—below, in their Answer here, and in their brief—to prove it with sworn evidence subject to this Court's scrutiny. They have not. The privilege does not yield to confident narration.

III.
THE NOTICE ARGUMENT COLLAPSES ON RESPONDENTS' OWN EXHIBIT AND CONCESSIONS

Respondents' notice argument (Resp. Br. 20–21) begins from a remarkable position: their brief concedes that "Petitioner and his counsel both failed to appear at the hearing" (Resp. Br. 7), while the order they defend recites that counsel for Petitioners was "[p]resent and appearing." Both cannot be true. Respondents have chosen the version that impeaches the order—and with it, the order's further recital that the court ruled "[a]fter consideration of … the arguments presented by counsel at the hearing." On Respondents' own account, the only "arguments presented by counsel" on this motion were their own. That is the precise evil the notice requirement exists to prevent.

The email chain Respondents invoke makes matters worse for them, because it affirmatively identified a *different* non-party's motion as the business of the November 26 hearing. The November 18, 2025 email from the Parker Defendants' counsel requested hearing time because "there is a Motion to Quash the deposition of a key witness that was recently filed," and his November 20 follow-up specified: "I have included counsel for Mandy Matney, the non-party witness, that filed a Motion to Quash that we wish to address." (Mot. to Reconsider, Exh. A (Pet. Exh. C).) Petitioners' motion was none of those things: it was filed six months earlier (May 15, 2025), it concerned bank records rather than a deposition, and no email in the chain mentions it. The public index and motion rosters reflected no hearing date for it. And even indulging the fiction that a copy line on another lawyer's scheduling email could be notice, the chain began November 18—eight days before the hearing, short of the ten days Rule 6(d), SCRCP, requires. Failure to give proper written notice of a motion hearing is reversible error where it deprives the opposing party of the opportunity to be heard. *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (1992).

Respondents' related assertion that "Petitioners fully briefed all of the arguments before Judge Kelly" (Resp. Br. 20–21) is both incomplete and self-defeating. Incomplete, because a movant's opening papers are no substitute for the opportunity to respond to arguments and materials his adversaries present at a hearing he does not know is occurring. Self-defeating, because the order itself disproves any suggestion that the written filings were considered in counsel's absence: a court that had engaged Petitioners' motion and affidavit could not have described the motion as one concerning "deposition testimony," because the motion, the attached subpoena, and the affidavit all concern bank records. The misdescription is affirmative evidence that the papers were not the basis of the ruling. A court may decide a motion on the papers only by actually deciding it on the papers.

Respondents answer that no rule required a hearing at all, citing *Re Civil Motions Pilot Program*, 414 S.C. 162, 777 S.E.2d 546 (2015). (Resp. Br. 21.) The argument misses its own target. The circuit court did not decide the motion "on the written filings without scheduling oral argument"; it convened a hearing, took argument from one side, and then recited that adversarial presentation had occurred when it had not. A court may often choose between deciding on the papers and holding a hearing. What it may not do is hold a hearing without notice to the movant, hear only the movant's adversaries, and then deny the motion "after consideration of … the arguments presented by counsel at the hearing." Due process is not satisfied by the observation that some other, fairer procedure would also have been lawful.

The assertions about the law clerk's telephone calls (Resp. Br. 2, 7, 20) are unsworn statements of counsel, supported by no affidavit and appearing nowhere in the record—offered, ironically, in the same brief that attacks Petitioners for relying on sworn affidavits. They should be disregarded. *Creech*, 328 S.C. at 32, 491 S.E.2d at 575. In any event, an inability to reach counsel on the morning of a hearing is not notice of the hearing; it is a symptom of its absence.

Respondents' suggestion that "Petitioners chose to stay away from the hearing" (Resp. Br. 20) is contradicted by Petitioners' conduct at every stage at which they actually had notice. Within days of learning of the February 5 order, counsel filed a detailed motion to reconsider and affirmatively requested a hearing on it through the e-filing system—a request the circuit court declined, electing to rule "[i]n lieu of oral arguments" on "filings and briefs." A party maneuvering to avoid hearings does not ask for them. The record thus reflects one party that sought oral adjudication whenever it knew adjudication was occurring, and a proceeding in which the only hearing ever held on its motion took place without it. The inference Respondents invite—strategic absence—has no evidentiary support and is refuted by the only record that exists.

Respondents' final refuge is that "Petitioners made these precise arguments to Judge Kelly" on reconsideration, and "Judge Kelly considered the arguments and rejected them." (Resp. Br. 20.) The March 16, 2026 order shows otherwise. Presented with proof that the February 5 order misdescribed the motion, falsely recited counsel's presence, and contained no statutory findings, the circuit court issued another Form 4 order reciting that the motion "does not present any newly discovered evidence, manifest errors of law or fact, or an intervening change in controlling law." A demonstrably false recital that counsel was "present and appearing" is the definition of a manifest error of fact; the absence of the analysis a statute mandates is the definition of a manifest error of law. An order that denies reconsideration of both, without addressing either, does not cure the due-process violation—it compounds it. An order entered without constitutionally adequate notice and an opportunity to be heard cannot stand, and the denial of reconsideration built upon it falls with it.

IV.
RESPONDENTS DO NOT DEFEND THE FEBRUARY 5 ORDER; THEY REPLACE IT

Strip away the matter outside the record, and Respondents' brief is notable for everything it does not dispute. It does not dispute that the order mischaracterizes the motion as one concerning "deposition testimony." It does not dispute that the order's recital of counsel's presence is false—it affirmatively contradicts it. It identifies no finding under § 19-11-100(B)(1), (2), or (3), and no finding that the statute does not apply; the order contains neither. It does not dispute that the same order resolved the Clawson & Staubes motion with particularized analysis while disposing of Petitioners' motion—the only one carrying a statutory and constitutional privilege—in a single conclusory paragraph. And it offers no response on the federally non-producible suspicious activity reports, the six-year "any and all" scope that Rule 45(c)(3)(A), SCRCP, exists to police, or the absence of UIDDA domestication for a subpoena to a Pennsylvania-headquartered bank. Silence on this scale is not oversight; it is the absence of a defense.

Indeed, the order's own boilerplate identifies a ground that compelled the opposite result. The order recites that a motion to quash shall be granted where the subpoena "requires disclosure of privileged or otherwise protected matter and no exception or waiver applies"—Rule 45(c)(3)(A)(iii), SCRCP—and where it "subjects a person to undue burden." (Order of Feb. 5, 2026, at 3–4 (Pet. Exh. B).) A demand for the complete financial records of a statutory privilege holder, including a category of documents (suspicious activity reports) that federal regulation commands the bank to "decline to produce," 31 C.F.R. § 1020.320(e), is the paradigm of both grounds. The court recited the rule, recited the privilege statute, recited *Decker*—and enforced the subpoena in full, without a word of application. Respondents' brief, given the opportunity to supply the missing reasoning, supplies none.

The disparate treatment within the four corners of the February 5 order deserves emphasis, because Respondents' silence about it is telling. Every other section of that order contains matter-specific reasoning: Section I explains why the movant's privilege showing failed; Section III identifies the privileged, work-product character of the material sought from Clawson & Staubes, finds good cause "to prevent the disclosure of the Plaintiff's focus group trade secrets," and grants the motion; Section IV weighs timeliness, prejudice, and a forum-selection clause in denying the third-party complaint against these very Petitioners. Section II alone—the section adjudicating a privilege the General Assembly fortified with a clear-and-convincing standard—contains no finding about the movants, the records, the privilege, or the test it had just recited. Whatever deference an exercise of discretion earns, "no discretion was, in fact, exercised" here, and "an error of law has occurred." *Fontaine*, 291 S.C. at 538, 354 S.E.2d at 566.

What Respondents offer instead is a new rationale—the statute never applied—that the circuit court never adopted, resting on evidence the circuit court never saw and this Court does not have. A respondent may urge affirmance on grounds *appearing in the record*. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417–20, 526 S.E.2d 716, 722–23 (2000). Respondents' grounds appear in their brief and nowhere else. Sustaining the order on them would require this Court to make first-instance factual findings—that Mr. Roman is not a newsgatherer, that his engagement was a smear campaign, that his sworn affidavits are false—on unsworn assertions, against the only evidence of record. Respondents themselves insist this Court "hardly ever" finds facts in its original jurisdiction. (Resp. Br. 3–4, quoting *Pascoe v. Wilson*, 416 S.C. 628, 649 n.21, 788 S.E.2d 686, 697 n.21 (2016) (Few, J., dissenting).) They cannot simultaneously invoke that restraint against Petitioners' request for relief on an uncontroverted record and ask the Court to find contested facts in their favor without any record at all.

Respondents' "no pattern" section (Resp. Br. 22–24) confirms the pattern. As to the parallel deposition campaign, Respondents defend only the UIDDA domestication and service-on-counsel points—and say nothing about the subpoena mailed to a United States Post Office, the blank proof of service, the untendered witness fees, or the motion for contempt sanctions filed against a non-party who was never validly served. As to the Pennsylvania Shield Law, 42 Pa. Cons. Stat. § 5942, *Hatchard v. Westinghouse Broadcasting Co.*, 532 A.2d 346 (Pa. 1987), involved a defamation plaintiff's discovery from media *defendants* and required redaction precisely to protect source-identifying information—it reinforces, rather than undermines, the principle that source-revealing material receives the highest protection, and *Castellani v. Scranton Times, L.P.*, 956 A.2d 937 (Pa. 2008), reaffirms that the public is the beneficiary of that protection. The premise of Respondents' entire response—that the shield laws "do not apply to Petitioner Roman"—is the unproven conclusion addressed in Part II above.

Respondents' footnoted attack on Petitioners' counsel (Resp. Br. 23 n.19) warrants only brief response. Whether counsel's prior representation of the Investigator Defendants presents any ethical question is a matter for the clients and the disciplinary authority; Respondents cite no authority—because none exists—for the proposition that a journalist's statutory privilege is diminished by the identity of his lawyer. The record, in any event, reflects that counsel's consent withdrawal was filed in May 2025, before the motion to quash, and that the sequence Respondents describe was addressed openly before Judge Kelly. (Pet. Br. 28 n.2; Reply to Answer ¶ 18.) The privilege belongs to the journalist, not the lawyer, and it does not have a conflicts exception.

V.
THE PROPOSED REFEREE PROCEEDING WOULD DESTROY THE PRIVILEGE IT PURPORTS TO TEST

Respondents' fallback request—that this Court "order Petitioner Roman to appear in person and submit to a deposition" before a referee as the price of adjudicating his privilege (Resp. Br. 25)—inverts the statute. Section 19-11-100(B) provides that a newsgatherer "may not be compelled to disclose any information" or give testimony *unless and until* the compelling party makes the three-part showing by clear and convincing evidence. Respondents propose to begin with the compelled testimony and work backward to the showing. The deposition they seek from this Court is, moreover, the same deposition the Investigator Defendants have pursued through the defective process described above—now sought from a different forum after those efforts failed. A privilege that must be surrendered in order to be adjudicated is no privilege at all.

Nor is there anything for a referee to find. Referral is appropriate "when fact-finding is necessary," on Respondents' own authority. (Resp. Br. 3–4, quoting *Pascoe*.) The material facts here are uncontroverted: two sworn affidavits establishing Mr. Roman's newsgathering history and the source-revealing character of the records; a subpoena whose text speaks for itself; orders whose omissions speak for themselves; and an email chain that identifies another journalist's motion. Respondents elected to controvert none of it with evidence—not below, not in their

Answer, not with their brief. A party cannot decline to make a record and then demand a remand to make one.

Respondents' demand that Mr. Roman "provide proof, other than his self-serving affidavit" (Resp. Br. 25) has the summary procedure backwards. Sworn proof is what he provided—twice. The vehicle for testing an affidavit is a counter-affidavit or competing evidence, which Respondents were always free to file and never did. A party may not decline to controvert sworn testimony and then demand the affiant's deposition as the price of relief—least of all where the affiant is a statutory privilege holder and the deposition is the very compulsion his adversaries have pursued through other channels for months.

Respondents' related assertion that "[b]y this Petition [Petitioners] have submitted to the jurisdiction of this Court" (Resp. Br. 24)—and may therefore be ordered into a deposition—confuses this Court's jurisdiction over the petition with a general submission to the compulsion Petitioners filed the petition to resist. A non-party who petitions to protect a statutory privilege invokes the Court's jurisdiction to adjudicate *that petition*; he does not thereby volunteer for the discovery the privilege forbids. On Respondents' theory, no journalist could ever seek judicial protection of the shield statute without forfeiting its protections at the courthouse door. The statute would be a trap, not a shield.

Respondents' in camera proposal—that a referee or Judge Kelly "can receive the records in camera and segregate" them "while maintaining the confidentiality of 'source' information" (Resp. Br. 26)—fails for a structural reason: it reverses the statute's sequence. Section 19-11-100(B) makes the three-prong showing a precondition to any compelled production, not a sorting protocol applied after the privilege holder's records have been surrendered to the court. Production to a judicial officer is still production—sources, travel patterns, and investigative expenditures exposed, non-disclosure agreements breached, the chilling message to every confidential source sent. And the proposal concedes the dispositive point: material that must be "segregated" to protect "'source' information" is material "obtained or prepared in the gathering or dissemination of news." Respondents cannot simultaneously deny the privilege exists and design procedures to accommodate it.

Remand to the circuit court would be more futile still. That court has now twice declined to apply the statute's mandatory framework—once in an order with no findings and a false recital, and again on reconsideration, when every defect now conceded was squarely presented. Petitioners do not seek a third opportunity for error; they seek the ruling the statute required at the outset. If this Court nonetheless concludes that any further proceedings are warranted, they must follow—not precede—this Court's holdings that the § 19-11-100 privilege attaches to Petitioners and that no compelled production may occur absent specific written findings, by clear and convincing evidence, under each statutory prong; any in camera procedures would come after those findings, not in place of them. On this record, however, the proper disposition is the simpler one: the subpoena should be quashed.

CONCLUSION

Respondents have conceded the hearing was one-sided, declined to defend the order's recitals or supply its missing analysis, and attempted to carry a clear-and-convincing statutory burden with unsworn argument and an eleventh-hour appendix that proves the opposite of their case. For the reasons stated here and in Petitioners' initial brief, this Court should: (1) enter a finding of fact and conclusion of law, on the uncontroverted sworn record, that Mr. Roman is a person engaged in, and who has been engaged in, the gathering and dissemination of news for the public within the meaning of S.C. Code Ann. § 19-11-100(A), that Gravitas is an entity through which he conducts that work, and that the qualified privilege attaches to Petitioners and has not been overcome; (2) reverse the February 5 and March 16, 2026 orders; (3) quash the May 2, 2025 subpoena to PNC Bank and make the injunction permanent; and (4) provide the guidance requested in the initial brief, so that compulsion of a newsgatherer's records or testimony is never again ordered in South Carolina without the findings the statute commands.

Respectfully submitted,

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