

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

RENEE S. BEACH, PHILLIP BEACH,
ROBIN BEACH, SAVANNAH TUTEN,
AND SETH TUTEN,

Plaintiffs,

v.

GREGORY M. PARKER, GREGORY
M. PARKER, INC. d/b/a PARKER'S
CORPORATION, BLAKE GRECO,
JASON D'CRUZ, MAX FRATODDI,
HENRY ROSADO, AND PRIVATE
INVESTIGATION SERVICES GROUP,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A No. 2026-CP-42-04208

**PARKER'S DEFENDANTS' RESPONSE
IN OPPOSITION TO PLAINTIFFS'
MOTION TO RECONSIDER THE
COURT'S ORDER GRANTING
DEFENDANTS' MOTION TO
TRANSFER VENUE**

INTRODUCTION

Defendants Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation, Blake Greco, and Jason D'Cruz (collectively, the "Parker's Defendants") oppose Plaintiffs' Motion to Reconsider (the "Motion") the Court's August 12, 2026 Order transferring venue of this action from Hampton County to Spartanburg County (the "Order"). Plaintiffs unpersuasively request that the Court enter a new order either (1) denying transfer of venue until after an attempt has been made to seat a jury in Hampton County; or (2) transferring the matter to a County within the Fourteenth Judicial Circuit.

The Motion runs thirty-five pages but identifies no new evidence, no intervening change in the law, and no fact or authority the Court overlooked. It reeks of desperation and presents, for a second time, the arguments the Court heard over two days in July and rejected in the Order. Plaintiffs' rehashed arguments are now supplemented with lengthy block quotations from

decisions that, read in full, support the Court's ruling rather than undermine it. On the strength of an unrebutted professional survey, live testimony, documentary evidence of years of sustained and targeted publicity, and proof of an organized campaign to pack the Hampton County courthouse, the Court found that a fair and impartial trial of the present action cannot be had in Hampton County or anywhere else in the Fourteenth Judicial Circuit. That finding was committed to the Court's discretion. The fact that Plaintiffs disagree is not a ground for reconsideration—as Plaintiffs failed in the first instance to mount any challenge to the survey itself or offer any evidence to contradict the evidence submitted by all Defendants on these issues.

Three points dispose of the Motion. *First*, no South Carolina statute or decision requires the Court to summon a Hampton County venire just to watch jury selection fail before ruling. The “general practice” of deferring a publicity-based venue ruling until *voir dire* was developed in criminal cases in which the moving party offered little or no evidence. But this general practice is not an invariable mandate, and the Supreme Court has expressly recognized that in rare and extraordinary circumstances like the one here,¹ prejudice may be so pervasive that an attempt to seat a jury would be a “hollow formality.” *See State v. Truesdale*, 278 S.C. 368, 371, 296 S.E.2d 528, 530 (1982) (quoting *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963)). The Court found those circumstances here.

Second, Plaintiffs' attack on the evidentiary record comes too late and proves too little. Plaintiffs declined the Parker's Defendants' offer to produce the survey's author for cross-

¹ As noted in other pleadings, not only has substantial negative media been directed at the Parker's Defendants, but most of it has been generated by Mandy Matney and her company, operating from a location inside the Fourteenth Judicial Circuit. And the alliance between Plaintiffs' counsel and Ms. Matney, her company and her colleagues has not only been well-documented in evidence submitted to this Court—Plaintiffs' counsel has confirmed that alliance through their own actions and statements. The facts of this case are truly extraordinary—and the facts here more strongly support this Court's actions than the facts at issue in *Truesdale*.

examination prior to the hearing conducted by the Court on July 6 and 7, 2026, offered no evidence of their own, and now complain of the Court's failure to conduct a gatekeeping inquiry they never asked it to conduct.

Third, Section 15-7-110 of the South Carolina Code does not bar the transfer to a County outside of the Fourteenth Judicial Circuit. The South Carolina Supreme Court held in 1924 and again in 1975 that the same-circuit venue language in this section cannot be construed to defeat a party's constitutional right to a fair trial, and in 1991, it affirmed an out-of-circuit transfer over the objection of parties who raised that very objection.²

Finally, notwithstanding Plaintiffs' attempt to disentangle the instant litigation from "all things Murdaugh," the Parker's Defendants must note something that Plaintiffs' instant Motion tellingly fails to mention—that on August 14, 2026, Circuit Judge Debra R. McCaslin cited the Order with approval while ordering a transfer in the *retrial* of Alex Murdaugh himself to a venue outside the Fourteenth Judicial Circuit.³ The issues in these cases may be different, but the bases for transfer overlap substantially. On this point, two respected trial judges now agree.

For these reasons, as well as the additional grounds discussed below, the Motion should be summarily denied.

ARGUMENT

I. PLAINTIFFS IDENTIFY NO GROUND FOR RECONSIDERING A DISCRETIONARY RULING.

A motion to alter or amend under Rule 59(e), SCRCPP, or for amended findings under Rule

² See *State v. Harvey*, 128 S.C. 494, 122 S.E. 860 (1924); *State v. Law*, 265 S.C. 111, 217 S.E.2d 22 (1975); *Lancaster v. Fielder*, 305 S.C. 418, 409 S.E.2d 375 (1991).

³ And on September 8, 2026, Judge McCaslin transferred venue to Sumter County, relying explicitly on this Court's Order to transfer venue outside of the Fourteenth Judicial Circuit. (Ex. 1, McCaslin Order.)

52(b), asks the Court to correct its own error. It is not a vehicle for rearguing matters already decided, and it may not be used to raise arguments that could have been presented before the ruling. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”); *see also Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). Nor does either rule oblige the Court to issue a separate ruling on every contention a party advances.⁴

The ruling Plaintiffs ask the Court to revisit was discretionary. A motion to change venue under Section 15-7-100 is addressed to the sound discretion of the trial judge, and the ruling will not be disturbed on appeal absent an abuse of that discretion. *State v. Evins*, 373 S.C. 404, 412, 645 S.E.2d 904, 908 (2007); *State v. Manning*, 329 S.C. 1, 495 S.E.2d 191 (1997); *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990); *see also Lancaster v. Fielder*, 305 S.C. 418, 422–23, 409 S.E.2d 375, 378 (1991) (applying the same standard to a civil transfer). Merely arguing that the Court should have weighed the evidence differently is not enough to obtain reconsideration. Instead, Plaintiffs must show that the Court’s ruling rested on an error of law or lacked evidentiary support. They show neither.

II. SOUTH CAROLINA LAW DOES NOT REQUIRE THE COURT TO ATTEMPT JURY SELECTION IN HAMPTON COUNTY BEFORE RULING.

Plaintiffs’ lead argument is that the Court is obligated to first try to seat a jury in Hampton County and that by ruling without doing so it “disregarded settled precedent.” (Mot. at 5.) No South Carolina authority imposes that obligation, and the cases Plaintiffs cite establish the opposite.

⁴ Rule 52(a), SCRCP, provides that “[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).”

A. The Statute Asks Whether There Is “Reason to Believe” a Fair Trial Cannot Be Had—a Predictive Judgment the Court Is Authorized to Make Before Trial.

The starting point is the statute itself. Section 15-7-100(A)(2) authorizes the Court to change the place of trial if “there is reason to believe that a fair and impartial trial cannot be had there.” The General Assembly specifically chose a forward-looking standard (i.e., a “reason to believe”) instead of requiring a conclusive failed attempt to seat a jury. Neither Section 15-7-100 nor Section 15-7-110 conditions the Court’s authority on the completion of *voir dire*.

As Plaintiffs’ own authorities confirm, legislatures that wish to impose such a condition know how to do so. In the passage of *Sicor, Inc. v. Sacks*, 266 P.3d 618 (Nev. 2011) (“*Sicor II*”) that Plaintiffs quote at length, Nevada’s Supreme Court explained that its legislature had amended the criminal venue statute to prohibit a change of venue “until after *voir dire* has been conducted ‘and it is apparent to the court that the selection of a fair and impartial jury cannot be had in the county,’” while leaving the civil statute (which, like South Carolina’s, turns on whether “there is reason to believe that an impartial trial cannot be had”) free of any such condition. *Id.* at 621–22 (quoted in Mot. at 32). South Carolina’s General Assembly has enacted no voir-dire-first requirement for civil actions, yet Plaintiffs ask the Court to read one into Section 15-7-100, and they do so despite insisting elsewhere that the venue statutes must be applied “literally.” (See Mot. at 17.)

B. The “General Practice” Described in *Manning* Is Not an Absolute Mandate, and the Concern That Animates the Practice Was Fully Satisfied Here.

Plaintiffs rely heavily on *State v. Manning* and its statement that “[i]f a change of venue is sought on the basis of pretrial publicity, the general practice is to postpone ruling on that motion until a jury panel is *voir dired*.” 329 S.C. at 8, 495 S.E.2d at 194. A “general practice” is not an invariable rule of law; it simply describes what trial courts sometimes undertake. Neither *Manning*

nor any of the decisions Plaintiffs string-cite⁵ holds that a trial court must conduct *voir dire* prior to transferring venue. The string-cited decisions approved trial courts' choices to defer; none reversed a trial court for declining to defer, and none involved a record remotely comparable to the one before this Court.⁶

Manning itself illustrates why this general practice may exist and why it has no application here. The State in *Manning* moved to change venue, and the trial court granted the motion on a record containing no evidentiary facts demonstrating actual prejudice in the community—only unsubstantiated opinion that a fair trial would be difficult to obtain. Importantly, the South Carolina Supreme Court reversed because the record did not support the ruling, not because the trial court ruled before *voir dire*. Deferral is the “general practice” because, in the usual case, *voir dire* is the only reliable evidence of community sentiment a court will ever have. The South Carolina Supreme Court has accordingly affirmed trial courts that deferred and then denied publicity-based motions once *voir dire* disclosed no actual prejudice. *See, e.g., Evins*, 373 S.C. 404, 645 S.E.2d 904; *Caldwell*, 300 S.C. 494, 388 S.E.2d 816. The common thread is that a venue ruling must rest on evidence of pervasive and prejudicial sentiment across the relevant community. While *voir dire* is one source of that evidence, it is not the only one.

⁵ See Mot. at 5 (citing *State v. Fowler*, 266 S.C. 203, 222 S.E.2d 497 (1976); *State v. Crowe*, 258 S.C. 258, 188 S.E.2d 379 (1972); *State v. Copeland*, 278 S.C. 572, 300 S.E.2d 63 (1982); *State v. Neeley*, 271 S.C. 33, 244 S.E.2d 522 (1978); *Stevens v. Sun News*, 267 S.C. 63, 226 S.E.2d 236 (1976); *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996)).

⁶ With the exception of *Stevens*, a civil action in which the movant offered no evidence at all, every case in Plaintiffs' string cite is a criminal prosecution decided under the criminal venue statute and the constitutional guarantees applicable to the accused. Plaintiffs do not explain why a practice developed in that setting should be imported wholesale into civil actions governed by Sections 15-7-100 and 15-7-110. Their own principal foreign authority shows why the distinction matters: Nevada requires a *voir-dire*-first attempt in criminal cases by statute and imposes no such requirement in civil cases. *Sicor II*, 266 P.3d at 621–22.

Here, the Parker's Defendants presented that evidence directly via a professionally designed survey of 330 respondents measuring not mere awareness but formed opinion; live testimony from Rob Waizenhofer documenting years of coordinated and targeted negative publicity; documentary exhibits; and proof of an organized "Crowd the Courthouse" campaign directed at the proceedings in this case. Where the community's state of mind and prejudice have been measured and proved and the evidence supports the transfer, there is no need to conduct *voir dire*. *Manning* condemned a transfer ordered without evidence. It says nothing about a transfer ordered on persuasive evidence like the Court had here.

C. *Truesdale* Confirms That a Transfer Before *Voir Dire* Is Proper in Rare and Extraordinary Circumstances, and the Court's Criticism of the Survey in That Case Highlights the Strength of the Record Here.

Plaintiffs describe *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982), as the Supreme Court's "clear and final" word that *voir dire* must precede any venue ruling. (Mot. at 6.) It is nothing of the sort. *Truesdale* expressly recognized—and Plaintiffs concede—that there are "rare and extraordinary circumstances," *id.*, in which prejudice is so pervasive before trial that attempting to impanel a jury would be a "hollow formality," *see* 278 S.C. at 371, 296 S.E.2d at 530 (citing *Rideau v. Louisiana*, 373 U.S. 723 (1963)). Having conceded that the exception exists, Plaintiffs cannot maintain that the Court lacked authority to find that it applies. Their real complaint is with the Court's decision after carefully weighing the evidence, which is not a basis for reconsideration.

Nor does *Truesdale* hold that survey evidence can never support a change of venue. There, the Supreme Court reviewed and affirmed a trial court's *denial* of a change of venue. The Supreme Court's statement that granting the motion "in such circumstances would be an abuse of discretion" was tied to the specific infirmities of the survey before it. As Plaintiffs' own footnote recounts, the professor who conducted the survey "could only assume" that his interviewers had followed

instructions; he produced “only two of seventeen” interviewers to testify; and defense counsel had personally conducted part of the interviews, a fact the Court found “so obviously compromising” that the resulting data “hardly warrant[ed] hearing by the court.” *Id.* at 373, 296 S.E.2d at 531 (quoted in Mot. at 13 n.7). Plaintiffs assert the *Truesdale* showing was “much stronger” than the showing here (Mot. at 6), but they wholly fail to explain how that is so. The Repass survey was designed and executed by a professional research firm, not by counsel; it sampled 330 respondents across two jurisdictions; its author submitted a sworn affidavit; defense counsel did not personally conduct any part of the interviews; and the Parker’s Defendants offered to produce Mr. Repass for deposition or live examination prior to the July 6 and 7 hearing—an offer Plaintiffs declined. (See Part III.B, below.) To the extent Plaintiffs now seek to belatedly complain that no interviewers were called to testify or were refused this information in response to a subpoena, it bears noting that: (1) the Parker’s Defendants provided the name of the supervisory interviewer in their discovery responses; (2) Plaintiffs failed to do anything with this information, never claimed this response was deficient, nor raised this argument before the Court’s ruling; and (3) Plaintiffs declined to depose Mr. Repass himself. It bears repeating the Parker’s Defendants offered to produce Mr. Repass for deposition or live examination prior to the July 6 and 7 hearing, but Plaintiffs declined. Plaintiffs similarly failed to request to depose or call as a witness any interviewer under the direction of Mr. Repass. Thus, Plaintiffs have waived any right they had to raise this issue. In any event, *Truesdale* teaches that survey evidence must be (a) reliable and (b) weighed by the court with care. Both prongs are satisfied here.

D. The Record Supports the Court’s Finding That This Is the Extraordinary Case in Which Jury Selection Would Be a Hollow Formality.

Plaintiffs contend that “[n]othing comparable” to *Rideau* has been shown here. (Mot. at 6.) But *Rideau*, which involved a televised jailhouse confession, illustrates an example of prejudice;

it does not define its outer limit. The Supreme Court of the United States has identified the considerations that mark the “extreme case” in which prejudice may be found without *voir dire*: the size and characteristics of the community, the nature of the publicity, and the passage of time. *Skilling v. United States*, 561 U.S. 358, 382–84 (2010). Each consideration supports the Court’s decision here.

The community is small. *Skilling* declined to presume prejudice in Houston, where “more than 4.5 million individuals eligible for jury duty” resided, and it contrasted that metropolis with *Rideau*, where the crime “was committed in a parish of only 150,000 residents.” *Id.* at 382. Hampton and Allendale Counties together have a population of 25,529—one-sixth the size of the community the Supreme Court of the United States found small enough to presume prejudice in *Rideau*, and roughly one-half of one percent of the Houston jury pool. The Nevada Supreme Court, in the passage Plaintiffs quote, treated the size of the jury pool the same way. It approved deferral in Clark County, “the most populous county” in Nevada, “with a correspondingly large jury pool,” while recognizing that a pretrial transfer is appropriate where the evidence shows that “a significant proportion of [a] small community” has connections to a party. *Sicor II*, 266 P.3d at 621–22 (citing *Jerry Harmon Motors v. First Nat’l Bank*, 440 N.W.2d 704 (N.D. 1989)) (quoted in Mot. at 31–33).

The publicity is not ordinary reporting. It is targeted advocacy. The Court heard live testimony (supported by documentary exhibits) demonstrating years of coordinated, negative, and targeted publicity concerning the Parker’s Defendants and their counsel. The Court also received evidence of an organized “Crowd the Courthouse” campaign specifically designed to bring public pressure to bear on the proceedings in this case. Far from “mere exposure,” *see Manning*, 329 S.C. at 7, 495 S.E.2d at 194, the record here reflects a sustained effort to shape community sentiment

against the Parker's Defendants, which is exactly the type of "outside influence" *Patterson v. People* warned against more than a century ago. *See* 205 U.S. 454, 462 (1907). The Order applied the right test, quoting *Sicor, Inc. v. Hutchison*, 266 P.3d 608, 615 (Nev. 2011) ("*Sicor I*") for the proposition that the question is not whether prospective jurors "have learned information about the case outside the courtroom," but "whether there is a reason to believe that the community in which the case has been brought will not yield a jury qualified to deliberate impartially and upon competent trial evidence." (Order at 5.) That formulation tracks closely with the language of Section 15-7-100(A)(2).

Time has compounded the prejudice rather than dissipated it. Here, the publicity at issue did not follow a single event and fade. From the Boat Crash Case in 2019 to the ongoing Murdaugh murder prosecution to the present lawsuit, coverage has continued over several years. Not only has coverage continued since the Court issued its Order granting the Motion to Change Venue, but it has arguably intensified, particularly given the fact that Judge McCaslin has relied on this Court's Order in granting Alex Murdaugh's request to change the venue of his retrial.

Moreover, Ms. Matney's specific media assault on the Parker's Defendants (and, indeed, this Court) has continued unabated. Ms. Matney and her colleagues have posted or blogged or discussed this case on at least the following dates since the issuance of the Court's Order granting the Motion to Change Venue: August 13, 14, 15, 16, 18, 19, 21, 25, 26, and 29 and September 3, 10, and 15. The following is just a small sampling of the statements Ms. Matney has posted in the aftermath of the Order.

The very day after the entry of said Order, on or about August 13, 2026, Ms. Matney proclaimed on a social media post:

Soooo let me get this straight.....Billionaire Greg Parker can get his trial — in a case where he is the DEFENDANT — moved to across

the state and I couldn't get my deposition moved across the STREET due to safety concerns... in a case where I am a NON-PARTY.

Now the trial will be held in Spartanburg SC — far away from Mallory Beach's family who are the plaintiffs in this case. The plaintiffs are accusing GREG PARKER of allegedly intentionally inflicting emotional distress on them in an alleged attempt to get Mallory's grieving family to settle for less money in their lawsuit against Greg Parker for owning the gas station that illegally sold the alcohol that fueled Paul Murdaugh's drunken rage that led to the tragic boat crash that ended Mallory's life.

THAT is what this case is about. Not my dumb deposition that has unfortunately sent this case spiraling into the direction of chaos and confusion — which is exactly what the bad guys⁷ want.

On August 17, 2026, Ms. Matney used one word to characterize this Court and its decision with respect to her: "Unconstitutional." Ms. Matney also specifically addressed in multiple posts the hearing the Court conducted concerning the change of venue motion on July 6, 2026—a hearing for which she was not present. In a post on August 26, 2026, Ms. Matney stated:

I will never forget the moment in court when the former FBI agent paid by Greg Parker admitted to following me.

My husband and I just looked at each other and everything changed for us in that moment.

It was crystal clear: South Carolina is no longer a safe place for us.

This claim was presumably regarding Robert Waizenhofer's testimony during the July 6, 2026, hearing concerning his confirmation that Ms. Matney resided on Hilton Head Island. Mr. Waizenhofer *never* testified he followed Ms. Matney, or went to her residence or ever conducted any type of physical surveillance with respect to her—because he did not.⁸

⁷ By "bad guys", Ms. Matney is clearly referring to the Parker's Defendants and their counsel—and perhaps others.

⁸ As a self-proclaimed investigative "journalist" who touts her social media and internet savvy, Ms. Matney should be aware that it is fairly simple to ascertain the personal addresses of most people (including her) through internet searches. Moreover, as she has proven many times, Ms. Matney has never been one to let facts get in the way of her self-serving narratives.

On or about September 10, 2026, Ms. Matney claimed she was the victim of “lawfare” by stating:

I can’t begin to tell yall [sic] the legal hell my husband and I have witnessed behind the scenes in the last year.

Shit we can’t talk about right now but absolutely will someday.

If you are experiencing lawfare right now, hang in there.

This shit is a challenging mountain of mindf*cking and we need to start a support group . [sic]

That same day, September 10, 2026, in a podcast concerning an entirely different case, but one in which Mr. Tinsley is involved—i.e. the Scott Spivey case—Ms. Matney and her colleague, Ms. Farrell, attempted to connect that case to the Parker’s Defendants and their counsel by questioning whether the undersigned are coordinating with the Weldon Boyd legal team “to destroy Mark Tinsley.” This speculation is patently false but demonstrates the commentary about the Parker’s Defendants is so frequent with Ms. Matney and her podcast that this biased commentary infiltrates her discussions about completely unrelated matters.⁹

And just this week, Ms. Matney posted a story on her Instagram, taking another shot at Ms. Barbier, stating: “It’s a good day to drag Deborah Barbier.” The posting is below:

⁹ Further demonstrating their continued, years-long alliance with Mr. Tinsley, Ms. Matney and Ms. Farrell appear to take almost every opportunity they have to give “shout outs” to Mr. Tinsley and to give court filings credence. On September 8, 2026, Mr. Tinsley and Mr. Nichols filed a federal civil rights lawsuit naming as defendants multiple officers from the Horry County Police Department who were involved in the Spivey investigation. Two days later, Ms. Matney and Ms. Farrell immediately devoted back-to-back True Sunlight podcasts to the complaint in that case, reviewing the allegations “officer by officer” in the second one, continuing to glorify their hero, Mark Tinsley.



The term “drag” (or “dragging”) chosen by Ms. Matney above is often used to describe a practice of insulting or calling someone out in public or online. In social media slang, “dragging” also refers to the practice of talking about a topic *ad nauseam*, simply refusing to let an argument or a grievance die.

And just today, following the entry of this Court’s September 14, 2026 Order regarding the Parker’s Defendants’ confidentiality designations, Ms. Matney and Ms. Farrell were at it again. In a podcast posted on September 17, 2026, Ms. Farrell asserted in the podcast with Ms. Matney “that it seems like Parker really doesn’t want the court in Roman’s appeal to consider the information contained in” the pages subject to the Court’s Order of September 14, 2026. Of course, there was no effort to hide any information from the Supreme Court as the Supreme Court (like

any other court) can consider documents marked as confidential—and, as the Parker’s Defendants noted in their filings, Plaintiffs should have been able to file those pages under seal with the Supreme Court in any event.¹⁰ So either Ms. Farrell (who was represented at her own deposition by Mr. Tinsley) does not understand how confidential documents are treated by courts (and should not therefore be commenting about the process) or she is intentionally spreading false information to her listeners.

If past is prologue here (and Ms. Matney and Ms. Farrell have demonstrated that it clearly is with them) these self-proclaimed “journalists” who are clearly aligned with Plaintiffs’ counsel will continue their efforts at “dragging” the Parker’s Defendants and their counsel at every opportunity, making statements that have no basis in fact or truth in an effort to sway a potential jury. Their efforts continue to demonstrate that this Court made the clearly correct decision in transferring the trial of this case out of the Fourteenth Circuit (Ms. Matney’s years-long home base) to ensure that *all* parties in this case receive a fair trial.

The relevant inquiry here focuses on community bias, not just community awareness. Plaintiffs’ own math (Mot. at 12–13 n.6) does not help them. Plaintiffs reason that because some percentage of respondents had not heard of the case, “it is possible to select a panel.” But the significance of the survey lies in opinion, not awareness, and a venire drawn from a community in which those holding opinions favor Plaintiffs three to one is not rendered impartial by the presence of a minority who have formed none. *Irvin v. Dowd*, on which Plaintiffs rely at length, shows what such a venire looks like in practice. Of the prospective jurors examined there, roughly ninety

¹⁰ Additionally, in the same podcast, episode 165 of the True Sunlight podcast, Ms. Farrell claimed “the Parker’s Defendants’ attorneys instructed PNC Bank not to release records responsive to Plaintiffs’ subpoena.” There is no evidence of such, because it did not happen—but that did not stop Ms. Farrell from making this patently false allegation.

percent held some opinion of the defendant's guilt, 268 were excused for cause as having fixed opinions, and eight of the twelve jurors ultimately seated admitted that they believed the defendant guilty. 366 U.S. 717, 727 (1961). The Supreme Court reversed the conviction notwithstanding an exhaustive *voir dire*, because the "pattern of deep and bitter prejudice" in the community could not be cured by the seated jurors' assurances of impartiality. *Id.* Plaintiffs' proposed remedy (i.e., summon a Hampton County venire and see what happens) is an invitation to replicate *Irvin* (an invitation the Court wisely declined the first time around).

III. THE COURT'S FINDING RESTS ON AN EVIDENTIARY RECORD THAT IS NOT ONLY SOLID—IT IS A RECORD THAT PLAINTIFFS CHOSE NOT TO TEST.

Plaintiffs next argue (Mot. at 7–14) that the Court "overlooked" the inadequacy of the Parker's Defendants' evidence. The Court overlooked nothing. It held a two-day evidentiary hearing, received the evidence, heard Plaintiffs' objections, and found that Plaintiffs "failed to offer evidence to rebut the survey conducted by Mr. Repass" and failed to "persuasively challenge" the Waizenhofer testimony and exhibits. (Order at 7.) That is a ruling on Plaintiffs' failure to challenge, not a failure to rule.

A. The Ricard Affidavit Satisfied the Statutory Requirement, and the Court's Finding Rested on the Evidence Presented at the Hearing, Not on the Affidavit.

Plaintiffs devote several pages to the affidavit of Rhett Ricard, arguing that because it was made "to the best of [his] knowledge" it could not support the transfer under *Stevens v. Sun News*, 267 S.C. 63, 226 S.E.2d 236 (1976), and *Davenport v. Summer*, 269 S.C. 382, 237 S.E.2d 494 (1977). The argument misapprehends both the function of the affidavit and the holdings of those cases.

Section 15-7-110 requires that an application for a change of venue "be supported by an affidavit that a fair and impartial trial cannot be had in such county." The requirement is

procedural: it ensures that the application is made under oath and in good faith. Nothing in the statute requires that the affiant reside in the county, that the affidavit recite firsthand observations of community sentiment, or that the affidavit serve as the movant's sole (or even primary) evidence. The Ricard affidavit verified the motion and its supporting memorandum, which is all that is required to satisfy the statute. The Parker's Defendants also submitted the sworn affidavit of Mr. Repass, an independent professional with no stake in this litigation, attesting to the survey, its methodology, and its results. Thus, the motion was supported by affidavit twice over.

Stevens and *Davenport* do not hold otherwise. In *Stevens*, as described by Plaintiffs themselves, the motion "was supported only by affidavits of the movant's counsel," and the South Carolina Supreme Court affirmed its denial because such "conclusory statements and opinions" were not sufficient. (Mot. at 7–8.) The Supreme Court rejected as a "naked assertion" counsel's claim that publicity had "so inflamed or contaminated the prospective jurors as to warrant a change of venue." 267 S.C. at 70, 226 S.E.2d at 240. *Davenport* likewise involved a motion resting on a party's "good name, position as a holder of public office, and family ties, *without more*." 269 S.C. at 385, 237 S.E.2d at 496 (quoted in Mot. at 28) (emphasis added). The operative words are "only" and "without more." Here, there was a great deal more: a survey of 330 respondents, a sworn expert affidavit, two days of testimony and argument, and documentary exhibits. The Court found that a fair trial could not be had because the evidence proved as much, not simply because Mr. Ricard said so. *Davenport*'s remark that counsel's affidavit "does not bear the degree of neutrality expected to persuade a court" (Mot. at 8–9) is a comment on weight, and the Court had no need to rely on the Ricard affidavit as proof of community sentiment; that proof came from the overwhelming corroborating material presented at the hearing. *Stevens* confirms that the moving

party's burden is "formidable." It also confirms that the burden can be carried with evidence, and the Court found that it was.

Plaintiffs' reliance on *Stevens*'s discussion of trial by a jury of the vicinage fares no better. The vicinage principle, as *Stevens* explains, is valued because jurors drawn from the vicinage are well situated "to pass upon the credibility of witnesses." *Id.* at 69, 226 S.E.2d at 239. The principle presupposes a vicinage capable of impartial judgment; it is not a license to try a case before a community that has already made up its mind. Section 15-7-100(A)(2) exists precisely because the vicinage sometimes cannot deliver a fair trial, and the case in which the South Carolina Supreme Court most prominently invoked the principle *reversed* a trial court for refusing to move a case out of Hampton County. *Patterson v. Charleston & W.C. Railway Co.*, 190 S.C. 66, 1 S.E.2d 920 (1939). Nor is an appeal to vicinage a natural one for Plaintiffs in this case, none of whom resides in Hampton County.¹¹

B. Plaintiffs Declined Every Opportunity to Examine Mr. Repass and Cannot Now Complain That His Methodology Went Untested.

The centerpiece of the Motion is the contention that the Court "accepted" the Repass survey "without performing a reliability analysis mandated by Rule 702, SCRE." (Mot. at 9.) The contention fails at the threshold, because the absence of any fuller record on Mr. Repass's qualifications and methodology is the product of Plaintiffs' own tactical choices.

The chronology is undisputed. By serving discovery responses targeted at Mr. Repass's work on March 20, 2026, Plaintiffs indicated they were aware of Mr. Repass's survey no later than

¹¹ Plaintiffs conveniently ignore that the record in this case conclusively establishes that none of the Plaintiffs resided in Hampton County when the Complaint was filed—or even when their alleged causes of action accrued, contrary to their counsel's incorrect assertions at the July 6, 2026, hearing. (Ex. 2, July 6, 2026, Hrg. Tr. at 121:11–12 (Mr. Tinsley: "When the cause of action accrues in 2021, all of these people live in Hampton County.")) Their failure to grapple with the actual evidence on this point speaks volumes.

that date. The Parker's Defendants' Motion for Change of Venue was filed on April 7, 2026. The Parker's Defendants' Memorandum in Support of the same was filed on June 5, 2026, which attached the survey for Plaintiffs' review. Mr. Repass's affidavit was filed on June 29, 2026. The hearing was held on July 6 and 7, 2026. Before the evidentiary hearing, the Parker's Defendants told Plaintiffs and the Court on the day of the June 22, 2026, hearing involving Ms. Matney, that Mr. Repass was not available on July 6 or 7 but that they would (as they had noted earlier) make him available for a video deposition or for live examination before the Court prior to July 6, 2026. Plaintiffs' lead counsel responded then that Plaintiffs did not consider his live testimony necessary nor did they intend to depose him—which Plaintiffs again confirmed on the record at the July 6, 2026 hearing. (Ex. 2, July 6, 2026, Hrg. Tr. at 6:23–25 (Mr. Tinsley: “I think it’s completely unnecessary to – call this gentleman [Mr. Repass] and have live testimony.”).) Plaintiffs did not move for a continuance to develop any challenge under Rule 702. They did not ask the Court to defer its ruling based upon a request for further discovery from Mr. Repass. They did not retain a competing expert or submit any evidence of their own. Instead, they elected to meet the survey with argument alone.¹²

Having made that election, Plaintiffs cannot be heard to complain that the Court failed to “test” the survey through a procedure they themselves declined. A party who forgoes an available opportunity to challenge evidence waives the right to complain of its consideration. *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (contemporaneous objection requirement); *Harris v. Campbell*, 293 S.C. 85, 358 S.E.2d 719 (Ct. App. 1987) (“The failure to make a timely and

¹² While Plaintiffs' counsel did make unsupported claims about the residence of blogger/podcaster Mandy Matney's viewers in Hampton County and Spartanburg County, no *evidence* in that regard was submitted then or thereafter. Such statements remain nothing more than unsubstantiated representations of counsel, i.e. that which “does not bear the degree of neutrality expected to persuade a court.” *Davenport*, 269 S.C. at 384, 237 S.E.2d at 495.

proper objection to the introduction of testimony waives the right to object to such testimony on appeal.”). This is especially true here, where Plaintiffs were not merely silent, but affirmatively declined the very cross-examination they now contend was indispensable. A motion under Rule 59(e) may not be used to present an issue that could have been raised before the ruling, *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482, and it certainly may not be used to obtain a second hearing on evidence the party chose not to confront at the first.¹³

Plaintiffs’ assertion that the Parker’s Defendants “refused” to provide information Plaintiffs subpoenaed from Mr. Repass, (Mot. at 9–10), does not change the analysis. Plaintiffs do not contend that they moved to compel production, sought to enforce the subpoena, requested a continuance, or asked the Court to defer consideration of the survey until any dispute over the subpoena was resolved. A party that believes it lacks the discovery it needs to contest a motion has well-established remedies. Plaintiffs invoked none of them, proceeded through a two-day hearing, and lost. The Rules do not permit them to stay silent and later convert a discovery dispute they never pursued into a ground for undoing the Court’s ruling.¹⁴

¹³ Plaintiffs’ related complaint that they “have not had the opportunity to depose Mr. Ricard” (Mot. at 10 n.4) fails for the same reason. Plaintiffs do not contend that they ever noticed his deposition or sought leave to take it. Comedically, Plaintiffs claim that Mr. Ricard has become a witness in the case by swearing out a procedural affidavit as he was required to do by statute.

¹⁴ Moreover, the Parker’s Defendants never “refused” to provide properly discoverable information. On March 20, 2026, the same day Plaintiffs issued a subpoena to Research America, Plaintiffs served their Fourth Set of Interrogatories and Seventh Set of Requests for Production, both of which were exclusively seeking information and documentation related to Research America. At the discovery conference on April 7, 2026, in which all counsel participated, the Parker’s Defendants’ counsel understood from Plaintiffs’ counsel that a motion to quash was not necessary because the Parker’s Defendants’ counsel verbally agreed to produce the final report from Rex Repass of Research America as well as associated invoices and communication not otherwise protected by Rule 26(b)(4) of the South Carolina Rules of Civil Procedure in response to Plaintiffs’ recently served discovery requests. This commitment was further demonstrated by the Parker’s Defendants responding to said discovery requests on April 28, 2026, and producing responsive documents that existed at the time, which continued to be supplemented. To the extent

C. In Any Event, Rule 702 Did Not Require the Court to Exclude the Survey or to Conduct a Separate Gatekeeping Hearing.

Setting Plaintiffs' waiver aside, their Rule 702 argument fails on its own terms for at least four reasons.

First, the Court performed the function Plaintiffs say it neglected. Plaintiffs presented their methodological criticisms—sample size, the survey's "hypotheses," the absence of scripts, respondent selection, and the rest—at the hearing, and the Court found them unpersuasive. (Order at 7.) Plaintiffs' complaint is not that the Court failed to consider reliability but that it resolved the question against them without the formal, freestanding hearing they now describe. Rule 702 requires no such ritual. The rule directs the trial court to satisfy itself that the evidence will assist the trier of fact (the Court in this scenario), that the witness is qualified, and that the basis of the opinion is reliable. *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999); *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023). It prescribes no particular procedure for doing so. A court that hears the evidence and the objections to it and then credits the evidence has done all that the rule requires.

Second, the concern that animates the gatekeeping cases is at its lowest ebb here. The authorities Plaintiffs cite concern the admission of expert testimony at trial, and the rationale for gatekeeping is the risk that lay jurors will be unduly impressed by unreliable expertise. Here, there was no danger that a jury would be improperly swayed. On a motion under Section 15-7-100, the Court is itself the finder of fact. The gate and the gatekeeper are the same, and the Court is fully capable of assessing the survey's methodology and assigning it the weight it deserves. *Cf. Gibbs v. Gibbs*, 210 F.3d 491, 500 (5th Cir. 2000) ("Most of the safeguards provided for in *Daubert* are

that Plaintiffs' counsel misunderstood the verbal agreement or intended to seek additional documentation, the proper route to accomplish this was not staying silent.

not as essential in a case such as this where a district judge sits as the trier of fact in place of a jury.”). Tellingly, *Truesdale*—the decision on which Plaintiffs themselves rely for the treatment of change-of-venue surveys—did not exclude the survey at issue. Instead, the Supreme Court examined the survey itself and concluded that its particular defects deprived it of *weight*. 278 S.C. at 371–73, 296 S.E.2d at 530–31. The Court engaged in the same weighing analysis here and reached the opposite conclusion.

Third, nothing in *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003) requires courts to reject experts’ affidavits. *Dawkins* upheld a trial court’s discretionary decision to disregard an expert affidavit that primarily contained legal arguments and conclusions on the ultimate issue and read “as if it could have been [the proponent’s] oral argument to the trial court.” (Mot. at 10.) Thus, if anything, *Dawkins* confirms that the weight to be given an expert’s affidavit is for the trial court to decide. The Repass affidavit reports the design, sample, and results of an empirical study, a far cry from the sort of covert advocacy as to legal issues that courts view with suspicion. Plaintiffs’ related complaint that the report was “not verified” until June 29, 2026 (Mot. at 10–11) is a complaint about purely procedural timing. Again, Plaintiffs had a week before the hearing during which they declined an express offer to have the affiant’s presence for purposes of adversarial testing.

Fourth, Plaintiffs’ observation that unrebutted evidence is not necessarily “undisputed” (Mot. at 12 (citing *Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010), and *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991))) is correct but irrelevant. The cases Plaintiffs cite hold that a factfinder is not *compelled* to accept uncontradicted evidence. They do not suggest that a factfinder errs by *crediting* it. The Court was entitled to weigh the survey, the

testimony, and the exhibits against Plaintiffs' arguments, and it was entitled to find the evidence more persuasive than counsel's argument.

D. Plaintiffs' Remaining Criticisms of the Survey Go to Weight, Not Admissibility.

The balance of Plaintiffs' attack consists of points the Court heard and rejected. Three warrant brief response.

Alex Murdaugh is not a party. True, and beside the point. The question under Section 15-7-100(A)(2) is whether the community can yield an impartial jury for *these* parties, and the survey measured opinion about the Parker's Defendants specifically. The Murdaugh saga matters because the Boat Crash Case, the murder prosecution, and this action are inextricably linked in the public mind of the Fourteenth Circuit (a linkage the Waizenhofer testimony and exhibits documented in detail) and because the resulting prejudicial saturation is what distinguishes this community from any other.¹⁵

The survey did not sample Jasper, Beaufort, or Colleton County. The survey sampled Hampton and Allendale Counties, together with a comparison county outside the affected media market. It found comparable levels of prejudice in Hampton and Allendale, and Mr. Repass concluded that the prejudice extends to the contiguous media market venues within the Fourteenth Circuit. Plaintiffs offered no evidence that Jasper, Beaufort, or Colleton County lies outside that media market or that opinion there differs. Their footnoted suggestion that Colleton County must be a suitable venue because a jury was seated there for the Murdaugh murder trial (Mot. at 11 n.5) is a truly remarkable one. That trial is the epicenter of the publicity at issue; it was a criminal prosecution conducted on a different record under a different constitutional framework; and the

¹⁵ Again, it bears noting that Judge McCaslin explicitly relied on the presently challenged Order in the very double murder case in which Alex Murdaugh very much is a party.

post-trial proceedings concerning that very jury (which required an evidentiary hearing into the Colleton County Clerk of Court's communications with the jurors) hardly support Colleton County as a venue insulated from the influences that concern the Court here. The ruling in the Boat Crash Case that Plaintiffs mention was likewise made on a substantively different motion, on a different record, at an earlier point in the publicity timeline, and before much of the evidence presented to this Court existed.

The comparison county. Plaintiffs insinuate that Spartanburg was selected as the survey's comparison county because it lies within the presiding judge's home circuit. (Mot. at 11 n.5.) Nothing in the record supports that suggestion, and it does not merit extended response. To prove anything, a comparison county in a change-of-venue survey must, by design, lie outside the media market whose effects are being measured. Spartanburg served that function, as reflected in the survey's comparative results. Plaintiffs offered no evidence that any county within the Fourteenth Circuit, or any county contiguous to it, could have served the same purpose.

IV. SECTION 15-7-110 DOES NOT BAR TRANSFER OUTSIDE THE FOURTEENTH CIRCUIT WHERE THE COURT HAS FOUND THAT A FAIR TRIAL CANNOT BE HAD WITHIN IT.

Plaintiffs' third argument is that the final sentence of Section 15-7-110 ("[i]f a change is ordered it shall be to a county in the same judicial circuit") is an absolute command that left the Court no choice but to send this case to Jasper, Beaufort, Allendale, or Colleton County. The South Carolina Supreme Court has rejected that construction of materially identical language, and its reasoning controls here.

A. *State v. Law* and *State v. Harvey* Hold That Same-Circuit Venue Language Cannot Be Construed to Defeat the Constitutional Right to a Fair Trial.

In *State v. Law*, 265 S.C. 111, 217 S.E.2d 22 (1975), the circuit court transferred a case beyond the Twelfth Judicial Circuit, and the State appealed on the ground that the venue statute—

which, like Section 15-7-110, directed that a change of venue be “to another county in the same circuit”—mandated trial within the circuit. (Mot. at 25–26 & n.12.) The South Carolina Supreme Court affirmed, holding that the rationale of *State v. Harvey*, 128 S.C. 494, 122 S.E. 860 (1924), was “dispositive of the appeal” and summarizing that rationale in terms Plaintiffs themselves quote:

In brief summary, the court held that the defendant, under Article 1, section 5 of the Constitution of South Carolina and the Fourteenth Amendment to the United States Constitution, was entitled to an impartial trial; that the power to order a change of venue to accomplish a fair and impartial trial was a common law power of the court and that the provision contained in section 2, Article 6 of the 1895 Constitution was intended primarily to preserve and guarantee the common law right to a change of venue rather than to limit it and that such a provision could not be construed so as to deprive a defendant of his constitutional guarantees as to an impartial trial and the equal protection of the laws.

265 S.C. at 112–13, 217 S.E.2d at 23 (quoted in Mot. at 26). Applying that rationale, the Court held that “to construe the statutory language relied upon by the State as preventing a change of venue beyond the circuit would be an impermissible construction in violation of the constitutional right of the defendant to a fair and impartial trial.” *Id.* at 113, 217 S.E.2d at 23. Plaintiffs’ efforts to confine *Law* to its facts do not survive a cursory reading of the opinion.

Law did not turn on a concession. Plaintiffs emphasize that, in *Law*, it was “unchallenged” that a fair trial could not be had in the Twelfth Circuit and that “[n]o such concession exists in this case.” (Mot. at 26.) But the significance of the concession in *Law* was simply that the predicate finding (i.e., that a fair trial could not be had within the circuit) was established. How the predicate is established is immaterial to the constitutional principle. Here, it was established by a finding, made after a contested two-day evidentiary hearing, that a fair and impartial trial of the present action cannot be obtained in Hampton County nor the Fourteenth Judicial Circuit. A finding made on evidence over objection is, if anything, a firmer foundation than an unexamined concession. *Law* and *Harvey* hold that once the predicate exists, the same-circuit language must yield to the

Constitution; nothing in either opinion suggests that the result would differ had the predicate been proved rather than conceded.

Law did not turn on the number of counties in the circuit. Plaintiffs note that the Ninth Circuit in *Harvey* had one county and the Twelfth Circuit in *Law* had two, whereas the Fourteenth Circuit has five. (Mot. at 27.) *Law* itself disposed of that distinction: “In the present case there are two counties in the circuit while in *Harvey* there was only one, *but the point is*, that it is unchallenged that the defendant cannot obtain a fair trial in the Twelfth Circuit.” 265 S.C. at 113, 217 S.E.2d at 23 (emphasis added). The point, in other words, is the finding of likely unfair prejudice, not logistics or impossibility. The Court made that finding here on a record that specifically addressed the reach of the prejudice beyond Hampton County—a survey of Allendale County showing comparable results, and expert testimony that the prejudice extends to the contiguous media market venues within the circuit. Plaintiffs offered nothing to the contrary beside unsupported representations of counsel.

Law is not limited to criminal cases. *Law* and *Harvey* rested on the constitutional guarantee of a fair and impartial trial, a guarantee that belongs to criminal defendants and civil litigants alike. The Nevada Supreme Court said so in the very decision Plaintiffs press on the Court: “In this civil action, appellants’ right to a ‘fair trial in a fair tribunal’ is likewise protected by the Due Process Clause.” *Sicor II*, 266 P.3d at 622 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)) (quoted in Mot. at 33). South Carolina’s Constitution, for its part, directs the General Assembly to provide for a change of venue “in all cases, civil and criminal,” upon a showing that “a fair and impartial trial cannot be had in the county.” S.C. Const. art. V, § 23 (quoted in Mot. at 3). The constitutional command is that the fair trial be secured. The same-circuit language is a statutory default that, under *Law* and *Harvey*, gives way when it cannot be honored consistently with that command.

Indeed, the argument for reading the statute as *Law* reads it is stronger today than it was in 1924 or 1975. The same-circuit limitation once appeared in the Constitution itself; the Supreme Court refused even then to read it as a barrier to a fair trial; and the constitutional provision has since been deleted. *Law*, 265 S.C. at 112–13, 217 S.E.2d at 23. What remains is a statutory remnant of a provision that, even at full constitutional strength, could not do what Plaintiffs ask it to do now.

Law's citation history is beside the point. Plaintiffs observe that *Law* “has not been cited by any subsequent cases.” (Mot. at 26.) An unreversed decision of the Supreme Court does not lose its binding force through infrequent citation; the observation reflects only how rarely the circumstances that require an out-of-circuit transfer arise. Plaintiffs cite no decision (because there is none) holding that a trial court must keep a case within a circuit in which it has found that a fair trial cannot be had.

Plaintiffs' statutory distinction is illusory. Finally, Plaintiffs contend that the criminal venue statute construed in *Law* contains “waiver language” absent from Section 15-7-110. (Mot. at 26 n.12.) The proviso they quote—that “such adverse party to whom notice is given shall have the right to waive it”—is most naturally read to refer to the notice of the application just mentioned, and Section 15-7-110 contains the same provision: “Four days’ notice of such application shall be given to the adverse party, but such adverse party shall have the right to waive such notice.” S.C. Code Ann. § 15-7-110 (quoted in Mot. at 4). Even on Plaintiffs’ reading, a requirement that a party may waive is by definition not a limitation on the court’s power. And *Law* did not rest on the proviso in any event; it rested on *Harvey*.

B. *Lancaster v. Fielder* Affirmed an Out-of-Circuit Transfer Over the Objection of Parties Who Preserved and Pressed That Objection at Every Stage.

Plaintiffs’ treatment of *Lancaster v. Fielder* rests on the premise that the transfer from Union County (Sixteenth Circuit) to Laurens County (Eighth Circuit) was “by consent,” so that

the propriety of an out-of-circuit transfer was “not raised or ruled upon.” (Mot. at 17, 26–27.) The opinion Plaintiffs quote at length refutes the premise. The trial judge granted the renewed motion “over the objection of petitioners.” 305 S.C. 418, 420, 409 S.E.2d 375, 376 (1991). “While *preserving their right to appeal the trial judge’s decision to transfer venue*, petitioners agreed to try the case in Laurens County.” *Id.* (emphasis added). When the case was called in Laurens County, “petitioners moved that venue be transferred back to Union County on the ground that the case had been improperly transferred,” and after the verdict they “moved for a new trial on the ground that venue had been improperly transferred to Laurens County.” *Id.* (quoted in Mot. at 16). A party who objects to a transfer, expressly reserves the objection, moves to undo the transfer before trial, and moves for a new trial on the same ground afterward can hardly be said to have consented to anything. The petitioners in *Lancaster* did exactly what litigants must do to preserve an issue, and the question the Supreme Court decided was whether the transfer to Laurens County was proper. The Supreme Court held that the trial judge did not abuse his discretion “in finding that a transfer of venue was necessary in order to obtain an impartial jury.” *Id.* at 422–23, 409 S.E.2d at 378.

Plaintiffs’ response is that “neither the circuit court nor the Supreme Court explained why the matter was not transferred to York County” within the Sixteenth Circuit. (Mot. at 17.) Thus, Plaintiffs acknowledge that the Supreme Court affirmed an out-of-circuit transfer without pausing over Section 15-7-110, which is to say, they acknowledge that the Supreme Court did not regard the same-circuit language as the insuperable barrier Plaintiffs now describe. If the statute meant what Plaintiffs say it means, the transfer to Laurens County would have been error on the face of the record the Supreme Court recited, and the petitioners’ preserved objection that venue had been “improperly transferred” would have required reversal. The Court instead affirmed. Therefore, the

Order accurately described *Lancaster* as standing for the proposition that “in appropriate circumstances, transfer to an out-of-circuit venue may be necessary to secure a fair trial.” (Order at 3).

By acknowledging that “venue by consent has always been proper” (Mot. at 17), Plaintiffs necessarily concede that the same-circuit language of Section 15-7-110 is not a limitation on the Court’s power. What Plaintiffs describe as an absolute mandate is, on their own account, a default rule that yields to the parties’ agreement. *Law* and *Harvey* establish that it likewise yields to the constitutional necessity of a fair trial.

C. The Canons of Construction Plaintiffs Invoke Do Not Permit the Court to Disregard the South Carolina Supreme Court’s Construction of the Statute.

Plaintiffs’ textual argument fares no better. “Shall” is mandatory, they argue (Mot. at 14) (citing *Strickland v. Richland Cnty. Legislative Delegation*, 440 S.C. 438, 442–43, 892 S.E.2d 288, 290 (2023)), and a plain and unambiguous statute must be applied literally (*id.* at 17 (citing *Henderson v. Evans*, 268 S.C. 127, 130, 232 S.E.2d 331, 333 (1977))). Those principles are unexceptionable and do not support Plaintiffs’ argument. The same-circuit language of the criminal venue statute construed in *Law* was equally plain, equally unambiguous, and equally mandatory in form, and the Supreme Court held that it could not be applied to defeat a fair trial. That construction binds this Court. Canons of construction are tools for discerning what the General Assembly meant; they are not a warrant for a trial court to depart from the construction the Supreme Court has already placed on materially identical language. And the Supreme Court’s construction is itself an application of the most important canon of all, the canon that statutes are read, where fairly possible, to *avoid constitutional infirmity*—the canon *Harvey* applied when it read the same-circuit provision as one “intended primarily to preserve and guarantee the common law right to a change of venue rather than to limit it.” 265 S.C. at 112–13, 217 S.E.2d at 23.

D. The Court's Finding That the Prejudice Pervades the Fourteenth Circuit Is Supported by the Record, and Plaintiffs' Proposed Alternatives Would Not Cure That Prejudice.

Plaintiffs' alternative request that the case be sent to Jasper, Beaufort, Allendale, or Colleton County assumes that the prejudice the Court found does not extend beyond the Hampton County line. The Court found otherwise, and the record supports its finding. The survey sampled Allendale County and found prejudice at levels comparable to Hampton County, and Mr. Repass concluded that the prejudice extends to the contiguous media market venues within the circuit. Plaintiffs offered no evidence that opinion in Jasper, Beaufort, or Colleton County differs. And *Irvin v. Dowd* (again, a case on which Plaintiffs rely) demonstrates why a transfer to an adjoining county within the same media market is no remedy at all. The trial court in *Irvin* had already moved the case once, from Vanderburgh County to adjoining Gibson County. The Supreme Court held that the move accomplished nothing because the same publicity had "caused a sustained excitement and fostered a strong prejudice among the people of Gibson County." 366 U.S. at 726–27. Plaintiffs ask this Court to make the same mistake.

V. THE ORDER PROPERLY RELIED ON THE REMAINING AUTHORITIES FOR THE PRINCIPLES THEY ESTABLISH.

Plaintiffs devote the final third of the Motion (Mot. at 18–34) to arguing that the decisions the Order cited "do not support or advance the Court's ruling" because each "is distinct from this case." (Mot. at 18.) Their argument misunderstands how the Order used those authorities. The Court did not cite *Patterson v. People* or *In re Murchison* as venue precedents; it cited them for the constitutional principles they articulate, and Plaintiffs do not (and cannot) dispute that the principles are correctly stated.

Where the Order relied on venue decisions, Plaintiffs' own descriptions of those decisions support the Court's holding:

- ***Patterson v. People*, 205 U.S. 454 (1907).** *Patterson* was a contempt case. The Order quoted it for the unremarkable proposition that the conclusions reached in any given case must be “induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” (Order at 2.) Plaintiffs concede that the Supreme Court of the United States invoked that very language in *Sheppard v. Maxwell*, 384 U.S. 333 (1966)—the foundational modern decision on prejudicial publicity—and that the South Carolina Supreme Court did the same in *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979). (Mot. at 19–20.) Plaintiffs thus establish that *Patterson*’s principle is a settled foundation of fair-trial jurisprudence in both courts whose decisions bind this one. That *Salters* and *Sheppard* addressed publicity through curative measures rather than a change of venue reflects the posture of those cases, in which juries had already been seated and the question was what to do about publicity *during* trial. It says nothing about the tools available to a court that has found, before trial, that no impartial jury can be seated in the first place.
- ***Skilling v. United States*, 561 U.S. 358 (2010).** Plaintiffs emphasize that *Skilling* involved a criminal prosecution under Rule 21 of the Federal Rules of Criminal Procedure and that “[n]o similar rule applies to civil matters in State court.” (Mot. at 21.) True, but the Order cited *Skilling* for its constitutional analysis,¹⁶ not its analysis of Rule 21. And *Skilling* fundamentally supports the Court’s decision on the merits. The Supreme Court declined to presume prejudice in *Skilling* because of the size and characteristics of the community (a metropolitan area of more than 4.5 million eligible jurors), because the publicity contained no confession or other “blatantly prejudicial information,” and because more than four years had passed between the events and the trial. 561 U.S. at 382–84. It reaffirmed that “[a] presumption of prejudice . . . attends only the extreme case.” *Id.* at 381 (quoted in Mot. at 21). As shown in Part II.D, every consideration that made *Skilling* the ordinary case makes this one the extreme case: a community of 25,529, publicity the Court found to be targeted and sustained, and prejudice that has intensified rather than

¹⁶ *Sicor II*, Plaintiffs’ principal foreign authority, devoted several pages to applying the same analysis in a civil venue dispute, explaining that a civil litigant’s right to a fair trial “is likewise protected by the Due Process Clause.” 266 P.3d at 622 (quoted in Mot. at 32–33).

dissipated with time. Plaintiffs cannot claim the benefit of *Skilling*'s framework while ignoring what the framework yields when applied to this record.¹⁷

- ***Irvin v. Dowd*, 366 U.S. 717 (1961), and *In re Murchison*, 349 U.S. 133 (1955).** The Order cited *Irvin* for the proposition (originally drawn from *Murchison*) that “[a] fair trial in a fair tribunal is a basic requirement of due process.” (Order at 2.) While Plaintiffs spend six pages establishing that *Murchison* involved a Michigan “judge-grand jury” and that *Irvin* discussed an Indiana venue statute, neither point casts doubt on the underlying principle, which *Skilling* and *Sicor II* both quoted for the identical purpose. Indeed, as shown above, *Irvin* is a powerful illustration of why the Court was right not to treat *voir dire* as a cure-all. It is the first case in which the Supreme Court of the United States set aside a state conviction on the ground of pretrial publicity. And it did so after a *voir dire* in which roughly ninety percent of the prospective jurors examined held some opinion of guilt and eight of the twelve jurors seated admitted as much, and even though the case had already been moved to an adjoining county. 366 U.S. at 725–28. Plaintiffs’ reliance on *Irvin*’s discussion of *State ex rel. Gannon v. Porter Circuit Court* is misplaced for the same reason. The passage Plaintiffs quote concludes that “the necessity for transfer will depend upon the totality of the surrounding facts,” *id.* at 721 (quoted in Mot. at 23), which is the precise inquiry the Court conducted here.
- ***Estes v. Texas*, 381 U.S. 532 (1965).** Plaintiffs note that *Estes* concerned the televising of court proceedings. (Mot. at 27.) *Estes* is also one of the three decisions¹⁸ in which the Supreme Court of the United States presumed prejudice from the circumstances surrounding a trial without proof of actual juror bias, as *Skilling* itself explains. 561 U.S. at 379–80 (quoted in Mot. at 27). The Order cited it for that principle (i.e., that proof of actual juror bias is not a prerequisite to transferring venue). Moreover, Plaintiffs’ observation that venue “had already been transferred” in *Estes* is telling in a way they do

¹⁷ Plaintiffs also object to the Order’s citation of *Skilling* for the proposition that a trial judge may base the evaluation of publicity on his “own perception of the depth and extent of news stories that might influence a juror.” (Mot. at 20; Order at 5.) But that is exactly what *Skilling* held, see 561 U.S. at 386, and, in any event, the Court here did not rest on its own perception alone, but also on a robust evidentiary record.

¹⁸ See also *Rideau*, 373 U.S. 723; *Sheppard*, 384 U.S. 333.

not acknowledge: the case had been moved some 500 miles, *see* 381 U.S. at 536, and the prejudice followed. Plaintiffs' complaint that this case has been moved 180 miles rings hollow against that backdrop.

- ***McCown v. Northeastern Railroad Co.*, 55 S.C. 384, 33 S.E. 506 (1899).** The Order cited *McCown* for the proposition that “the status or prominence of a party within the county has been found sufficient to support the finding that a fair and impartial trial cannot be had there.” (Order at 4.) Plaintiffs' own description of *McCown* confirms the point: the Supreme Court affirmed a transfer where the clerk of court who summoned the jurors was also the administrator of the plaintiff's estate. (Mot. at 28.) That is a finding of local influence supporting a change of venue, which is exactly what the Order cited it for. Plaintiffs' observation that in *McCown*, the transfer stayed within the circuit reflects that the same-circuit rule was then a provision of the Constitution—the very provision *Harvey* later held could not be applied to defeat a fair trial, and which has since been removed from the Constitution. (See Part IV.A, above.) And *Davenport v. Summer*, which Plaintiffs pair with *McCown*, reversed a transfer premised on a party's good name, public office, and family ties “without more.” (Mot. at 28.) The “more” that was missing in *Davenport* is present in abundance here.
- ***Patterson v. Charleston & W.C. Railway Co.*, 190 S.C. 66, 1 S.E.2d 920 (1939).** *Patterson* held that the trial court abused its discretion by refusing to move a case out of Hampton County when the ends of justice so required. Plaintiffs quote the decision's statement that “[t]he very object of our jury system, in requiring jurors from the vicinage to pass upon the credibility of witnesses, is the promotion of the ends of justice,” and conclude that it “supports holding the trial of this case where ‘jurors from the vicinage’” reside. (Mot. at 30.) Plaintiffs' reading inverts the sentence. *Patterson* explains that the vicinage rule is valued *because* it promotes the ends of justice, and the Supreme Court invoked it to justify *removing* the case from the county where the plaintiffs had filed it and sending it 145 miles to the county where the events occurred and the witnesses lived. The vicinage principle is instrumental; when it no longer serves the ends of justice, it yields. Plaintiffs do not contend that the Order misquoted *Patterson*, only that the case arose under the convenience-of-witnesses ground, which is true but immaterial. The court reversed a Hampton County trial judge for refusing to move a case when the ends of justice

required transfer. In other words, in *Patterson* itself, the vicinage principle Plaintiffs invoke was the reason for *moving* the case rather than keeping it.

- ***Unger v. Cauchon*, 73 P.3d 1005 (Wash. Ct. App. 2003).** From *Unger*, the Order drew a set of factors bearing on whether pretrial publicity warrants a change of venue, including the nature and extent of the publicity, the size of the community, and the nature of the case. (Order at 4.) Plaintiffs do not contend that the factors are wrong or that the Court misapplied them; they contend that Washington courts generally attempt *voir dire* first. (Mot. at 30–31.) But Plaintiffs’ own authority states the Washington rule together with its exception: *voir dire* is the means of determining whether an impartial jury can be impaneled “*unless media coverage is so pervasive that bias can be presumed.*” *State v. Jackson*, 76 P.3d 217, 228 (Wash. 2003) (emphasis added) (cited in Mot. at 30). That is the “hollow formality” exception of *Truesdale* in Washington dress, and the Court found that it applies. South Carolina has not adopted a mandatory list of factors, as Plaintiffs note; neither has it prohibited a trial court from considering sensible ones, and Plaintiffs identify no factor the Court considered that it should not have.

Finally, Plaintiffs’ extended treatment of *Sicor I* and *II* (Mot. at 31–34) proves a point nobody contests: pre-*voir dire* transfers are the exception. Still, the exception exists and this case falls squarely within it. Three features of *Sicor II* bear emphasis.

First, *Sicor II* held only that a trial court *may* defer a ruling until after *voir dire*. The court declined “to equate the district court’s deferral of its final decision . . . with a denial of that motion.” 266 P.3d at 622 (quoted in Mot. at 34). The court did not hold that a trial court *must* defer. In fact, it said the opposite: “Only rarely will the pertinent factors so overwhelmingly weigh in favor of a venue change that granting it before jury selection is attempted is appropriate.” *Id.* at 621–22 (quoted in Mot. at 31–32). Plaintiffs read “rarely” as “never.” The Nevada Supreme Court did not. It cited, as an example of an appropriate pretrial transfer, a civil case in which the evidence showed that “a significant proportion of [a] small community” had dealings with the parties, *id.* (citing *Jerry Harmon Motors v. First Nat’l Bank*, 440 N.W.2d 704 (N.D. 1989)), and it cited *Little v.*

Kobos, 877 P.2d 752, 757–58 (Wyo. 1994), in which the trial court, “following return of jury questionnaires,” concluded “that a fair trial could not be had and at that time grant[ed] a change in venue”—before *voir dire*, on the strength of written evidence of community sentiment. *Id.* (quoted in Mot. at 32). The Repass survey is evidence of the same kind, gathered by a more rigorous method.

Second, *Sicor II* emphasized that the venue at issue was “the largest metropolitan area in Nevada” with “a correspondingly large jury pool,” that jury questionnaires “had already been distributed and returned,” and that “extensive *voir dire* was contemplated.” *Id.* at 622 (quoted in Mot. at 33). Deferral was reasonable there because the jury pool was vast and the tools for appropriate screening were already in hand, none of which is true here.

Third, as discussed in Part II.A, *Sicor II* observed that the Nevada legislature had made a *voir-dire*-first attempt mandatory in criminal cases by statute while leaving the civil statute—which turns, as ours does, on whether there is “reason to believe” that an impartial trial cannot be had—free of that condition. *Id.* at 621–22. Plaintiffs read the passage as though it supported a judicially created *voir-dire*-first rule for civil cases. It shows the opposite: where a legislature wants such a rule, it enacts one, and South Carolina’s General Assembly, like Nevada’s, has not enacted one for civil actions.

As for *Sicor I*, Plaintiffs are correct that it addressed a post-*voir dire* motion. The Order quoted it for the governing question—whether “there is a reason to believe that the community in which the case has been brought will not yield a jury qualified to deliberate impartially and upon competent trial evidence” (Order at 5)—and Plaintiffs do not suggest that the question is wrongly framed. It is the statutory question, and the Court answered it on the evidence.

VI. THE CONVENIENCE OF WITNESSES IS NEITHER A GROUND FOR RECONSIDERATION NOR A REASON TO SUBORDINATE THE RIGHT TO A FAIR TRIAL.

Plaintiffs “point out” that the transfer requires the parties and witnesses to travel to Spartanburg, ask the Court to weigh that inconvenience in ruling on the present Motion, and acknowledge that they intend to raise the issue “by subsequent motion” if reconsideration is denied. (Mot. at 18.) The argument is not properly before the Court. It was not presented in opposition to the motion to transfer, and a motion to alter or amend may not be used to raise an argument that could have been raised before the ruling. *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482.

On the merits, the argument does not withstand scrutiny. Section 15-7-100(A)(3) authorizes a *movant* to seek a change of venue to promote the convenience of witnesses; it does not make the convenience of the non-moving party a limitation on a transfer ordered under subsection (A)(2) to secure a fair trial. Some inconvenience attends every change of venue. If that inconvenience were a ground for refusing one, subsection (A)(2) would be a dead letter. In *Patterson*, the Hampton County decision on which Plaintiffs rely, the Supreme Court ordered a transfer of 145 miles over the plaintiffs’ objection, demonstrating that the constitutional guarantee of a fair trial does not yield to travel expense or inconvenience.

The Parker’s Defendants do not minimize the burdens of a multi-week trial at any location on any party, including Plaintiffs. However, Plaintiffs are not the only witnesses in this case—and many of the potential witnesses live outside Hampton County and/or the Fourteenth Judicial Circuit and some reside out of state. The potential burdens that might be suffered by Plaintiffs (who brought this case in a county where they do not reside and where they have not suffered any injury caused by the Parker’s Defendants) are *not* a reason to try this case before a jury drawn from

a community the Court has found cannot be impartial. Should Plaintiffs file the motion they forecast, the Parker's Defendants will respond to it on its merits.

VII. THE ORDER ADEQUATELY ADDRESSED PLAINTIFFS' ARGUMENTS.

Plaintiffs' final request is for "specific rulings on the arguments Plaintiff made in their opposition," on the theory that the Order "failed to address *any* of those arguments." (Mot. at 2–3.) The premise is inaccurate. The Order set out Plaintiffs' arguments (Order at 6–7)—including their contentions under *Stevens*, *Manning*, and *Dawkins* and their statutory argument—and rejected them in light of the evidence, finding that Plaintiffs "failed to offer evidence to rebut the survey conducted by Mr. Repass" and failed to "persuasively challenge" the remaining evidence. (Order at 7.) A court that recites a party's arguments and rules against them on the record before it has addressed them. It is not required to write a separate opinion on each argument. Rule 52(a) provides that findings and conclusions "are unnecessary on decisions of motions," and the *Elam* footnote on which Plaintiffs rely addresses what a *losing party* must do to preserve an issue for appeal; it imposes no obligation on the trial court to specifically address every argument raised. 361 S.C. at 24 n.4, 602 S.E.2d at 780 n.4.

That said, the Parker's Defendants have no objection to an order confirming what the Order already reflects—that the Court considered and rejected each of the arguments Plaintiffs raised in opposition to the motion to transfer—so that no question of preservation lingers. What the Court should not do is disturb a ruling that was correct when made and that Plaintiffs have given it no meritorious reason to revisit the Court's sound, well-reasoned Order.

CONCLUSION

The Order was a proper exercise of the discretion Section 15-7-100(A)(2) confers, on a record the Court developed over a two-day hearing and that Plaintiffs elected not to test. Plaintiffs identify no error of law: no South Carolina authority required the Court to attempt jury selection

before ruling, and the Supreme Court has twice held that same-circuit venue language cannot be construed to defeat a party's right to a fair trial. They identify no error of fact: they offered no evidence at the hearing and offer none now. The Parker's Defendants respectfully request that the Court summarily deny Plaintiffs' Motion to Reconsider in its entirety and leave the transfer of venue to Spartanburg County undisturbed. The Parker's Defendants are willing and able to provide the Court with an Order denying this Motion if the Court so requests.

Respectfully submitted,

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