

THE SUPREME COURT OF SOUTH CAROLINA

Ex parte: Robert W. Harrell, Jr., Respondent,

v.

Attorney General of the State of South Carolina,
Appellant.

In re: State Grand Jury Investigation

Appellate Case No. 2014-001058

RECEIVED

MAY 22 2014

S.C. Supreme Court

MOTION

Respondent hereby moves, by and through his undersigned attorneys, that the court determine the appeal herein is brought pursuant to Section 14-8-200(b)(3) rather than as stated in the Notice of Appeal pursuant to S.C. Code §14-7-1630(G), S.C. Code §14-8-200(b)(6), and Rule 203(d)(1)(A)(v), SCACR.

The basis of this motion is that only orders pursuant to 14-7-1630(G) would be subject to appeal directly to the Supreme Court as set forth in Appellant's Notice of Appeal. However, to invoke §14-7-1630(G) requires a lower court order that the State Grand Jury is not conducting investigative activity within its jurisdiction and the presiding judge limiting the investigation so that the investigation conforms within the jurisdiction of the State Grand Jury. As is clearly set forth in the order of the lower court which has been provided to this court attached to the Appellant's Notice of Appeal, the lower court found that the State Grand Jury lacked subject matter jurisdiction to be convened and therefore had *no* jurisdiction, not that it was conducting investigative activity outside of its jurisdiction allowing the presiding judge to limit the investigation. The lower court order

specifically so states in footnote 4 of the opinion.

Notwithstanding that the appeal is not properly brought pursuant to the sections referred to in Appellate's Notice of Appeal, Respondent agrees that the Notice is properly brought to this court pursuant to §14-8-200(b)(3) allowing a direct appeal to this court from a judgment involving a challenge on state grounds to the constitutionality of a state law, where the principal issue is one of constitutionality of the state law. In this case it appears that the Attorney General is contending that the Legislative Ethics Act conflicts with the South Carolina Constitution, particularly Art. V, Section 24 of the state constitution, designating the Attorney General as "the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record."

For the foregoing reasons as well as any which may be advanced at any hearing held hereon it is respectfully submitted that this appeal should be treated as one pursuant to §14-8-200(b)(3), and if not so treated be dismissed.¹

Respectfully submitted,

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¹Respondent Harrell desires to have this matter determined by the South Carolina Supreme Court while preserving his contentions that subject matter jurisdiction was lacking to have convened a Grand Jury and, thus, the order under review is not an order issued pursuant to S.C. Code §14-7-1630(G).

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By: 

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Robert W. Harrell, Jr.

May 22, 2014

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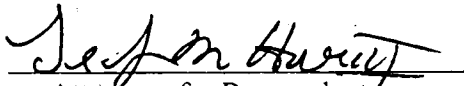
PROOF OF SERVICE

The undersigned hereby certifies that he has served the attached motion on Appellant by depositing a copy in the United States mail, postage pre-paid, on May 22, 2014, addressed to his attorneys of record listed below at the address listed below and by email to said attorneys of record.

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