RECEIVED

MAY 27 2014

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE STATE GRAND JURY - RICHLAND COUNTY
Court of General Sessions

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2014-001058
Lower Court Order No. 2014-GS-47--237

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

v.

Attorney General of the
State of South Carolina, Appellant.

RECORD ON APPEAL

Robert E. Stepp
Robert E. Tyson, Jr.
Roland M. Franklin, Jr.
SOWELL GRAY STEPP & LAFFITTE, LLC
P. O. Box 11449
Columbia, SC 29211

GEDNEY M. HOWE, III
PO Box 1034
Charleston, SC 29402
(843) 722-8048

E. BART DANIEL
P.O. Box 856
Charleston, SC 29402
(843)722-2000

ATTORNEYS FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

JOHN W. MCINTOSH
CHIEF DEPUTY
ATTORNEY GENERAL

ROBERT D. COOK
SOLICITOR GENERAL

W. ALLEN MYRICK
SR. ASSISTANT DEPUTY
ATTORNEY GENERAL

S. CREIGHTON WATERS
ASSISTANT DEPUTY
ATTORNEY GENERAL

BRIAN T. PETRANO
ASSISTANT ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211
(803)734-3693.

ATTORNEYS FOR APPELLANT.

INDEX

Motion to Disqualify Attorney General from Participation in Grand Jury Investigation and Prosecution Pursuant to SC Code Section 14-7-1650(C), filed February 24, 2014; and supporting Affidavits 1

Response to Robert Harrell's Motion to Disqualify Attorney General Alan Wilson from a Pending State Grand Jury Investigation, filed March 7, 2014; and supporting Affidavits 5

Transcript of proceedings before Judge Manning on March 21, 2014 30

State's Proposed Order Denying Motion to Disqualify Attorney General, sent to the Court on March 28, 2014 114

Brief of Attorney General on the Inapplicability of Rainey v. Haley to the Current State Grand Jury Matter, sent to the Court on April 2, 2014 120

Supplemental Brief Refuting the Application of Rainey v. Haley to this case, sent to the Court on April 16, 2014 144

News Release of Attorney General Wilson dated October 9, 2012 166

Transcript of Proceedings before Judge Manning on May 2, 2014 167

Court's Exhibits 1 (Landess letter) and 2 (McIntosh letter) from hearing on May 2, 2014 234

Attorney General's Proposed Order Finding Rainey v. Haley Inapplicable to the Current State Grand Jury Matter; submitted May 7, 2014 238

Order of Judge Manning filed May 12, 2014 250

Complaint from South Carolina Policy Council 255

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 27, 2014

/s/ Brian T. Petrano
BRIAN T. PETRANO
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803)734-3693
Attorney for Appellant

E. BART DANIEL
ATTORNEY AT LAW
SEVEN STATE STREET
P.O. BOX 856
CHARLESTON, SOUTH CAROLINA 29402

(843) 722-2000
(843) 722-6254 (FAX)

bart@bartdaniel.com
www.bartdaniel.com

February 24, 2014

John W. McIntosh, Esquire
Deputy Attorney General
1006 L Avenue
Cayce, SC 29033
Via Hand-delivery

Re: Motion to Disqualify Attorney General

Dear John:

I have enclosed a copy of our Motion to Disqualify Attorney General with an attached affidavit (Exhibit A) for your information. Since this is a confidential state grand jury matter, we will ask the court for an *in-camera* hearing.

Very truly yours,

E. BART DANIEL

EBD/et
Enclosure

RECEIVED
FEB 24 2014
Referred to McIntosh, ds
Answered

FILED
FEB 24 2014
JAMES R. PARKS
CLERK, STATE GRAND JURY

IN THE MATTER OF THE SOUTH CAROLINA STATE GRAND JURY	IN THE COURT OF GENERAL SESSIONS MOTION TO DISQUALIFY ATTORNEY GENERAL FROM PARTICIPATION IN GRAND JURY INVESTIGATION AND PROSECUTION PURSUANT TO SC CODE SECTION 14-7-1650 (C)

Robert W. Harrell, Jr., by and through his undersigned attorneys hereby moves the court for an order disqualifying Attorney General Alan Wilson from participation in any state Grand Jury investigation and prosecution of Robert W. Harrell, Jr.

Said motion is made upon the ground that, upon information and belief a state Grand Jury investigation is ongoing as to certain activities of Robert Harrell and in connection therewith the Attorney General of South Carolina should be disqualified. In support of this motion, see the attached affidavit showing a conflict requiring disqualification. Counsel would request an in-camera hearing to consider this affidavit and other reasons that may be propounded at such a hearing.

Gedney M. Howe, III
Gedney M. Howe, III, P.A.
PO Box 1034
Charleston, SC 29402
Phone: 843-722-8048
Fax: 843-722-2140

E. Bart Daniel
PO Box 856
Charleston, SC 29402
Phone: 843-722-2000
Fax: 843-722-6254

By: E. Bart Daniel
Attorneys for Robert W. Harrell, Jr.

February 24, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me the undersigned who being duly sworn deposes and says that I am Chief of Staff and Counsel to the Speaker of the House of Representatives for South Carolina, Robert Harrell. At Speaker Harrell's request on April 16, 2013, I attended a public meeting of the Constitutional Laws Subcommittee of the House Judiciary Committee of the South Carolina House of Representatives. The purpose of the meeting was to discuss and debate House Bill 3945. During the Subcommittee meeting Representative Quinn discussed his intention to introduce an amendment providing for the creation of a Public Integrity Unit ("PIU") and stated he intended to present this amendment at the full Committee meeting the following day. Attorney General ("AG") Alan Wilson had stated publically that he supported a PIU. At one point during the meeting I was asked to leave. I responded that I would confer with the Speaker about his intentions regarding my attendance at the meeting. I conferred with the Speaker, the Speaker instructed me to attend the meeting, and I returned to the meeting.

While in the Subcommittee room after I returned, I was asked by Representative Quinn to confirm my cell phone number, which I did. Approximately one minute later I received a call on my cell phone from Kristy in the Attorney General's Office advising me that the AG wanted to meet with me. I told Kristy that I would be available in approximately 10-15 minutes.

After the Subcommittee meeting I called the AG's office and was taken to Attorney General Wilson's personal office. I entered the office, the AG closed the door, and the AG and I were the only persons in the office for the remainder of the meeting. We proceeded to discuss certain matters. The primary area of discussion was the PIU which Representative Quinn had

mentioned at the Subcommittee meeting. The AG indicated that he was strongly in favor of establishing a PIU which would be under the auspices of the Attorney General's office.

AG Wilson stated that the PIU was his number one priority this session. He stated that he was talking to me about this because he could not talk directly to Speaker Harrell because of the ongoing investigation of the Speaker. He stated that he fully expected me to repeat everything that I could remember about our conversation back to the Speaker.

At one point he pounded his fist on his desk. I felt intimidated. It was clear to me that the AG wanted the Speaker to support the PIU and that there would be consequences if the Speaker did not, and that AG Wilson felt he was giving Speaker Harrell a chance to support the PIU. AG Wilson used the term "olive branch" at least twice. In closing, the AG gave me his card with his contact information and insisted that I get back with him, or with one of two specified aides to the AG, the next day to let him know whether the Speaker was supportive of the PIU being included in the bill. He was adamant that I let them know the Speaker's response before the Committee meeting the next day.

After consultations with the Speaker, I called one of the designated aides the next morning prior to the Committee meeting and told him the Speaker would support the PIU.

Bradley S. Wright

BRADLEY S. WRIGHT

SWORN to before me this
24th day of Feb., 2014

Cindy A. Tatum (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/16/2015

FILED
MAR 07 2014
JAMES R. PARKS
CLERK, STATE GRAND JURY

THE STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation # M 2014-237	**RESPONSE TO ROBERT HARRELL'S MOTION TO HOLD IN CAMERA HEARING TO DISQUALIFY THE ELECTED ATTORNEY GENERAL**

The Attorney General hereby responds as follows to that portion of the motion received from Robert Harrell, Jr., seeking an "in camera" hearing to disqualify the Attorney General from performing his statutorily mandated duty as legal advisor to the State Grand Jury with respect to the present matter. As discussed below, any hearing should be held in a public forum, and the relevant portions of Mr. Harrell's motion should be denied. This court must address Mr. Harrell's "request" to have a hearing on this motion in secret as a separate matter. Further, because of the public interest at stake, Mr. Harrell's attempt here to secretly remove the Attorney General needs to be ruled upon in advance of any hearing on the merits, and the required hearing should be conducted in a public courtroom, on the record, before the public.

The Attorney General moves that any hearing on the issue of closing the courtroom be open and that any separate hearing on the issue of whether or not the Attorney General should be disqualified should be open as well.

FACTS

In the relevant affidavit, Bradley Wright (an employee of Robert Harrell, both then and now) asserts that he met with Alan Wilson on April 16, 2013 and that they discussed Speaker Harrell's support for the creation of a Public Integrity Unit by the legislature. In his affidavit Wright further states that he felt "intimidated" and that he

believed that there would be "consequences" for Harrell if he did not accede to the Attorney General's wishes.1 All parties agree that a meeting took place. However, as indicated in the simultaneously filed affidavit by Attorney General Alan Wilson, Mr. Wright's recollection of particular events at the meeting, their intended purpose and their alleged significance, are all contested by the Attorney General.

LAW

THE SOUTH CAROLINA CONSTITUTION AND THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRE PUBLIC PROCEEDINGS

Any such discussion must begin with the strong presumption that court hearings in South Carolina are to be open to the public and held in the light of day. The Constitution of the State of South Carolina states, in Article 1, Section 9 that "All courts shall be public" and by way of explanation (in case one was ever required) our Supreme Court has declared that this particular provision constitutes "unqualified language guaranteeing open courtrooms" Ex Parte Hearst-Argyle Television, Inc, 369 S.C. 69 76, FN. 5. That same opinion, looking to the United States Supreme Court, also said that:

> "The rights of the public and the press to attend criminal trials are guaranteed by the South Carolina Constitution and the United States Constitution" and that "[The] United States Supreme Court has interpreted the guarantees of free speech and freedom of the press found in the First Amendment to the United States Constitution to include a constitutional guarantee of open and public courts. Because the court views the rights of the public and press as constitutionally guaranteed, the First Amendment analysis applies a strong presumption favoring open criminal proceedings."

Ex Parte Hearst-Argyle Television, Inc, 369 S.C. 69, 631 S.E.2d 86 (2006) (citing

---

1 These facts have been significantly abridged in order that this document be available as a public document with only minimal redaction. For a full discussion of the facts, please see the separate document addressing the pending Motion filed with the Clerk of Court simultaneously to this one.

Richmond Newspapers, Inc. v. Virginia, 448 US 555, 580 (1980), In re Charlotte Observer, 882 F2d. 850, 852 (4th Cir. 1989); and In re Knight Publishing Co., 743 F 2d. 231, 234 (4th Cir. 1984)". The inquiry remaining then, is 1)whether that particular type of proceeding has historically been open, and 2) whether or not public scrutiny plays a significant role in the functioning of the proceeding.

A. STATE GRAND JURY COURT PROCEEDINGS OCCUR IN OPEN COURTROOMS

While the State Grand Jury investigates and deliberates in secret, all resulting court proceedings are held in open courtrooms, as they should be. Bond settings, arraignments, motions, guilty pleas, and all proceedings related to the trial (if charges are brought) occur in open courtrooms of this state. There is no reason the present motion should be treated differently.

B. THE SUBJECT OF THE CURRENT MOTION DOES NOT FALL WITHIN THE SECRECY PROTECTIONS OF THE STATE GRAND JURY STATUTE

South Carolina Code 14-7-1720 generally provides that State Grand Jury proceedings are secret, and then defines that secrecy by generally precluding those authorized to attend state grand jury proceedings from disclosing "the testimony of a witness examined before a state grand jury or other evidence received by it". The limitation of secrecy protects the ***actual evidence*** being received by the grand jurors – not process and procedural questions like the current one which do nothing to disclose the actual evidence under investigation.

Similarly, S.C. Code Ann. § 14-7-1770 (Supp. 2009) of the State Grand Jury Act, provides that "records, orders, and subpoenas relating to state grand jury proceedings must be kept under seal to the extent and for that time as is necessary to prevent

disclosure of matters occurring before a state grand jury". Again, nothing regarding the proposed disqualification of the Attorney General as legal advisor to the State Grand Jury will disclose the actual matters that might occur before that body.

In fact, there is nothing secret about the fact that the Attorney General serves as the legal advisor to the State Grand Jury; and is necessarily involved in the process of initiating a state grand jury, as this is well-known and codified in statute. S.C. Code 14-7-1650 ("The Attorney General or his designee shall attend sessions of a state grand jury and shall serve as its legal advisor. The Attorney General or his designee shall examine witnesses, present evidence, and draft indictments and reports upon the direction of a state grand jury."). The Attorney General's duties with regard to the State Grand Jury were given to him by the public process of a constitutional amendment and legislation; thus, there is a strong public interest in the right to know if the Attorney General is being removed ***over his objection*** from the statutory duties he was afforded by the public, through its representatives.

Indeed, if the Court deems it necessary to discuss specific facts and evidence before the grand jury, the caselaw allows this Court to review such evidence and facts with the Attorney General outside of the presence of the public – and Mr. Harrell – as a subject cannot privy himself to secret grand jury matters by the simple expedient of filing a motion such as this. United States v. R Enterprises, Inc., 498 U.S. 292, 302 (district court may require government to reveal subject of investigation *in camera* in addressing motion to quash).

C. THERE IS NO PREJUDICE TO MR. HARRELL FROM AN OPEN PROCEEDING

There is no prejudice to Mr. Harrell resulting from the allegations contained within

Mr. Wright's affidavit. Any efforts by him to suggest otherwise are not credible. The only prejudice, if any, would be to the Attorney General, should Mr. Wright's version of events be found believable. Further, the facts which led to the present investigation were initiated by an article in a well read newspaper and Mr. Harrell's very public responses to that article, also covered extensively in the press. Additionally, the public reporting requirements of the South Carolina Ethics Act ensure that many documents related to public officials are readily available to the public. Furthermore, the existence of SLED 's involvement was well-known. This is a public matter and one of great concern. Irrespective of one's opinion on this state of affairs, it has become (in a legal and time honored fashion guaranteed by our Constitutions, both State and Federal) well-known that there is a State Grand Jury Investigation which involves Mr. Harrell. So, the fact that this matter is to be heard in an open courtroom does not jeopardize exposing a fact which is already well-known. Finally, not having been charged, Mr. Harrell's various constitutional rights which would afford him protection during the course of a trial have not attached. He cannot claim that, not having been charged, that his right to a fair trial is implicated. In fact, he may never be charged by the State Grand Jury, and even if that event came to pass, no matter being heard on this motion would implicate that right, even if it did attach at the present time.

CONCLUSION

It is no small comment on the credibility of the allegation that Mr. Harrell wishes that it be sealed behind a veil of secrecy, and not brought before the light of public scrutiny. Given that: (1) there is a strong and longstanding presumption that judicial proceedings are to be held in public; (2) the current motion for disqualification only addresses the

publicly known and codified status of the Attorney General as legal advisor to the grand jury; (3) an open hearing will not prejudice Mr. Harrell; 4) the current motion does not implicate what is statutorily protected as secret – that is, evidence and witnesses received by the grand jurors, and (5) the public interest is served by open knowledge if and why a court is taking the unprecedented and extraordinary action of disqualifying the elected Attorney General, over his objection, from his constitutional and statutory duties as the State's chief prosecutor and legal advisor to the State Grand Jury, then it is respectfully submitted that the proceedings on this motion should be public.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

JOHN MCINTOSH
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT D. COOK
SOLICITOR GENERAL

W. Allen Myrick
Sr. Asst. Deputy Attorney General

S. Creighton Waters
Asst. Deputy Attorney General

March 7, 2014
P.O. Box 11549
Columbia SC 29211

FILED
MAR 07 2014
JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation # M 2014-237	**RESPONSE TO ROBERT HARRELL'S MOTION TO DISQUALIFY ATTORNEY GENERAL ALAN WILSON FROM A PENDING STATE GRAND JURY INVESTIGATION**

The Attorney General hereby responds as follows to the motion received from Robert Harrell, Jr., seeking to disqualify the Attorney General in this matter from doing his statutorily mandated duty as legal advisor to the State Grand Jury. For the following reasons, this transparent attempt to impede the grand jury's lawful investigation should be denied, as the courts typically do with such motions.

I. FACTS

In the relevant affidavit, Bradley Wright (the chief of staff and legal counsel to Robert Harrell, both then and now) asserts that he met with Alan Wilson on April 16, 2013, and they discussed Speaker Harrell's support for the creation of a Public Integrity Unit by the legislature. This is not subject to dispute, as all parties agree that a meeting took place. However, as indicated in the attached affidavit by Attorney General Alan Wilson, Mr. Wright's recollection is inaccurate about the particular events at the meeting, as well as their intended purpose and alleged significance.

To place events in context:

(1) February 14, 2013: Attorney General receives complaint.

> The complaint, from Ashley Landess of the South Carolina Policy Council, noted that it was brought to the Attorney General and not the House Ethics committee because of obvious conflicts of interest, including the fact that the Speaker has hiring and firing authority over all employees of the House, including those who may be tasked with review or those staffers who may be fact witnesses.

(2) February 14, 2013: Attorney General Wilson refers the complaint to the South Carolina Law Enforcement Division (SLED) for review.

(3) April 16, 2013: Meeting between Attorney General and Mr. Wright.

> The House Judiciary Committee was considering ethics reform legislation that did not include a Public Integrity Unit, which the Attorney General supported. The Attorney General requested a meeting with Mr. Wright in order to explain the Public Integrity Unit to him and to defuse any tensions that might exist because the Attorney General – as is his job – referred a matter for investigation in the ordinary course of business. At this time the Attorney General was unaware of any final results of the then-pending investigation.

(4) April 17, 2013: Mr. Wright calls and indicates Mr. Harrell would in fact support the Public Integrity Unit.

> Mr. Harrell was subsequently among the members who overwhelmingly voted for ethics reform legislation containing a Public Integrity Unit.

(5) December 6, 2013: SLED completes its review of the matter and provides a report to the Attorney General.

(6) January 13, 2014: A matter is referred to the South Carolina State Grand Jury.

(7) February 24, 2014: Mr. Wright signs his affidavit.

The above facts provide context for the meeting that occurred between the Attorney General and Mr. Wright. As stated in his attached Affidavit, the Attorney General had specific and legitimate reasons for such a meeting, of which none involved threats, intimidation, or the proposition of a corrupt agreement as supposedly alleged by Mr. Wright. The Attorney General has a statutory and public duty to monitor and where appropriate advocate for legislation, and he was expressly separating his advocacy for a strong enforcement mechanism like the Public Integrity Unit, from the mere fact that he had referred review a matter presented to him – as his job requires him to do.

Indeed, in order to believe Mr. Wright's version of events, one would have to accept as true that Attorney General Alan Wilson: (1) is inclined to use the power of his office to threaten people; (2) purposefully engages in corrupt negotiations to craft unlawful bargains; (3) emphasizes and facilitates this "dealmaking" with absurd physical displays such as pounding on his desk; and (4) reneges on such bargains when they are created.

Further, the court would have to accept that (1) Speaker Bobby Harrell capitulated to these threats by supporting the creation of the Public Integrity Unit; (2) the Attorney General backed out on his deal; and (3) the Attorney General would engage in all of this allegedly unethical behavior in an effort to promote the creation of a body that would enforce ***greater*** ethical standards of conduct by public servants in South Carolina. The logical inconsistencies in the arguments propounded by Mr. Harrell, based on the above-referenced affidavit, are significant. The various assertions contained within Mr. Wright's affidavit fail when subjected to the application of common sense and logic.

II. EVEN ASSUMING BUT NOT CONCEDING THE ALLEGATIONS IN MR WRIGHT'S AFFIDAVIT ARE TRUE, MR. HARRELL HAS NOT COME CLOSE TO MEETING THE HIGH BURDEN NECESSARY FOR PRE-INDICTMENT JUDICIAL INVOLVEMENT IN THE GRAND JURY PROCESS.

Despite the factual absurdities with Mr. Wright's claims, they are still insufficient on their face for disqualification. There is no need for the Court to resolve any factual issues. Even under the ridiculous assumption that Mr. Wright's affidavit is true, Mr. Harrell has not even come close to meeting the high burden necessary to justify judicial involvement in the grand jury process – particularly at the investigative stage prior to any indictment.

A. General Judicial Reluctance in Oversight of the Grand Jury

Of course, the State Grand Jury statute provides that it is the duty of this Court as the State Grand Jury judge to resolve any doubt regarding conflict of the Attorney General. S.C. Code Ann s 14-7-1650. First, though, a review of the general reluctance and deference the courts show in grand jury matters is instructive before this Court considers the extraordinary and unprecedented step of removing an Attorney General over his objection from his statutory duties as legal advisor to the grand jury.

Grand juries have historically been considered an institution generally independent of the courts, which have been reluctant to engage in oversight of the process. A grand jury is "rooted in long centuries of Anglo–American history" as a "constitutional fixture in its own right", and the "whole theory of its function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people". United States v. Williams, 504 U.S. 36, 47 (1992) (quoting various Supreme Court cases). Thus, the United States Supreme Court has stated: "Given the grand jury's operational separateness from its constituting court, it should come as no surprise that we have been reluctant to invoke the judicial supervisory power as a basis for prescribing modes of grand jury procedure." Williams, 504 U.S. at 49. A court has a limited role in dealing with the grand jury and "a court may not intervene in the grand jury process absent a compelling reason." In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988).

This limited judicial role and general reluctance in oversight is reflected in how courts have handled motions about the grand jury's investigation. The most typical motion in the pre-indictment stage is a motion to quash subpoenas. There, the movant

has the high burden of showing unreasonableness, because "the law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority". United States v. R. Enterprises, Inc., 498 U.S. 292 (1991). This burden is particularly heavy in that "a motion to quash must be denied unless the district court determines that there is *no reasonable possibility* that the category of material the Government seeks will produce information relevant to the general subject of the grand jury's investigation". Id. at 301 (emphasis added). This is because a grand jury subpoena does not itself have to be justified by probable cause, as if it were a warrant, because the whole point of the grand jury investigation is to determine whether or not there is probable cause in the first place. See R. Enterprises, 498 U.S. at 297.

Indeed, even in the post-indictment setting, where there is an actual charge and adversarial process, the courts still have been reluctant to undermine the grand jury's work when faced with defense motions to dismiss for alleged prosecutorial misconduct. The United States Supreme Court has concluded, in affirming the reversal of dismissal of an indictment based on alleged prosecutorial misconduct and secrecy violations, that a non-constitutional grand jury challenge can succeed only if the violations "substantially influenced the grand jury's decision to indict". Bank of Nova Scotia v. United States, 487 U.S. 250, 251 (1988). Federal courts interpreting Nova Scotia have uniformly held that such a finding of actual prejudice is necessary to dismiss an indictment.[1]

2. Conflict motions in preindictment situations

Similarly, the courts have also been extremely reluctant to grant motions like the one we have today – a pre-indictment conflict motion to exclude the prosecutor from his role

[1] See United States v. Feurtado, 191 F.3d 420 (4th Cir. 1999); United States v. Wiseman, 172 F.3d 1196 (10th Cir. 1999); United States v. Derrick, 163 F.3d 799 (4th Cir. 1998).

with the grand jury. The courts recognize that such attempts are often transparent and somewhat telling efforts to slow down and impede an investigation while it is just getting started, and the courts are typically reluctant to give credence to such efforts where the issue can be addressed at the more appropriate trial stage if in fact an indictment is forthcoming from the grand jury.

This analysis was best stated as follows:

> It should be noted that the cases which have allowed judicial intervention at the preindictment, investigatory stage, have required that **serious abuses** first be shown. See In re Grand Jury Investigation, 696 F.2d 449, 451 (6th Cir.1982) and cases cited therein. No such showing has been made here. Clearly, petitioner's conclusory allegations are insufficient to warrant the court's intervention through the use of its supervisory powers. **Use of these supervisory powers to disqualify government officials from proceeding before a grand jury based on conclusory allegations of conflict of interest and speculation as to possible improprieties runs afoul of the policies of promoting "a fair method of instituting criminal proceedings"**, Costello, *supra*, 350 U.S. at 362, protecting "citizens against arbitrary and oppressive governmental action", Calandra, *supra*, 414 U.S. at 343, or assuring the "protection of citizens against unfounded criminal prosecutions." Branzburg, *supra*, 408 U.S. at 686.
>
> Accordingly, **whether a prosecutor who appears before a grand jury labors under a conflict of interest or whether his conduct oversteps the bounds of propriety should be determined after indictment, not by mere conjecture or speculation beforehand.** To hold otherwise would burden the grand jury with minitrials and preliminary showings which would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws. United States v. Dionisio, 410 U.S. 1, 17 (1973).

In re Grand Jury Proceedings, 700 F. Supp. 626, 631 (D. Puerto Rico 1988) (emphasis added).[2] Indeed, in our state jurisprudence, Evans v. State speaks at great length on

[2] See also In re Grand Jury Subpoenas on Barnett, 818 F.2d 330 (5th Cir. 1987) (no conflict of interest and no termination of investigation before indictment required even though prosecutors in grand jury action also defending target's civil action against government, because no specific allegations that grand jury process used to prepare civil defense and challenges could be raised to quash if indictment obtained); Wright v. United States, 732 F.2d 1048, 1055, 1958 (2nd Cir. 1984) (no due process violation

the procedures *after indictment* for a defendant to review the grand jury proceedings and make whatever motions to quash he wishes. 363 S.C. 495, 611 S.E.2d 510 (2005)

Finally, disqualification raises separation of powers concerns and thus "is a drastic measure which courts should hesitate to impose except when absolutely necessary." Matter of Grand Jury Subpoena of Rochon, 873 F.2d 170 (7th Cir. 1989). Rochon points out that a "court order prohibiting the Attorney General of the United States from participating in a grand jury investigation is no small matter, even if the investigation could continue in his absence," as it raises "sharp separation of powers concerns". 873 F.2d at 174. Of course, such concerns exist under the South Carolina Constitution where a disqualification is sought over objection, as the Attorney General is constitutionally mandated as the State's chief prosecutor, and is constitutionally protected in that role by the separation of powers doctrine. See generally State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994).[3]

3. Standard for post-trial disqualification in South Carolina

Having established the general reluctance of courts to inject themselves into grand jury matters, especially pre-indictment, and the high standard of "serious abuses" that must be shown for conflict motions to succeed in this context, a review of South Carolina *post-trial* conflict motions is instructive.

---

sufficient to require dismissal of indictment even though wife of prosecutor appointed to investigate petitioner, was political opponent of petitioner, and previously brought two criminal complaints against petitioner -- even assuming the prosecutor had a special interest in securing petitioner's indictment, that did not constitute a violation of due process, absent evidence of specific misbehavior); In re Grand Jury Investigation, 696 F.2d 449, 451 (6th Cir. 1982) (no error in refusing to disqualify IRS agents and prosecutors at pre-indictment investigatory stage due to agents' alleged improper conveyance of taxpayer return information to AUSAs, since witness' conclusory allegations were insufficient to warrant court's intervention in grand jury) (citing various cases).

[3] ("Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. ... The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may even decide whether an indictment should be sought."). See also S.C. Const. art. V, § 24.

The first point that must be made is that an actual conflict is required for disqualification – not the mere "appearance of impropriety," a disfavored standard which has been abandoned. While appearances used to be the standard in the Code of Professional Responsibility, it faced much criticism, with the Second Circuit noting that "appearance of impropriety is simply too slender a reed on which to rest a disqualification order." See Roberta Flowers, What You See Is What You Get: Applying the Appearance of Impropriety Standard to Prosecutors, 63 Mo. L. Rev. 699, 716 (1998) (quoting Board of Education v. Nyguist, 590 F.2d 1241 (2nd Cir. 1979)).

These issues with application of the "appearance of impropriety" standard led to its exclusion from the Model Rules of Professional Conduct, which were in large measure adopted by South Carolina effective September 1, 1990. Similarly, the ABA's Prosecution Function section now also only refers to an actual conflict of interest rather than mere appearance: "A prosecutor should avoid a conflict of interest with respect to his or her official duties." ABA Standards for Criminal Justice 3-1.3(a).[4]

Finally, South Carolina cases addressing post-indictment claims for disqualification have similarly been clear that actual prejudice is required for the extraordinary remedy of disqualification.[5]

---

[4] In contrast, the Judicial Canons in South Carolina still maintain the "appearance of impropriety" standard. See Canon 2, Rule 501, SCACR.

[5] See State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011) (affirming trial court's refusal to disqualify the solicitor's office for alleged witness intimidation, and finding prejudice generally must be shown); State v. Childers, 373 S.C. 367, 645 S.E.2d 233 (2007) (no error in denying defendant's request to relieve his trial counsel based on counsel's prosecution of defendant on unrelated charge during counsel's former employment as an assistant solicitor; defendant failed to show any divided loyalties or actual conflict of interest); State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2007) (where prosecutor intentionally eavesdropped on privileged conversation of defendant with counsel, finding defendant had to show either deliberate prosecutorial misconduct or prejudice to show a violation of the Sixth Amendment right to counsel); State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994) (where assistant solicitor acted inappropriately by communicating with defendant while defendant was represented by counsel, and secretly taping conversation; defendant still failed to show prejudice, where he had no right to plea

4. Analysis

Turning to the case here, it is clear that even if Mr. Wright's ridiculous affidavit is accepted as true, it is insufficient to justify the unprecedented and extraordinary action of forcibly removing the Attorney General from a case over his objection. Although the affidavit's point and the bare bones motion are not entirely clear, apparently Mr. Wright seems to allege the Attorney General threatened the Speaker but then offered an unethical and implied *quid pro quo* promise to hinder SLED's review, in return for the Speaker's support for stronger *ethics* enforcement mechanisms – a fairly nonsensical proposition. Regardless, since Mr. Harrell ultimately supported the Public Integrity Unit, he seemingly seeks to conflict out the Attorney General for failing to live up to an alleged back room deal – over *strengthening ethics reform.*

However, even accepting (but not conceding) the truth of this affidavit, it offers nothing but speculation and conjecture as to any supposed conflict or abuse before the actual grand jury itself, and certainly does nothing to show "serious abuses" of the grand jury process as is required by the caselaw. It is the only "evidence" offered to support the current motion, and there has been no showing whatsoever of any misconduct or bias in the handling of the case before the grand jurors themselves.

Indeed, the only action regarding the grand jury to which Mr. Harrell could possibly point is the referral to the grand jury itself. However, a grand jury referral, like a grand

---

bargain and evidence was overwhelming); State v. Smart, 278 S.C. 515, 299 S.E.2d 686 (1982) (motion for disqualification of entire solicitor's office was properly denied; rejecting claim that entitlement to disqualification could be established by merely alleging a violation of the ethical canons, despite cases to that effect from other jurisdictions; defendant must show actual prejudice; here, no prejudice was shown where former PD merely worked on a brief, has no discussions with trial counsel or the defendant, or looked at the case file; facts to not suggest a betrayal of any confidences); State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007) (motion to disqualify solicitor's office properly denied where former PD investigator now working for solicitor's office interviewed defendant; investigator did not remember interviewing defendant, imparted no confidential information to the solicitor, and was only involved with ministerial duties on the case while at the solicitor's office).

jury subpoena, requires no probable cause to initiate, and does not carry with it any imprimatur of guilt, since the grand jurors are conducting an investigation from which they may or may not find probable cause. Moreover, the Attorney General alone cannot initiate a case – it also requires the support of the Chief of SLED and approval of a petition by the presiding judge of the State Grand Jury. Again, the only evidence offered to support the motion is a conversation with the Attorney General in April of 2013 – which took place long before the referral to the grand jury in January of 2014, and a conversation which did not involve either the Chief of SLED or the presiding judge of the state grand jury. If anything, even if one accepts Mr. Wright's farfetched version of the conversation as accurate, the supposed promise has had no effect on the investigation – as the investigation has continued even though Mr. Harrell supported the Public Integrity Unit. Regardless, it is what happens before the grand jurors that counts, and Mr. Harrell has not made cannot make any showing in that regard.

And that last point illustrates why Mr. Harrell's motion is premature. If – and only if – a grand jury indicts him, he will then have the opportunity to review every transcript of the proceedings before the grand jurors for supposed prosecutorial misconduct or conflict of interest. If he finds something he thinks qualifies, he can make whatever motions he wishes to make to quash or dismiss the indictment. As In re Grand Jury Proceedings persuasively points out, "whether a prosecutor who appears before a grand jury labors under a conflict of interest or whether his conduct oversteps the bounds of propriety should be determined after indictment, not by mere conjecture or speculation beforehand". 700 F. Supp. 626, 631. Otherwise, "any holding that would saddle a grand jury with mini-trials and preliminary showings would assuredly impede its

investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws." R. Enterprises, 498 U.S. at 298-99.

V. MR. WRIGHT'S AFFIDAVIT IS INCORRECT.

While the preceding ground as to the insufficiency of the affidavit on its face is justification for the court to deny relief without further factual inquiry, the substance of the affidavit is incorrect and refuted by the Affidavits provided by the Attorney General and Adam Piper, his Director of Governmental and Community Affairs. Thus, there is no proof of an actual conflict of interest or prejudice.

As shown by the Attorney General's affidavit, one of the Attorney General's statutory duties is to monitor, and where appropriate, advocate for proposed legislation pending before the South Carolina General Assembly – particularly where such legislation would affect the criminal laws of the State. S. C. Code s 1-7-90. He became aware of the Speaker's possible objections to including the Public Integrity Unit in the ethics reform legislation, and he reached out to Mr. Wright for a meeting. The purpose of this meeting was to explain the mechanics of Public Integrity Unit to Mr. Wright, and to advise him that the Attorney General's advocacy for a Public Integrity Unit had no connection to the fact that the Attorney General referred the matter to SLED for investigation – as he had to do and frequently does for many matters in the ordinary course of his business. The Attorney General wished to avoid the appearance of impropriety from a direct meeting with Mr. Harrell but still comply with his statutory duty to advocate for proposed legislation. His goal was to lower tensions and not raise them from the mere fact that he had simply done his job and referred a matter for review.

The Attorney General adamantly denies raising his voice, pounding the desk, or

any other aggressive action. The Attorney General adamantly denies threatening the Speaker or promising the Speaker anything with regards to the SLED investigation. The Attorney General adamantly denies that he is in any way conflicted in the matter, or that he has or will make any decision on anything but an objective view of the facts and the law.

Additionally, Mr. Wright's version of a supposed unethical deal and unethical actions for the purpose of promoting ethics reform is absurd and inconsistent on its face and accordingly lacks credibility. As discussed in the first section, too many ridiculous premises have to be accepted to find Mr. Wright's story credible, aside from the Attorney General's express refutation.

The bottom line is there is no conflict where the Attorney General is merely attempting to engage the Speaker's office on pending legislation, while a SLED investigation is ongoing from which no final results have been reported to him. Because of their respective integral roles in the government of South Carolina, the Attorney General still had to endeavor to work with the Speaker -- particularly where the SLED review was incomplete and pending, and it is not uncommon that complaints and matters referred to this Office are shown to be unfounded after full review by an investigative body. If Mr. Wright unfortunately read into the conversation a threat, promise, or *quid pro quo* that was not offered or did not exist, that is no basis for the drastic remedy of conflicting an elected constitutional officer like thethe Attorney General from his constitutional and statutory duties.

The motion is without merit and should be denied.

CONCLUSION

The allegations in Mr. Wright's affidavit are insufficient on their face to overcome the high standard needed for judicial intervention in a pre-indictment grand jury matter. Under the caselaw, after indictment is when individuals become defendants in an adversarial process, and can then make motions they wish to make.

In any event, the significant facts or implications of Mr. Wright's affidavit are incorrect and expressly denied. The Attorney General has no conflict sufficient for the drastic remedy of disqualifying an elected constitutional officer over his objection from his constitutionally and legislatively charged duties.

It is respectfully submitted that the motion should be denied.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

JOHN MCINTOSH
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT D. COOK
SOLICITOR GENERAL

W. Allen Myrick
Sr. Asst. Deputy Attorney General

S. Creighton Waters
Asst. Deputy Attorney General
PO Box 11549
Columbia SC 29211

March 7, 2014

FILED
MAR 07 2014
JAMES R. PARKS
CLERK, STATE GRAND JURY

THE STATE GRAND JURY OF SOUTH CAROLINA

In the matter of State Grand Jury Investigation 2014-237

AFFIDAVIT OF ADAM PIPER

PERSONALLY APPEARED BEFORE ME, ADAM PIPER, who first being duly sworn deposes and states as follows:

(1) My name is Adam Piper. I am Director of Government and Community Relations for the South Carolina Attorney General's Office.

(2) One of the duties of my position is to assist the Attorney General in monitoring and where appropriate advocating for legislation that is pending before the General Assembly.

(3) On March 6, 2013, an ethics reform bill was introduced in the House that included a Public Integrity Unit.

(4) In March of 2013, the Office was advised that ethics reform legislation to be discussed by the House Judiciary Committee would not include a Public Integrity Unit.

(5) On April 11, 2013, a new comprehensive bill was introduced in the House that excluded a Public Integrity Unit.

(6) On April 16, 2013, the House Full Judiciary Committee discussed ethics reform without the Public Integrity Unit. However, a break was taken for possible amendment.

(7) The Attorney General asked me to find a contact number for Brad Wright, the chief of staff and legal counsel for Speaker Harrell in order to set up a meeting.

(8) Mr. Wright met with the Attorney General on the afternoon of April 16, 2013. Although I did not attend the meeting, I walked with the Attorney General and Mr. Wright on the way to the elevator. The interaction I observed between the Attorney General and Mr. Wright was normal and comfortable, and nothing Mr. Wright said or did, and nothing about his demeanor, indicated that his interaction with the Attorney General had been anything but normal.

(9) Mr. Wright and I exchanged contact information and business cards. Again, nothing Mr. Wright said or did, and nothing about his demeanor, indicated that he was at all uncomfortable or intimidated. Nothing I observed gave any indication that Mr. Wright had just had any kind of negative interaction with the Attorney General. My interaction with Mr. Wright was also pleasant and professional.

(10) The next day, April 17, 2013, Mr. Wright called to inform us the Speaker would be supporting the Public Integrity Unit and would advise other members of this.

(11) That day, an amendment was added which inserted the Public Integrity Unit into ethics reform legislation. Speaker Harrell was among the House members who overwhelmingly voted for the legislation, which included the Public Integrity Unit.

FURTHER AFFIANT SAYETH NOT.

Adam Piper
ADAM PIPER

SWORN to before me this
Friday, March 07, 2014
Katrina Elliott
Notary Public for South Carolina
My Commission Expires: 06/14/2021

FILED

MAR 07 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

THE STATE GRAND JURY OF SOUTH CAROLINA

In the matter of State Grand Jury Investigation 2014-237	)	**AFFIDAVIT OF ALAN WILSON**

PERSONALLY APPEARED BEFORE ME, ALAN WILSON, who first being duly sworn deposes and states as follows:

(1) My name is Alan Wilson. I am the elected Attorney General of the State of South Carolina. I also currently serve as a Lieutenant Colonel in the South Carolina National Guard. During my career I have also served as an Assistant Solicitor in the Eleventh Circuit, an Assistant Attorney General in the South Carolina Attorney General's Office, and an artillery Officer in the United States Army.

(2) On February 14, 2013, a citizen complaint was delivered to this Office regarding possible ethics violations by Speaker Robert Harrell. A concern was raised that staff of the House Ethics Committee would have a conflict of interest in investigating claims against Speaker Harrell, because of his control over the hiring and firing of staffers, and because some of those staffers might be fact witnesses in the investigation. As such, the complaint was brought to this Office.

(3) Because the complaint was brought to our office due to concerns over possible conflicts of interest, I had a job to do. Accordingly, on February 14, 2013, I referred the matter to the South Carolina Law Enforcement Division ("SLED") to conduct a preliminary review of the matters raised by the citizen complaint. At this time I knew nothing about the case other than the allegations that were set forth in the complaint.

(4) One of the many duties I have as Attorney General of South Carolina is to monitor, and where appropriate, advocate for proposed legislation pending before the South Carolina General Assembly – particularly where such legislation would affect the criminal laws of the State. Indeed, this duty is codified at section 1-7-90 of the South Carolina Code of Laws.

(5) During the first half of 2013 I was supporting an ethics reform bill that not only would strengthen the ethics laws in general, but also would include the creation

of the Public Integrity Unit. The proposed Public Integrity Unit would include representatives from the Attorney General's Office, SLED, the South Carolina Ethics Commission, the South Carolina Department of Revenue, and the Inspector General.

(6) The purpose of the Public Integrity Unit was to enhance collaboration and minimize duplication of effort among the various state agencies charged with detecting and addressing corruption, fraud, misconduct, and dishonesty in South Carolina state government.

(7) During February, March, and April of 2013 I met with various people to discuss and hopefully advance ethics reform legislation and the creation of the Public Integrity Unit. During this time I became aware that Speaker Harrell may have had concerns about including the Public Integrity Unit in ethics reform legislation. I was worried that the Public Integrity Unit would not make it into the final bill.

(8) On April 11, 2013, a comprehensive ethics bill was introduced that did not contain a Public Integrity Unit. The Full Judiciary Committee met on April 16, 2013, and I was advised the Public Integrity Unit was not included in the discussions.

(9) Because I believed it would create the appearance of impropriety if I were to meet directly with Speaker Harrell given the pending SLED review of the citizen complaint into possible ethics violations by Speaker Harrell, I decided to reach out to his chief of staff and chief legal counsel, Brad Wright, to discuss the ethics reform legislation and the Public Integrity Unit.

(10) My purpose in arranging this meeting was to get Speaker Harrell's support for stronger ethics laws and a Public Integrity Unit, and to convey that the proposed ethics reform and the Public Integrity Unit had nothing to do with the fact that this Office, in the normal course of business, referred to SLED a complaint that was brought to us for investigation – as this Office routinely does for the myriad of cases and matters that are brought to it. Of course, such a referral carries with it no conclusion that a complaint is valid or unfounded – that is for the investigation to determine.

(11) Indeed, at that time I did not know the final result of any investigation into the ethics complaints about Speaker Harrell, and had no idea as to what, if anything, SLED would find.

(12) Accordingly, on April 16, 2013, I had my staff obtain a cell phone number for Mr. Wright and invite him to a meeting at my office. After reviewing my calendar, I believe the meeting took place late that afternoon. I closed the door and Mr. Wright and I sat down in my office.

(13) I explained to Mr. Wright the mechanics of the Public Integrity Unit and the idea of fostering collaboration among the various state agencies tasked with ensuring that there is good and honest government for the citizens of South Carolina. I also explained that there was no linkage between the proposed ethics reform and the fact that this Office simply referred a complaint about Speaker Harrell for investigation, as it routinely does for various matters in the ordinary course of business. I conveyed to Mr. Wright my hope that the mere fact this Office referred the matter to SLED in the ordinary course of its business would not cause Speaker Harrell to publicly or privately withhold support for the Public Integrity Unit.

(14) At no time did we discuss the specifics of the SLED referral other than to acknowledge it existed, and again, at that time I had no knowledge about the final results of any such investigation.

(15) The entire conversation between us was professional and cordial.

(16) I deny that I raised my voice at Mr. Wright at any time during the meeting, or behaved in any other manner that would be aggressive, unprofessional, or uncivil.

(17) I further deny that at any time I pounded my fist on the desk. That is not something I do as a general matter, and it makes no sense that I would be combative given that my goal was to prevent the Public Integrity Unit from being scuttled because of tension from Speaker Harrell over the fact this Office had referred to SLED ethics complaints against the Speaker.

(18) At no time did Mr. Wright say anything or do anything that would indicate he was "intimidated", and I did nothing that was designed to intimidate anyone.

(19) At no time did I expressly or impliedly threaten Mr. Wright with "consequences" if Speaker Harrell did not support the Public Integrity Unit. Nor did I make any promises regarding the investigation. My intent in the conversation was to lessen tensions not raise them, and to explain to Mr. Wright the advantages of having a Public Integrity Unit.

(20) I certainly may have asked Mr. Wright to let us know if Speaker Harrell was going to support stronger ethics enforcement mechanisms, but I deny that I was "insisting" or "adamant".

(21) At the conclusion of the meeting, Mr. Wright and I got up, shook hands, and then I walked him to the elevator along with Adam Piper, the Office's Director of Government and Community Relations. The conversation had been pleasant and cordial, and I was encouraged for the Public Integrity Unit as I believed the entire interaction had been on good terms.

(22) I was advised by staff the next day that Mr. Wright had called and stated Speaker Harrell would support an amendment containing a Public Integrity Unit. Speaker Harrell subsequently voted for a version of ethics reform that contained a Public Integrity Unit.

(23) Any decisions I have made in this case were based purely on objective consideration of the facts and the law.

FURTHER AFFIANT SAYETH NOT.

Alan Wilson
ALAN WILSON

SWORN to before me this
Friday, March 07, 2014
Kathi Elliott
Notary Public for South Carolina
My Commission Expires: 06/14/2021

STATE OF SOUTH CAROLINA	)	IN GENERAL SESSIONS
COUNTY OF RICHLAND	)	COURT
	)	
BOBBY HARRELL,	)	
	)	TRANSCRIPT
-V-	)	OF
	)	RECORD
STATE OF SOUTH CAROLINA,	)	M 2014-237
DEFENDANT.	)	

MARCH 21, 2014

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF:

MR. HOWE, ESQ.

MR. DANIEL, ESQ.

FOR THE DEFENDANT:

MR. WATERS, ESQ.

MR. MYRICK, ESQ.

I-N-D-E-X

	PG.
EXAMINATION OF BRAD SCOTT WRIGHT:	
DIRECT BY MR. DANIEL	7
CROSS BY MR. MYRICK	32
REDIRECT BY MR. DANIEL	41
EXAMINATION OF ALAN WILSON:	
DIRECT BY MR. WATERS	44
CROSS BY MR. HOWE	64
REDIRECT BY MR. WATERS	83
CERTIFICATE OF REPORTER:	84

(REPORTER'S NOTE: THERE WERE NO EXHIBITS MARKED DURNING THE PROCEEDINGS.)

-

(The following proceedings were held on March 21, 2014.)

THE COURT: First of all, I'm not Robert Hood.

(Laughter.)

And I'm sure y'all are aware of the administrative order that exist that when the chief judge of criminal is unavailable then the chief judge of civil will hear all matters related to the State wide grand jury -- I happen to be the chief judge of civil here in this circuit so I shall hear this matter.

Now, there's been some concern about whether this hearing should be opened or closed. I'll try to clarify that issue right now. Obviously, it will be open. Nothing said in this public hearing should be anything that may go before the State wide grand jury. This is an ancillary proceeding. There's a Hearst-Argyle Test. South Carolina Supreme Court opined in Ex parte Hearst-Argle Television Incorporate the courtroom may be closed only if specific findings are made. That one, there's a substantial probability that the defendant's rights to a fair trial will be prejudiced by the publicity; two, there's a substantial probability that closure would prevent that prejudice; and three, reasonable alternative to closure cannot adequately protect the defendant's rights.

Now, the South Carolina Supreme Court has held

that the analysis for courtroom closures begins with a determination of whether the particular type of proceeding has historically been opened and whether public scrutiny plays a significant role in the functioning of the proceeding.

In making this determination, the presumption of openness is strengthened by the South Carolina Constitution, the constitution's unqualified language guaranteeing open courtrooms. Specifically, our constitution provides that all courts shall be public, that every person shall have speedy remedy therein for wrongs sustained. South Carolina Constitutional Article, section nine.

South Carolina jurisprudence has recognized Article one, section nine independent constitutional guarantee of open courts and our Supreme Court has held that exclusion of the press and public from judicial proceedings is a drastic measure calling for a careful weighing of interests affected.

In making the determination under these facts, it is necessary to distinguish between presentations to and deliberations of the grand jurors, on one hand, and court proceedings ancillary to the operation of the grand jury on the other. Historically, the secrecy attached to grand jury proceedings has application only to those things which transpire in the grand jury room. Tellingly, the Supreme

Court in Margolis noted that the oath of the grand jurors take -- relative to secrecy is taken in open court.

So I thought it was necessary for me to say that to dispel any notions there would be some sort of closed hearing. I'm not sure whether or not either side to this controversy was, actually, seeking to close this hearing, but I think what motions that were made so for were made out of an abundance of caution not to interfere with the secret proceedings of the grand jury.

Now, with that in mind, is there anyone who wants to say anything before we get started?

Yes, sir.

MR. WATERS: Nothing from us.

THE COURT: All right.

Where is Mr. Howe, I don't see him?

Oh, you look a lot younger than I anticipated, Mr. Howe.

(Laughter.)

MR. HOWE: That's a pretty good come back, Judge.

THE COURT: Thank you.

Y'all ready to proceed? You're the moving party?

Mr. Daniel, I assume you're going to be the spokesperson.

MR. DANIEL: Excuse me, Your Honor, at this time, we would be asking any witnesses be sequestered and we would

call our first witness.

THE COURT: All right.

Any opposition to that, gentlemen?

MR. WATERS: Your Honor, the only witness that -- I don't know that we have any witnesses. Obviously, the attorney general is at issue in this matter, but I believe because he is --

THE COURT: I'm not going to exclude him or Mr. Harrell.

Now, if there's some other witnesses, that request would go to them, but if there are no other witnesses. Third parties, I can't exclude them.

MR. MYRICK: No, sir.

THE COURT: All right. So Mr. Alan from the AG, Mr. Harrell, Bobby Harrell and -- may be your two witnesses?

MR. WATERS: Yes, sir.

THE COURT: Okay. In that case, I'm not going to excluding anyone of them so or sequester them.

You may proceed, Mr. Daniel.

MR. DANIEL: Yes, Your Honor, at this time, we call Mr. Brad Wright.

THEREUPON,

BRAD SCOTT WRIGHT,

after having been duly sworn, testified as follows:

THE CLERK: Please state your full name.

BRAD WRIGHT DIRECT BY MR. DANIEL

MR. WRIGHT: Brad Scott Wright.

DIRECT EXAMINATION

BY MR. DANIEL:

Q. Good morning, sir.

A. Good morning.

Q. Please tell the Court your background and what you do for a living, sir?

A. I'm the counsel and chief of staff -- legal counsel and chief of staff for Speaker Harrell. I work for the South Carolina House of Representatives.

Q. Okay. And what is your background? Where did you graduate, briefly, and attend school?

A. I was born in North Carolina, but moved to Pawley's Island area when I was five and I've -- that's originally where I'm from, Myrtle Beach, Pawley's Island area. I went to college at Auburn University, moved back here for law school and went to law school at the University of South Carolina. And I've been in Columbia ever since I graduated law school.

Q. And upon your graduation from law school, where did you get your first job as a lawyer?

A. I worked for the McNair Firm.

Q. Okay.

A. Right here in Columbia.

Q. Okay. How long did you work for McNair?

A. I think it was around five years, from the fall of '99, as I recall, to somewhere close to -- well, to the fall of 2004, I believe.
Q. And tell Judge Manning and the Court what you did after you -- when you left and why you left McNair?
A. I left McNair, I took a job with the Labor, Commerce and Industry Committee with the South Carolina House of Representatives working for Chairman Cato.
Q. Okay. And how long did you do that?
A. From January 1st of 2005 until -- until sometime, I think, September of 2007, somewhere in that time frame.
Q. And what did you then do?
A. I then became the legal counsel for Speaker Harrell in, I believe, September of 2007.
Q. Okay. Just briefly, what does speaker -- excuse me. What does legal counsel for the Speaker do?
A. Well, I handle litigation matters for the House, other attorneys do as well, but I handle litigation matters for the Speaker and I handle legislative matters for the Speaker as well, drafting legislation. I also handle constituent issues from time-to-time and general duties that are assigned to me.
Q. Now, you served in that capacity from 2009 and some time later, you became chief of staff?
A. Sir?

BRAD WRIGHT DIRECT BY MR. DANIEL

Q. At some time later, did you become chief of staff?
A. I did. I did. I became chief of staff, I believe it was in 2011.
Q. Okay.
A. Sometime around that time frame when the Speaker made me chief of staff.
Q. Okay. Bringing you up-to-date, did you attend at the Speaker's direction a subcommittee meeting of the judiciary committee on April 16th, 2013?
A. I did.
Q. Okay. Explain to the Court, please, the purpose and background of what gave rise to that meeting?
A. Well, the -- the -- the meeting that day was dealing with the House Bill 3945. It was the -- it was an ethics bill. That Bill had been introduced the previous Thursday, you know, last session day for the week on April 11th and it was introduced in title only. It was assigned to the subcommittee the next Tuesday and I attended the subcommittee just to follow along what was going on with the ethics bill since it was a major issue before the -- before the House at that time.
Q. And what issue was specifically discussed at that subcommittee meeting on April 16th?
A. Well, there were various issues discussed. It was

discussed whether or not to have an independent ethics investigatory body and they discussed the public integrity unit as well.

Q. Okay. Explain to Judge Manning the background of the public integrity unit, why it was some -- some disagreement over it as you proceed.

A. Well --

THE COURT: It was originally left out of the Bill and this was an amendment; is that correct?

MR. WRIGHT: Yes, sir. yes, sir.

THE COURT: All right. Go ahead.

MR. WRIGHT: It was in a Bill that had been previously filed some weeks before, some three or four weeks before that was filed with, I think Mr. Bigham was the primary sponsor and had some additional sponsors. And then this Bill was filed in title only on that Thursday and then went to subcommittee on that Tuesday and public integrity unit was not in that Bill.

BY MR. DANIEL:

Q. Okay. And why -- why -- what seemed to be some of the opposition that House members had just in general to a public integrity unit being included? What would it do? What was their opposition to that?

A. Well, some members had expressed discomfort with the fact that any time a complaint got forwarded to SLED --

or got forwarded to the public integrity unit, you would automatically get a SLED investigation and that could become public and the public would know about it and you would be guilty before you ever had an opportunity to have a fair hearing or investigation. So there was some discomfort in it. And the language of the Bill that was introduced by Mr. Bigham required, essentially, any -- any allegation of misconduct under the ethics act to go to the public integrity unit. No matter how minor, it had to go to the public integrity unit.

Q. And under whose control would the public integrity unit be?

A. Well, it was a compilation of agencies, as I recall, best I can recall, but it was under the attorney general's office.

Q. Describe the meeting, please, for Judge Manning, the subcommittee meeting. What happened? What transpired?

A. Well, the -- there was debate. They probably took testimony. I don't specifically recall, that would have been the appropriate thing to do, take some testimony at subcommittee meetings. You usually don't hear testimony, it's rare that testimony is taken at a full committee meeting. And there was debate about the -- about various aspects of the Bill, so -- including

the public integrity unit.

Q. Did it come a time when there was a recess? Would you describe to Judge Manning what happened during the recess?

A. Yes, sir, about 5:00 that afternoon, there was a recess in the subcommittee meeting. And at that recess, I stepped out into the --

THE COURT: Don't tell me who you talked to Richard Quinn.

MR. WRIGHT: Sir?

THE COURT: Go ahead. Don't let me stop you. Go ahead.

BY MR. DANIEL:

Q. Go ahead. Please continue.

A. I talked to Mr. Bannister, the subcommittee chairman, and he said that Mr. Quinn had expressed a desire for me not to be in the meeting. So I told him I would go ask the Speaker about that. I went and asked the Speaker about it and he expressed that he wanted me to be in the meeting to tell him what was going on. When I started to walk back into the subcommittee meeting, the Page in our office, Kristin, stopped me and said that I had gotten a call from the attorney general's office. And I took the message, but I wanted to get back into the meeting before it started again. So I

walked into the meeting and I sat down at the side table and -- where staff normally sits and Mr. Quinn asked me if I would confirm -- he asked me -- he recited my cell phone number and asked me if that was it and --

Q. This is Representative Quinn?

A. Yes, sir. Yes, sir.

Q. Does he still serve on the subcommittee?

A. Yes, sir, he does.

Q. Okay. Please continue.

A. So less than a minute later, I got a phone call on my cell phone. And I stepped out in the hall and it was Christy from the attorney general's office.

Q. Now, that's not Kristin from your office?

A. No, sir, it's not. Kristin is the Page. She said her name was Christy from the attorney general's office.

Q. Okay. Describe your discussion.

A. Well, she -- she asked -- she said the attorney general wanted to meet with me. And I told her that I was in a meeting at that time, but I could call her back in 10 or 15 minutes and let her know. And that was pretty much it. I hung up the phone at that point.

Q. Okay. Did you then resume your place back in the subcommittee meeting?

A. I did. I went back to the subcommittee meeting and the

subcommittee meeting resumed. And Mr. Quinn told members of the subcommittee that he was not going to offer the public integrity unit as amendment that day at the subcommittee meeting, but he fully intended to offer it the next day at the full committee meeting.

Q. Okay. And what happened when the subcommittee -- judiciary committee concluded or adjourned?

A. I'm sorry?

Q. What did you do when the meeting adjourned?

A. Well, when the meeting adjourned, I went back to talk to Speaker Harrell and ask him if he wanted me to -- to tell him that I had gotten this phone call from the attorney general's office and asked him if he wanted me to attend and he said that he did. So I called Christy back and she said she would meet me outside and I would go -- I would meet her and go -- and go with her to the attorney general's office. She said they were going to bring me up the back elevator, I think is how she described it.

Q. Had you ever been on any back elevator before?

A. Not that I recall, no, sir.

Q. Okay. Describe for the Court what happened when you got the AG's office and Christy, the executive assistant to the attorney general, met you. What happened then?

A. Well, she met me outside and took me up to the attorney general's office. And I met the attorney general at his office and we went in and --

Q. Did you stop by the fifth floor where visitors normally check in?

A. No, sir.

Q. You just went straight up?

A. Yes, sir.

Q. Okay. Please describe what happened then.

A. Well, we went in and the attorney general closed the door and it was just the two of us in the meeting and the meeting began.

Q. Okay. Tell Judge Manning what the attorney general -- Attorney General, Alan Wilson, himself, right?

A. Yes, sir.

Q. Was there anybody else in that meeting?

A. No, sir, it was just -- it was just the two of us.

Q. And had you ever been to any attorney general's meeting or was it your first meeting with an attorney general in your seven years as chief of staff working for the Speaker?

A. No, sir. No, sir, I had not.

Q. Now, when you got to that office, was the director of legislative affairs in that office, in the attorney general's office?

A. No, sir.
Q. Was there the director of communications in that office?
A. No, sir.
Q. It was just you alone with the attorney general?
A. Yes, sir.
Q. What was your reaction, what were you thinking? What was your state of mind when you came in and the attorney general closed the door?
A. I knew that was a little unusual. It was unexpected. I had dealt with the attorney general's office before with legislation in the past, but I had always dealt with their legislative affairs director primarily, which in the past had been Brian Sterling. So it was -- it was unusual. I never met with even -- I can't recall having ever met with a constitutional officer one-on-one before.
Q. And what else that was going on that you thought about at the time that went through your mind?
A. Well, of course, I knew that the attorney general had forwarded a complaint to SLED for investigation against Speaker Harrell.
Q. Now, please, when the attorney general closed the door, please, describe for Judge Manning how he began the discussion.

A. He told me that -- that he -- he couldn't meet with the Speaker right now because of the SLED investigation, but he could meet with me and he knew the Speaker valued my opinion. And, of course, he told me he wanted to talk about the public integrity unit and he told me that he fully expected that I would -- after meeting with him that I would go back and tell the Speaker everything I could remember about our conversation.

Q. Did he mention to you anything about the SLED investigation after what you just said? What did he say after that about the investigation?

A. Well, he told me he wasn't going to talk about the SLED investigation, but then he turned -- he immediately told me that he felt like he had to forward the complaint to SLED because according to terms of the complaint, there was a potential conflict of interest. And he -- he described some of that conflict. I'm not sure -- I didn't exactly follow, but he described some of what he thought that conflict was.

Q. And did he mention anything about an investigation, criminal investigation? Did he mention anything else about his position on the criminal investigation?

A. He told me that he hoped that the SLED investigation wouldn't result in anything prosecutable against the

Speaker, but then he immediately said that he was going to do the right thing. And then he told me a story about his parents. He said that he had often told his parents that if something came out about them, he, of course, couldn't prosecute the case. He would have to recuse himself from the case and he would serve as a character witness, but he wouldn't stand in the way of that prosecution.

Q. Okay. Did the discussion then resume -- did the conversation or the discussion resume or pick up on the discussion on the integrity unit and what the issue was before --

A. Yeah, he then -- he began discussing the process and he said he was disappointed with how quickly the ethics bill had come up in subcommittee and --

Q. Now, please, mention to Judge Manning what -- procedurally, where was the public integrity unit at that point in time?

A. At that point in time, it wasn't in the -- it wasn't in the Bill.

Q. Okay. Please continue. I'm sorry.

A. So he told me he was disappointed that the meeting had come up so quickly and that it had come to subcommittee so quickly and it didn't include -- the Bill did not include the public integrity unit.

BRAD WRIGHT DIRECT BY MR. DANIEL

Q. Did his demeanor change in any way at that point in time?
A. At that point in time, it was clear to me he was -- he was upset. He was not happy. That was my impression, he was upset.
Q. Did he then mention to you about Speaker Harrell's position, his understanding of Speaker Harrell's position on the public integrity unit?
A. Well, he told me a couple of things. He told me that Representative Quinn -- he knew that Representative Quinn thought that the Speaker was mad at him. And he was referring to himself, or, at least, that's how I understood it. And he told me that he was his own person and Representative Quinn did not control him. And those were -- those were the words that he used. I didn't -- we weren't discussing Representative Quinn, so I thought that was a little odd, but that was what he said. He then told me it was his understanding that Speaker Harrell opposed the public integrity unit.
Q. Okay. What was your response or did you have a response to that?
A. Well, I had a two-fold response. I knew that he was -- I felt like he was getting upset, so I wanted to -- it was my hope to try to defuse some of that. That's what I have to do sort of on a daily basis in the General

Assembly. So I tried to describe that the process for the -- for the subcommittee and the Bill was that the Bill was intended to be a reflection of what the Speakers thought the members wanted to see and that that had been a process that began before the legislative session started and continued all the way up until the day that the Bill was introduced, so it wasn't really a last minute thing.

Q. Well, why did you think it was important to defuse?

A. Well, I -- I knew he was upset and I did not think him being upset at the Speaker given the current circumstances was a good thing.

Q. And what was the current circumstances? Be specific, please.

A. The current circumstances was the ongoing SLED investigation.

Q. And who led that investigation?

A. The attorney general referred the complaint.

Q. And what was your response about -- or did he discuss what he thought Speaker Harrell's position --

A. Well, I brought it up. I said that I didn't know that the statement the Speaker was against the public integrity unit was completely true. And before I could finish that statement, he cut me off and he sort of -- he did like this on his desk (indicating) and he said

that's not what he understood from the members.

Q. Was he --

THE COURT: I'm sorry, I didn't hear that last part.

MR. WRIGHT: He said that's not what I understand from the members.

THE COURT: Okay. Thank you.

BY MR. DANIEL:

Q. Describe his demeanor or temperament at that point in time.

A. At that point, it appeared to me that he was angry.

Q. Who all did the attorney general tell you was in support of the public integrity unit?

A. He told me that -- he told me he had broad support for the public integrity unit in the House and Senate. He told me that Chief Keel, that he had met with Chief Keel in the conference room, and he referenced the conference room next to his office, or, at least, that's what I understood him to be saying. He said he met with Chief Keel in his office until he got him to agree to it.

Q. Just for the record, who is Chief Keel?

A. The chief of SLED.

Q. Okay. And did it concern you at all or what was your -- what was your reaction or what were you thinking

when he mentioned Chief Keel's name?
A. I -- I don't know. I don't know if I was -- at that point, I was becoming increasingly uncomfortable with being in the room and I don't know that I -- I don't know what I thought about the reference to Chief Keel.
Q. And chief Keel is the chief of SLED who's conducting the investigation under the office of the attorney general?
A. Yes, sir.
Q. Did -- did you then proceed to explain or attempt to explain to the attorney general why some other members were against the public integrity unit?
A. I don't recall -- I know he explained to me that there were other members that he had talked to and the members that he mentioned, I knew that, at least, a couple of them had expressed that they weren't comfortable with the public integrity unit.
Q. And what, I'm sorry?
A. That they were not comfortable -- not entirely comfortable with the public integrity unit. And he mentioned those members by name and he said they were becoming more uncomfortable every time he -- each time he spoke to them.
Q. How did you react -- you mentioned that he had gotten angry, how did you begin to react to the attorney

general's anger?

A. Well, like I said, initially, I was hoping to defuse some of that, but after -- after he sort of rebuffed that, I decided that it was best for me not to say a whole lot, so I was mostly listening at that point and hoping to get out of the room, honestly.

Q. Now, how did you take what the attorney general said to you and how he said it?

A. Well, at one point in the meeting, he told me that (pause) -- at one point in the meeting, he told me that he had friends with deep pockets, he could make this an issue if he asked them to. And when he said that, I was -- I mean, I still remember -- my recollection is he was standing up at that time and I was still sitting down. And that scared me.

Q. How did that -- in your mind, did that have any relation to the fact that he was also conducting a SLED investigation into the Speaker of the House of Representatives?

A. Yes, sir, I thought that was a threat.

Q. Explain to the Court what you mean by that, what you were thinking at the time.

A. Well, he was so direct and the look on his face at the time, I can still see the look on his face at the time. He was so -- he was so -- he was so stern and angry at

the time when he made that statement. And, of course, in the back of my mind, I'm thinking that you have a SLED -- there's a SLED investigation going on. So, I mean, at that -- by that point in the conversation, I just wanted out of the room.

Q. Were you afraid?

A. Yes, sir.

Q. For what? Why? Why were you afraid?

A. It was a comfortable position to be in. I was concerned for the Speaker. I was concerned that I was going to have to go back and try to relay this in some way as well.

Q. Now, you had mentioned or repeated word-for-word -- or as best you could to the Speaker, what was the message -- what was the ongoing gist of the message that he was telling you to deliver to the Speaker?

A. He told me that -- the gist of the message as I took it is that he wanted the Speaker's support on the public integrity unit. And he told me several times that not putting the amendment up at subcommittee that day was a -- was an olive branch. That was the term he used, that it was an olive branch and that he -- and that he -- but he fully intended for the amendment to be added at full committee the next day, that the amendment was going up at full committee the next day. But this was

an olive branch to give the Speaker an opportunity to support the public integrity.

Q. What was your -- what was your thought process at the time when he mentioned "olive branch" several times?

A. Well, of course, I know an olive branch is a peace offering and the opposite of peace is conflict, so that -- that's what I was thinking.

Q. Were you -- when you say that, what were you relating it to possible conflict?

A. I -- I don't know that -- I don't know that I had drawn a conclusion. I was mostly thinking at that point I wanted to get out of the room. I knew I was going to have to deliver this to the Speaker.

Q. Did you know, Mr. Wright, of any disagreement between the attorney general and Speaker Harrell (indicating) that would necessitate the offering of an olive branch or a peace offering by the attorney general?

A. No, sir. I mean, the only thing I knew -- I mean, obviously, I knew there was a SLED investigation, but nothing else about their relationship.

Q. Please continue. What happened as the meeting was wrapping up?

A. Well, as -- he walked me out and he took me -- he walked me to the -- to the hallway and said we were going to stop by Mr. Piper and Mr. Bernstein's office.

As I recall, we were standing in the hallway and they sort of poked their heads out and he told me that I could -- he had reiterated that he wanted to know the next day before the full committee meeting what the Speaker's position was on the public integrity unit. And he told me I could either call him or I could call Mr. Piper or Mr. Bernstein. And he gave me his business card with a number on the back and Mr. Piper and Mr. Bernstein gave me their cards.

Q. Is the number on the back handwritten?

A. Yes, sir.

Q. Okay. And was the business card his personal e-mail particularly?

A. I think it was -- I think it was a Wilson for AG e-mail, something along those lines.

Q. It was not the normal Wilson@SC?

A. What was written on the back was not the state address, no, sir.

Q. Okay. Now, when you saw Mr. Piper and Mr. Bernstein, his aids, as you walked down -- as y'all were walking down the hall, what was going through your mind when you saw them?

A. I wondered why they weren't meeting with us.

Q. Say it again, I'm sorry. I couldn't hear you.

A. I wondered why they weren't meeting with us.

Q. Did you save the attorney general's business card that he gave you with the handwritten number on the back?
A. Yes, sir, I did.
Q. Okay. So you have it here -- if the Court needs it, you have it with you?
A. Yes, sir, I do.
Q. Now, as you left the attorney general's office and were headed over to the House of Representatives over at the Blatt Building to the Speaker's office, what was going through your mind at the time?
A. I was just thinking about what -- that I was going to have to try to explain to the Speaker what -- what happened.
Q. And why did that concern you so?
A. Because I -- because I thought it was a threat. I thought I was being asked to deliver a threat to Speaker Harrell.
Q. And did you meet with Speaker Harrell and deliver the message as the attorney general instructed you?
A. Yes, sir, I went back to my -- I went straight back to my office and I met with Speaker Harrell. And I -- the attorney general told me to tell him -- he expected me to tell him everything I could remember, so I told him everything I could remember about the conversation.
Q. And what bottom line did you tell him -- or what did

you tell him the attorney general wanted him to do?
A. He wanted him to support the public integrity unit and he needed to let him know before the next day.
Q. Did you describe the tone of your meeting with the attorney general to Speaker Harrell?
A. I -- I -- honestly, I don't recall. I was -- I know I didn't -- I wanted him to hear what was said and I was trying to remember as much about what was said as possible. I was hoping he would tell me that this wasn't as serious as I was fearing that it was and that I felt that it was.
Q. What was Speaker Harrell's reaction to your now delivered message from the attorney general?
A. Well, after -- after he and I met and we were -- I was leaving his office, he could -- I guess he could tell I was upset and so he sort of grabbed me by the shoulder and he said, Brad, it's going to be okay. You just got threatened. And then he corrected himself and he said, Actually, I just got threatened. You're just the messenger, but it's going to be okay.
Q. Now, tell the Court what did Speaker Harrell then instruct you to do in regard to getting back to the attorney general?
A. Oh, well, it was -- I don't recall if we discussed it that day or not. I know that the next day prior to the

full committee meeting, I affirmed with him that he wanted -- we must have because I recall just asking him do you want me to call the attorney general's office and let them know that you support the public integrity unit and he said, Yes. So I called Mr. Piper and told him that the Speaker supported the public integrity unit.

Q. And why didn't you call the AG himself, you had his personal cell phone number?

A. Well, one, that wouldn't have been the normal protocol because he's a constitutional officer. I'm just a staff person. But two, I just wasn't comfortable with having a conversation with him again.

Q. And why was that?

A. Because of what had happened the previous day.

Q. What did you do next? What did you then do?

A. I would have waited around the office until the Speaker left. I wouldn't have left the office before the Speaker went home for the day. But I went home that evening.

Q. And what about the next day? Did you consult with anybody?

A. Yes, sir. The next day, it was still -- it was still bothering me and there's not really a lot of options -- I didn't think it would be a good idea to talk about

this, but the clerk of the House, Charles Reed, is a good friend of mine, so --

Q. And Charles Reed, the clerk of the House, who is a friend of yours, is he also a lawyer?

A. Yes, sir.

Q. Okay. And what position had he previously served in prior to being selected -- or elected to clerk of the House?

A. He had my position as chief of staff and legal counsel to the Speaker.

Q. Okay. Please tell Judge Manning what you then did?

A. He -- Charles is a confidant, so I went to Charles and I met with him in his office and I told him what I could about the -- what I could remember about the meeting. Just -- just I knew he would know what to do.

Q. Okay. What was his advice to you --

MR. MYRICK: I'm going to object to any hearsay, Your Honor.

MR. DANIEL: I'll withdraw the question, Your Honor.

THE COURT: Okay.

BY MR. DANIEL:

Q. As a result of your meeting and your discussions with the Speaker -- excuse me, with the clerk of the House of Representatives, what did you then do?

A. I wrote a memo that described everything I could remember about the -- about the meeting that day.
Q. And how soon after the event was that -- did you write that memo?
A. We were in legislative days, so I got to it as soon as I could. I believe I started it that same -- that following day, April 17th.
Q. And did you finish it the next day, you believe?
A. I did most of it, I believe, that day. I recall that I left it on my computer, minimized it on my computer and locked the door. And when I came back the next day, I think I read over it again and then that was it.
Q. And who -- to whom was that memo addressed?
A. To Speaker Harrell.
Q. You as the Speaker and the House representative lawyer?
A. Yes, sir.

MR. DANIEL: Beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. DANIEL:

Q. No further questions, Mr. Wright. Please answer any questions that the attorney general's office may have for you.
A. Yes, sir.

THE COURT: Mr. Myrick or Mr. Waters?

(Mr. Myrick stands.)

Mr. Myrick, the witness is yours.

MR. MYRICK: Thank you, Your Honor, may it please the Court?

CROSS-EXAMINATION

BY MR. MYRICK:

Q. Morning.

A. Morning.

Q. So you're aware, are you not, that the attorney general has legislative functions to his job, correct?

A. I've worked with the attorney general's office in the past on legislative issues.

Q. And that the attorney general vigorously supported the creation of a public integrity unit?

A. I know that he supported the public integrity unit.

Q. And isn't it a good idea to have improved ethics enforcement in the State of South Carolina?

A. I'm just a staff attorney. I -- I do and draft what I'm asked, I don't make the policy decisions. I'm not allowed to make policy decisions, but I try to advise the members as best I can. And that's not a decision that would have been in my purview.

Q. So you went to this meeting?

A. Yes, sir.

Q. At your boss's request (indicating) after having been

invited?
A. Yes, sir.
Q. Now, you work for Mr. Harrell, right?
A. I do work for Mr. Harrell, but there are a limited number of attorneys in the House, so I provide legal representation more than just to Speaker Harrell, but yes, I do work for Speaker Harrell.
Q. Isn't it true that the Speaker of the House hires and fires House staff?
A. I, actually, am not familiar with that process. It's a process that goes through the Speaker and the clerk.
Q. So you don't know who hired you and who could fire you?
A. Well, I interviewed with Charles Reed and, of course, I interviewed with the Speaker when he -- when I applied for the job, yes, sir.
Q. Now, in your mind, when you were threatened, did you present a deal to Mr. Harrell?
A. Sir?
Q. Did you present a deal to him?
A. I'm not sure I understand what you mean.
Q. Or just convey a threat?
A. I tried to repeat to Speaker Harrell, as the attorney general had asked me to do, everything I could remember about the meeting.
Q. Well, let me ask you, do you mean to imply that the

Speaker changed his vote after your meeting with the attorney general?

A. All I'm telling you is what I was instructed to do.

Q. So you don't know?

A. Well --

Q. Or you won't say?

A. There had not been a vote on the -- by the Speaker on the public integrity unit or any ethics bill at that point.

Q. So you don't mean to say that he changed his vote?

A. I'm not sure I understand --

THE COURT: Let me help you. Was it a quid pro quo as a result of this meeting you had with the AG's office?

MR. WRIGHT: No, sir.

THE COURT: All right.

MR. WRIGHT: Absolutely not.

BY MR. MYRICK:

Q. Now, in your affidavit, you said he pounded the desk, the attorney general pounded the desk (indicating)?

A. I -- I believe I said that he hit the desk or pounded the desk.

Q. Pounded, like this (indicating)?

A. He --

Q. An olive branch is a peace offering, correct?

A. That's my understanding, yes, sir.
Q. So what you're saying is that simultaneously you were being threatened and made a peace offering at the same time?
A. I thought the reference to the peace offering was that the Speaker was given an opportunity to come on board to support the public integrity unit.
Q. So that was your impression. Let me ask you, is it possible that you misinterpreted the intentions of the attorney general?
A. I do not think I mis -- I think I --
Q. Is it possible? Do you ever misinterpret someone's intentions?
A. I believe -- I believe I delivered the message to the Speaker that the attorney general intended me to deliver.
Q. Now, you're a member of the Bar, right?
A. Yes, sir.
Q. And being a member of the Bar comes certain ethical obligations, does it not?
A. Yes, sir.
Q. And this meeting happened in April of last year?
A. Yes, sir.
Q. Are you not under an obligation to report unethical conduct?

A. I don't know if this was a violation of the ethical canons or not.
Q. So you would say that a threat in order to get someone to change their vote, you can't determine for yourself whether that would be an ethical obligation or not?
A. I'm not sure if it is or not. Certainly, if I have an ethical obligation to report something, I would do that.
Q. But you didn't, did you?
A. (There was no response.)
Q. Did you report it to the office of disciplinary counsel?
A. I have not. I have not filed a complaint, no, sir.
Q. In fact, how long was it? It was 10 months, wasn't it, before this alleged threat ever saw the light of day, is that correct?
A. I was hoping that I would never have to discuss --
Q. Is that correct?
A. -- this issue again. That's correct.
Q. So you didn't report it to ODC and you waited 10 months to divulge it to anyone outside of your immediate employer?
A. And the clerk.
Q. I'm sorry?
A. I also told the clerk of the House.

Q. Who's also employed by the Speaker?
A. He's elected by the House of Representatives, not employed by the Speaker.
Q. So the referral to SLED was common knowledge, was it not?
A. Yes, sir.
Q. And, certainly, you're aware that it caused tension between Mr. Harrell and the attorney general, are you not?
A. I -- that's not a comfortable situation, but I don't -- I don't know what their relationship status was.
Q. Now, you mentioned that the attorney general said there was a conflict, correct?
A. He mentioned a conflict -- that a conflict was referenced in the complaint.
Q. Is it possible that the conflict he meant was the conflict between the fact that Mr. Harrell hires and fires the ethics staff who would be reviewing a complaint if it wasn't at SLED?
A. The reference that he made, as I recall, was that someone who would be potentially investigating the complaint could also be a witness. That's what I understand that he said.
Q. So there is potential conflict?
A. According to the attorney general.

Q. And you were afraid of what the attorney general could do to you, is that correct?
A. I -- I wasn't fearful that the attorney general was going to do something to me. He is the State's top prosecutor and I'm a staff attorney, but, generally, I was just very, very uncomfortable in the meeting.
Q. Yet, you waited 10 months to make it public?
A. If I had my choice, I wouldn't be doing this right now.
Q. You filed an affidavit with the Court, did you not?
A. Yes, sir.
Q. And you testified that the attorney general said he has friends with deep pockets?
A. Yes, sir.
Q. That's not in your affidavit, is it?
A. I -- I don't recall.
Q. Would you like to see a copy?
A. (There was no response.)

MR. MYRICK: Can I approach, Your Honor?

THE COURT: Yes, sir.

I don't think any of these are marked. You may as well at least do them for ID, Mr. Myrick. I've seen them already.

MR. MYRICK: At the appropriate time, Your Honor, we're going to ask that all these documents associated with the proceeding be made public whether we mark them or not.

THE COURT: All right.

BY MR. MYRICK:

Q. Is that your affidavit?

A. Yes, sir.

Q. Would you take a moment and review it?

A. (The witness complies.)

Q. Have you looked at it, Mr. Wright?

A. Yes, sir.

Q. There's no comment anywhere about the attorney general saying he had friends with deep pockets, is there?

A. It's not.

Q. Since your affidavit is incomplete, do you think you've added everything now or are you going to add some more stuff later?

A. The affidavit --

MR. DANIEL: Objection --

THE COURT: Stop, argumentive. Just ask the question, please.

BY MR. MYRICK:

Q. So if it was wrong in April of 2013 for the attorney general to threaten you, it would be wrong now as well, right?

A. (There was no response.)

Q. Wrong is wrong? It was wrong when you heard it and it was wrong when you reported it in your view?

A. I'm not -- I'm not sure I'm following the question exactly.
Q. If the attorney general behaved inappropriately in April of 2013, that would be incorrect? That would be unethical if he made a threat?
A. I don't know if I'm in a position to evaluate -- unethical -- are you talking about the ethical canons? I'm not sure --
Q. Yes, I am.
A. If it was wrong then, yes, it would be wrong now.
Q. But you're only reporting it now?
A. I -- I don't -- reporting it, what --

MR. MYRICK: May I beg the Court's indulgence for one moment?

THE COURT: Yes, sir.

MR. MYRICK: Thank you, Your Honor. That's all we have for this witness.

THE COURT: Mr. Daniel, anything on redirect?

MR. DANIEL: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. DANIEL:
Q. Mr. Wright, were you concerned enough, were you fearful enough, did it rock you enough that you went out and retained your own lawyer and told that lawyer what happened?

A. Yes, sir.

MR. DANIEL: No further questions, Your Honor.

THE COURT: Anything further of this witness?

MR. MYRICK: Nothing from the State.

THE COURT: You may step down, sir.

Any other witness, Mr. Daniel?

MR. DANIEL: No, Your Honor.

THE COURT: That completes your presentation?

MR. DANIEL: Yes, Your Honor.

THE COURT: All right. Mr. Waters?

MR. WATERS: Court's indulgence one moment, Your Honor.

THE COURT: All right. Well, let's do this. Let's take a short break. I need one. Whether y'all want one or not we'll take one. We'll be back in 10 minutes.

MR. WATERS: Thank you, Your Honor.

THE COURT: Thank you all.

(Whereupon, a short recess was held.)

THE COURT: Well, gentlemen, are you ready to proceed?

MR. MYRICK: We are, Your Honor.

THE COURT: All right.

MR. MYRICK: If it please the Court, Your Honor. The present motion by Mr. Harrell's attorneys constitutes nothing more than a personal attack on the integrity of the

attorney general. They're --

THE COURT: Is this a motion?

MR. MYRICK: I'm responding to their motion, if I may.

THE COURT: All right. Go ahead.

MR. MYRICK: They're imputing his integrity, Your Honor, and we -- speaking for the attorney general, he is very glad that this is being held in light of public scrutiny. As we reached on cross, the attorney general wears many hats. One of them is he is -- he provides legal advice --

MR. HOWE: Excuse me, Your Honor. I don't understand what we're doing.

THE COURT: Well, I will help everybody out. I've read the affidavit already, so I'm familiar with the duties of the attorney general, but let's hold on for a minute, Mr. Howe, let's see how far he goes.

You may continue, Mr. Myrick.

MR. MYRICK: I would like to, Your Honor, characterize in conjunction with the attorney general's affidavit the meeting from a different perspective. The attorney general doesn't concede that it would have been inappropriate to discuss the creation of the public integrity unit with Mr. Harrell. What the attorney general was trying to do and I think it's in his affidavit --

THE COURT: I've read the affidavit several times.

MR. MYRICK: Misintentions, Your Honor.

THE COURT: So you want to rest on the affidavit of the attorney general, is that correct?

MR. MYRICK: One moment, please, Your Honor.

THE COURT: All right. Take your time.

MR. WATERS: Your Honor, we are going to present some testimony.

THE COURT: All right. You're Mr. Waters, is that correct?

MR. WATERS: Yes, sir, Your Honor.

THE COURT: All right. You may proceed.

MR. WATERS: At this time, we would call the Attorney General for the State of South Carolina, Alan Wilson, to the stand.

THE COURT: Come around, General Wilson.

THE CLERK: Raise your right hand.

THEREUPON,

ALAN WILSON,

after having been duly sworn, testified as follows:

THE CLERK: Please state your full name.

MR. WILSON: Alan Wilson.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

ALAN WILSON DIRECT BY MR. WATERS

BY MR. WATERS:

Q. Attorney General Wilson, how are you doing today?

A. I'm good.

Q. You are, obviously, the elected attorney general of the State of South Carolina, is that correct?

A. That is correct.

Q. All right. And if you would for the Court, if you could give us a little bit of your background, your service to our country, your service as a lawyer, if you would, please?

A. Prior to being attorney general, I was in private practice. Prior to that, I was assistant attorney general in the attorney general's office. I was an 11th circuit prosecutor in Lexington County. In addition to that, I am an 18-year veteran of the Army National Guard having served in the field of artillery as a judge advocate general currently serving. I currently reside in Lexington and currently serving as the State Attorney General. I was elected in 2010.

Q. Okay. So you're currently an Army officer, is that correct?

A. That's correct, lieutenant colonel.

Q. And you serve as an artillery officer, including service overseas, is that correct?

A. I served a tour in Iraq in 2004 and 2005.

Q. All right. And you have previously served as an assistant general in this office before you became the attorney general?
A. That is correct.
Q. And also as an assistant solicitor, is that correct?
A. That is correct.
Q. All right. And you were elected to be the attorney general when?
A. 2010.
Q. All right. If you would, tell us a little bit about the -- the matter that came to your office and your decision in that regard, what you did, if you could?
A. The matter involving the public integrity unit?
Q. No, I'm asking about the citizen complaint that came to your office?
A. Oh, last year, we received a citizen complaint regarding Speaker Harrell. When we received the complaint, it was an interesting or awkward situation because normally on that course, you would send it to the House ethics committee if it involved a member of the House. In the complaint, there were potential fact witnesses in the complaint that were House ethics committee staffers or staffers in the House. So, obviously, when you send a complaint to the House ethics committee, the very staffers who are fact

witnesses can't handle the case that's being alleged.

Additionally, it's our understanding that all of the staff members in the House are hired and/or fired by the Speaker of the House. So we did not want to create a cloud over any potential investigation on the alleged ethics violations by sending the complaint to the House ethics committee to be handled by the very staffers that might have been or would be conflicted out of the case.

I, also, honestly, at the time, thought it would be unfair to Mr. Harrell to send the complaint or the citizen complaint only to have a clean bill of health come out of the House ethics committee and then have the cloud over -- you know, people always questioning was it truly a clean bill of health if it was handled by the very staffers he could hire and fire. So out of an abundance of caution, and it was pretty uniform on the staff, we, as we do everyday or in the normal course of business, we forwarded the complaint to SLED for an independent inquiry.

Q. Okay. And you mentioned in the ordinary course of business. Is that something you frequently do when matters come into the office is refer it to law enforcement for investigation?

A. That's correct.

ALAN WILSON DIRECT BY MR. WATERS

Q. Is the attorney general's office an investigative body?
A. No, it's not.
Q. So we send things to law enforcement for investigation all the time, is that correct?
A. Yes.
Q. And is that what you did here?
A. Yes.
Q. And does the fact that you referred something for investigation, does that carry with it any determination that there's any merit or not merit to the matter that's being referred?
A. No, it's simply an investigation. We're not really active in that part of the process.
Q. That's what the investigation is for, correct?
A. Correct.
Q. Okay. All right. We've already discussed this a little bit, but do you -- is one of the duties of attorney general of South Carolina monitoring and advocating for legislation that may be pending before the General Assembly of the State of South Carolina?
A. Yes, it's, actually, a statutory duty, any laws that could be passed, obviously, that would affect the criminal justice system. One of my priorities last year was the public integrity unit.
Q. Well, tell us what that is. What is the public

integrity unit that you were supporting about a year ago? Tell us what that is.

A. Well, I'm still supporting it, but the public integrity unit was an idea that I had heard from other attorneys general. When I go to the national conferences, we're always sharing ideas on what other states are doing. One thing I liked about the public integrity unit was as my own personal experience as attorney general, I felt a need for it, was there was a lot of duplication in investigative processes.

By way of example, several years ago, there was the high profile case involving the former lieutenant governor where the ethics commission had the case for I think about five months. And after they finished their investigation and came to their consent order, which was the conclusion or the final result, that case then got referred to SLED and then there was an entire another investigation that lasted an additional eight months. So it was really 13 months from the time the ethics commission got it until the grand jury returned an indictment.

So I came up with an idea -- well, it was an idea that I borrowed from other states where you have the attorney general's office, the inspector general, the department of revenue, SLED and the ethics commission

would have a public integrity unit where they would co-locate their own investigators, auditors, forensic accountants and, obviously, legal advisers and/or prosecutors who would work together. Had this been the case at the time of the former lieutenant governor's case was going, both the ethics commission and SLED would have been working from day one and SLED would not have waited five months to receive the case. Everybody would have been on the -- would have been on the ground floor of this issue and they would have consolidated their resources, but there wouldn't have been a disbursement of control. In other words, there would be several agencies involved. So the case would not have lasted 13 months. SLED would have already been up to speed at month five. So it was an efficiency issue, too.

Q. So this was -- this whole idea of a public integrity unit was to synthesize various resources in the state for stronger and more effective enforcement of the ethics laws that govern the conduct of public officials in South Carolina?

MR. HOWE: Your Honor, he's giving a speech. He's supposed to ask a question.

THE COURT: I tend to agree.

MR. WATERS: I apologize.

BY MR. WATERS:

Q. Just summarize, what was the purpose of the PIU after that?

A. You did a good job. The point of the PIU was to just bring resources together of the various agencies. Some agencies have auditors and forensic accountants. Other agencies are more of the criminal investigator variety. Other agencies had the legal expertise. To bring all those agencies together to work together so that they were on a dual track. If a noncriminal investigation agency gets to a threshold, they can take a case and resolve it, but then the criminal agency like SLED can take it on. So it avoids duplication. It makes things more efficient. And while -- it disburses power. And people don't want one person having the ability to -- that's why we have the grand jury process the way it is. So yes, I thought it was good for ethics enforcement. I wasn't getting involved in all of the other ethics debates, but I was focused on the enforcement side of it.

Q. Okay. In your advocacy for this ethics enforcement mechanism called public integrity unit, did you have various meetings and conversations with citizens, legislators, law enforcement officials and the like?

A. Yes. I -- obviously, I met with DOR, SLED, the

inspector general, you know, obviously, our own staff, I mean, all the participating and the ethics commission folks. I also met with numerous house members.

Q. Okay. And in -- as a result of all of those various conversations that you had, did you get any sense or any gut feeling or conclusion about the public integrity unit support in the legislature?

A. Yes. People were asking a lot of questions. There was, obviously, a lot of concern early on. And as we started to discuss the case, you know, members of the House at first were reluctant, but as we talked it through and they asked questions and some of them would add, you know, amendments and things and it started to gain traction. In fact, ultimately, it passed. I think like 113 members voted for it on the House side in session. So yeah, it did pick up a lot of traction.

Q. Did you get a sense as you had your ear to the ground with the legislative session as to the Speaker's viewpoint on PIU or public integrity unit?

A. Well, when Mr. Wright was up here, he mentioned that Representative Quinn made a comment to me, but I, actually, heard comments from numerous folks. I can't attribute specific comments to specific House members, but during that time, I had met with probably 10, 12 members of the House and Senate. And, particularly, on

the House side, I was left with the very strong impression that the Speaker was angry.

Q. About what?

A. The Speaker was angry with us because we had referred the complaint to SLED. And so because of his anger, there was some hesitance and concern about him supporting the public integrity unit. At least, that was the belief and impression I received from conversations with multiple House members. And it was conveyed to me that you might want to try to reach out to the Speaker or, at least, to his staff to win him over on the idea. Because it was a good idea and I didn't want anything our office had done to cause it to become collateral damage.

Q. At this period in time, did you have any sort of final result or report from SLED into this referral?

A. No.

Q. Okay. Did you have any knowledge of any specific results of the investigation detailing whether or not there had been any conduct that needed to be look into?

A. We had simply passed the complaint on and I had no idea as to what, if anything, had come of SLED's inquiry at that time.

Q. Okay. And again, the office frequently refers things and some prove to be founded and some prove to be

unfounded, is that correct?

A. Correct.

Q. All right. Where was the ball on the investigation at this period of time, in April of 2013, that you're speaking of?

A. Well, it was SLED's ball at that time. They're the investigative unit. We rely on them mostly in all of our investigations, so it was -- the ball was in SLED's court at that time.

Q. Okay. And you stated that based on having your ear to the ground, you believed the Speaker was angry over the referral and that might negatively affect the public integrity unit?

A. Yeah, I mean, obviously, he was upset and I have never spoken to him directly about it, but it was, obviously not a secret that he was upset about that referral and that poorly kept secret was made known to me through numerous conversations.

Q. At this period of time when the ball for the investigation was in SLED's court and you had received no information from that investigation, no final report and you also were aware of this information about the Speaker's anger, what did you elect to do?

A. Well, I wanted to reach out to the Speaker's office. I would have loved to have reached out to the Speaker

and, normally, I would have gone to the Speaker. Obviously, prior to this, we got along and talked from time-to-time about various issues. But on this one, I wanted to avoid the appearance of impropriety. I did not think it would be improper for me to talk to the Speaker, but because SLED was looking at him, if someone had seen me walking over to the Blatt Building and walk into the Speaker's office, even if we were going to talk about football or something, just seeing me walk over there or someone seeing him being brought over and him walking in, then there would have been an appearance that we were meeting about SLED's case and there would have been rumors and I didn't want to feed the rumor mill. And I didn't want to do anything to damage the integrity of our office, my personal integrity, and, frankly, in all fairness to the Speaker, I didn't know what SLED was going to say. And if SLED came back with a clean bill of health or there was no issue, that somebody had seen us meeting, then that would have tainted the process even though we weren't going to talk about the merits of it. So I didn't want to do anything to taint the process for him. And that's how I would treat anybody.

So I elected to meet with his chief counsel and his chief of staff. You know, he's an attorney and I

knew Mr. Wright is valued by the Speaker. And I knew there were tensions over in the House regarding the referral. So I didn't want there to be tensions. I did not want the Speaker to think our referral of that SLED -- of that complaint to SLED was personal. I didn't want the Speaker to think that there was a connection between the referral of the complaint to SLED and the PIU. And I didn't want to do it directly at the Speaker because, like I said, I didn't want to taint the process, so I figured talking to another attorney who was the chief of staff and, you know, the adviser would be the way to go.

So I asked my staff to try to track down Brad Wright. At the time, it was not -- the PIU was not in the Bill at the time, so I was told. And I just wanted to try to reach out to the Speaker to lessen tensions. That was the entire purpose. I just wanted to lesson tensions and separate the two issues and, basically, show him I didn't have horns and a pitchfork.

Q. Okay. And again, this is at a time when the ball is in the SLED's court and you don't have any final results of this matter you referred in the ordinary course of business?

A. No, I had no clue what was going on, but I knew that I had to somehow reach out to the Speaker's office and to

the Speaker. And I just wanted to do it in a way that avoided any inappropriate appearance.

Q. Both for you and for him (indicating)?

A. Yes. Yes.

Q. All right. So tell us -- tell us about -- tell us a little bit about how that meeting was set up and how it took place, if you could.

A. Some of the things that Mr. Wright said up here on the stand are true, some I had, actually, forgotten about. I had forgotten to comment about my parents, but he remembered that and now I do recall it. But he came in -- and by the way, normally, I do have people sitting in the office with me. In fact, I rarely meet with people alone unless the door is open and, you know, folks can hear. But I wanted -- I wanted to create kind of an atmosphere where I didn't want him to be surrounded by people in our office. I didn't want him to see other attorneys or other government affairs people sitting in there. So I wanted him to be able to come to the office and us just have a casual conversation because I truly believed that I was talking to him and he would convey to the Speaker everything that was said.

So he was -- and they set up that he was brought up the back elevator, which is something we do for any

member of the House or any staff member that's coming over from the Blatt Building because it's a short walk from the Blatt Building to the --

Q. So that's not uncommon?

A. No, that happens everyday. We use that back elevator all the time. I had a House member in my office yesterday who came up on an issue and wanted to talk and they came up the back. People come up the back elevator all the time. Not just House members, but people who are on the State House grounds and it's a quick way to get them up so they don't have to wait on the fifth floor. So if I recall, I believe, Mr. Piper is my government affairs director went down and -- they got Mr. Wright's number, they called him, he was available to come over. Mr. Piper brought him up the back elevator and brought him down the hall to my office.

Q. All right. Well, tell us a little bit about the meeting. And, first of all, what was your intent with this meeting? Was it your intent to threaten the Speaker of the House of Representatives?

A. My intent, I believe it says it in my affidavit, was to lessen tensions. Now, if by meeting with Mr. Wright behind closed doors privately raised his tensions, that was unintentional. I, certainly, didn't want to do

that. I was kind of looking at Brad as, you know, he's an attorney, he's a, you know, a person who works on the State House grounds and I just wanted to say hey, listen, I mean, what I did with the SLED referral was not personal, it was my job. I had a job to do. We received it and we forwarded it on. And I know that's created some issues over in your office, especially with your boss, and I wanted him to know I had no ill will toward Speaker Harrell. I still have no ill will toward Speaker Harrell. I just do my job. And that was the purpose of the meeting was to say hey listen, I don't want anything I have done to hurt a good Bill. People can be mad at me for decisions I make, but just don't hurt the good ethics of legislation.

Q. Did you explain to him some of the mechanics of the PIU to let him know what this enforcement mechanism was all about to achieve better ethics performance?

A. I did. We -- and a lot of what he said in his remarks up here were true. I think I agree with him in the affidavit. He came in, we closed the door. We -- the comment about my parents, how I told my parents that if you ever break the law and someone brings it to my attention, you know, I'll -- I'm not going to stop the investigation of you. I'll recuse myself and stand with you as a character witness. But that was kind of

my funny way of saying I don't -- when it comes to the criminal justice system, I don't play politics and I don't play favorites. And I do remember, I think, saying that to him.

I also talked about the mechanics of the public integrity unit. I mentioned -- you know, we acknowledged the fact that there was -- there was a referral to SLED. I had to mention that there was a referral to SLED because that was, in my belief, the genesis of the Speaker's anger, and which was the reason I wanted to say, listen, that issue is separate. We can't talk about the merits of it because, frankly, I didn't know what was going on with the investigation at the time. But I felt like I wanted to say listen, it happened, it happened because I had a job to do in the ordinary course of business, but I want to talk about the public integrity unit and I just want y'all to know that I'm not after you. I don't have an agenda to take down the Speaker or anyone else like that.

Q. Just have a job to do in the ordinary course of business?

A. That's correct.

Q. Did you -- did you say anything to Mr. Wright that you thought or intended to be a threat or intimidating to him?

A. No. Honestly, I thought the meeting went very well.
Q. Did he indicate -- at any time, did he display being uncomfortable or say anything that led you to believe that he was uncomfortable during this meeting?
A. When he was up here, it struck me as kind of odd that he said all of a sudden, I became angry. I wasn't angry. I was, actually, happy with the meeting because I felt like he was pleasant, he was professional, he was cordial. In his affidavit -- when they filed the in-camera motion, he said in his affidavit that I pounded my fist on the desk. And when I read that, it shocked me. I never pounded my fist on the desk. And I don't think you can find anybody on the staff in our office that will ever say that I would yell or threaten or intimidate. That's not my nature.

The meeting in my mind was a good meeting. I was happy with it. And I felt like I had reached through Mr. Wright and I figured by reaching him, he would convey to the Speaker, hey, I know you didn't like what the AG did, but I don't think he has an issue with you. I think this is good legislation and I think we should support it. And that's what I thought.

When he walked out of the room, we shook hands. I gave him my e-mail and it was the Wilson for attorney general. I might have given him my cell phone, which I

do for most people because I want them to have access to me. If they want to call me or deal with me, I give them my personal information, that's not uncommon for me. But I really felt like, you know, I've got somebody I can work with in his office.

Q. Did you at any time offer him any quid pro quo or any deal that you were going to check up on the investigation into the Speaker if he would support ethics enforcement?

A. No. No. I never took that away. In fact, when I read Mr. Wright's affidavit the first time, the way he writes the affidavit, it sounds like I'm threatening the Speaker and that there would be consequences if he didn't capitulate or comply with what I was demanding, which is odd because the PIU passed overwhelmingly in the house. My recollection is 113 to seven or close to that number. So I didn't understand why he would claim that I was threatening him because it was never my intention to threaten, in fact, just the opposite. Why I would poke the chief of staff to the Speaker in the eye when I was trying to win them over? So --

Q. So you didn't threat him?

A. Absolutely not.

Q. And you didn't promise anything to him?

A. Oh, absolutely not.

ALAN WILSON DIRECT BY MR. WATERS

Q. You just said one has nothing to do with the other. I have a job to do and I did it, but I'm still --

THE COURT: Let me help you out. You're testifying for him. Please just ask him the question.

MR. WATERS: Thank you. Thank you, Judge.

BY MR. WATERS:

Q. All right. So you didn't promise him anything?

A. I did not promise him anything. I did not threaten him. He did not act in a way that lead me to believe that he had been threatened. He did not act in a way that lead me to believe that the meeting went anywhere but pleasant. Like I said, when I shook his hand, I felt really good about things. Every action that I did in that office was intended to lower tensions not raise them. If I did something wrong, if I made any bad judgment calls, it was to have the meeting with him alone because I never dreamed in a million years that someone would accuse me of what I was accused in the affidavit, which is why I'm glad we're having this in a public hearing today. I want the public to know what was in my affidavit. I want them to know what's in his affidavit.

Q. One thing that we heard from Mr. Wright today that was not in his affidavit is this claim that you said something about I know people with deep pockets. Did

you say anything like that to him?

A. I have absolutely no recollection. I don't even know what that means.

Q. Attorney General Wilson, is your professional judgment in any way conflicted or compromised in this particular case?

A. No, absolutely not.

Q. Have you made any decision in this case that was not -- was based on anything but an objective review of the facts and the law?

A. Every decision I've made has not only been objective, it's been bounced off all the members of our staff as well as our partner agency, SLED. I've never made a unilateral decision without everyone being in agreement.

Q. Attorney General Wilson, in your heart, do you have a conflict of interest in this case?

A. No. Absolutely not. And I'm thinking back to my days as a prosecutor in the 11th Circuit when you're striking a jury pool and the judge ask everyone in the audience is there anyone here who knows the defendant or the attorneys that are parties to this case, and you will oftentimes have a person say well, I went to high school with Johnny, you know, Attorney Jones. And the judge will always say well, is your knowing them from

high school going to create a conflict for you, are you going to be able to be unbiased? And if the juror says yes, then the judge allows the juror to sit for selection. I'm telling you right now as the attorney general, I think I deserve the same courtesy as the people's elected attorney general. I have no bias. I have no agenda. I have nothing to do but my job and that's all I want to do.

MR. WATERS: Thank you, Mr. Attorney General. No further questions.

THE COURT: Mr. Howe?

CROSS-EXAMINATION

BY MR. HOWE:

Q. I'm not going to be long. Do you have a read on what we're here for today?

A. Yes. You're trying to prosecute the prosecutor.

Q. How we doing?

A. Not very good.

Q. I disagree. Are we here on the question of whether or not you have crossed the line and tainted yourself so badly that you should be recused in this case, is that why we're here?

A. That's why you're here.

Q. Now, in your brief, you appear to take the position that there has to be more than the appearance of

impropriety to disqualify you, is that correct?
A. Yes.
Q. So you say the standard for disqualification is actual impropriety as opposed to the appearance of impropriety?
A. No, I don't think that's the standard. I think the standard is the prejudice.
Q. That's a standard. Would you agree with me that a standard would also be the appearance of impropriety?
A. It's a standard, but not the one that applies here.
Q. Okay. You filed an affidavit?
A. Yes, sir.
Q. And in the affidavit, in paragraph nine, you said I believe it would create an appearance of impropriety, is that what you said?
A. Yes, sir.
Q. So the standard you were using for yourself was did it create an appearance of impropriety?
A. Mr. Howe, you misunderstand what I'm saying in the affidavit. May I explain to you?
Q. If you could just answer my question.
A. I am. If I may explain to you. You're talking about a legal standard. I'm talking about appearances in the court of public opinion. If someone sees an officer of the court meeting in an office with someone who's the

target of an investigation in another agency, it may be a completely innocent meeting, but there are so many rumors in the House that I didn't want to feed any of them. So I wanted to avoid the appearance of impropriety by meeting with someone who wasn't the target.

Q. So that was the standard you were measuring yourself against, the appearance of impropriety?

A. I didn't want to feed rumors in the House.

Q. That's the standard you were measuring yourself against, the appearance of impropriety? That's what you said in your affidavit?

A. That's what I said in my affidavit.

Q. All right. Now, are you familiar with the concept of abuse of process?

A. Oh, I'm very familiar with it.

Q. Is that when you use the criminal courts to accomplish -- try to use the criminal courts to accomplish a civil purpose? When somebody says I'll drop the charges against you if you pay me 50,000-dollars, that would be an abuse of process?

A. Yes, sir.

Q. And are you familiar with the concept of you can't do indirectly what you can't do directly?

A. Yes.

Q. That's sort of a corny little legal axiom, but it's been around a long time. The theory is it's not gamesmanship to practice law if you can't do directly, you can't expect to find some indirect way to do the same thing, isn't that correct?

A. Yes, sir, but --

Q. And that's improper?

A. No, no, I was going to explain my answer, Mr. Howe. There was nothing wrong with me meeting with the Speaker legally. I'm going to finish. There's nothing wrong for me to go over to Mr. Harrell's office and speak to him --

MR. HOWE: Judge, nonresponsive.

THE COURT: He answered it, then he's explaining it, Mr. Howe. I'll give him a chance to finish.

Continue, sir.

MR. WILSON: There was nothing wrong legally with me -- because my office wasn't involved in that case. SLED had the case, the ball was in their court. I simply didn't want to put a cloud over the case by having the people see the Speaker and me together. But had we been together, we could have gone and met and talked about the legislation all day long. There is nothing legally prohibitive about that. I just didn't want people to see me walking into his office or he walking into mine and then all of a sudden, we've got

all these cameras and all these people out here (indicating) yelling that the attorney general is meeting with the target of an investigation. So it wasn't a legal standard, it was just an appearance of propriety and professionalism. I didn't want to cast any cloud over the Speaker or myself or the office.

BY MR. HOWE:

Q. Are you familiar with the concept you can't do indirectly what you can't do directly?

A. Yes, sir.

Q. Do you subscribe to that as a solid principle in the law?

A. I would have assume -- sure, why not.

Q. You also agree with me on the concept of abuse of process is not a good thing to do?

A. Of course.

Q. You can't use the criminal courts to accomplish another purpose?

A. Yes, sir, but --

Q. You can't use the threat of --

A. Can I explain? I answered your question earlier. You're saying I can't do directly -- indirectly what I can't do directly. I could have directly met with the Speaker, so your legal argument fails on its face because there was nothing wrong with me meeting with

the Speaker, I just didn't want people out there feeding the rumor mill. So what you're arguing doesn't work, Mr. Howe.

Q. You said in paragraph three, because I believe it would create an air of impropriety if I were to meet directly with the Speaker in the -- SLED review of citizen complaint of possible ethics violations, I decided to reach out to the chief of staff. So you, clearly, were doing indirectly what you didn't think you should do directly?

A. Mr. Howe, are you fundamentally failing to understand what I'm trying to explain slowly to you. Let me say it again. I wanted to avoid a public appearance of impropriety. For me to be seen at a social gathering or a meeting room with someone who was currently under investigation would have looked bad. There's no legal standard here. It was just I did not want to give an inappropriate appearance, period.

Q. And in your affidavit, do you mention the SLED investigation seven times?

A. I doesn't know how many times I mentioned it.

Q. How about multiple?

A. Sure.

Q. And you said in paragraph 10, my purpose in arranging the meeting was to get Speaker Harrell's support in the

public integrity unit. Isn't that what you said?

A. I would have loved to have his support. He did support it and I was grateful for that.

Q. And so you had a role in the criminal prosecution of Mr. Harrell and you were seeking to accomplish a political goal, the political goal being to line him up for support of this Bill, is that correct?

A. No, sir, that's not correct.

Q. Okay. Are you familiar with the national prosecution standards?

A. I'm familiar with the prosecution standards. I don't know them word-for-word.

Q. Are you familiar with the -- on the issue of conflict of what is a conflict, prosecutors should not hold an interest or engage in an activity, financial or otherwise, that conflict have significant potential conflict or reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office. Are you familiar with that statement?

A. Yes, sir, and that's one of the reasons I met with Mr. Wright instead of the Speaker.

Q. Did you say anything to Mr. Wright you wouldn't have said to the Speaker?

A. No, sir.

Q. So you -- the message was the same, it was just who you

were delivering it to?

A. I just wanted them to know that --

Q. Listen to my question.

A. I am.

Q. The message was the same --

THE COURT: Stop. Don't argue with each other, please. Give him the chance to finish.

MR. WILSON: Thank you, Judge.

THE COURT: Let him finish his question.

MR. WILSON: I just want --

THE COURT: Thank you.

MR. WILSON: I'm sorry, Judge.

THE COURT: That's all right. Everybody is up on their hind legs.

Now, finish your question, then you can go to the next one. Go ahead, finish.

MR. WILSON: I just wanted to convey to Mr. Wright that I didn't want any tensions. I didn't want the PIU to be collateral damage and I wanted to convey to Mr. Wright for the speaker that our referring the complaint to SLED was just a normal perfunctory everyday activity and that I had no issues with the Speaker and then I wanted to talk about the PIU, that was my intent.

BY MR. HOWE:

Q. You are a lawyer?

A. Yes, sir.
Q. And you're bound by the ethical requirements of practicing law?
A. Yes, sir.
Q. You know your response was filed on March the 7th of this year, your response to our motion?
A. Okay. Yes, sir.
Q. You know less than a week after that, it was a front page article in the State newspaper on this case?
A. Yes, sir.
Q. And it said, Lawyer for South Carolina House Speaker Bobby Harrell was secretly trying to get a state judge to remove State Attorney General Alan Wilson as the prosecutor in the State grand jury proceedings against Harrell according to sources close to the -- law enforcement familiar with the situation. Do you know who those sources were?
A. No, sir.
Q. Would they be from your office?
A. No, sir.
Q. Would it be improper if they were from your office?
A. Yes, sir.
Q. Do you know where they got that information?
A. No, sir.
Q. Do you think they got it from the clerk or the State

wide grand jury?

A. No, sir.

Q. Do you think they got it from anybody who worked in the State wide grand jury's office?

A. No, sir.

Q. You read that Judge Hood was contacted and didn't respond, so you think they got the article from Judge Hood?

A. I don't know, sir. I'm not -- I just know it didn't come from my office.

Q. That doesn't make it true, isn't it?

A. That y'all are trying to secretly kick me off this case, yes, sir.

Q. All right, sir. So the statement is accurate, you just don't know where it came from?

A. I mean, yes, the headline is accurate, yes, sir.

Q. Harrell's lawyers, who include Attorneys Howe and Daniel, both of Charleston, are seeking to a closed door hearing before Judge Hood, Columbia. That's -- again, that's accurate information, isn't it?

A. Sir, I didn't write the article. You'd have to --

Q. That's not my question --

A. -- I can't answer where they got the information from, I don't know.

Q. Did somebody on your behalf write the article?

A. No, sir.
Q. It says here in one of the articles, Wilson's office, after inquiries from the State newspaper about whether he agreed with Harrell's lawyers that he should be disqualified issued a statement late Wednesday. Did you issue a press release in regards to this case?
A. Could you repeat the question again? I'm sorry.
Q. Sure. Wilson's office, after inquiries from the State newspaper about whether he agreed with Harrell's lawyers that he should be disqualified issued a statement Wednesday, quote, The attorney general's office is strongly opposing both the request for a closed hearing and any disqualification of Attorney General Wilson. That's a press release, isn't it?
A. No. It's a statement.
Q. Well, it was a statement you gave as a result from an inquiry from the press?
A. I gave a statement that y'all, obviously, agreed with that it should be open because you didn't oppose it at the beginning of the hearing today and I said I would oppose any disqualification of me from this case, which I would take in any case.
Q. All right. I'm headed in a different direction and I'm not trying to sneak it up on you.
A. Yes, sir.

ALAN WILSON CROSS BY MR. HOWE

Q. Straight ahead, okay?
A. Yes, sir.
Q. You're not supposed to be commenting on criminal cases?
A. I'm not commenting on a criminal case. There's an investigation going on that's being handled by the grand jury. I was commenting on an ancillary motion to remove me in-camera out of the public view, that was my position.
Q. My point is you had an inquiry from the newspaper and you responded to them?
A. Yes.
Q. You didn't say no comment?
A. That is correct.
Q. You didn't say this is before the court and I don't want to do anything to prejudice the defendant, so I have nothing to add?
A. Mr. Howe, there is nothing --
Q. You didn't say that?
A. I'm answering your question.
Q. You have to answer the question first, then you explain it?
A. We said that, but there was nothing about your motion that prejudices your client. You and Mr. Daniel sent a letter saying you wanted to have me disqualified in-camera, meaning out of the view of the public. You

did that so that you could file this affidavit that is not accurate against me in private so that I would be disqualified and then you could say the attorney general is disqualified because of his prejudice and then I couldn't answer. That was the reason you did the motion. So we simply just said we oppose any motion to disqualify the attorney general. We support an open public court system.

Q. And you were talking about the standard the judge is going to apply, you were talking about actual prejudice as opposed to appearance of impropriety?

A. That's correct.

Q. And so when I read here, There's no reason to believe there was any prejudice when this matter came before the attorney general, if anything, Wilson started out prejudice in favor of Mr. Harrell and if that has changed, it would be the result of egregious behavior. That's the same thing you've written in your brief, isn't it?

A. I apologize, what are you reading from?

Q. I'm reading from a newspaper article.

MR. WATERS: Your Honor, I would have to object to him commenting on what somebody wrote in a newspaper article.

BY MR. HOWE:

Q. All I'm asking is is that the same position you stated in the brief before the Court.

A. Could you read me it again, please?

Q. Sure. There is no reason to believe there was any prejudice as opposed to the appearance of impropriety when this matter came first before the attorney general, if anything. If anything Mr. Wilson stated it started out prejudice in favor of Mr. Harrell and if that changed, it would have been as a result of some egregious behavior Mr. Wilson has engaged in since that time.

THE COURT: And that --

MR. WATERS: Nothing like that is in our brief. Again, I would object to him having him comment about something somebody write in the press.

THE COURT: Connect the dots, Mr. Howe. I mean, you're reading from something you see in his affidavit or the lawyer's brief? Can you connect the two? It would help me more; how is that?

MR. HOWE: All right.

BY MR. HOWE:

Q. Do you have ethical requirements -- that you can say to the press on active investigation?

A. Yes.

Q. And are they designed to protect the rights of the defendant so that he can get a fair trial?
A. Yes. But, again, I will explain my answer. But your motion was trying to impugn my character and integrity. It had nothing do with anything involving the Speaker. So that is what I was commenting on, was your motion to disqualify me in-camera or out of public view. That is what I opposed. There was nothing that prejudiced the Speaker in that case.
Q. You're familiar with the South Carolina Rules of Court?
A. Yes, sir.
Q. You agree with me rule eight point four misconduct says it is professional misconduct for a lawyer to state or imply an ability to influence improperly a governmental agency or official to achieve results by means that violate the rules of professional conduct. Are you familiar with that?
A. Yes, sir.
Q. And if you listen to what Mr. Wright says and if Mr. Wright is accurate in his recollection of what happened, if he's accurate, I understand you disagree, then what he testified to would be a violation of that rule, wouldn't it?
A. That I'm trying to -- I want to make sure I understand, that I'm trying to influence another agency?

Q. You're trying to influence Speaker Harrell by sending a message to him that he can have an olive branch or he can have war?
A. That is -- even if you believe --
Q. If that's correct, that would be a violation of that rule?
A. No, sir. I have to talk to members of the general assembly on matters of legislation. Talking to them does not even fit into that rule, so I would disagree with your assessment.
Q. So if somebody came and said that you stated or implied that there were going be consequences if you didn't accept the olive branch, that wouldn't be a violation?
A. Well, I never did that.
Q. I'm not asking -- that's why I didn't ask you if you did it, I'm asking if it would be a violation of this section?
A. Well, let me rephrase that. I think I did say the olive branch because I didn't want him to be angry with us with the PIU, but if I were trying to do something like that, then sure. But that's not what happened.
Q. And you agree with subsection five that says lawyers holding public office assume legal responsibility that goes beyond those of citizens. A lawyer's abuse of the public office can serve and suggest an inability to

fulfill the profession of a lawyer?
A. Yes, sir. I don't know where you're going, but yes.
Q. There's been a series of articles with regards to this proceeding, haven't there, newspaper articles?
A. Yes, sir.
Q. And each time, it refers to a person knowledgeable or close to the case as the source of the information, is that correct?
A. I would assume so, I haven't read them all.
Q. Do you have any idea who they could be referring to?
A. No, sir.
Q. Do you agree with me that you have -- as a prosecutor, you're not supposed to be making judicial statements about the process that may influence or hurt the defendant's opportunity to a fair trial?
A. Correct, yes, I would agree with that.
Q. And that you have that obligation not only for yourself, but for -- prevent investigators, law enforcement personnel and other employees, you have an obligation and a duty to make sure that no one on your behalf is making those statements?
A. That's correct.
Q. And yet, you tell me today all these newspaper articles we've seen, all this stuff that's been read in the newspaper, you have no idea the source of it?

A. No, sir. And we don't have press conferences. We don't issue public statements regarding this process other than the initial one. So I -- I would never do that. Other than the question as to whether or not I should be disqualified and it should be private, that's the only comment we've made.

Q. But you did, in fact, comment on this case in response to an inquiry from the State newspaper?

A. I commented on your trying to secretly disqualify me. That is what I was against.

Q. Well, that -- I understand you're against it, but that is the subject of a motion before the State wide grand jury, isn't it?

A. No, sir, because the Court has ruled this is an open hearing, so that's not a proceeding before the grand jury.

Q. Before today when you made a statement -- when you held a press conference and made a statement, at that point in time, there was an issue before the State wide grand jury?

A. No, sir, that's not -- you're not accurate. You're wrong.

Q. There was a motion to disqualify you, wasn't it?

A. Yes, sir, you --

Q. And you commented on that, didn't you?

ALAN WILSON CROSS BY MR. HOWE

A. Mr. Howe, let me educate you on the grand jury real quick.
Q. You've got to answer the question.
A. I am answering the question.
THE COURT: Stop, both of you. Can I see the lawyers up here for a minute?
MR. WATERS: Yes, sir, Your Honor.
(Whereupon, a bench conference was held off the record.)
BY MR. HOWE:
Q. Let's see if we can agree on something. You heard Brad Wright's testimony?
A. Yes, sir.
Q. If you said those things that he said -- that he testified to, you agree with me that that would have been improper communication on your behalf?
A. If --
Q. If you threated him and told him to go tell his boss that he was going to -- a threat, those were his words, would that have been improper conduct on your part?
A. If what Mr. Wright said was true and I had, in fact, intimidated or told him there would be consequences, then that would have been wrong and he would have had a duty to report it instead of wait 10 months.
Q. Would it have been wrong for you to have done it?

A. It would have been wrong for me to do it, but he should have reported it, yet, he waited 10 months, which I find suspect.

MR. HOWE: Thank you.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. WATERS:

Q. Did you do anything -- all of that stuff he just said?

A. No, sir.

MR. WATERS: Thank you. Nothing further.

THE COURT: You may step down, Attorney General.

Anything further?

MR. MYRICK: No, sir.

THE COURT: All right. We had a brief discussion up here at the bench. I will take this matter under advisement, give both sides an opportunity to submit proposed orders, as I indicated, by next Wednesday. I believe we said next Wednesday would be good enough. I don't want to wait too long. I can be honest enough with you to tell you that at this point in time, only God knows what the decision will be because I don't and he's not talking to me, so I'll wait and get your proposed orders. I'll try to get you my decision as soon as possible. Thank you all so very much. This mater is concluded.

MR. WATERS: Thank you, Judge.

COUNTY OF RICHLAND)

CERTIFICATE OF REPORTER

I, Crystal Holmes, hereby certify that I reported the preceding case entitled Bobby Harrel Vs. State of SC Case No. M 2014-237, at the Richland County Courthouse, March 21, 2014.

I FURTHER CERTIFY that the foregoing pages 1 through 84 constitute a true, accurate and full transcript of said hearing.

I FURTHER CERTIFY that I am not employed by any of the parties hereto and I have no financial interest in the outcome of said case.

IN WITNESS WHEREOF, I have heretofore set my hand and seal at Richland County on this 22nd day of March, 2014.

_____

Crystal Holmes, Official Court Reporter

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation 2014-237	**ORDER DENYING MOTION TO DISQUALIFY ATTORNEY GENERAL FROM A STATE GRAND JURY MATTER**

This matter comes before the Court by way of a motion filed by Robert W. Harrell, Jr. ("Mr. Harrell") dated February 24, 2014, seeking to "[disqualify] Attorney General Alan Wilson from participation in any State Grand Jury investigation and prosecution of Robert W. Harrell, Jr." The motion included an affidavit executed by Mr. Harrell's Chief of Staff – Bradley Scott Wright, Esquire. The State responded with a brief and affidavits on March 7, 2014, and Mr. Harrell replied on March 14, 2014.

A hearing was held on March 21, 2014. Mr. Harrell was represented by Gedney M. Howe, III, Esquire, and E. Bart Daniel, Esquire. The State was represented by Attorney General Alan Wilson, Senior Assistant Deputy Attorney General W. Allen Myrick, Assistant Deputy Attorney General S. Creighton Waters, and Assistant Attorney General Brian T. Petrano. Chief Deputy Attorney General John McIntosh and Solicitor General Robert Cook were also present on behalf of the State.

Applicable Law

The State Grand Jury statute provides that it is the duty of this Court to resolve any doubt regarding conflict of the Attorney General. S.C. Code Ann s 14-7-1650. However, a grand jury is "rooted in long centuries of Anglo–American history" as a "constitutional fixture in its own right". United States v. Williams, 504 U.S. 36, 47 (1992) (quoting various Supreme Court cases). Thus, "a court may not intervene in the grand

jury process absent a compelling reason." In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988).

Similarly, courts are reluctant to grant a pre-indictment conflict motion to exclude the prosecutor from his role with the grand jury. Typically, the judiciary is hesitant to give credence to efforts to impede an investigation where the issue can be addressed at the more appropriate trial stage if an indictment actually results:

> [W]hether a prosecutor who appears before a grand jury labors under a conflict of interest or whether his conduct oversteps the bounds of propriety should be determined after indictment, not by mere conjecture or speculation beforehand. To hold otherwise would burden the grand jury with minitrials and preliminary showings which would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws. United States v. Dionisio, 410 U.S. 1, 17 (1973).

In re Grand Jury Proceedings, 700 F. Supp. 626, 631 (D. Puerto Rico 1988). Likewise, Evans v. State speaks at great length concerning procedures after indictment for a defendant to review the grand jury proceedings and make motions to quash. 363 S.C. 495, 611 S.E.2d 510 (2005).

Finally, disqualification raises separation of powers concerns and thus "is a drastic measure which courts should hesitate to impose except when absolutely necessary." Matter of Grand Jury Subpoena of Rochon, 873 F.2d 170 (7th Cir. 1989). Of course, the Attorney General is constitutionally mandated as the State's chief prosecutor, and is constitutionally protected in that role by separation of powers. See generally State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994).

Even in the post-indictment setting, where there is an actual charge and adversarial process, the courts still are reluctant to undermine the grand jury's work. These cases have required a showing of actual prejudice. See generally Bank of Nova Scotia v. United States, 487 U.S. 250, 251 (1988) (and various cases interpreting Nova

Scotia). The same goes for cases in South Carolina addressing attempts to disqualify a prosecutor – they similarly have required a showing of actual prejudice.[1]

Analysis

This Court has had the opportunity to review the submissions of the parties and has heard the testimony in its entirety. For the following reasons, this Court denies Mr. Harrell's motion.

The testimony of Mr. Wright and Attorney General Wilson is, in many ways, similar:

- both agreed that the Attorney General hoped nothing prosecutable would result from the SLED investigation of the Speaker;
- both said the Attorney General stated he would do the right thing and would even not stand in the way of the prosecution of the Attorney General's parents, if warranted;
- both testified that the Attorney General did not wish to discuss the pending SLED investigation beyond the reason for the Attorney General's referral to SLED;
- both agreed that the Attorney General stated he did not wish the pending SLED investigation to affect the Speaker's support for the PIU;
- both agreed that there was no *quid pro quo* involved in the meeting.

The two versions of the meeting, however, sharply disagree over whether there was some sort of threat made by the Attorney General to Mr. Wright to be conveyed to the Speaker. General Wilson vehemently denies any threat. Mr. Wright perceived a

---

[1] See State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011); State v. Childers, 373 S.C. 367, 645 S.E.2d 233 (2007); State v. Smart, 278 S.C. 515, 299 S.E.2d 686 (1982); State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007).

threat made by the Attorney General. Under either version, however, the evidence presented to the Court does not nearly approach the legal standard necessary to disqualify the Attorney General, who is constitutionally designated as the State's chief prosecuting officer. The focus of the meeting between Mr. Wright and General Wilson related to an entirely collateral matter – the Speaker's support or lack thereof for the PIU. This Court sees no problem with the Attorney General having reached out to the Speaker's office on legislative matters at a point in time when the SLED review was ongoing, particularly in light of the extensive safeguards, discussed below. Accordingly, based upon the evidence presented, this Court finds that the Attorney General did not act inappropriately, but was acting in his statutory capacity to advocate for legislation regarding the criminal laws of the State. See § 1-7-140.

The Attorney General's testimony expressly refutes any improper action or intent on his part. This Court, therefore, finds there was no threat or promise made by the Attorney General. If Mr. Wright unfortunately read into the conversation a threat and promise that was not offered or did not exist, that is no basis for the drastic remedy of disqualifying an elected constitutional officer like the Attorney General from his constitutional and statutory duties, simply because of Mr. Wright's subjective and mistaken interpretation of a conversation. Upon hearing all of the testimony, this Court finds there is no basis to disqualify the Attorney General from this matter.

Most importantly, the process for convening the State Grand Jury protects from the possibility of any abuse. The initiation of a State Grand Jury case requires far more than just the signature of the Attorney General. Section 14-7-1650 requires that the Attorney General must consult with the solicitor of the circuit where the alleged crimes occurred. See Section 16-7-1650. In addition, the Chief of the State Law Enforcement

Division, the criminal investigative agency of the State, must approve the initiation of the State Grand Jury. Then, and only then, does the initiation request go to the circuit court for approval. The petition to the circuit court "in all instances must specify that the public interest is served by the impanelment." See § 14-7-1630(B).

Further, any SLED investigation is conducted by that agency independent of the Attorney General. The Attorney General does not investigate criminal matters, but only serves as legal advisor to the State Grand Jury after the numerous hurdles necessary for convening a State Grand Jury investigation are met. Once a State Grand Jury is convened, and begins to investigate a matter, the presiding judge maintains judicial oversight. In short, the State Grand Jury Act requires numerous safeguards to be built into the process. This process has been followed since enactment.

Speaker Harrell has submitted no evidence that this longstanding process has in any way been compromised. There is absolutely no indication that the investigation before the State Grand Jury has been affected. Nor has there been any suggestion that the Attorney General or his staff attempted to interfere with or influence the SLED investigation or the circuit court in approving the convening of the State Grand Jury in this matter. The Attorney General recommended a State Grand Jury after review of the SLED report. Subsequent thereto, SLED and the circuit court agreed that a State Grand Jury investigation met the requirements under law. In this Court's view, the process written into law, and followed by the Attorney General's Office, SLED and the court were adhered to here.

In summary, the requisite nexus to any pending SLED investigation or convening of the State Grand Jury in this matter, such that the Attorney General is now conflicted, simply does not exist. Importantly, Mr. Wright's resounding denial with absolute

certitude upon questioning by this Court – stating that there was "absolutely not" any *quid pro quo* relating to the pending SLED investigation – demonstrates that there is no legal basis for disqualification. Additionally, any threat perceived by Mr. Wright does not affect the Attorney General's ability to serve as the legal advisor to the State Grand Jury in accordance with his statutory duties, referenced above. Accordingly, there has been no abuse of the State Grand Jury process that would necessitate this court granting the extraordinary remedy of disqualification of the Attorney General.

CONCLUSION

Based on the foregoing, this Court finds and concludes that Mr. Harrell has failed to establish and prove any actual conflict or other consideration that would require this court to grant his request for the extraordinary relief of recusal of South Carolina's elected Attorney General from serving as legal advisor to the State Grand Jury in this matter.

IT IS THEREFORE ORDERED that Mr. Harrell's motion to recuse the Attorney General from his statutory role as legal advisor to the State Grand Jury is denied.

AND IT IS SO ORDERED this _____ day of _____, 2014.

_____
The Honorable L. Casey Manning
Acting Presiding Judge of the State Grand Jury

_____, South Carolina.

FILED
APR - 2 2014
JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation 2014-237

BRIEF OF ATTORNEY GENERAL ON THE INAPPLICABILITY OF RAINEY v. HALEY TO THE CURRENT STATE GRAND JURY MATTER

The Attorney General hereby responds as directed to the effect of Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013), on the current proceedings. This Court is apparently concerned that Rainey stands for the proposition that the current State Grand Jury investigation is somehow premature, and that this Court and perhaps the Attorney General are somehow barred from acting, because of statements in Rainey like, "ethics investigations concerning members and staff of the Legislature are intended to be solely within the Legislature's purview, to the exclusion of the courts, except in the singular circumstances expressly provided for in section 8-13-530(4)."

Summary of Argument

To hold that the Attorney General can be somehow prohibited from initiating a criminal investigation is flatly repugnant not only to the South Carolina Constitution but also repugnant to basic notions of good government for the people of South Carolina. Ethics Act violations clearly are criminal, and a State Grand Jury investigation has been properly initiated. As such, the Attorney General as the State's chief prosecutor needs no referral or permission from any committee or administrative commission before he can exercise his constitutional powers to prosecute statutory crimes like violations of the Ethics Act. In fact, the South Carolina Supreme Court has already expressly held as much in State v. Thrift.

Moreover, the history of the State Grand Jury is completely at odds with any idea that referral must first come from any House committee prior to the State Grand Jury's

investigation of a matter involving the Speaker of the House. For this Court to hold that Rainey somehow deprives the State Grand Jury of jurisdiction in this matter would be unparalleled and would contravene the wishes of the voters who rejected any restriction upon the State Grand Jury's power to investigate public corruption of members of the General Assembly.

Any thought that Section 8-13-540 is controlling is misplaced even upon well-recognized principles of statutory construction. Section 8-13-540 has been a part of the State Ethics Act since its inception in the 1970s. However, the statute giving the State Grand Jury public corruption jurisdiction was enacted following rejection of the constitutional limitation upon State Grand Jury jurisdiction in 1990. That statute, Section 14-7-1630(3), makes no mention whatsoever of any necessity for referral of ethics complaints from the House or Senate prior to initiation of a State Grand Jury public corruption case involving a member of the General Assembly. A statute much later in time cannot be governed by an earlier statute, as the later statute is controlling. City of Newberry v. Public Service Commission of South Carolina, 287 S.C. 404, 339 S.E.2d 124 (1986) (later statute governs over earlier law).

Thus, Rainey is inapplicable to this case because State Grand Jury jurisdiction does not recognize the need for any referral from the House or Senate prior to initiation. The Common Pleas jurisdiction addressed in Rainey is far different from the jurisdiction of the presiding General Sessions judge to initiate a state grand jury investigation. The inquiry of the presiding General Sessions judge relates only to the face of the petition presented by the Attorney General and SLED. Thus even if this court believes that

Rainey deprives a circuit court of Common Pleas jurisdiction the State Grand Jury act gives the presiding judge clear General Sessions jurisdiction to review the petition.

The Supreme Court has already resolved this issue in the current criminal context.

The South Carolina Supreme Court has already rejected such a proposition clearly and expressly. In the seminal State Grand Jury case of State v. Thrift, one of the defendants argued that a *criminal* prosecution of him was not allowed under the Ethics Act because a referral to the Attorney General from the Ethics Commission was a necessary prerequisite. He also contended that a criminal prosecution was improper because of the statute of limitations in the Ethics Act. The South Carolina Supreme Court swiftly disposed of both contentions -- because the Attorney General was operating in the *criminal* realm of the Ethics Act, not the civil one.

The strong language from the Supreme Court in Thrift undoubtedly decides the current issue and makes the point best without any dilution:

> Article V, § 24 provides in part that, "[t]he Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." ***The constitutional provision is dispositive that any requirement which places the authority to supervise the prosecution of a criminal case in the hands of the Ethics Commission is unconstitutional***. As noted earlier in the plea agreement issue, the prosecution has wide latitude in selecting what cases to prosecute and what cases to plea bargain. ***This power arises from our State Constitution and cannot be impaired by legislation.***
>
> Recognizing the constitutional implications of the State's argument, we note that ***the entire constitutional issue is avoided by recognizing the civil nature of the Ethics Act complaint***. The older scheme allowed for a civil evaluation by the Ethics Commission prior to any criminal referral by the Ethics Commission; and with a narrow reading, the statute does not run afoul of the State Constitution. We adopt this narrow construction.
>
> In light of our narrow construction of the statute, neither issue raised by Reeves has merit. The statute of limitations applies only to the

> civil complaint before the Ethics Commission, and the referral system only applies to civil complaints to the Ethics Commission which are referred by it to the Attorney General for criminal prosecution. ***THE ABSENCE OF A COMPLAINT TO THE ETHICS COMMISSION WILL NEVER OPERATE AS A LIMITATION UPON THE STATE'S INDEPENDENT RIGHT TO INITIATE A CRIMINAL PROSECUTION.***

312 S.C. 282, 307, 440 S.E.2d 341, 355 (1994) (emphasis added).

Violations of Chapter 13 of the Ethics Act are crimes. See S.C. Code Ann. § 8-13-1510 & -1520 (Supp. 2013). Accordingly, the South Carolina Constitution would be flatly violated by any ruling or interpretation of the statute that precluded or delayed the Attorney General, together with SLED, from the independent right to investigate or the Attorney General's power to prosecute violations of the criminal law. The referral system in the statute simply means the relevant civil authority can complete its own regulatory process before it refers a case – but nothing precludes the Attorney General, together with SLED, from independently conducting an investigation or the Attorney General's taking prosecutorial action regardless of the existence or status of the civil matter.

Nothing in the subsequent decision of *Rainey* undermines the clear holding of *Thrift*.

Further, nothing in Rainey undermines the obvious and clear holding of Thrift. As this Court is aware, the plaintiff in Rainey filed a declaratory judgment action in Common Pleas court seeking a holding that Governor Haley had violated aspects of the Ethics Act, as well had committed perjury. The appellate court there first noted that the Ethics Act only provides for review of civil complaints by the appropriate legislative committee or the state commission, and that the Act only expressly allows for judicial review in one situation inapplicable in that case -- when a complaint is filed fifty days before an election. Since the one exception for judicial review was not applicable, Rainey found no judicial jurisdiction to hear the matter. Finally, the decision noted that

the legislature has constitutional authority over the qualification of its own members, and concluded that judicial oversight at this point "would not only contravene the clear language of the State Ethics Act, it would also violate separation of powers". Rainey, 745 S.E.2d at 326.

Nothing in Rainey affects the clear and unambiguous conclusion in Thrift, as Rainey only addressed the civil regulatory functions of the House Ethics Committee under the Ethics Act, and not the Attorney General's constitutionally unassailable right to initiate the investigation and prosecution in the criminal realm.[1] Rainey was a declaratory judgment action – a civil remedy under a civil statute of procedure, brought in civil Common Pleas court and not General Sessions court. Nothing in Rainey addressed what happens in the criminal realm of a State Grand Jury investigation or in a criminal prosecution conducted by the constitutional officer with the sole authority to do so. Undoubtedly, the appropriate Ethics Committee or Commission has exclusive jurisdiction as the civil regulatory body, but the Attorney General has the exclusive power to handle criminal matters, and Rainey only addresses the former point.[2]

Even if a court in the Common Pleas action had declared that the Governor had violated the Ethics Act, that would not allow the court to give any sort of criminal penalty – it goes without saying that prosecutions in South Carolina can only be brought by a constitutionally authorized officer like the Attorney General or the solicitors,[3] and even then only through the constitutionally required process of indictment and then conviction

---

[1] See Rainey, 745 S.E.2d at 82 ("The Legislature has established a comprehensive statutory scheme for *regulating* the behavior of elected officials, public employees, lobbyists, and other individuals who present for public service." (emphasis added)).

[2] See generally Elephant, Inc. v. South Carolina Dept. of Revenue, 373 S.C. 186, 190, 644 S.E.2d 728, 730 (2007) ("Administrative sanctions simply are not equivalent to a criminal prosecution. See e.g., State v. Price, 333 S.C. 267, 510 S.E.2d 215 (1998) (administrative suspension of driver's license does not constitute a criminal penalty).")

[3] S.C. Const. art. IV, § 24, cl. 2 (The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record).

in General Sessions court by either plea or jury trial.[4] Indeed, a prosecutor in his constitutionally protected discretion might elect not to bring criminal charges, even if a court had found in a declaratory judgment action that a law was violated – but the separation of powers doctrine precludes any judicial oversight of that decision.

And Justice Beatty joined by Justice Hearn in Rainey's concurrence recognized these obvious and undeniable points. The concurrence pointed out that the declaratory judgment sought there could be construed as a backdoor attempt to enforce the criminal laws, which it found to be completely improper because first, "a declaratory judgment action is not the appropriate proceeding for determining guilt or innocence in criminal matters," and second, a private citizen has no authority to enforce criminal laws when "[t]he South Carolina Constitution, South Carolina statutes and case law place the unfettered discretion to prosecute solely in the prosecutor's hands". Rainey, 745 S.E.2d at 87. The Rainey concurrence itself then reiterated exactly the ultimate point for the current issue before this Court: "[T]he Attorney General's office, ***either on its own initiative or via a referral*** from the House of Representatives Legislative Ethics Committee, could have sought a criminal determination of the alleged misconduct." 745 S.E.2d at 87 (emphasis added) (citing Thrift).

Finally, Rainey's reference to separation of powers does not mean that the doctrine prevents a criminal investigation or prosecution of a sitting legislator for Ethics Act crimes. Undoubtedly, as Rainey points out, the Legislature has the constitutional prerogative to determine the qualification of its own members, and to expel or punish members for violations. 745 S.E.2d at 84 (citing the relevant state constitutional provisions). However, those determinations are separate and apart from the decision to

[4] S.C. Const. art. I, § 14 (The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury...), S.C. Const. art. I, § 11 (No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger.)

criminally investigate, indict, and prosecute. It is up to the Legislature to determine whether someone indicted or convicted of a crime should remain a member of the body, or should receive some other reprimand or discipline. That power in no way affects the right of the Attorney General to seek a conviction in the first place.[5]

A contrary conclusion would lead to the ridiculous proposition that somehow legislators are immune from any criminal prosecution under the Ethics Act, when the statute expressly provides to the contrary.

The Grand Jury is not limited solely to Ethics Act investigation.

Further, it is an important point to note that even if Thrift and the undeniable constitutional prerogatives were entirely ignored because of some overly expansive and erroneous view of language taken out of context from Rainey, such a conclusion would only apply to Ethics Act offenses. The grand jury is not so limited in its review, and has broad powers to investigate and to go where the evidence leads them.[6] South Carolina has the common law offense of misconduct in office, which is a flexible and versatile crime that can be violated by public officers who wilfully violate the general duty of good faith and accountability, as well as any other statutory or common law duty. State v. Hess, 279 S.C. 14, 301 S.E.2d 547 (1983). Nothing in Rainey possibly could affect the validity of an investigation into this as well as other possible non-Ethics Act crimes.

The History of the State Grand Jury Fully Demonstrates that Investigations of Members of the General Assembly Do Not First Require a Referral From Either the House or Senate.

---

[5] Indeed, the statutes and case law preclude the idea of immunity and indeed contemplate suspension pending trial of a sitting member after indictment depending on the crime alleged. See S.C. Code § 8-13-560 (Supp. 2013) (providing for suspension of House or Senate member if indicted for felony, crime of moral turpitude, crime with a sentence of more than two years, or a crime that violates election laws); See also 1993 Op. Atty Gen. No. 93-7 (concluding and citing to CJS, AmJur, and ALS for the proposition that the constitutional provisions such as S.C. Const. Art. 3 § 14 protecting legislators during and travelling to session apply to civil matters only and do not provide immunity for criminal matters). And this has been the case as well in practice, with two recent criminal indictments and prosecutions of sitting House members for tax crimes.

[6] "The grand jury, in acting for the public, requires wide latitude to investigate allegations of criminal activity so that it can issue accurate indictments and dismiss baseless charges." , In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988). "The identity of the offender, **and the precise nature of the offense,** if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning". Blair v United States, 250 U.S. 273, 282 (1919) (emphasis added).

Moreover, as to any conceivable argument that the State Constitution in Art. III, § 11 – which bestowed upon each House the power to judge the qualifications of its members – somehow "immunizes" a House member from a State Grand Jury investigation prior to inquiry by the House, such contention completely fails. That argument is utterly at odds with the wishes of the voters in creating and in not restricting the jurisdiction of the State Grand Jury and with the General Assembly in bestowing public corruption jurisdiction upon that investigative body. See Art. I, § 11; Art. V, § 22 of the South Carolina Constitution (1895 as amended) [authorizing State Grand Jury with such powers as General Assembly may provide.]

In the late 1980s and early 1990s, the State witnessed the "Lost Trust" scandal in South Carolina, an episode which saw many members of the General Assembly convicted by the federal government for bribery and other offenses. In response, an effort was then made to restrict the jurisdiction of the State Grand Jury to disallow it from investigating public corruption. Led by the efforts of former Attorney General Medlock and then Governor Campbell, the voters rejected such an attempt to limit by constitutional amendment the jurisdiction of the State Grand Jury to the investigation of crimes involving drugs and pornography. The purpose of the legislation (Joint Resolution, see Attachment B) was to require a constitutional amendment for any expansion of the State Grand Jury jurisdiction. This would make it extraordinarily difficult, if not impossible, to convey to the State Grand Jury public corruption jurisdiction, such as the federal government had used in Lost Trust, to investigate members of the General Assembly. See Attachment A. The voters overwhelmingly defeated the placement of such a limitation in the Constitution, strongly endorsing the idea that any public corruption by public officials – including by members of the Legislature – could be investigated by the State Grand Jury.

The Legislature heard the voters. Subsequently, the General Assembly indeed enacted § 14-7-1630(3), which bestows such public corruption jurisdiction. As can be seen, this State Grand Jury jurisdiction, as enacted, makes no exception for any particular category of public official, such as members of the General Assembly. In short, it is clear that the history surrounding the creation of the State Grand Jury, and most particularly the rejection by the voters to place constitutional limitations upon that investigative body, completely refutes any argument that members of the General Assembly could somehow be exempted from the investigative reach of that body, either based upon Art. III, § 11 or upon any other immunity or privilege afforded legislators by the Constitution. See State v. Long, 406 S.C. 511, 753 S.E.2d 425, 426 (2014) ["When the Court is called to interpret our Constitution, it is guided by the principle that both the citizenry and the General Assembly have worked to create the governing law."]. Certainly, when the attempted limitation upon the State Grand Jury 's jurisdiction was rejected by the voters, and public corruption jurisdiction was enacted, Art. III, § 11 had long been part of the state Constitution. Thus, it is both historically and legally irrefutable that a member of the Legislature may be investigated for crimes, common law or statutory, pursuant to the public corruption jurisdiction of the State Grand Jury, irrespective of any power in either House to judge the qualifications of its members. See, Gravel v. United States, 408 U.S. 606, 615 (1972) [as Thomas Jefferson noted, privileges afforded legislators in the Constitution do not entitle these officials to "stand above the law but ought to be generally bound by it as are ordinary persons." (quoting T. Jefferson, Manual of Parliamentary Practice, S.Doc.No. 92-1, p. 437 (1971); Powell v McCormack, 395 US. 486, 550 (1969) [judging the qualifications of members of Congress" is limited to the standing qualifications prescribed in the Constitution."]. Thus, any decision holding that the Attorney General may not refer a case to the State Grand Jury involving a member of the House unless a referral is first made by the

House Ethics Committee is patently inconsistent with the history of the State Grand Jury and with the history of legislative privileges generally.

As argued above, in Thrift – the very first case referred to the State Grand Jury under its newly acquired public corruption jurisdiction – the Supreme Court strongly reinforced the principle that referral from another body, such as the Ethics Commission, is not constitutionally required prior to any investigation by the State Grand Jury. Absurdly, if such initial referral were required, the only way a case of public corruption could be referred to the State Grand Jury would be upon recommendation of a member's colleagues. More specifically, those members of the House who depend upon the Speaker for committee assignments and other appointments, as well as staffers, who are hired and fired by the Speaker, would be the sole body to refer a criminal complaint. This is akin to a deputy sheriff being asked to investigate the sheriff, his or her employer. It is a restriction unrecognized in the law. Moreover, any such limitation infringes upon the constitutional powers of the Attorney General as chief prosecuting officer of the State, pursuant to Art. V, § 24. See also State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003) [legislative limitations upon the Attorney General as chief prosecutor regarding his power to prosecute are unconstitutional and DHEC may not supersede the Attorney General in prosecutorial decisions].

And only recently, in State v. Long, supra, the Court reiterated this basic principle, citing Thrift for the fundamental proposition that "the General Assembly may not limit the authority granted to the Attorney General through Art. V, § 24." The Court further explained that

> ... this Court has always regarded the Attorney General as the State's chief prosecuting officer with broad common law and statutory authority to prosecute any case on behalf of the State. State ex rel. McLeod v. Snipes, 266 S.C. 415, 419, 223 S.E.2d 853, 854 (1976) recognizing the Attorney General as the "chief prosecuting officer of the state"); see also State ex rel. Condon v. Hodges, 349 S.C. 232, 240, 562 S.E.2d 623, 627 (2002) (recognizing the Attorney General as the "chief law officer of the

state"); State ex rel. Daniel v. Broad River Power Co., 157 S.C. 1, 153 S.E.2d 537 (1929); State ex rel. Wolfe v. Sanders, 118 S.C. 498, 110 S.E. 808 (1920).

Long, 406 S.C 511, 753 S.E.2d at 427. Obviously, the Court's noting that the Attorney General possesses the constitutional power to prosecute "any case" would include the power to initiate, together with the Chief of SLED and the presiding judge, any investigation within the jurisdiction of the State Grand Jury of any person, regardless of membership in the General Assembly.

Indeed, this case is the flip side of the situation addressed in Rainey. In Rainey, the Supreme Court affirmed this Court's holding that Rainey, a private citizen, had filed his complaint in the wrong place – the Court of Common Pleas. Here, however, the Attorney General, the chief of SLED and the circuit court together have properly authorized a criminal investigation in the right place, both constitutionally and statutorily, the State Grand Jury pursuant to its public corruption jurisdiction. Again, the State Grand Jury is authorized in the State Constitution and by the statute. Neither makes any exception whatever with respect to members of the General Assembly being investigated until after referral from the House or Senate. Thus, clearly Art. III, § 11 does not trump the other provisions of the Constitution authorizing the State Grand Jury and designating the Attorney General as the chief prosecuting officer of the State. Instead, these provisions of the Constitution must be read in conjunction with and in harmony with each other. See Knight v. Salisbury 262 S.C. 565, 206 S.E.2d 875 (1974) (the state Constitution is not to be construed item by item, and its provisions must be harmonized). The result is clear: this Court possesses jurisdiction and the State Grand Jury is properly authorized pursuant to its constitutional and statutory authority.

Likewise, the Attorney General, as chief prosecuting officer of the State, is properly the legal advisor to the State Grand Jury in its ongoing investigation of this matter. The State Grand Jury, as discussed above, possesses authority to investigate all matters relating to public corruption, including any common law crimes of misconduct in office, should it determine such offenses are applicable.

CONCLUSION

The bottom line is that Thrift's plain language is dispositive of this issue when it flatly says: "The absence of a complaint to the ethics commission will **never** operate as a limitation upon the state's independent right to initiate a criminal prosecution." 440 S.E.2d at 355 (emphasis added). To hold that the Attorney General can be somehow prohibited from initiating a criminal investigation is flatly repugnant not only to the South Carolina Constitution but also repugnant to basic notions of good government for the people of South Carolina. Ethics Act violations clearly are criminal, and a State Grand Jury investigation has been properly initiated. As such, the Attorney General as the State's chief prosecutor needs no referral or permission from any committee or administrative commission before he can exercise his constitutional powers to prosecute statutory crimes like violations of the Ethics Act.

Moreover, the history of the State Grand Jury is completely at odds with any idea that referral must first come from any House committee prior to the State Grand Jury's investigation of a matter involving the Speaker of the House. In 1990, in the wake of the Lost Trust scandal, the voters overwhelmingly rejected a proposed constitutional amendment, designed to prohibit the investigation of public corruption of public officials, including members of the General Assembly, by the State Grand Jury. The Legislature heard the will of the voters loudly and clearly. Immediately thereafter, the General Assembly bestowed public corruption jurisdiction upon the State Grand Jury. There is

no suggestion in either the constitutional provision authorizing the State Grand Jury or in the State Grand Jury Act itself which suggests that such an exception for members of the Legislature exists or precludes the State Grand Jury's ongoing investigation of the Speaker of the House. Such an interpretation, based upon the Rainey case, which simply involved a private citizen asserting he had the authority to bring a civil action to determine violations of the Ethics Act, would be a completely incorrect view of the law.

In sharp contrast to Rainey, where this Court (affirmed by the Supreme Court) in dismissing Rainey's action, concluded in its order that a private citizen "does not have standing to prosecute his alleged criminal claims," here the Attorney General, as the State's chief prosecuting officer, clearly does have such authority, conveyed by the Constitution, statutes and common law of this State. The Attorney General prosecutes crimes in South Carolina; a private citizen, such as Rainey, does not. For this Court to hold that Rainey somehow deprives the State Grand Jury of jurisdiction in this matter would be unparalleled and would contravene the wishes of the voters who rejected any restriction upon the State Grand Jury's power to investigate public corruption of members of the General Assembly.

Thus, Rainey is inapplicable.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

JOHN MCINTOSH
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT D. COOK
SOLICITOR GENERAL

W. Allen Myrick
Sr. Asst. Deputy Attorney General

S. Creighton Waters
Asst. Deputy Attorney General
PO Box 11549
Columbia SC 29211

April 2, 2014

Westlaw.
11/7/90 THESTATE 4A

NewsRoom
Page 1

11/7/90 Columbia State (SC) 4A
1990 WLNR 936410
Loaded Date: 08/28/2003

Columbia State (SC)
Copyright (1990) STATE-RECORD CO. (COLUMBIA, SC)

November 7, 1990

Section: METRO/REGION

VOTERS REJECT CURBS ON STATE GRAND JURY

JOHN ALLARD, Staff Writer

S.C. voters have overwhelmingly rejected a referendum that would have limited the state grand jury's investigations to illegal multicounty drug and pornography operations.

The referendum was required by a 1988 amendment to the state constitution that voters approved to create the state grand jury. Legislators wanted a safeguard against abuse of the grand jury's extensive powers.

With 48 percent of the precincts reporting statewide, The Associated Press reported that 361,095 voters, 67 percent, supported broadening the state grand jury's investigative powers.

S.C. Attorney General Travis Medlock said he will ask the General Assembly in January to authorize the state grand jury to investigate public corruption and vote fraud cases.

"It's tremendous news," Medlock spokesman Mark Dillard said. "A vote against the referendum was a vote against corruption."

The FBI's State House sting shows there is a need to expand the authority of state prosecutors to investigate corrupt public officials, Medlock said.

Medlock said the drive to defeat the referendum, including paid TV commercials, succeeded despite its confusing wording. People were asked to vote "no" in order to expand the state grand jury's investigative powers.

ELECTION '90: STATEWIDE RACES

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

ATTACHMENT A

--- INDEX REFERENCES ---

COMPANY: FBI SA; FRANCHISE BANCORP INC

NEWS SUBJECT: (Government (1GO80))

Language: EN

OTHER INDEXING: (FBI; STATE HOUSE; TV) (Assembly; Legislators; Mark Dillard; Medlock; Travis Medlock; VOTERS REJECT CURBS) (COURT; ELECTION; RESULT)

EDITION: FINAL

Word Count: 256
11/7/90 THESTATE 4A
END OF DOCUMENT

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw. NewsRoom

11/1/90 CHAROBSVR 2D Page 1

11/1/90 Charlotte Observer (N.C.) 2D
1990 WLNR 1427371
Loaded Date: 08/20/2003

Charlotte Observer (NC)
Copyright © 2004 The Charlotte Observer. All rights reserved.

November 1, 1990

Section: METRO

CAMPBELL, MEDLOCK URGE REJECTION OF GRAND JURY AMENDMENT MEASURE ON NOV. 6 BALLOT WOULD RESTRICT STATEWIDE INVESTIGATIONS

Associated Press

Voters should reject proposed **constitutional** amendments that **limit** statewide **grand juries** if they want **state** public corruption investigations like the federal vote-selling probe of the Legislature, Gov. Carroll Campbell said Wednesday.

The question on the Nov. 6 ballot would amend the South Carolina **Constitution** in two sections in order to restrict the statewide **grand jury** to drug and pornography cases.

Campbell and Attorney General Travis Medlock are waging a late election-season campaign to **defeat** the amendments. They are spending $25,000 from their campaign treasuries for a 30-second radio advertisement that will begin todayand run through midday on Election Day.

Both Campbell and Medlock, joined by **State** Law Enforcement Division Chief Robert Stewart and other officials, want the **grand jury** to be able to investigate public corruption.

"Law enforcement cannot adequately investigate 1990s crimes with 1890s techniques," Stewart said. "Many complex investigations are hamstrung because of the lack of an investigative **grand jury**."

Medlock said the promotional campaign is beginning now because he believes people "don't really rivet their attention on these matters until about a week before the election."

Voter approval of the ballot question would bar the **grand jury** from investigating cases such as the ongoing federal probe of **State** House corruption.

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

"We need a statewide mechanism to investigate and prosecute official corruption without having to rely upon the federal government," Campbell said. "We will not have such a mechanism if these amendments are approved."

If voters **defeat** the amendments, Medlock said he will offer legislation in 1991 that would expand the **grand** jury's powers to include cases of government bribery and official corruption.

"Let's give the **state** of South Carolina a way to put its own house in order," Medlock said. "The people of South Carolina expect a high standard of ethics from officials who hold the public trust in our **state**. I find it difficult to believe that they would not want to provide every available tool to their own **state** government to enforce that high standard."

Voters approved the statewide **grand jury** in 1988. Since its creation, the **grand jury** has indicted 156 people, earned a 94 percent conviction rate from the indictments and destroyed eight major drug rings.

In that time, the government has seized nearly $2 million in property and other assets.

"If we're going to fight such things as drugs and find them intertwined with public corruption, which we are now finding, then we think that this is a logical progression of the **grand jury**," Campbell said.

The FBI sting operation has resulted in vote-selling charges against nine lawmakers and drug charges against another lawmaker and a **State** House lobbyist.

If the campaign against the amendments fail, Campbell said, "we have said we don't want South Carolina investigating public corruption. We want to wait on the federal government to do it all for us at all times. and I don't think that's what we want to do."

The restrictions on the **grand jury** greatly **limit** South Carolina's ability to investigate corruption, both Campbell and Medlock said.

"Why should South Carolina have to wait for somebody else to try to clean up our own problems," Campbell said, when asked if federal investigators were better suited to handle such cases because of concerns about conflicts of interest.

"We need the mechanism not to supplant the federal mechanism but to complement it," he said.

Associated Press : S.C. Attorney General Travis Medlock (left), along with Gov. Carroll Campbell, wants voters to reject a proposed **constitutional** amendment that would restrict **grand juries**.

--- INDEX REFERENCES ---

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

COMPANY: TOWN OF CAMPBELL; FBI SA; CAMPBELL INTERNATIONAL HOLDINGS INC; FRANCHISE BANCORP INC

NEWS SUBJECT: (Legal (1LE33); Government (1GO80); Legislation (1LE97); Judicial (1JU36))

REGION: (North America (1NO39); Americas (1AM92); South Carolina (1SO63); USA (1US73))

Language: EN

OTHER INDEXING: (CAMPBELL; FBI; STATE HOUSE) (Attorney; Campbell; Carroll Campbell; Medlock; RESTRICT STATEWIDE; Robert Stewart; Stewart; Travis Medlock) (COLUMBIA; SC; POLITICS; COURT)

EDITION: FIVE

Word Count: 745
11/1/90 CHAROBSVR 2D
END OF DOCUMENT

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw.
10/23/90 CHAROBSVR 2C

NewsRoom
Page 1

10/23/90 Charlotte Observer (N.C.) 2C
1990 WLNR 1426663
Loaded Date: 08/20/2003

Charlotte Observer (NC)
Copyright © 2004 The Charlotte Observer. All rights reserved.

October 23, 1990

Section: METRO

BALLOT QUESTION ON **GRAND JURY** CALLED BAD IDEA

BRUCE SMITH, Associated Press

S.C. Attorney General Travis Medlock has no opposition in next month's election. But he's campaigning anyway.

Medlock isn't running against an opponent. He's campaigning to **defeat** a ballot question that would **limit** the scope of the statewide **grand jury**.

The **grand jury** now can investigate drugs and pornography. Medlock would like to see that expanded to include government corruption as well.

Right now, a S.C. **state grand jury** could not probe government corruption as the federal government did in the **State** House sting investigation, he said.

To expand the **state jury's** powers, voters must first **defeat** a **constitutional** amendment on next month's ballot. The amendment would **limit** the panel to its present authority.

It was put on the ballot by lawmakers when the statewide **grand jury** was approved two years ago. Some local solicitors and lawmakers were concerned they would lose power to the **grand jury**. And legislators raised the specter of big brother in **state** government.

But Medlock counters the statewide **grand jury** works and says figures from its first 17 months are impressive.

The **grand jury** has indicted 155 people and 94 percent of the indictments resulted in convictions. Six major drug rings have been eliminated. Sentences in those drug cases total 1,173 years in prison and fines of $1.6

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

million, Medlock said.

The government has seized property worth more than $1 million. That compares with the cost of operating the **grand jury** at about $285,000 a year, Medlock said.

"It's not only tremendously reducing the supply of cocaine in South Carolina, it is also making money for the **state**," he said.

Before the **grand jury**, it was difficult for **state** officials to investigate crime operations which crossed county and judicial circuit lines. The **state** panel also has investigative powers, including the right to grant immunity to witnesses.

Such powers are needed to break down secret criminal activities, Medlock said.

The proposal approved by the voters two years ago gave the **grand jury** power to investigate only drugs and pornography. And the ballot question would prevent **state** lawmakers from ever expanding the scope of the **jury** .

But Medlock says the **grand jury** has "very ample safeguards for the protection of individual rights and there have been no problems with that whatsoever."

If the public **defeats** the amendment, Medlock said he is prepared to ask the legislature next year to widen the power of the **grand jury**.

--- INDEX REFERENCES ---

NEWS SUBJECT: (Legal (1LE33))

Language: EN

OTHER INDEXING: (STATE HOUSE) (BALLOT QUESTION; Medlock; Sentences; Travis Medlock) (SC; COURT; POLICY)

EDITION: FIVE

Word Count: 493
10/23/90 CHAROBSVR 2C
END OF DOCUMENT

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

South Carolina General Assembly
108th Session, 1989-1990

Bill 246

Current Status

Bill Number:	246
Ratification Number:	40
Act Number	203
Introducing Body:	Senate
Subject:	Jurisdiction of state grand jury proposed

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A203, R40, S246)

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO SECTION 22, ARTICLE V OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO GRAND JURIES, PETIT JURIES, AND THE STATE GRAND JURY, AND TO SECTION 11, ARTICLE I OF THE CONSTITUTION, RELATING TO INDICTMENTS BY COUNTY GRAND JURIES AND THE STATE GRAND JURY, SO AS TO RESTRICT THE JURISDICTION OF THE STATE GRAND JURY TO CRIMES INVOLVING NARCOTICS, DANGEROUS DRUGS, OR CONTROLLED SUBSTANCES AND CRIMES INVOLVING OBSCENITY OR ANY ATTEMPT, SOLICITATION, OR CONSPIRACY TO COMMIT ANY OF THESE CRIMES IF THE CRIMES ARE OF A MULTI-COUNTY NATURE OR HAVE TRANSPIRED, ARE TRANSPIRING, OR HAVE SIGNIFICANCE IN MORE THAN ONE COUNTY OF THIS STATE.

Be it enacted by the General Assembly of the State of South Carolina:

Jurisdiction of state grand jury proposed

SECTION 1. It is proposed that Section 22 of Article V of the Constitution of this State be amended to read:

"Section 22. The petit jury of the Circuit Court shall consist of twelve members and the number of jurors of other courts must be determined by law. All jurors in any trial court must agree to a verdict in order to render the same. The grand jury of each county, and the state grand jury, as the General Assembly may establish by general law, shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the court. The jurisdiction of the state grand jury is restricted to crimes involving narcotics, dangerous drugs, or controlled substances and crimes involving obscenity or any attempt, solicitation, or conspiracy to commit any of these crimes if the crimes are of a multi-county nature or have transpired, are transpiring, or have significance in more than one county of this State. Each juror must be a resident of this State and have such other qualifications as the General Assembly may prescribe."

ATTACHMENT B

Ballot Question

SECTION 2. The proposed amendment must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written on the ballot:

"Shall Section 22 of Article V of the Constitution of this State be amended so as to restrict the jurisdiction of the state grand jury to crimes involving narcotics, dangerous drugs, or controlled substances and crimes involving obscenity or any attempt, solicitation, or conspiracy to commit any of these crimes if the crimes are of a multi-county nature or have transpired, are transpiring, or have significance in more than one county of this State?

Yes / /

No / /

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word 'Yes', and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word 'No'."

Jurisdiction of state grand jury proposed

SECTION 3. It is proposed that Section 11 of Article I of the Constitution of this State be amended to read:

"Section 11. No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with that jurisdiction as provided in Section 22 of Article V with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide."

Ballot question

SECTION 4. The proposed amendment must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written on the ballot:

"Shall Section 11 of Article I of the Constitution of this State be amended so as to provide that the jurisdiction of the state grand jury must be as provided in Section 22 of Article V of the Constitution of this State?

Yes / /

No / /

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word 'Yes', and those voting against the question shall deposit a ballot with a check or cross mark in

the square after the word 'No'."

FILED

APR 16 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation 2014-237	**SUPPLEMENTAL BRIEF REFUTING THE APPLICATION OF RAINEY v. HALEY TO THIS CASE**

I.

The State Supreme Court's decision in Rainey v. Haley is, for many reasons, completely inapplicable to this case. As this Court recognized in Rainey, subject matter jurisdiction must be bestowed by "the South Carolina Code ... ." Circuit Court Order, in Rainey at 3. Here, unlike Rainey, this Court possesses clear subject matter jurisdiction pursuant to Art. I, §11 of the Constitution and the State Grand Jury Act. Subject matter jurisdiction of the State Grand Jury is governed by the State Grand Jury Act only, and by no other statute, including the State Ethics Act. Moreover, the State Grand Jury statute, authorized by Art. I, § 11 of the Constitution, is later in time and more specific than the 1991 Ethics Act. Thus, reference must be made solely to § 14-7-1630 of the State Grand Jury Act to determine if a criminal investigation is within the subject matter jurisdiction of the State Grand Jury. See Medlock v. One 1985 Jeep Cherokee Van, 322 S.C. 127, 470 S.E.2d 373 (1996) [subject matter jurisdiction of the State Grand Jury is determined by § 14-7-1630 of the State Grand Jury Act]. Criminal violations of the Ethics Act, along with non-Ethics Act offenses such as common law misconduct in office, false pretenses offenses and perjury, are part of the State Grand Jury's public corruption jurisdiction. See §§ 14-7-1615 and 14-7-1630(3). "Public corruption," as defined in the statute, includes "any unlawful activity." Section 14-7-1615(B). Thus, in

this instance, § 14-7-1630(3), or public corruption jurisdiction, is controlling. That should end the matter.

Pursuant to § 14-7-1730 of the State Grand Jury Act, "the presiding judge has jurisdiction to hear all matters arising from the proceedings of a state grand jury ...." The petition for impanelment is made by the Attorney General to the chief administrative judge of the judicial circuit in which he seeks to impanel a state grand jury for an order impaneling a state grand jury." Thus, the State Grand Jury was impaneled in this instance pursuant to the State Grand Jury statute rather than as a circuit judge of general jurisdiction. Other circuit judges who are not the chief administrative judge either for criminal or civil matters are not empowered to convene a state grand jury. See, § 14-7-1630(B); see also Order of Supreme Court 2011-02-04-01 (February 4, 2011). Only the chief administrative judge may authorize a State Grand Jury. Thus, again, we must look to the State Grand Jury Act exclusively for purposes of determining subject matter jurisdiction of the State Grand Jury.

As then Judge Hearn, writing for the Court of Appeals in State v. Adams, 310 S.C. 509, 462 S.E.2d 308 (Ct. App. 1995) cogently concluded; if the petition seeking State Grand Jury impanelment tracks the language of an area which the Legislature has authorized for State Grand Jury investigation, then the requisite jurisdictional requirements are present. A criminal investigation by the State Grand Jury may then begin. Here, jurisdiction was recognized by the impaneling judge.

The consideration of other statutes, such as § 8-13-540(3) of the 1991 Ethics Act, is nothing but a red herring. To use Rainey to impose a requirement for referral to the Attorney General from the House Ethics Committee in order for the State Grand

Jury to possess subject matter jurisdiction is legally indefensible. In other words, authorization to the Committee to "refer the matter to the Attorney General" is absolutely no basis for lack of subject matter jurisdiction of the State Grand Jury in this instance. To so conclude, turns the law on its head and completely negates the State Grand Jury's authority.

The expansion of the State Grand Jury's investigatory power to include public corruption was enacted in 1992. This legislation was passed by the very same General Assembly which only months earlier – in the fall of 1991 at a special session called by Governor Campbell – had enacted the ground-breaking Ethics Act. All of these reforms were passed in the wake of the Lost Trust scandal in which numerous legislators were indicted and convicted by the United States for bribery and other offenses. Thus, it is inconceivable that the same Legislature which enacted ethics reform, by passing the 1991 Ethics Act, would then add public corruption jurisdiction to the State Grand Jury, but, at the same time, require that such jurisdiction could not vest until the House or Senate Ethics Committees referred potential Ethics Act criminal violations to the Attorney General. The Legislature could not possibly have acted so irrationally and absurdly. It most certainly did not give its own members immunity from investigation and prosecution of public corruption crimes such as violations of the Ethics Act, or common law misconduct in office, obtaining property under false pretenses or perjury.

Moreover, even if the same Legislature which had just enacted the Ethics Act thought that public corruption jurisdiction of the State Grand Jury somehow depended upon a referral from the House or Senate Ethics Committee, surely, it would have said so in the State Grand Jury Act. See, Smith v. State Highway Comm'n., 138 S.C. 374,

136 S.E. 487, 488 (1927) [where statutes adopted are adopted at the same legislative session, any conflict between the two is to be resolved in favor of the statute "which takes effect at later date."] Yet, there is not the slightest hint in the subsequent State Grand Jury Act suggesting a requirement of referral from the House or Senate Ethics Committee prior to State Grand Jury jurisdiction attaching, pursuant to § 14-7-1630.

Even more importantly, the imposition of such a referral requirement would be patently unconstitutional. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994) and State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003) held that a requirement of referral from another agency infringes upon the constitutional powers of the Attorney General as the State's chief prosecuting officer and violates separation of powers. Our Supreme Court has recognized that a legislative committee cannot constitutionally be given executive powers. State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982). See also Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 558 S.E.2d 511 (2002) [The legislature does not have the power to create a law then execute it]; Sptg. Co. v. Miller, 135 S.C. 348, 132 S.E. 673, 677 (1924) [... the Legislature of the State may not, consistently with the constitutional requirement here involved, undertake to both pass laws and to execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators ... ."]. In short, imposing a necessity of House Ethics Committee referral turns the discretionary act of a legislative body's sending a criminal matter to the Attorney General for review into a mandatory precondition that it must be so sent before any investigation and prosecution of a criminal act may begin. The law does not recognize such a dubious, unconstitutional condition being placed upon investigation and prosecution of criminal

offenses. It is unprecedented in the annals of American jurisprudence. See e.g. Burton v. United States, 202 U.S. 344, 368 (1905) ["A Senator cannot claim immunity (for a criminal offense) ... because he is a member of a body which does not owe its existence to Congress, and with whose constitutional functions there can be no interference."]. As one court has aptly stated, simply because another administrative body possesses authority to refer a criminal matter to the Attorney General "does not mean the Attorney General must wait [for that body] to make a determination before conducting his own investigation and submitting his evidence to a properly constituted grand jury." Dem. Party of Ky. v. Graham, 976 S.W.2d 423, 430 (Ky. 1998).

In short, this kind of artificially created prerequisite to criminal investigation and prosecution is certainly not the law, and never has been. And, Rainey does not come close to saying it is the law now. Rainey did not pertain to a criminal investigation or prosecution in any sense of the word. Nor did Rainey address the jurisdiction of the State Grand Jury or the Court of General Sessions. See, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Rainey, instead, involved a private citizen, claiming jurisdiction in the Court of Common Pleas pursuant to the Declaratory Judgment Act, alleging that a former member of the General Assembly, Governor Haley, violated the Ethics Act. Both this Court and the Supreme Court, based upon the narrow facts presented, held that the Court of Common Pleas lacked subject matter jurisdiction to hear a civil ethics complaint. It is obvious that the Court was referring to such a civil complaint, where jurisdiction lies exclusively in the House Ethics Committee under the Ethics Act, and not to the State Grand Jury which is given subject matter jurisdiction to investigate public corruption, involving criminal acts by public officials pursuant to § 14-7-1630(3).

The functions of the House Ethics Committee and the State Grand Jury are, in other words, completely distinct and serve entirely different purposes altogether. Indeed, the Ethics Act itself does not purport to govern criminal prosecutions under the Act, but leaves that function to the executive branch. Reference in § 8-13-540(3) is itself a tacit admission that it is the province of the Attorney General to prosecute criminal violations of the Ethics Act. Examination of the relevant provisions of the State Ethics Act makes clear that the House or Senate Ethics committees, acting pursuant to their constitutional authority under Art. III, §§ 11 and 12 of the State Constitution – to judge qualifications of and to discipline its members – function in a completely different role from that of a criminal investigating authority, such as the State Grand Jury, or a criminal prosecutor, such as the Attorney General. Members of an Ethics Committee of the House and Senate are not criminal prosecutors and cannot assume such power under our constitutional system.

First of all, jurisdiction of the House and Senate Ethics Committees, as specified by § 8-13-540(3), expressly states that if "after the hearing," and based on competent and substantial evidence, the ethics committee finds the respondent "has violated this chapter or Chapter 17 of Title 2" it shall perform one of four specified options. (emphasis added). Thus, the committee is given jurisdiction only over the Ethics Act, § 8-13-100 et seq., and the provisions relating to the regulation of lobbyists contained in Title 2. Accordingly, the ethics committees possess no jurisdiction in any sense beyond the regulation of the Ethics Act and lobbyists with respect to members of their respective bodies. Most certainly, there is no jurisdiction of the House or Senate over matters within the powers of the public corruption jurisdictional authority of the State

Grand Jury, such as common law misconduct in office or obtaining property under false pretenses. Thus, even if § 8-13-540(3) were somehow applicable, which it is not, it would only be relevant to Ethics Act violations and would not prohibit investigation into other offenses within the public corruption jurisdiction of the State Grand Jury such as common law misconduct in office. The House and Senate Ethics Committee's jurisdiction, and the remedies it may seek pursuant to § 8-13-540(3), are to "serve the important interest [the legislature] has in upholding its reputation and integrity." Monserrate v. New York State Senate, 599 F.3d 148, 155 (2nd Cir. 2010). These committees act in a fact-finding role for the purpose of discipline of members, not criminal investigation or prosecution of those members.

Secondly, this distinction between discipline of members and criminal prosecution of members becomes clear upon examination of the four disciplinary options possessed by the Committee pursuant to § 8-13-540(3). Three of these four options contemplate that criminal investigation, prosecution and conviction for an Ethics Act violation has already occurred. In addition to referral to the Attorney General for appropriate action if an alleged criminal violation is found, the Committee may either administer a public or private reprimand, determine that a technical violation is provided for in § 8-13-1170 or recommend expulsion of the member. Each of these, particularly expulsion, encompass disciplinary action against the member. Most importantly, all but referral to the Attorney General recognize that prosecution and conviction of crimes under the Act may well have already occurred when the House or Senate Ethics Committee becomes involved. The fourth option, referral to the Attorney General, by contrast, involves the situation where it appears, based upon the facts found, there may

be a criminal violation, but a criminal proceeding, for whatever reason, has not yet been initiated. Accordingly, the hearing which must be afforded by the Committee relates to each of these possible disciplinary sanctions, rather than any prerequisite to criminal prosecution. Rainey thus cannot and should not be incorrectly relied upon here for the latter proposition.

Likewise, § 8-13-560 authorizes suspension of a member, if indicted for certain crimes, including those for moral turpitude. Certain provisions of the Ethics Act are undoubtedly crimes of moral turpitude. Thus, again this provision relates to the disciplinary authority of the House or Senate, not to any prosecutorial authority which is a function only of the executive branch; but importantly also the Ethics Act contemplates that investigations and indictments pursuant to provisions of the Ethics Act may occur prior to the Senate or House ever taking disciplinary action under the Act. Accordingly, any reliance upon Rainey completely confuses the exclusive authority of the House and Senate in the discipline or punishment of members with the power of Attorney General as the State's chief prosecuting officer. Thrift, supra. In short, one of the overriding purposes of the Ethics Act, as stated in the findings of the General Assembly, was "to help restore public trust in the governmental institutions and the political and governmental processes." If the Ethics Act is interpreted in such a novel, incorrect manner, to mis-apply Rainey so that the House or Senate Ethics Committee now serve as a clearinghouse before potential criminal violations of the Ethics Act may be investigated by the State Grand Jury, it will most assuredly not "restore public confidence in the governmental institutions and the political and government processes."

But beyond that even, relying upon Rainey here to dismiss the State Grand Jury in this case would constitute an unconstitutional interference by the judicial branch with that of the executive branch in the investigation and prosecution of criminal cases. See In re Grand Jury Proceedings, U.S. v. Northside Realty Associates, 613 F.2d 501 (5th Cir. 1980) [court's interference with prosecutor's policy regarding an investigative target a pre-indictment conference violates separation of powers]; see also State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998) [a circuit judge is a member of the judicial department and cannot constitutionally exercise the function of the executive department]; Thrift, supra [except in rare cases, "(t)he Judicial Branch is not empowered to infringe on the exercise of the prosecutorial function."]. As Thrift and other cases make clear, such infringement is patently unconstitutional.

In 1988, the people voted to place the State Grand Jury in the Constitution and give it such powers and authority as the General Assembly prescribed. See, Art. I, § 11. The Legislature has enacted the law regarding State Grand Jury jurisdiction and in May, 1992, expanded subject matter jurisdiction to include public corruption. Criminal violations of the Ethics Act are quite clearly part of that public corruption jurisdiction. Rainey has no bearing upon the State Grand Jury Act and thus the State Grand Jury statute should not be rewritten by the courts to give immunity to members of the Legislature from investigation and prosecution. As the United States Supreme Court made clear in Burton, a member of a legislative body cannot claim immunity merely because of his or her membership or that each House may judge the qualifications of or discipline its members. Yet, here a ruling by the Court, essentially eviscerating public corruption jurisdiction, would nullify the voters' will in approving a State Grand Jury and

replace authority to investigate legislators by the State Grand Jury with the discretion of the House Ethics Committee not to do anything at all. This kind of intrusion into the constitutional prerogatives of the Attorney General as the State's chief prosecuting officer, and the rewriting of the Constitution and statutes enacted is unparalleled. It would essentially place members of the General Assembly beyond the reach of the law. As the Supreme Court of the United States has recognized, "[n]o man in this country is so high that he is above the law." United States v. Lee, 106 U.S. 196, 220 (1882).

II.

As the United States Supreme Court recognized long ago, "[t]here can be no reason why the government may not, by legislation, protect ... against everything ... that ... may tend to corruption or inefficiency in the management of public affairs." A member of the Legislature [or Congress], the Court continued, "cannot claim immunity from legislation directed to that end ...." Burton v. United States, 202 U.S. 344, 368 (1906).

In May, 1992, with the scandal of Lost Trust still looming, a scandal in which the federal authorities prosecuted and convicted numerous members of the General Assembly for bribery and other offenses, the Legislature added public corruption jurisdiction to the State Grand Jury. Pursuant to Section 14-7-1610(C) – part of the State Grand Jury Act – the Legislature determined it necessary "to enhance the grand jury system to improve the ability of the State to detect and eliminate public corruption." "Public corruption" is defined by § 14-7-1630(B) as "any unlawful activity under color of or in connection with any public office or employment ... ." (emphasis added).

In accordance with § 14-7-1630, the requisite "subject matter jurisdiction" to investigate public corruption is authorized to investigate 'a crime, statutory, common law or other, involving public corruption ... .' In addition, pursuant to the 1992 amendments to the State Grand Jury Act, the General Assembly provided that "[t]he expanded jurisdiction of the State Grand Jury system applies to offenses committed both before and after the effective date of this act." See Act No. 335 of 1992 (Section 2). Thus, even as to public corruption offenses committed between the time of passage of the first State Ethics Act, enacted in 1975, and its major overhaul in 1991, the State Grand Jury possesses express authority to investigate such offenses. Accordingly, it is clear that the Legislature intended the State Grand Jury's jurisdiction to investigate public corruption cannot be governed by 8-13-540(3) because this provision of the State Grand Jury Act relates back even prior to the very existence of § 8-13-540(3). In sum, the State Grand Jury's public corruption jurisdiction is clearly independent of § 8-13-540(3), as evidenced by Section 2 of the State Grand Jury Act, as enacted in 1992.

In June, 2013, Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013) was decided by the South Carolina Supreme Court. The Rainey decision involved a civil action brought by Rainey, a private citizen, "seeking a declaration that Governor Haley violated the State Ethics Act while serving as a member of the House of Representatives." 404 S.C. at 322, 745 S.E.2d at 82. Rainey "contended that the court had jurisdiction pursuant to the Declaratory Judgment Act." However, the Supreme Court held that the circuit court lacked subject matter jurisdiction because "ethics investigations concerning members and staff of the Legislature are intended to be solely within the Legislature's

purview, to the exclusion of the courts, except in the singular circumstance expressly provided for in section 8-13-530(4)."

The Court referenced § 8-13-530(4) as the one exception to the jurisdiction of the House Ethics Committee's authority. During the fifty day period before an election the respective legislative committee lacked jurisdiction, and "'any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction ... .' These remedies are, of course, civil remedies, rather than criminal.

Thus, it is clear that the "ethics complaint" the Rainey Court referenced was nothing more than the effort by a civil plaintiff to obtain, in the Court of Common Pleas, a declaratory judgment that someone is violating the State Ethics Act. However, by no stretch of the imagination, can Rainey be legitimately extended to apply to a criminal investigation before the State Grand Jury, initiated pursuant to the State Grand Jury Act. In no sense of the word, did the Legislature intend to limit criminal investigations or prosecutions by the enactment of the 1991 Ethics Act, enacted at the same legislative session as the State Grand Jury Act was expanded to include public corruption. Nor does Rainey's discussion of separation of powers or legislative privileges protected by the State Constitution – such as the requirement that each house judge the qualifications of its members or that each house discipline its members – in any way alter or limit the State Grand Jury's power to investigate public corruption. Burton, supra.

First, Section 14-7-1630 expressly provides that the "subject matter jurisdiction" of the State Grand Jury consists of the designate areas referenced. The decisions

challenging the subject matter jurisdiction of the State Grand Jury all speak with one voice that such subject matter jurisdiction is determined solely by reference to § 14-7-1630. In State v. Adams, 319 S.C. 509, 462 S.E.2d 308 (Ct. App. 1995), Judge Hearn, speaking for the Court of Appeals, concluded that the impaneling judge of the State Grand Jury simply must examine the petition for State Grand Jury impanelment to determine if the language in the petition "track[s] the language of Section 14-7-1630 ..." and that "the Attorney General fully complied with the requirements of Section 14-7-1630 and the grand jury was properly impaneled." See also State v. James, 321 S.C. 75, 472 S.E.2d 38, 41 (Ct. App. 1996) [subject matter jurisdiction of state grand jury governed by § 14-7-1630]; State v. Wilson, 315 S.C. 289, 291, 433 S.E.2d 864, 866 (1993) [§ 14-7-1630 provides the limitation of the State Grand Jury's subject matter jurisdiction to "certain offenses...."]. In State v. Evans, 322 S.C. 78, 80-81, 470 S.E.2d 97, 98 (1996), the Supreme Court noted that "the State Grand Jury was created to enhance the grand jury system and improve the ability of the State to detect and eliminate criminal activity." (emphasis added). The Court looked only to § 14-7-1630 to determine if the State Grand Jury possesses subject matter jurisdiction.

State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16 (2011) also strongly supports the proposition that subject matter jurisdiction of the State Grand Jury is governed by § 14-7-1630 and nothing else. In Sheppard, it was argued that the State Grand Jury lacked subject matter jurisdiction because the crimes of obtaining property by false pretenses and conspiracy were not included within the "securities fraud" jurisdiction thereof. However, the Supreme Court, speaking through Chief Justice Toal, rejected this argument because such offenses "were committed in the same course of conduct

as securities violations." 391 S.C. at 423, 706 S.E.2d at 20. The Court cited to State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), noting that a court's subject matter jurisdiction "is that court's power 'to hear and determine cases of the general class to which the proceedings in question belong.'" According to Sheppard, the Court in Gentry made it clear that the question regarding the subject matter jurisdiction of the court and "the sufficiency of an indictment is a question separate from and does not implicate subject matter jurisdiction." Contrary to subject matter jurisdiction, which may be raised at any time, sufficiency of the indictment is "a challenge that must be raised before the jury is sworn." Sheppard, 391 S.C. at 422. Clearly, the Sheppard Court reasoned, under Gentry, the securities fraud jurisdiction provided for in § 14-7-1630 was sufficient to give the State Grand Jury subject matter jurisdiction and the general jurisdiction of the Court of General Sessions plainly empowered the court to try Sheppard.

Importantly also, Sheppard raised and the Supreme Court rejected the constitutional defense of ex post facto as a limitation upon State Grand Jury jurisdiction. The Defendant argued that § 14-7-1820, which makes the State Grand Jury statute applicable to offenses committed both before and after the effective date of the Act was unconstitutional as violative of ex post facto and thus void. Such a constitutional argument had not been preserved for appellate review but if the constitutional claim had constituted subject matter jurisdiction of the State Grand Jury, he could have raised it even without its having been preserved. Chief Justice Toal, writing for the Court, concluded that Sheppard's constitutional argument "is again a thinly veiled attempt to reach subject matter jurisdiction because Sheppard has not preserved his ex post facto argument for appellate review." 391 S.C. at 424, 706 S.E.2d at 20.

The reason this part of the Sheppard decision is highly instructive in this case is that, like Sheppard, here it is being argued that the Speaker as a member of the House is protected from State Grand Jury investigation by the Constitution and the State Ethics Act because of jurisdiction of the House Ethics Committee over ethics complaints. However, Sheppard stands for the proposition that any claim of constitutional (or statutory) immunity of an individual does not affect the subject matter jurisdiction of the State Grand Jury. If there were to be an indictment in this case, such an argument could be raised prior to trial in accordance with Sheppard. While we categorically reject that this argument possesses any validity, in any event, it does not affect the public corruption jurisdiction of the State Grand Jury established by § 14-7-1630.

Moreover, in Anderson v. S.C. Election Comm., 397 S.C. 551, 725 S.E.2d 704 (2012), just one year before Rainey, the Supreme Court rejected the argument that legislative privileges, such as are contained in Art. III, § 11 of the State Constitution, designating each house as the judge of the qualifications of its members, deprived the court of subject matter jurisdiction to determine questions of law such as the interpretation and application of statutes. Thus, this Court should not conclude that § 14-7-1630, bestowing subject matter jurisdiction upon the State Grand Jury, may be bypassed and replaced with a completely irrelevant statute and constitutional provision. The impaneling judge, as a member of the judicial branch, is required under State v. Adams, supra to apply § 14-7-1630 in deciding whether to sign the order impaneling the State Grand Jury public corruption case. It is no answer that Art. III, § 11 or other legislative privileges contained in the Constitution deprives it of the subject matter jurisdiction to do so.

Moreover, the State Ethics Act, upon which the Rainey case relied, was first enacted in 1975. The current version of § 8-13-540(3) became effective January 1, 1992. The State Grand Jury statute added public corruption jurisdiction, effective May 4, 1992. Thus, the public corruption jurisdiction provision is later in time, is more specific, and the Ethics Act provision was fully effective when the General Assembly debated and ultimately enacted the State Grand Jury public corruption statute. Our Supreme Court has continuously held as follows:

> [t]he "primary function in interpreting a statute is to ascertain the intent of the legislature." Browning v. Hartrigsen, 307 S.C. 122, 414 S.E.2d 115, 117 (1992). Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2df 153 (1988).

Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993). Here, these rules of interpretation must be deemed controlling. It would be absurd to conclude that the public corruption jurisdiction of the later in time, more specific State Grand Jury Act is governed by § 8-13-540(3) of the State Ethics Act. The very purpose of public corruption jurisdiction of the State Grand Jury, enacted in the wake of and brought about by the Lost Trust scandal, one in which numerous members of the General Assembly were convicted by the United States for public corruption, was to give the State the same investigative tools for public corruption as the federal authorities possess. Indeed, the legislative findings concerning public corruption, found at § 16-7-1610(C), state that "[t]he General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to defect and eliminate public corruption .... The General Assembly believes that a state grand jury, possessing

considerably broader investigative authority than individual county grand juries, should be available to investigate public corruption offenses in South Carolina."

If the General Assembly was of the view that either the recently enacted § 8-13-540(3) or its constitutional privileges prevented the State Grand Jury from investigating members of the General Assembly for public corruption, it surely would not have written the foregoing words in the legislative findings. Surely, it does not "enhance the grand jury system" nor "improve the ability of the State to detect and eliminate public corruption" to impede investigation of members of the Legislature for public corruption by first requiring review by the House Ethics Committee. No body or person would be more protective of legislative privileges than the General Assembly itself. Yet, it created the State Grand Jury to investigate public corruption by all public officials, including its own membership.

State v. Thrift, supra is fully supportive of the argument that the Legislature did not intend, in enacting the 1991 Ethics Act to provide immunity to a member of the General Assembly from criminal investigation and prosecution. In Thrift, in concluding that the preceding version of the Ethics Act was still viable with respect to the prosecution of those defendants who had been indicted by the State Grand Jury for violations committed under the former Act, the Supreme Court commented upon the "new" 1991 Act as follows:

> [g]iven the overall climate ... [Lost Trust scandal] in which the legislation was amended and the more stringent guidelines set forth in the new Act, it is apparent that the legislature did not intend to permit someone to escape prosecution for acts of bribery or similar activity committed prior to the amendment of the legislation. We find persuasive the State's argument that to allow this defendant this safe harbor from prosecution based on an implied repeal

> completely frustrates the legislative purpose and intent in enacting the later legislation.

312 S.C. at 306, 440 S.E.2d at 354 (emphasis in original). In short, "the legislative purpose and intent in enacting the later legislation" was most certainly not to provide any "safe harbor" for persons subject to prosecution by the Attorney General.

In addition, as argued earlier, Thrift strongly supports the idea that requiring as a pre-condition of prosecution a referral from an administrative agency such as the Ethics Commission violates the State Constitution. The Thrift Court recognized, quite clearly, that it was necessary to construe the referral provision narrowly in order to avoid the unconstitutionality of the statute which would, if not so construed, violate Art. V, § 24 designating the Attorney General as the "chief prosecuting officer of the state," and the prohibition against infringement of the separation of powers. According to the Court,

> ... the referral system only applies to civil complaints to the Ethics Commission which are referred by it to the Attorney General for criminal prosecution. The absence of a complaint to the Ethics Commission will never operate as a limitation upon the State's independent right to initiate a criminal prosecution.

Thus, imposing a requirement as a pre-condition of State Grand Jury investigation authority a referral to the Attorney General from the House Ethics Committee is patently unconstitutional. As discussed above, it is not for the Legislature to say when and if a member of its body is investigated and/or prosecuted. Such is a prerogative of the executive branch and the Attorney General.

When Rainey is read with common sense in mind, in light of the Court's holding in Thrift – which required a construction that the State Ethics Act encompasses only those "civil complaints" investigated by either the Ethics Commission or the House or Senate Ethics Committees – the answer is crystal clear. Such civil complaint

investigative power does not in any way detract from or undermine criminal investigations or prosecutions. The Constitution simply does not permit a mandatory review by these bodies as a prerequisite to a criminal investigation or prosecution of a member of the General Assembly regarding violations of the Ethics Act or other laws.

The United States Supreme Court long ago recognized this constitutional truism. In Burton v. United States, supra, the Supreme Court squarely addressed the question of whether a member of Congress was immune from prosecution under a federal law designed to protect against corruption based upon his status as a Senator as well as the constitutional privileges and prerogatives of such office. The Supreme Court resoundingly rejected such a proposition. The Burton Court stated as follows:

> [i]t is said that the statute interferes, or, by its necessary operation, will interfere, with the legitimate authority of the Senate over its members, in that a judgment of conviction under it may exclude a Senator from the Senate before his constitutional term expires; whereas, under the Constitution, a Senator is elected to serve a specified number of years, and the Senate is made by that instrument the sole judge of the qualifications of its members, and, with the concurrence of two thirds, may expel a Senator from that body. In our judgment there in no necessary connection between the conviction of a Senator of a public offense prescribed by statute and the authority of the Senate in the particulars named. While the framers of the Constitution intended that each department should keep within its appointed sphere of public action, it was never contemplated that the authority of the Senate to admit to a seat in its body one who had been duly elected as a Senator, or its power to expel him after being admitted, should, in any degree, limit or restrict the authority of Congress to enact such statutes, not forbidden by the Constitution, as the public interests required for carrying into effect the powers granted to it. In order to promote the efficiency of the public service and enforce integrity in the conduct of such public affairs as are committed to the several departments, Congress, having a choice of means, may prescribe such regulations to those ends as its wisdom may suggest, if they be not forbidden by the fundamental law. It possesses the entire legislative authority of the United States. By the provision in the Constitution that 'all legislative powers herein granted shall be vested in a Congress of the United States,' it is meant that Congress-keeping within the limits of its powers and observing the restrictions imposed by the

Constitution-may, in its discretion, enact any statute appropriate to accomplish the objects for which the national government was established. A statute like the one before us has direct relation to those objects, and can be executed without in any degree impinging upon the rightful authority of the Senate over its members or interfering with the discharge of the legitimate duties of a Senator. The proper discharge of those duties does not require a Senator to appear before an executive department in order to enforce his particular views, or the views of others, in respect of matters committed to that department for determination. He may often do so without impropriety, and, so far as existing law is concerned, may do so whenever he chooses, provided he neither agrees to receive nor receives compensation for such services. Congress, when passing this statute, knew, as, indeed, everybody may know, that executive officers are apt, and not unnaturally, to attach great, sometimes, perhaps, undue, weight to the wishes of Senators and Representatives. Evidently the statute has for its main object to secure the integrity of executive action against undue influence upon the part of members of that branch of the government, whose favor may have much to do with the appointment to, or retention in, public position of those whose official action it is sought to control or direct. The evils attending such a situation are apparent and are increased when those seeking to influence executive officers are spurred to action by hopes of pecuniary reward. There can be no reason why the government may not, by legislation, protect each department against such evils, indeed, against everything from whatever source it proceeds, that tends or may tend to corruption or inefficiency in the management of public affairs. A Senator cannot claim immunity from legislation directed to that end, simply because he is a member of a body which does not owe its existence to Congress, and with whose constitutional functions there can be no interference. If that which is enacted in the form of a statute is within the general sphere of legitimate legislative, as distinguished from executive and judicial, action, and not forbidden by the Constitution, it is the supreme law of the land,-supreme over all in public stations as well as over all the people. 'No man in this country,' this court has said, 'is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.' *United States* v. *Lee*, 106 U. S. 196, 220, 27 L. ed. 171, 181, 1 Sup. Ct. Rep. 240. Nothing in the relations existing between a Senator, Representative, or Delegate in Congress and the public matters with which, under the Constitution, they are respectively connected from time to time, can exempt them from the rule of conduct prescribed by § 1782. The enforcement of that rule will not impair or disturb those relations or cripple the power of Senators, Representatives, or Delegates to meet all rightful or appropriate demands made upon them as public servants.

Conclusion

In short, any argument that Rainey applies to or controls this case is without any legal basis whatever. It is inconceivable that the Legislature, in adding public corruption jurisdiction to the State Grand Jury in 1992, intended to impose as a condition of investigating legislators for criminal offenses, that there first must be a referral to the Attorney General from the House Ethics Committee. Even if by some stretch of the imagination the Legislature did impose such a condition, it is patently unconstitutional under Thrift and other cases. This Court should not so rewrite the law. As the United States Supreme Court has recognized, no person is above the law for alleged crimes committed. To read Rainey as imposing the need for a referral to the Attorney General by the House Ethics Committee before investigation and prosecution of a legislator may begin, gives members of the General Assembly immunity from public corruption crimes. It places these public officials beyond the reach of the law, or at the very least, places legislators in a special class which no other public official or citizen enjoys. Rainey certainly never contemplated immunity for legislators from criminal investigation and prosecution. To so apply Rainey here would give legislators a blank check to violate the Ethics Act with impunity.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN MCINTOSH
Chief Deputy Attorney General

ROBERT D. COOK
Solicitor General

W. ALLEN MYRICK
Senior Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General

By: _____
ROBERT D. COOK

Office of the Attorney General
Post Office Box 11549
Columbia South Carolina 29211
Telephone: (803) 734-3970

April 16, 2014

NEWS RELEASE

OFFICE OF ATTORNEY GENERAL ALAN WILSON
STATE OF SOUTH CAROLINA

For Immediate Release
October 9, 2012

Contact: J. Mark Powell
(803) 734-3670
mpowell@scag.gov

Attorney General Alan Wilson Issues Statement on Speaker Harrell

COLUMBIA, SC - South Carolina Attorney General Alan Wilson issued the following statement in response to media inquiries regarding the use of campaign funds by House Speaker Bobby Harrell.

"As the state's chief prosecutor, this Office resolves matters in the public's best interest. There is an established record of our following the legal process. It must be given the chance to proceed as designed by law. That is what we will do in this instance.

"South Carolina statute 8-13-540(3) authorizes the House Ethics committee to investigate this type of allegation concerning House members. That law says '[a]fter the hearing, the ethics committee shall determine its findings of fact... (d) in the case of an alleged criminal violation, [it shall] refer the matter to the Attorney General for investigation.'

"For that reason it is premature for this Office to ask SLED to investigate this matter at this time. The process must proceed as prescribed by state law. Should the House Ethics Committee not act, this Office is then prepared to do what is in the public's best interest."

STATE OF SOUTH CAROLINA	)	IN GENERAL SESSIONS
COUNTY OF RICHLAND	)	COURT
	)	
BOBBY HARRELL,	)	
	)	TRANSCRIPT
-V-	)	OF
	)	RECORD
STATE OF SOUTH CAROLINA,	)	M 2014-237
DEFENDANT.	)	

MAY 2, 2014

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF:

MR. HOWE, ESQ.

MR. DANIEL, ESQ.

.

FOR THE DEFENDANT:

MR. WATERS, ESQ.

MR. MYRICK, ESQ.

I-N-D-E-X

	PG.
MOTION:	3
CERTIFICATE OF REPORTER	67

E-X-H-I-B-I-T-S

COURT'S	PG.
1. LETTER DATED 2/14 WITH ATTACHMENT.	8
2. LETTER DATED 2/14 TO MARK KEEL AT SLED.	8

(The following proceedings were held on May 2, 2014.)

THE COURT: Good morning. I thought what I'd first do is give some introductory remarks, hopefully, to save some time and put everybody on the same page. I might be off a little bit, but I prepared a time line of events and summary. First of all, this began on October the 9th, 2012, when the Attorney General issued a statement on Speaker Harrell. The Attorney General did this in response to media inquiries regarding the use of campaign funds by the Speaker of the House.

On February the 14th, 2013, Valentine's Day, the Attorney General received a letter and complaint from Ashley Landess from the South Carolina policy counsel. Ms. Landess' letter indicates that she met with the AG on, at least, one occasion prior to sending the complaint. And I quote from her letter, page two, she said, I've told you when we first discussed this matter several weeks ago I think that the House ethics committee is institutionally unsuited to afford due process in this particular matter. Landess letter, page two. Continues page two, at your suggestion during those earlier discussions, we in good faith explored the process by which we might file a complaint with the House ethics committee.

On February 14th, also, 2013, the Attorney General

office sends a letter with the subject line preliminary criminal inquiry to SLED, along with a copy of Ms. Landess' letter. The AG's letter request that SLED assign an agent to conduct this inquiry. Also, on February 14th, 2013, meeting with Ms. Landess, the AG letter states, We met today with Ms. Ashley Landess, who delivered information to this office alleging possible criminal violations by the Speaker Bobby Harrell.

Then on April 16th, 2013, there was a meeting between the AG and Mr. Brad Wright, I think the House -- the Speaker's lawyer -- the House lawyer for the Speaker of the House. Meeting between AG and Brad Wright, Chief of Staff for the counsel for the Speaker of the House. Then on April 17th, 2013, Mr. Wright calls and indicates that Mr. Harrell will support the public integrity unit in a new proposed ethics bill, I do believe.

On December the 6th, 2013, SLED completes its review and provides a report to the AG. On January the 13th, 2014, a matter is referred to the South Carolina state grand jury. Also on January 13th, 2014, the Attorney General releases a statement and the release says, Regarding the state -- the Speaker Bobby Harrell matter, this is to advise that it is being referred to the state grand jury.

On February 24th of 2014, a motion to disqualify Attorney General from participation in the grand jury

investigation and prosecution of Mr. Harrell's file. On March 7th of 2014, the Attorney General files a response to Mr. Harrell's motion to disqualify him that is Allen Wilson.

Now, from the affidavit of Mr. Wilson filed March 7th, 2014, it says on February 14th, 2013, a citizen complaint was delivered to this office regarding possible ethics violation by Speaker Robert Harrell in paragraph two. Further quote, Because I believe it would create the appearance of impropriety if I were to meet directly with Speaker Harrell given the pending SLED review of the citizen complaint into possible ethical violation by Speaker Harrell, I decided to reach out to his chief of staff and chief legal counsel, Brad Wright, to discuss the ethics reform legislation of the public integrity unit. That's from paragraph nine.

Further, indeed, quote, continue, At that time, I did not know the final result of any investigation into ethics complaints about Speaker Harrell and had no idea as to what, if anything, SLED would find, in paragraph 11. Further quote, it makes no sense that I would be combative given that my goal was to prevent the public integrity unit from being discovered because of tensions -- because of tension of Speaker Harrell over the fact this office had referred to SLED ethics complaints against the Speaker, paragraph 17.

On March 14th, 2014, reply of Mr. Harrell to the AG's motion to disqualify was submitted and filed. On March 21st, 2014, we had a public hearing. On March 26th, a two-day extension to admit proposed orders was granted. Mr. Harrell's attorneys requested a two-day extension to submit post orders. The Attorney General did not oppose the extension and requested the same extension be granted to that office. On March 28th, 2014, proposed orders were to be submitted by close of business on Friday March 28th, 2014. On March 31st, 2014, a conference call -- on a conference call, the Court raised the issue of subject matter jurisdiction. And, also, not only did I raise the issue of subject matter jurisdiction, I, also, inquired about the application of Rainey vs. Haley to the situation that -- why we're here today.

On April 2nd, 2014, the first round of briefs were submitted on subject matter jurisdiction. The AG's office requested an extension of time and, also, requested that they have an opportunity to make oral arguments. And, essentially, that's why we're here today at the request of the Attorney General to make oral arguments.

Now, on April 4th, 2014, the clerk of the statewide grand jury e-mails of any update. On April 16th, 2014, the deadline for all briefs and materials be submitted in order for them to be considered prior to the second

hearing. Scheduling of the second hearing delayed due to the attorneys for both sides being out of the state. And I think General Wilson's was in Florida in regards to your duties as --

MR. WILSON: National Guard.

THE COURT: Reserves. Was it the Reserves?

MR. WILSON: Yes, sir. Yes, sir.

THE COURT: And I think Mr -- who went to -- who went to Hawaii? Who was the lucky guy that went to Hawaii?

(Laughter.)

THE COURT: So the Speaker was out for about a week. You were out for like 10 days, so that's one of the reasons why it was delayed somewhat quite frankly.

April 30th, 2014, a hearing was set for today at 11:00. We notified the attorneys yesterday. The media -- well, two days ago. The media was notified yesterday.

Now, that's sort of the back drop as to how we got here and why we're here. But how this all began, ladies and gentlemen, I think it's proper and only fair to let everyone know what was the triggering device or what started it all. And it started with a letter with attachment from Ms. Landess to the Attorney General dated February 14th, 2013, along with attachment that summarizes the complaints that she had against the Attorney General.

So far is everybody with me? If I say anything or

leave out anything, add to or take away from anything I said. But, essentially, that's how this matter began.

So I would like to mark as Court's Exhibit No. 1 the letter dated Valentine's Day 2013 with the attachment.

(WHEREUPON, Court's Exhibit No. 1 was admitted into evidence.)

THE COURT: I'll read that into the record.

Now, on the same day, February 14th, 2013, John McIntosh from the Attorney General's office submitted a letter to Mark Keel at SLED. That sort of got this thing underway also. So let me read the letter, the complaint, as I referred to it from Ms. Landess to the AG and the attachment as well. I'll make this letter a part of the record as well from Mr. John McIntosh.

(WHEREUPON, Court's Exhibit No. 2 was admitted into evidence.)

THE COURT: I'm sure everybody has a copy of this letter. If I misquote anything -- February 14th, 2013, Attorney General to Allen Wilson, it says, Dear Allen, I appreciate your decision to accept and consider the enclosed ethics complaint against Speaker of the House, Robert Harrell, of what appears to be multiple and possible criminal violations of the state ethics law. Your consideration of the complaint will be free of the multiple conflicts of interest inherent in the House ethics committee

process. We do not file this complaint lightly or without supporting documentation. Indeed, we hope that by now, these concerns would have been investigated and addressed, but much later, the public still has no answers as to a pattern of alleged continuing ethic violations by the Speaker of the House.

As you know, in South Carolina, the Speaker has duties that far exceed those in other states. He has extraordinary powers of the function of all three branches of government and yet, he is not elected statewide. In the attached complaint, we outline five examples of potential violations of ethics laws that seem to demonstrate a pattern of abuse of power that is extremely disturbing to us as well as many others. Our organization is not equipped to delve more deeply into these concerns than we already have. Nor are we able to investigate any other areas in which there may have been ethics violations. We have limited our complaint to the five issues for which there seems to be -- there seems to us little question that the Speaker was not in compliance with the law. We believe a thorough investigation is warranted to determine if that, actually, is the case and, also, to determine if there are other violations which have not yet been brought to light, page one.

Page two continues, As I told you when we first

discussed this matter several weeks ago, I think the House ethics committee is institutionally unsuited to afford due process in this particular matter for multiple reasons. The House ethics committee has been reconfigured in a manner not consistent with statute and thus its rulings could be challenged. Moreover, the apparent ethics violations, if proven, could be possibly seen as a pattern of public corruption that would be out of the jurisdiction of the House ethics committee to investigate.

Finally, there are conflicts of interest inherent in the House ethics process which may not be successfully addressed. Nonetheless, at your suggestion during those earlier discussions, we in good faith explored the process for which we might file a complaint with the House ethics committee and in doing so, we would have to come to better understanding of the multiple conflicts inhering in that process. Conflicts so blatant that the no reasonable person could possibly assume objectivity on the part of the House ethics committee, even if such objectivity were -- by its members and its staff. Simply put, a compliant against the Speaker of the House presents unique conflicts for which there is no formal process to resolve. For the House ethics committee to have considered such a complaint would have most certainly been a violation of due process to which all parties in this process are entitled.

First, the Speaker is a presiding officer of the House and as such has ultimate authority over all employees of the House, including the clerk's office, committee staff, including ethics committee staff, counsel to the Speaker's office and communications staff for which -- for the Speaker's office. Not only would it be impossible for us to be -- for complete objectivity on the part of any staff member, it is unreasonable to ask those staffers or those staff members to participate in an investigation of their boss. In addition, several of the House employees may well have knowledge of the Speaker's action referred to in a complaint and thus could not possibly be involved in the complaint process itself. Because the Speaker is their superior, they could be at risk for retaliation if they divulge information unfavorable to him.

Second, as presiding officer of the House, the Speaker would, ultimately, be responsible for authorizing the hiring and payment of an independent investigator, we could not be reasonably assured that any investigator hired and authorized by the House with the Speaker as its presiding officer could be objectively retained.

Third, a finding of the House ethics committee of probable cause would have to be presented first to the Speaker of the House himself.

Fourth, if the Speaker wanted to appeal any

finding of the House ethics committee, he is the only one authorized to call the General Assembly to session for that purpose.

Clearly, the House ethics committee process is not designed to consider a complaint against the Speaker of the House. There's no formal process upon which the inherent conflicts could be resolved and thus no party to a complaint against any Speaker could be assured of objectivity or fairness. Again, I truly appreciate your consideration and appreciation of our due process concerns and your decision to accept and investigate the complaint. This is a serious matter and your action today reassures us and, more importantly, the citizens of this state that you will ensure that a fair and impartial process is afforded to all the parties with regard to our concerns.

I think I've fairly and accurately read that letter. I think everybody has a copy of it.

The attachment to that letter, Valentine's Day, 2013, reads as follows: Summary of complaint filed with Attorney General Allen Wilson, February 14th, 2013. One, if Robert Harrell used his office for his financial benefit and that of his family business, he may have violated South Carolina law. South Carolina code section 8-13-700 states that public officials cannot use their positions in office for financial gain. The law states that they cannot

knowingly use their office to obtain an economic interest for themselves or their family members. The law is also quite clear that public officials are not permitted in any way to use their positions to influence a governmental decision in which they, a family member or a business have an economic interest.

Second, Robert Harrell seems to have broken the law by using campaign funds for personal purposes. The law is clear that campaign funds can only be used for either campaign purposes or for ordinary expenses in connection with public office according to section 8-13-1348 of the ethics act.

Third, Robert Harrell's appointment of his brother to a position on the judicial merits election commission seems to be against South Carolina law, code section, once again, 8-13-750.

Four, Robert Harrell has publically stated that he failed to maintain certain records to document his expenditures. State law requires candidates to maintain such records for four years, citing again code 8-13-1302.

And finally, five, Robert Harrell did not adequately itemize reimbursements to himself from his campaign account as the law requires, 8-13-1360.

Now, once again, the Court raised the issue of subject matter jurisdiction. I happened to be the trial

judge that heard the arguments in Rainey vs. Haley. That decision was appealed and affirmed when I found lack of subject matter jurisdiction to hear a declaratory judgment action. And that supreme court opinion is on file. It's public record.

But regarding subject matter jurisdiction, this is what one has to consider, summary, the issue of subject matter jurisdiction is, of course, critical to determining in which court any action may be brought. Subject matter jurisdiction refers to a court's power to hear and determine cases of the general class to which the proceeding in question belongs. Lack of subject matter jurisdiction constitute the strongest possible defense in the action because it is a complete defense that may be raised at any stage of a proceeding, even for the first time on appeal before the supreme court. It may not be waived, including by the similar parties, and should be taken notice of by the courts. The subject matter jurisdiction of South Carolina courts is constitutionally and statutorily specified. And, really, that's a quote out of Chief Justice Toal's appellate practices of South Carolina, second edition. Additionally, the statement of law tracks the Rainey decision.

Also, in Rainey, in addition to separation -- I'm sorry, in addition to subject matter jurisdiction, another issue was raised, and that's one of separation of powers.

And I will give you a simple definition of that. The legislative, executive and judicial departments are independent branches of government. The separation of powers of state government prevents the concentration of power at the hands of too few and provides a system of checks and balance in which the legislative department makes laws. The executive department carries laws into effect and the judicial department interprets and -- laws. Conflicts of three separate branches of government arise when one branch asserts another's authority. When a conflict arises, the judiciary, they usually adjudicate the conflict and determine whether the constitution separation of powers guarantees have been violated.

Now, I -- that's simply for an overview trying to put everybody on the same page. I've introduced the complaint with the attachments as Court Exhibit No. 1. Additionally, I'd like to mark this as Court Exhibit No. 2. And let me tell you what it is, ladies and gentlemen. It's the letter from John McIntosh, Chief Deputy Attorney General, to Chief Mark Keel of SLED. And it references preliminary criminal inquiry.

Dear Chief Keel, we met today with Ms. Ashley Landess, who delivered information to this office alleging possible criminal violations by Speaker Bobby Harrell. Ms. Landess has brought to our attention today that there be

inherent -- there may be inherent conflicts of interest by potential witnesses with respect to any initial inquiry by the House ethics committee. Therefore, Ms. Landess has referred this matter directly to this office for handling as a criminal matter. Consistent with our usual longstanding policy, we are requesting that SLED assign an agent to conduct this inquiry. I am enclosing a copy of Ms. Landess' letter to this office. Very truly yours, John W. McIntosh.

Now, with that back drop, I had a brief discussion with the attorneys in chambers a minute ago and decided we would proceed. And the agreement was we'll first hear from Mr. Harrell's lawyers make arguments on these issues and then Attorney General Allen Wilson intends to make the argument for the Attorney General himself.

Is that correct, Mr. Wilson?

MR. WILSON: Yes, sir.

THE COURT: All right. So if I left anything out or if you need to add something, please feel free to do so. This is a nonjury action. I mean, even if there's an objection to something that's proposed to be introduced, I still must listen to it as a proffer anyway.

So, Mr. Daniel, are you ready to proceed?

MR. DANIEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. DANIEL: Your Honor, since the Court raised

the subject matter jurisdiction several weeks ago, we researched and studied the case the Court suggested of Rainey vs. Haley. We agree with the Court's initial determination that this Court, indeed, does lack subject matter jurisdiction.

Your Honor, specifically, this very Court, as the Court has pointed out, dealt with the issue at the circuit court level, specifically, involving the former House member, Governor Haley, back when she was a House member and this was in 2012. And in your court, Your Honor, in your order of dismissal, the Court found this, alleged violations of the ethics code, however, are exclusively within the subject matter jurisdiction of the state ethics commission or the legislative ethics committees, not the circuit court.

And, Your Honor, in that same order of dismissal restated well said law that without subject matter jurisdiction anything that a court does is void ab initio. And that is simply put void as a matter of law.

Supreme court on appeal unanimously affirmed this Court's ruling in Rainey vs. Haley. In there, the Court explained, quote, the legislature has established a comprehensive statutory scheme to regulate the behavior of elected officials, public employees, lobbyists or others who offer for public service. The legislative ethics committees, parentheses, House and Senate, are charged with

the exclusive -- and, Your Honor, I emphasize, the exclusive responsibility for the handling of ethics complaints, including members of the General Assembly and their staff.

THE COURT: Except for the 51-day rule.

MR. DANIEL: Except for the 51-day rule that Your Honor pointed out, I believe, in the footnote. The Court further states the extensive -- and, again, I emphasize this word, Your Honor, unambiguous statutory scheme contemplates the receipt, the processing and the resolution of ethics complaints against members in the General Assembly in the respective chambers of the legislature. And they state finally it is therefore clear the legislature intended the respective ethics committee to otherwise have exclusive, emphasis, Your Honor, exclusive authority to hear alleged ethics violations of its own members and staff. Again, repeating well said law.

Your Honor, the Court goes on to cite another case that came before the Court that was a very similar issue, but involving a South Carolina state senator. And that was the case of State Senator Robert Ford vs. The State Ethics Commission. Remember, part of that is statutory and it congregates a statutory scheme. In that case, a complaint was filed with the state ethics commission against Senator Ford. And the supreme court -- Senator Ford moved to dismiss that complaint to circuit court. The circuit court

dismissed that complaint. And, of course, Senator Ford's position was based on the well set up principle that the court lacked subject matter jurisdiction to hear an ethics complaint against a sitting state senator. The supreme court affirmed the circuit court dismissing the complaint against Senator Ford.

And, Your Honor, finally, in the Rainey case, the final opinion, the Court said this, The South Carolina constitution, as this Court eluded to in its opening remarks, and this Court have expressly recognized and respected the legislative authority on the conduct of its own members. And the Court as this Court did just this morning cited the separation of powers under Article 1, section 8.

Now, Your Honor, the Attorney General is familiar with this well settled law. And that is evidenced by the October 9th, 2012 news release issued by the Attorney General, which I provided the Court and the Court has cited today. In that, it specifically involves this very case, of Speaker Bobby Harrell. And here the Attorney General, I quote those news release, as the State's chief prosecutor, there is a well established, the emphasis on well established record of our following the legal process. It must be given a chance to proceed as designed by law.

The Attorney General goes on in the news release

to cite this very statue, your Honor, significantly, the ethics statute, section 8-13-540. He says it authorizes the House ethics committee to investigate this type of allegation concerning House members. The law says and he quotes the law right from the statute, after the hearing ethics committee shall determine the findings of facts and then goes on D, in the case of an alleged criminal violation, it shall. And, Your Honor, I add emphasis to that, it shall, not discretionary, refer the matter to the Attorney General for an investigation.

He says finally in his letter, for that reason, it is premature for this office to ask SLED to investigate the matter at this time. The process must proceed as prescribed by state law. Those are the words of the Attorney General in this case (indicating).

Your Honor, next, we know that the Attorney General recognizes it as an ethics complaint from the very beginning because as the Court has pointed out, Ms. Landess' letter talks about an ethics complaint. And not only that, she's got an attachment, Your Honor, which I believe the Court has put into evidence as an exhibit now. And that attachment list the various -- I think there's seven potential ethical --

THE COURT: Five.

MR. DANIEL: Sorry, Your Honor. Five potential

ethical violations. And, Your Honor, after each one is section 8 and whatever section that may have been violated under the South Carolina ethics act.

And then on February -- excuse me, Your Honor, on March the 7th, 2014, the Attorney General, in his affidavit filed with this Court, it's on this record, he says on February the 14th, 2013, a citizen complaint -- this is at paragraph two, Your Honor. A citizen complaint was delivered to this office regarding possible ethics violations by Speaker Robert Harrell. So we know he identified them as ethical allegations.

On March 21st -- and this -- from this very witness stand before Your Honor (indicating), the Attorney General took the stand and in the transcript, it can be found on page 45, line 17, the Attorney General testified, and I quote, When we received the complaint, it was an interesting or awkward situation because, normally, on that course, you would send it to the House ethics committee if it involved a member of the House.

Your Honor, in the Attorney General's brief to the Court on this issue, they rely extensively on the Thrift case. Their reliance is clearly misplaced in all fairness because the Thrift case, Your Honor, stands for the proposition, among others, it says the supreme court -- excuse me, the supreme court decided that the ethics act

violations are, quote, civil in nature as is the ethics act complaint unless and until the committee, that's the ethics committee of the House, Your Honor, determines there is criminal activity, in which case it must, it must refer the matter to the Attorney General.

Your Honor, in conclusion, nobody here, Speaker Harrell --

THE COURT: Well, how about this, I think the Rainey case -- it was a unanimous decision. Three of the Justices said there was no subject matter jurisdiction. I think it was Judge Beatty and Hearn said they would find subject matter jurisdiction, but because Mr. Rainey didn't exhaust his administrative remedies, it should be. That's why I agree -- that they agree with the dismissal, then Mr. Rainey filed a concurrent complaint with the House ethics committee as that case was unfolding.

MR. DANIEL: Yes, sir.

THE COURT: So there's some suggestion that -- by two of the five members of the supreme court that a court could take or recognize subject matter jurisdiction, but since, I assume, as in this case, nothing has gone through the House ethics committee, they didn't exhaust their administrative remedies, no matter how you would look at the proffer. So I guess you're telling me that it appears to you that the Attorney General took something that didn't

belong to him and he's probably got to give it back?

MR. DANIEL: Yes, sir, Your Honor, precisely.

THE COURT: All right. Thank you, Mr. Daniel.

MR. DANIEL: Thank you, Your Honor.

THE COURT: All right.

Mr. Wilson.

MR. WILSON: Thank you, Judge. I appreciate the opportunity. Your Honor, I'm going to start first off by addressing Rainey vs. Haley briefly and then I'm going to come back to it and then I'm going to talk about the context of the ethics act and the grand jury act and why they were passed. But first, I'd like to say Rainey boiled down to a simple statement. It is a case about a private citizen trying to prosecute another person with a civil complaint in a civil common pleas court, which is a completely different scenario which you have the Attorney General. The state --

THE COURT: Well, let me stop you right now before you get started. I think Ms. Landess is a private citizen of the South Carolina Policy Counsel --

MR. WILSON: Your Honor --

THE COURT: Didn't it -- wasn't it triggered by the Landess letter, that's how it got started?

MR. WILSON: Well, Your Honor, I'm going to address that.

THE COURT: Okay. Well, go ahead.

MR. WILSON: If you will let me naturally get to it.

THE COURT: Yes, sir.

MR. WILSON: This is different than the Attorney General and the Chief of SLED sending a criminal investigative report that was the product of a 10-month investigation to the grand jury pursuant to the grand jury act. Rainey is a private citizen.

THE COURT: My question is this, is not Ms. Landess a private citizen?

MR. WILSON: No -- she is, sir.

THE COURT: All right.

MR. WILSON: And --

THE COURT: Then it all started with her complaint.

MR. WILSON: Judge, if you could let me get to my point.

THE COURT: Well, I will let you get to your point, but let's clear this up. Is she a private citizen or not?

MR. WILSON: She is a private citizen.

THE COURT: Okay. Now you may continue, sir.

MR. WILSON: In Rainey, it was a private citizen bringing a civil complaint --

THE COURT: Uh-huh.

MR. WILSON: -- in common pleas court pursuant to the declaratory judgment act. In this case, it's the Attorney General and Chief of SLED referring a criminal investigative report to the state grand jury in general sessions court, which is the criminal court, pursuant to the grand jury act. Two completely separate set of facts.

Your Honor, to fully understand the ethics act and the grand jury act, we must understand the context in which they were written. In 1990, South Carolina had just endured and gone through the worst scandal in our state's history through lost trust. Lost trust had embarrassed the state, had humiliated the General Assembly. Public confidence and public trust were lost in the legislative branch of government, in all branches of government for that matter. This is evidenced by the fact that in the fall of 1991, Governor Campbell convened a special session of the General Assembly so that they could then pass the 1991 ethics act. The 1991 ethics act was passed, but that was just within year of lost trust. Within several months of lost trust, members of the General Assembly tried to pass a constitutional amendment, put it on the ballot to prevent the grand jury from having the authority to prosecute public corruption crimes. That was struck down by 75 percent of the public.

That next fall, the ethics act was passed. Nine

months later, the grand jury act was passed, Your Honor. It is inconceivable that the legislature would have passed ethics reforms in the wake of lost trust that would given them the possible immunity from criminal investigation and prosecution of public corruption crimes to include criminal violations of the ethics act as well as official misconduct perjuring and other crimes.

The grand jury act was passed nine months later after the ethics act. This is important. It is later in time is more specific in the ethics act. The supreme court has held that where statutes are adopted by the same legislative session, any conflict between the two is resolved in favor of the statute which takes effect at the later date and time.

The purpose of all of this was to avoid the courts of this state -- excuse me, was to avoid the state having to go to the feds, which is what they had to do in lost trust to prosecute public corruption. A finding by the courts of this state that says that referral is a precondition for the state to prosecute an act of public corruption would create a situation where the state would have to consider going back to the federal track like we did in pre-1991.

Now, Judge, in your order -- and I know what you want to hear about and I'm getting there in one second, but in your order, Judge, you wrote the plaintiff has not

identified any authority in the South Carolina constitution or the South Carolina code to suggest that this case is appropriately before the court nor has he identified any authority that would authorize him, a private citizen, to attempt to prosecute criminal allegations in a civil court.

Well, first, we're not a criminal court. And secondly, Your Honor, I am not a private citizen in this capacity. Article 5, section 24 says the Attorney General shall be the chief prosecuting officer of the state with authority to supervise the prosecution of all criminal cases in courts of record.

Now, the court in the Thrift case, Your Honor, held that this power, meaning Article 5, section 24 rises from the state constitution and cannot be impaired by legislation ergo the ethics act. Thrift went on to say the constitutional provision is dispositive that any requirement which places the authority to supervise the prosecution of a criminal case in the hands of the ethics commission is unconstitutional. Thrift goes on to say recognizing the constitutional implications, we know that the entire constitutional issue is avoided by recognizing the civil nature of the ethics act complaint. In light of our narrow construction of the statute, referral system only applies to civil complaints. The absence of a complaint to the ethics commission will never operate as a limitation upon the

State's independent right to initiate a criminal prosecution.

THE COURT: And that's what is raised, is this an ethics violation or a criminal complaint?

MR. WILSON: Well, Your Honor, first off, every -- every violation of the ethics act is criminalized under 8-13-1520. It's all criminal. But I'm going to address that in one second, Judge.

A minute ago, it was mentioned separation of powers in article 1 section 8. Article 1, section 11 of the constitution says nothing contained in this constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure as the General Assembly may provide.

You read Article 1, Section 8, separation of powers. Judge, it says that no department shall assume or discharge the duties of another. Here what we're doing is we're creating a situation where the House ethics committee is now the supervisor of its own prosecution of its own members. That is an authority given to the Attorney General under Article 5, Section 24. In State V. Peak, the Supreme Court held the authority to grant immunity from criminal prosecution also resides exclusively in the Attorney

general. What if a member of the House violates the law, violates the ethics act or official misconduct, which the same facts support the ethics act also could support perjury, they could support official misconduct --

THE COURT: Well, that's a possibility, Mr. Attorney General, but in this case, do we have an ethics act violation or a criminal violation?

MR. WILSON: Well, Judge --

THE COURT: It's styled as an ethics act violation by the triggering device, sir. This is what the complaint --

MR. WILSON: Judge, in --

THE COURT: This is what the complainant decided to call it, an ethics complaint. Not a criminal complaint, not a lost trust complaint, not a criminal -- complaint, not gang related activity. It's styled, it's called, it's labeled an ethics complaint.

MR. WILSON: Your Honor, in the -- when you were reading earlier the time line, you were reading her complaint into the record, I don't know where it is in the documentation. They haven't found it, but I've read in her complaint where she alleges the 8-13 crimes and she also alleges 14-7-1615, which is the definition of public corruption under the grand jury act.

If you look to 14-7-1615, and it is in her

complaint and we'll put our hands on it for you, but it says the term public corruption means any unlawful activity under color of or connection with any public office or employment of any public official, et cetera. The facts that support ethics violations also support nonethics violations of crimes, Judge.

When you go to 1630 of the grand jury act, 14-7-1630, that is the portal, I guess is the word I'm thinking of for subject matter jurisdiction that the supreme court has always looked to when subject matter jurisdiction on the grand jury has been challenged. In multiple cases, the supreme court always goes to 16-30. And in 16-30, it says the subject matter jurisdiction of the state grand jury shall -- in all cases is limited to the following offenses, then it gives 12 areas of inquiry. The number -- third inquiry is a crime, statutory, common law or other involving public corruption as defined in section 16-15 and a crime, statutory, common law or other involving public corruption, which is defined as any unlawful activity under color of.

So when you read that, Judge -- and in Ms. Landess' complaint, she alleges violations under 14-7-1615. It wasn't read into the record earlier. It wasn't read in when Mr. Daniel was up here, but that was also part of it when she met with us the last time.

THE COURT: Well, how many times did y'all meet

anyways, I'm curious?

MR. WILSON: Two or three.

THE COURT: All right.

MR. WILSON: Over four months or five months. I don't really recall, Judge.

THE COURT: So you met two or three times over a four-month period before Valentine's Day 2013?

MR. WILSON: Yes, sir. We --

THE COURT: All right.

MR. WILSON: Going off my recollection, but in the middle to late fall, she came to us and our office told her that --

THE COURT: That it goes to the House ethics --

MR. WILSON: Well, we said that we prefer that you go to the House ethics committee.

THE COURT: All right.

MR. WILSON: And I'll -- I'm going to go ahead and jump to the letter -- the statement that Mr. Daniel read. It was interesting, Judge, I -- when we asked for the oral arguments today in public court, I couldn't understand why Mr. Daniel and Mr. Howe objected to them until I saw what their pleading was. It was a one-page --

MR. DANIEL: Your Honor, I --

THE COURT: You'll get a chance to respond. Relax, Mr. Daniel.

MR. WILSON: I haven't --

THE COURT: Stop. Don't talk to each other. Direct your attention to me.

MR. WILSON: Thank you. Thank you, Judge. When I read that their entire pleading was an e-mail saying they agreed with our press release, that was very interesting to me because when Mr. Daniel was reading the press release into the record a moment ago, he stopped before he read the last sentence of the press release. In fact, I marked it. I even bolded it here. The very last sentence of that release, Judge, says should the House ethics committee not act, this office is then prepared to do what is in the public's best interest. That was put there for a purpose, Judge. We're not --

THE COURT: Well, the House ethics committee never had an opportunity to act, did they not?

MR. WILSON: Well, actually, Judge, my understanding is that Ms. Landess went and met with the chairman of the house ethics --

THE COURT: By the way, is Mr. Landess here?

(Ms. Landess raises her hand.)

THE COURT: Does she intend to testify or offer any evidence? You don't have to answer that. Go ahead. I'm sorry, Mr. Wilson.

MR. WILSON: Ms. Landess, to my understanding, I

don't think she was happy with our office at the time, but she did go at our request and go meet with Chairman Kenny Bingham, who is the Chairman of the House ethics committee. She went with her attorney, Tom Davis. And they met, I guess it was right around Valentine's Day or right before Valentine's Day before she met with us the last time. And my understanding -- I also read a press statement put out by Mr. Bingham that he would not -- or she did not go into the substance of the allegations, but he did explain the process to her and every time that he explained the process to her, she would raise to him, according to his statement, the criminal allegations. He told her in his press statement where he told her that if you believe there's criminal allegations, you -- it's, certainly, your right under the law to take it to the Attorney General.

When she came back to us the last time, she came back to us with a thick packet of information that we had not yet seen before. And that packet of information, it was reviewed by all of the attorneys (indicating) you see sitting behind me over a period of a couple of days. And it was at the point where we read that there was a criminal allegation, not an ethics act violation, which the ethics acts are criminal violations under 1520, but when we read it was a criminal allegation, we also knew that some of the members of the House ethics committee staff may, in fact, be

fact witnesses and all of the staff members who process and handle the investigations are, in fact, employees of the Speaker who can be hired and fired by him, we said well, let's refer it to SLED and let them do the initial inquiry. And it was around Valentine's Day of that year that we -- Chief Deputy McIntosh sent the report over to SLED for them to do a preliminary inquiry.

THE COURT: Yes, sir.

MR. WILSON: Which took 10 months.

Judge, if I may go back to my original point is that we're all looking at the ethics act and we're looking at section 540 of the -- 8-30-540, which is a process that the House ethics committee must follow when they receive a complaint. It's been read into the record. But it's a process they must follow. And once you read 540 --

THE COURT: Doesn't this go to the issue of separation of powers, Mr. Wilson?

MR. WILSON: Well, Judge, what I was saying before is is if the House ethics committee is allowed -- in other words, if the Court's going to say that the House ethics -- that the Attorney General can only prosecute if the House ethics committee refers a case to us, then what if the House ethics committee refuses to refer a case and there is probable cause or there is alleged criminal violation, then isn't that tantamount to legislative criminal immunity if

someone can influence the House ethics committee.

THE COURT: Well, that's your argument, you made that in your brief.

MR. WILSON: Yes, Judge, but the court in Peak has said that only the Attorney General can grant legislative -- or, excuse me, grant immunity from criminal prosecution.

THE COURT: Was it the -- case?

MR. WILSON: No, sir, it was the Peak case.

THE COURT: All right.

MR. WILSON: The authority to grant immunity from criminal prosecution also resides exclusively in the Attorney General. Administrative bodies like the House ethics committee cannot be gatekeepers to criminal investigation.

Second, Judge, the very last provision of the ethics act I believe is -- or that section of the ethics act is 813-1520, which makes violations of the ethics act criminal. And if you look at 1615 of the grand jury act, it says any unlawful activity, unlawful, criminal. Your Honor, the ethics committee is also hamstrung in another way. They have a statute of limitations of four years.

So let's give a hypothetical situation. If the Court finds that the executive branch of government can't institute it's own investigative process or prosecution process with a referral from the House or Senate ethics

committee, let's say a House member or a senator decides to take --

THE COURT: Well, he can rob a bank, he can --

MR. WILSON: No, no --

THE COURT: Cheat somebody, he can do a lot of things that would make it criminal.

MR. WILSON: Well, Judge, let's say he takes -- he goes to Vegas with his best friends for a bachelor party, runs up a $50,000 bill on booze, prostitutes and gambling --

THE COURT: This would be a Republican House member.

(Laughter.)

MR. WILSON: No one's above it, Judge.

THE COURT: Agreed.

MR. WILSON: Comes back and then has the campaign reimburse him the money for that bachelor party trip in Vegas.

THE COURT: Yes.

MR. WILSON: Well, let's say no one looks at the ethics disclosures for four years. Someone made the point if he did it at the beginning of a quarter, he'd get a free three months, he's only have to go three years and nine months to get to the four years. But if he gets to four years and one day and then someone says wait a second, that money was spent for that activity in Vegas, the House ethics

committee can't receive it because it's outside of the four years and now we can't prosecute it, that is a criminal act outside of the four years that we're -- we now can't prosecute because the House ethics committee can't even refer it to us. That is an absurd outcome under this set of facts.

Now, Judge, going back to -- going back to the press statement. People can say the press statement was imprudent. They can say it's poorly written.

THE COURT: I think --

MR. WILSON: I take responsibility -- go ahead.

THE COURT: I think it goes to notice. It goes to notice.

MR. WILSON: Well, Judge, I will tell you right now, no one in my staff who has been a part of this thing since the beginning believes that we were on notice that we were prohibited --

THE COURT: No, I mean, the press release suggested you knew about the Rainey case, you knew about the statute, you knew about the -- complaint against a member of the House for those violations of ethics act.

MR. WILSON: Well, Judge, we were aware of the Rainey case.

THE COURT: Okay.

MR. WILSON: But we weren't -- we do not believe

the Rainey case applied.

THE COURT: That's right, you were aware of Rainey you didn't think it applied in this situation.

MR. WILSON: Well, Judge, I want to talk about that press statement for a second.

THE COURT: Well, first, Mr. Wilson.

MR. WILSON: Yes, sir.

THE COURT: Everybody has a tough job. You know, I worked in the Attorney General's office for five years. It was -- I enjoyed working there. And I know a lot of people there. But this, it's not an easy job at the AG. It's not an easy job to be the Speaker. So I'm not casting disbursements on anyone.

MR. WILSON: Yes, sir.

THE COURT: And I would say I've known you since you were young, and let's just leave it at that. Go ahead. I'm not going to interrupt you.

MR. WILSON: Yes, sir.

Judge, when we sent that press statement out, we, obviously -- the last sentence in there that I read earlier should the House ethics committee not act, this office is then prepared to do what is in the public's best interest is indicative of the fact that we didn't think we had to wait on the House ethics committee.

THE COURT: All right. That's fine.

MR. WILSON: We put strong language in the front of that statement, you know, things like South Carolina statute 540 authorizes the House ethics committee. It doesn't say it prohibits us, it authorizes them. I use this analogy, Judge, I have 200 plus employees at the Attorney General's office. Everyone knows that I have an open door policy and if I'm needed, I can engage in a dispute, but I have a mandatory policy and all the managers know this. Two employees get into a dispute or a conflict, they go to the front line manager and that front line manager is there to try to resolve that dispute or conflict. If the front line manager can't resolve the front line or resolve the dispute, then the front line manager takes those employees to the intermediate manager. That intermediate manager, along with the front line manager tries to resolve the dispute. If they can't, then it comes to the Chief Deputy Attorney General and the Chief of Staff in the Attorney General's office. 98 to 99 percent of the time, I don't ever get involved in disputes because that process is in place. It's mandatory and it's designed to try to vet out those issues that won't be a distraction to me and that other managers are better staffed to be able to handle because they're more privy to the fact pattern. However, one to two percent of the time, there's an issue that's so unique that I, basically, go directly to it and we don't follow the

process. I don't follow the process because I'm not prohibited by the process. I go and I deal with the conflict and try to get it resolved to help the two employees. That happens rarely.

The point I'm making is, our office has an internal policy, Judge, that we want every one to try to go to civil remedies first, not because we can't take it directly or to civil agencies or committees, but because we feel that they can resolve 98 to 99 percent of them. We're not prohibited, I'm not barred, I'm not estopped as the chief prosecuting officer of the state from actually going and looking at a case if I believe there may be alleged criminal involvement, but this is a unique case. I don't think anyone disputes that.

So when -- when that press release was sent out, it was in response to media request and multiple people trying to ask this office to get involved. And it's not just this case. This isn't about this case. This is about the power and authority of the state grand jury and the authority of the Attorney General's office and the criminal justice system, Your Honor. We -- the politics have muddied this and I want to get away from that. The point is that press statements are not legally binding. If they were, I'll have one issued in 20 minutes that will find this Court --

THE COURT: Well, that's why I made the observation it goes to notice instead of binding. It just shows that you knew what the law was and procedure was at the time you decided to take this case.

MR. WILSON: Well, I'm telling you the reason the press statement was sent out the way it was is to encourage people to impress upon people don't berate us because then there's a precedent set in every single ethics complaint every where --

THE COURT: I know. Will go to you. I worked there for five years. I --

MR. WILSON: Everybody wants the Attorney General to fix all the problems and that's not a knock on anyone complainant, that's just the facts. We try to push people away. Ms. Landess availed herself of the opportunity to meet with the chairman of the House ethics committee. They met. Even in his press statement, he recognized that it was her right under the law to bring it to us because he recognized he didn't have jurisdiction if it was, in fact, criminal.

Your Honor, I wanted to go to Rainey V. Haley case and I've got some excerpts from the case here. In the very beginning of the Rainey V. Haley case, the Court says the circuit court dismissed the action for lack of jurisdiction finding the House ethics committee has exclusive

jurisdiction to hear complaints of ethics violations against it's own members. We agree and affirm. But if you read 8-13-540, it gives the House ethics committee the power to do four things once they file the process. They could find that a technical violation has occurred. They can issue a public or private reprimand. They could recommend expulsion. Those are all administrative. And if it's criminal, they have to refer it to the Attorney General. So it's a restriction on them, so they can't hear criminal allegation. So in the Court's opening statement when it says has exclusive jurisdiction to hear complaints, well, the Court is not talking about criminal allegations, they're talking about civil complaints.

THE COURT: That's true, yeah.

MR. WILSON: The last paragraph or near the last paragraph of Rainey V. Haley, it says in some ethics investigations concerning members and staff of the legislature are intended to be solely within the legislature's purview to the exclusion of the courts, except in similar circumstances expressed and provided for the section 8-13-530, subsection four. Well, first, in the first sentence it says in some ethics investigations. It doesn't say not criminal investigations. And in the last sentence, it refers to 534, which we call the 50-day rule, and that's the rule that within 50 days you can't file a

complaint with the committee within --

THE COURT: You could then go to the circuit court.

MR. WILSON: And then it says -- on 530 subparagraph four, it says during this 50-day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction or both. Even in the exception, it's referring to a civil court. Common pleas is civil court. And it says mandamus, injunction or both, which are generally civil remedies. So the supreme court never ever in the majority opinion mentions the Attorney General except in two footnotes and that's when they're quoting the law that I've already quoted. They never mention criminal investigations, general sessions court as a prohibition on us.

Where it is addressed is in the concurring opinion by Justice Beatty and Justice Hearn. In concurring opinion, Justice Beatty writes one except, although appellant was not the proper party to pursue the criminal action, his concern for the public was not without recourse. As the Attorney General's office, either on its own initiative or via referral from the House of Representations ethics committee could have sought a criminal determination of alleged misconduct. He says on its own initiative.

THE COURT: And emphasize the word criminal.

MR. WILSON: Yes, Judge, and I'll come back to that. Then it also says in the next paragraph, our state constitution provides the Attorney General shall be the chief prosecuting officer and he cites the constitutional provision and then says thus the prosecution has wide latitude in selecting what cases to prosecute, which necessarily would include violations of the ethics act.

He then cites Thrift again, which held that prosecution under the ethics act does not referral by the ethics commission as the AG's power to prosecute arises from out state constitution and cannot be impaired by legislation.

He concluded -- near the conclusion, he says to the extent appellate's complaint can be construed as purely a civil action involving a violation of the ethics act, I would find it was not ripe for judicial review as appellate had failed to exhaust the administrative remedies provided for the ethics act. He was in a civil common pleas court trying to file a civil complaint. He had not exhausted, in my view, which the court was saying, the remedies of the ethics committee at that time against Governor Haley. But Justice Hearn and written by Justice Beatty say the prosecution has wide latitude in selecting what cases to prosecute, which necessarily would include violations of the

ethics act. The reason he's saying that, Your Honor, is because violations of the ethics act are also criminal.

THE COURT: They can be criminal. They aren't always also criminal.

MR. WILSON: And, Judge, the same facts that support violations of certain violations in the ethics act also support nonethics act violations. Nonethics act violations. You can official misconduct. You can have perjury. You can have a whole plethora of other types of crimes I'm not even mentioning right now that the same facts supporting those allegations under 8-13 can support nonethics act violations.

So, Your Honor, I wanted to identify -- I have three former attorneys general here. I've talk --

THE COURT: Henry McMaster, Charlie Condon and Travis Medlock in that order from my left to right.

MR. WILSON: That's right. And --

THE COURT: Y'all want to stand up so people can get a good look at you. Go ahead.

(Laughter.)

THE COURT: Go ahead. Stand up.

(Mr. McMaster, Mr. Condon and Mr. Medlock stands.)

First in line is Travis Medlock. I worked with him for five years.

Next in line is Charlie Condon I believe followed by Henry McMaster.

MR. WILSON: Also --

THE COURT: All good patriotic --

MR. WILSON: -- Attorney General, Robert Mulch is in the back.

THE COURT: All good patriotic citizens.

MR. WILSON: Yeah, and I agree with you, Judge.

The reason I have them is here is just because they're service in the Attorney General's office -- you know, General McMaster had been adviser to a federal grand jury and, actually, as U. S. Attorney had recommended that we have a state grand jury system back in the 80's. General Medlock, when you worked for him under his leadership and, obviously, the leadership of Carroll Campbell, they got passed the grand jury act and, subsequently the --

THE COURT: Well, believe it or not, me and a young assistant Attorney General Tommy and Ken Moore wrote a memo, I think it was 22 pages, regarding the efficacy of state wide grand jury system in South Carolina and I think it was about four or five states had it at that time, Pennsylvania being one. There was some state west of the Mississippi. So even before this act was conceived, I was part of it, so to speak, and Bob Cook will verify that.

MR. COOK: Yes, sir.

MR. WILSON: And General Cook was also, I believe, the original author of the --

THE COURT: I think he, at least, takes credit for writing it. I don't know really.

(Laughter.)

MR. WILSON: But, Your Honor --

THE COURT: Yes, sir, go ahead.

MR. WILSON: You have one who is the father of the grand jury, one, Charlie Condon who was the first Attorney General who utilized it to its present day function and General McMaster who advocated for it as U. S. Attorney. And all of them agree that a referral from the ethics committee and the legislature as a precondition for the Attorney General's office to invest -- even investigate, not even prosecuting, we're just investigating an allegation of ethics and/or criminal conduct is never what was intended by the General Assembly when they passed this act in the wake of lost trust and prior to the grand jury act, which we believe is controlling.

Judge, beg the Court's indulgence?

THE COURT: Yes, sir, take your time.

MR. WILSON: Judge, two things.

THE COURT: Yes, sir.

MR. WILSON: And you read this into the record, I'm going to read half -- part of it. When she -- in Ms.

Landess' letter, she says the apparent ethics violations, if proven, could be possibly seen as a pattern of public corruption that would out of the jurisdiction of the House ethics committee to investigate --

THE COURT: Is Ms. Landess a lawyer?

MR. WILSON: No, sir. I'm going to the next part of the complaint, which is what we read -- paragraph two on page seven set forth all the applicable House rules and statutory codes sections alleged to have been violated by the respondent. They allege several, 8-13 and then they end with South Carolina code 14-7-1615, which is the public rushing component of the ethics act. And when we read that, we went and looked it up and then we read the facts of the packet of documentation and what was embedded in the facts of that packet, which is not outlined in her letter or outlined in the complaint, we said wow. This --

THE COURT: I'm sorry. Slow down and back up. Something -- would you repeat what you just said, I'm sorry, I didn't quite understand.

MR. WILSON: In her letter and complaint, she has a stack of supporting documentation. And she's -- in her complaint, she's -- just like an indictment on a case doesn't tell you all the facts of the case, it's enough to put the person on notice. Well, we read the packet of information and said --

THE COURT: Has the Court been provided with that packet?

MR. WILSON: I don't know, Your Honor.

THE COURT: I know, the answer is no. Go ahead. I'm sorry.

MR. WILSON: But that information to my knowledge was referred with the letter to SLED. And when SLED came back, they brought back to us -- and, honestly, when we sent it to SLED, me, personally, thought it would be a three or four week process and it would come back and this thing would have been over. But 10 months later, we got a voluminous SLED report that provided us additional information not yet known to this Court in its entirety or anyone else. And that information is what we based our determination on --

THE COURT: So you based your determination on something that the Court hasn't seen and nobody else has seen?

MR. WILSON: Well, Judge, you have seen the petition. You have seen the -- you have seen the information that we brought to you and that is the --

THE COURT: We don't need to go too far, I know what you're saying.

MR. WILSON: Yes, sir.

THE COURT: But how does that mitigate or resolve

the issue of the matter of subject matter jurisdiction?

MR. WILSON: Well, Judge, I'll just restate what Justice Beatty said and concurred with Justice Hearn --

THE COURT: Well, what about -- what about Justice Pleicones, Justice Kittredge who authored the opinion and how about Chief Justice Toal?

MR. WILSON: Well, Judge, none of them addressed the authority of the Attorney General. None of them addressed the fact that there are criminal allegations within -- there's a criminal provision within the ethics act. That's never mentioned. They're simply talking about a private citizen filing a civil complaint in common pleas court pursuant to the declaratory judgment act. Basically, you had an individual who was trying to prosecute Governor Haley by having the Court declaring she violated a law in civil court. And that is not what's going on here. We're not even asking the Court to adjudicate something. We're in the investigative process.

THE COURT: All right.

MR. WILSON: Which may or may not yield anything. We're waiting on the grand jury to conduct its work, Your Honor. But none of those three Justices in the majority disagree with in the majority with what Justice Beatty has said and Justice Hearn has said, which is we could have initiated this on our own or via referral and that we have

wide latitude in selecting what cases to prosecute, which necessarily would include violations of the ethics act, which is, in fact, a criminal violation under 15 --

THE COURT: I think Mr. Cook wants --

MR. WILSON: Yes, sir. Give me two seconds, Judge.

THE COURT: Yeah, take your time, sir.

MR. WILSON: Your Honor, at this time.

THE COURT: Mr. Cook, yes, sir.

MR. WILSON: Mr. Cook is going to speak.

MR. COOK: Good morning, Your Honor, it's a pleasure to be here.

THE COURT: I think it's afternoon already.

MR. COOK: All right, sir.

THE COURT: You've been here too long. Go ahead.

(Laughter.)

MR. COOK: But it's an honor to appear before you.

Your Honor, I want to speak to the separation of powers issue, which was dealt with in Rainey V. Haley. The Court referenced as part of the separation of powers statement in Rainey that Article 3, section 11 and Article 3, section 12 are part of what the court was basing its determination on. And I'm -- Article 3, section 11 speaks to each House has the sole judge of the qualification of its members. And Article 3, section 12 gives each House the

right to expel.

Now, we reference this in our brief, Your Honor, but just a year before Rainey, the Court dealt in the Anderson ballot question with Article 3, section 11. And the Court -- the argument was -- in the Anderson ballot question was that each House had the -- was the sole judge of the qualification of its members. The Court, clearly, held that that provision did not deprive the Court of subject matter jurisdiction. It did not intrude on the judicial function. It did not deprive the Court of the right to determine what the law is. And likewise, the supreme court has dealt -- U.S. Supreme Court has dealt with Article 3, section 11 and 12, similar provisions. And the Court says very clearly in the Burton case that those provisions do not deprive a court of the right to hear criminal prosecution --

THE COURT: You know, this is the problem, you say criminal, the complaint says ethics. There's a difference between -- there's an obvious difference between them. If a member of the House committed a criminal offense, he could be arrested, indicted and anything else. But if the triggering mechanism, the complaint, is styled ethics complaint, it doesn't necessarily automatically become a criminal complaint. That's the distinction.

MR. COOK: No, it doesn't, Your Honor, but that is

for the prosecutor to determine, not the House --

THE COURT: I don't think he has unfettered power to do anything he wants. That brings in the idea of separation of powers, Mr. Cook.

MR. COOK: No, Your Honor --

THE COURT: I'm going to let you finish, but I think the distinction is a little different --

MR. COOK: I understand what you're saying, but Article 3, section 11, Article 3, section 12, simply because they allow each House to do those things that I mentioned doesn't deprive the executive of the power to make prosecutorial decisions.

But I want to get to two other provisions of the constitution, which also would deal with separation of power. Article 1, section 11, which I drafted, the whole idea of Article 1, section 11 which authorized the General Assembly to create the state grand jury, as General Wilson read, it says nothing contained in this constitution, nothing contained in this constitution is deemed to limit the General Assembly in determining what the jurisdiction or the procedures or the authority of the state grand jury might be. How can it be that Article 1, section 11 says nothing in this constitution and then say the same constitution trumps that? How do you do that?

THE COURT: I guess you pass a law.

MR. COOK: No, sir. One provision of the constitution doesn't trump another. And if it says in there that nothing contained in this constitution -- the whole purpose of that, Your Honor, as you recall very well, we worked together on it, the whole purpose was the structural limitations that would prevent a state grand jury. County to county --

THE COURT: County to county, yes, sir. That's why the Thrift brothers were charged in a whole new county.

MR. COOK: Yes, sir, I believe that's correct.

THE COURT: I was a part of that case.

MR. COOK: You have a good memory.

THE COURT: That's 33 years ago.

MR. COOK: Yes, sir.

THE COURT: How long ago was that? I think Reagan was in the White House.

(Laughter.)

MR. COOK: But -- but nothing contained in this constitution has to include separation of powers.

THE COURT: All right.

MR. COOK: So I don't quite understand how Rainey can say -- how the Court could use Rainey as a limitation on the prosecutor in the state grand jury --

THE COURT: Mr. Cook, I have yet to make a decision. That's why I -- that's why I gave y'all -- this

is such an important issue --

MR. COOK: I understand --

THE COURT: To everybody involved --

MR. COOK: I understand.

THE COURT: The --

MR. COOK: But --

THE COURT: I say take as much time as you need because it is important.

MR. COOK: It is important, Your Honor, and this goes to the very future of the state grand jury.

THE COURT: Exactly. It has nothing to do with Bobby Harrell.

MR. COOK: No, sir.

THE COURT: Or Allen Wilson --

MR. COOK: I'm not up here --

THE COURT: It's our system of government --

MR. COOK: I'm up here arguing as one who is very instrumental in the state grand jury.

THE COURT: Yeah.

MR. COOK: So my point being that that was put in there so that provisions in the constitution such as separation of powers could not be deemed as a limitation on the authority of the state grand jury to investigate --

THE COURT: Criminal offenses.

MR. COOK: Criminal offenses, but as the General

has said all -- all violations of the ethics law and 1520 are criminal offenses.

THE COURT: Mr. Cook, since I've known you so long, I'm going to pose an argument that was used by the 16th president who's also -- and the argument goes, question, if you count a dog's tail as a leg, how many legs does the dog have? Four. You know why? A tail can never be a leg.

MR. COOK: That's correct.

THE COURT: All right.

MR. COOK: Well, if I may, Your Honor. And then we get to another provision of the constitution, which is Article 3, section 14. Article 3, section 14 provides immunity and privilege to members of the General Assembly during the session for civil process. It very clearly excludes treason, felony and breach of the peace. And those provisions are read as all criminal matters, so a legislator or a member of the General Assembly by our own constitution going back to 1790 is not immune from criminal prosecution.

THE COURT: Nobody's saying he's immune from criminal prosecution.

MR. COOK: Well, if you have to go through the --

THE COURT: Well, this is an -- it's not styled as criminal prosecution or a lost trust prosecution or a drug trafficking prosecution, it's styled as a ethics law --

MR. COOK: Well, let me ask you this, Your Honor --

THE COURT: I'm not here to answer questions.

MR. COOK: I understand.

THE COURT: But you can ask it.

MR. COOK: I can ask a rhetorical question.

THE COURT: Go ahead.

MR. COOK: Would it make any difference in Your Honor's view if this were deemed some other crime beyond the ethics act? Would it may any difference if it was misconduct --

THE COURT: Well, since this is rhetorical, I'll let you answer the question, Mr. Cook.

MR. COOK: I don't -- I think -- I think if the problem is ethics act complaint, then as the General just pointed out, the jurisdiction of the state grand jury under public corruption goes way beyond ethics act complaints and it goes to other matters such as official misconduct. And so I'm just rhetorically asking --

THE COURT: I understand.

MR. COOK: Is -- is the -- is the issue here the fact that it was simply an ethics matter or would it make --

THE COURT: Well, I think it kicks everything off. It's the triggering mechanism that brings us all here today. Without that letter from Ms. Landess February 14th, 2013,

without a complaint, without the AG, we wouldn't be here. But what started it all? Let's go to the beginning. What was the seed that grew this tree and that was the letter from Ms. Landess and attached complaint. And it says ethical. You know, it says what it says.

MR. COOK: It says what it says, but 10 months, there's a lot of water --

THE COURT: But the problem with subject matter jurisdiction doesn't matter when you raise it. You can raise it before something begins, you can raise it in the middle of a trial --

MR. COOK: No question.

THE COURT: The supreme court can raise it on its own --

MR. COOK: I bow to Your Honor on that --

THE COURT: So I raised it --

MR. COOK: I know you raised it --

THE COURT: And, Mr. Cook, and everybody involved, I haven't made a decision.

MR. COOK: I understand.

THE COURT: I'm here to listen.

MR. COOK: That's why I'm here.

THE COURT: I have no idea what I'm going to do.

MR. COOK: That's why I'm here, Your Honor.

THE COURT: Go ahead.

MR. COOK: It just seems to me, Your Honor, that there are several provisions in the constitution that make it clear that separation of powers doesn't trump everything in this matter.

THE COURT: Okay.

MR. COOK: And so if Rainey is based on separation of powers, then Rainey was not talking about a criminal matter.

THE COURT: I think Mr. Rainey accused the Governor of perjury, which is a criminal matter, which was stated in the complaint. That issue was --

MR. COOK: Yes, sir, but it was in common pleas court and as, Your Honor, adroitly held --

THE COURT: That's very nice to say.

(Laughter.)

THE COURT: Go ahead, Mr. Cook.

MR. COOK: You like that word?

THE COURT: Yes, that's a good start.

MR. COOK: As, Your Honor, adroitly held, he as a private citizen couldn't bring that in the common pleas court and, actually, I agree with that.

THE COURT: Well, thank you.

(Laughter.)

MR. COOK: So we go way back, Your Honor.

THE COURT: Yeah, I know. And the bottom line,

Mr. Cook, as everybody knows, there's two things I can do. I can find no subject matter jurisdiction, the AG is going to appeal. If I find subject matter jurisdiction, Mr. Harrell is going to appeal. And both of you should. Both of you may appeal my decision anyway. And that's why we're here to make the record because the final decision will be made by a group that resides at the intersection of Sumter and Gervais.

MR. COOK: My final comment, Your Honor, if the House ethics committee is the determinant factor here, it stands the idea of separation of powers on its head. It puts the legislature in the position roughly similar to the British parliament, which has all three powers and that would be prosecutor --

THE COURT: Uh-huh.

MR. COOK: -- judge and jury. So I would ask the Court, and I know the Court will fairly and equitably apply the law. And that's what I have to say, Your Honor.

THE COURT: Thank you, Mr. Cook.

Mr. Daniel.

MR. DANIEL: I would like to read just the very last paragraph of the majority opinion. It's very short.

THE COURT: In the Rainey case?

MR. DANIEL: Yes, sir. Ethics investigations concerning members and staff of the legislature are intended

to be solely within the legislature purview, to the exclusion of the courts, except in similar circumstances expressly provided for the section 8-13 when they determine criminal conduct. It says the court. It doesn't say general sessions court. It doesn't say common pleas. It says the court.

And, Your Honor, the statutes don't conflict. This is all -- our position is this is all premature. The process outlined in this comprehensive statutory scheme is that an ethics complaint is filed with the House ethics committee. That committee then does its investigation, as the supreme court noted, processes the complaint, investigates it, looks at it and makes a determination. And then if, under D, there's a finding of criminal, they shall -- it says they shall. Now, what the Attorney General's position is doing, Your Honor, is assuming that the legislators, the lawmakers themselves are not going to follow the law. And the law presumes, the lawmakers, just like the members of the general public, will follow the law.

Your Honor, in closing, no one is asking for immunity from any prosecution, only that the proper process be followed. Even the Attorney General, Your Honor, especially the Attorney General, we've seen today knows the rules. The Attorney General, especially the Attorney General has to play by the rules and follow the law. Thank

you, Your Honor.

THE COURT: All right. Thank you.

Anything further, Mr. Wilson?

MR. WILSON: Briefly, Your Honor.

THE COURT: Yes, sir. Go ahead.

MR. WILSON: Thank you.

Mr. Daniel read the last paragraph talking about to the exclusion of the courts. I just want to raise this, Your Honor. When you look to the jurisdiction of the grand jury, you look to the four corners of 14-7-1630(b) -- well, the whole provision, but in B, it says whenever the Attorney General and the chief of the South Carolina Law Enforcement Division consider it necessary and normal investigative or prosecutorial procedures are not adequate, the Attorney General may petition in writing to the chief administrative judge of the judicial circuit in which he seeks to impanel a state grand jury for an order compelling the state grand jury. This judge to refer to the article as the impaneling judge.

THE COURT: Uh-huh.

MR. WILSON: There's, obviously, a supreme court order that allows for an alternative judge to be selected if the other one is not available, but that provision -- the authority of a circuit judge to sign a petition to impanel a grand jury doesn't come so much from their authority as a

circuit judge, it comes from their authority under B, which is they have to be the chief administrative judge of the judicial circuit which we're impaneling or, in the alternative selected by supreme court under the statute.

I couldn't go to Lexington or Kershaw or York and find a judge up there to impanel a grand jury. I had to go --

THE COURT: You had to come here.

MR. WILSON: I had to come here.

THE COURT: Statewide grand jury.

MR. WILSON: I had to come here. So they're talking about the courts in a generic sense and also talking about the courts in a civil sense, so I wanted to raise that.

One last point, Your Honor. We did not attach Ms. Landess' complaint to a grand jury petition and ask a judge to sign it. We attached a criminal investigative report. And we keep talking about the complaint. It does not matter what Ms. Landess called the complaint -- or what she called the behavior in the complaint. What matters is is when I received the report from SLED 10 months later that me and our staff in our office, under our constitutional duty -- under our constitutional authority and as chief prosecutor made a criminal referral at that point. And it was the SLED report that really -- and we were not investigating a civil

matter. We were having SLED look at it. They sent a report back. We forwarded the report to the grand jury, which was signed by the impaneling judge.

Your Honor, my last sentence is if there's a referral required by the House or Senate ethics committee, legislators may have criminal immunity from prosecution from crimes outside the ethics act.

THE COURT: Nobody's arguing that point.

MR. WILSON: That could be -- that could be an unintended consequence.

THE COURT: I understand.

MR. WILSON: And I was going to leave that with Your Honor. And 15-20 does criminalize the ethics act.

THE COURT: Mr. Wilson, thank you for your lively presentation.

MR. WILSON: Thank you, Your Honor.

THE COURT: I don't remember Travis Medlock, Henry McMaster or Charlie Condon making such an appearance. I don't recall, y'all might have.

Anything further?

(There was no response.)

THE COURT: All right.

So people wonder what might happen from this point on. I raise this issue in response because I recognize it being a very important not only to the Attorney General's

office, but to the House member and the Senate members and the legislature. Too important of an issue to shoot from the hip. And I remember having a discussion with everybody. Since I raised it, that's why I gave everybody as much time as you felt you needed to prepare for this. I say that just to indicate that I am in no hurry to make a decision. It won't be today. It won't be tomorrow. I'll take as long as I need. I'll be as thorough as I can and make the best decision possible by the help everybody in the presentation made by both sides here. So I'll leave it at that.

And there's one or two logistical things I mentioned earlier and changes about how y'all like to proceed from here and I would like to revisit those. But don't expect an order today, tomorrow or Monday. I'm going to take my time. Since this is a nonjury issue, if I need additional information, obviously, I'm in a position to request. I might need something additional. So probably looking at a week or so. Even if I completed it say next Wednesday, I would still think about it for another couple of days. I'm going to be deliberate and fair and do the best I can based on what I've heard here today. And nobody has horns and a tail in this endeavor. Everybody is trying to do the right thing. Everybody is a good patriotic -- citizen let's just see where it goes from here.

So with that in mind, I appreciate your attention.

But I do need to speak with the lawyers one other time as a followup to our brief discussion earlier. This matter is concluded. Thank you.

END OF PROCEEDINGS

COUNTY OF RICHLAND)

CERTIFICATE OF REPORTER

I, Crystal Holmes, hereby certify that I reported the preceding case entitled Bobby Harrel Vs. State of SC Case No. M 2014-237, at the Richland County Courthouse, May 2, 2014.

I FURTHER CERTIFY that the foregoing pages 1 through 67 constitute a true, accurate and full transcript of said hearing.

I FURTHER CERTIFY that I am not employed by any of the parties hereto and I have no financial interest in the outcome of said case.

IN WITNESS WHEREOF, I have heretofore set my hand and seal at Richland County on this 8TH day of MAY, 2014.

_____

Crystal Holmes, Court Reporter
Official Reporter



OUR MISSION
is to educate members and all South Carolinians about state and local public policy based on the traditional South Carolina values of individual liberty and responsibility, free enterprise and limited government.

February 14, 2013

Attorney General Alan Wilson
Rembert Dennis Building
1000 Assembly Street
Room 519
Columbia, SC 29201

Dear Alan,

I appreciate your decision to accept and consider the enclosed ethics Complaint against Speaker of the House, Robert Harrell, for what appears to be multiple, and possibly criminal, violations of state ethics laws. Your consideration of the Complaint will be free of the multiple conflicts of interests inherent in the House Ethics Committee process.

We do not file this Complaint lightly or without supporting documentation. Indeed, we hoped that by now these concerns would have been investigated and addressed. But months later the public still has no answers as to a pattern of alleged continuing ethics violations by the Speaker of the House. As you know, in South Carolina the Speaker has duties that far exceed those in other states. He has extraordinary powers over the functions of all three branches of our government, and yet he is not elected statewide. In the attached Complaint, we outline five examples of potential violations of ethics laws that seem to demonstrate a pattern of abuse of power that is extremely disturbing to us as well as many others.

Our organization is not equipped to delve more deeply into these concerns than we already have, nor are we able to investigate any other areas in which there may have been ethics violations. We have limited our Complaint to the five issues for which there seems to us little question that the Speaker was not in compliance with the law. We believe a thorough investigation is warranted to determine if that is the case, and also to determine if there were/are other violations which have not yet been brought to light.

As I told you when we first discussed this matter several weeks ago, I think the House Ethics Committee is institutionally unsuited to afford due process in this particular matter, for multiple reasons. The House Ethics Committee has been re-configured in a manner not consistent with statute and thus its ruling could be challenged; moreover, the apparent ethics violations, if proven, could be plausibly seen as a pattern of public corruption that would be out of the jurisdiction of the House Ethics Committee to investigate. Finally, there are conflicts of interest inherent in the House ethics process which cannot be successfully addressed.

Nonetheless, at your suggestion during those earlier discussions, we in good faith explored the process by which we might file a Complaint with the House Ethics Committee, and in doing so we have come to better understand the multiple conflicts inherent in that process -- conflicts so blatant that no reasonable person could possibly assume objectivity on the part of the House Ethics Committee, even if such objectivity were practiced by its members and its staff. Simply put, a Complaint against the Speaker of the House presents unique conflicts for which there is no formal process to resolve. For the House Ethics Committee to have considered such a Complaint would have most certainly been a violation of the due process to which all parties in the process are entitled.

First, the Speaker is the presiding officer of the House, and as such has ultimate authority over all employees of the House, including the Clerk's office, Committee Staff (including Ethics Committee Staff), counsel to the Speaker's office and communications staff for the Speaker's office. Not only would it be impossible for us to be assured complete objectivity on the part of any staff member, it is unreasonable to ask those staff members to participate in an investigation of their boss. In addition, several of the House employees may well have knowledge of the Speaker's actions referenced in a Complaint, and thus could not possibly be involved in the Complaint process itself. Because the Speaker is their supervisor, they could be at risk for retaliation if they divulged information unfavorable to him.

Second, as presiding officer of the House, the Speaker would ultimately be responsible for authorizing the hiring and payment of an independent investigator. We could not reasonably be assured that any investigator hired and authorized by the House with the Speaker as its presiding officer could be objectively retained.

Third, a finding of the House Ethics Committee of probable cause would have to be presented first to the Speaker of the House himself.

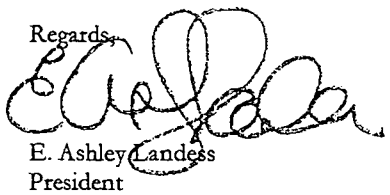
Fourth, if the Speaker wanted to appeal any finding of the House Ethics Committee, he is the only one authorized to call the General Assembly into session for that purpose.

Clearly, the House Ethics Committee's process is not designed to consider a Complaint filed against the Speaker of the House. There is no formal process by which the inherent conflicts could be resolved, and thus no party to a complaint against any House Speaker could be assured of objectivity or fairness.

Again, I truly appreciate your consideration and appreciation of our due-process concerns and your decision to accept and investigate the Complaint. This is a serious matter and your action today

reassures us – and more importantly, the citizens of this state – that you will ensure that a fair and impartial process is afforded to all parties with regard to our concerns.

Regards,



E. Ashley Landess
President

ALAN WILSON
ATTORNEY GENERAL

FEB 14 2013
CHIEF'S OFFICE
Referred To
Date Referred
Action

February 14, 2013

Chief Mark Keel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, SC 29221

RE: Preliminary Criminal Inquiry

Dear Chief Keel:

We met today with Ms. Ashley Landess who delivered information to this office alleging possible criminal violations by Speaker Bobby Harrell.

Ms. Landess has brought to our attention today that there may be inherent conflicts of interest by potential witnesses with respect to any initial inquiry by the House Ethics Committee. Therefore, Ms. Landess has referred this matter directly to this office for handling as a criminal matter.

Consistent with our usual long-standing policy, we are requesting that SLED assign an agent to conduct this inquiry. I am enclosing a copy of Ms. Landess' letter to this office.

Yours very truly,

John W. McIntosh

John W. McIntosh
Chief Deputy Attorney General

JWM/ds

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation 2014-237	**ORDER FINDING RAINEY v. HALEY INAPPLICABLE TO THE CURRENT STATE GRAND JURY MATTER**

The current issue before this Court is whether or not the South Carolina Supreme Court's decision in Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013) means that the State Grand Jury lacks jurisdiction to review criminal matters under the Ethics Act absent a referral from the House Ethics Committee. For the following reasons, this Court finds Rainey has no effect on the current matter.

Following a hearing on March 21, 2014, with regard to the motion to disqualify the Attorney General filed by Robert Harrell, Jr., this Court contacted the parties and *sua sponte* raised the issue of whether Rainey precluded the State Grand Jury acting in the matter since there had not been a referral from the House Ethics Committee to the Attorney General for criminal investigation. After briefing by both sides, a hearing was held on May 2, 2014. Having carefully considered the positions of both sides, this Court finds Rainey is no bar to the current State Grand Jury action.

A. Thrift has already rejected this contention

First, the South Carolina Supreme Court has already clearly and expressly rejected the proposition that referral from the appropriate civil ethics authority is a required before criminal investigation and indictment. In the seminal State Grand Jury case of State v. Thrift, one of the defendants argued that a *criminal* prosecution of him was not allowed under the Ethics Act because a referral to the Attorney General from the Ethics Commission was a necessary prerequisite. The South Carolina Supreme Court swiftly disposed the contention because the Attorney General was operating in the *criminal* realm of the Ethics Act, not the civil one:

> Article V, § 24 provides in part that, "[t]he Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." ***The constitutional provision is dispositive that any requirement which places the authority to supervise the prosecution of a criminal case in the hands of the Ethics Commission is unconstitutional***. As noted earlier in the plea agreement issue, the prosecution has wide latitude in selecting what cases to prosecute and what cases to plea bargain. ***This power arises from our State Constitution and cannot be impaired by legislation.***
>
> Recognizing the constitutional implications of the State's argument, we note that ***the entire constitutional issue is avoided by recognizing the civil nature of the Ethics Act complaint***. The older scheme allowed for a civil evaluation by the Ethics Commission prior to any criminal referral by the Ethics Commission; and with a narrow reading, the statute does not run afoul of the State Constitution. We adopt this narrow construction.
>
> In light of our narrow construction of the statute, neither issue raised by Reeves has merit. The statute of limitations applies only to the civil complaint before the Ethics Commission, and the referral system only applies to civil complaints to the Ethics Commission which are referred by it to the Attorney General for criminal prosecution. ***THE ABSENCE OF A COMPLAINT TO THE ETHICS COMMISSION WILL NEVER OPERATE AS A LIMITATION UPON THE STATE'S INDEPENDENT RIGHT TO INITIATE A CRIMINAL PROSECUTION.***

312 S.C. 282, 307, 440 S.E.2d 341, 355 (1994) (emphasis added).

All violations of Chapter 13 of the Ethics Act are made crimes by a separate statute within that Ethics Act. See S.C. Code Ann. § 8-13-1510 & -1520 (Supp. 2013). Accordingly, the South Carolina Constitution would be flatly violated by any ruling or interpretation of the statute that precluded or delayed the Attorney General, together with SLED, from the independent right to investigate or the Attorney General's power to prosecute violations of the criminal law, regardless of whether the House Ethics Committee had referred the matter.

B. Rainey, a civil matter, does not affect Thrift's conclusion as to the Attorney General's constitutional prerogative in the criminal realm

Second, nothing in Rainey undermines the obvious and clear holding in Thrift. The plaintiff in Rainey filed a declaratory judgment action in Common Pleas court seeking a holding that Governor Haley had violated aspects of the Ethics Act, as well had committed perjury. The appellate court there first noted that the Ethics Act only provides for review of civil complaints by the appropriate legislative committee or the state commission, and that the Act only expressly allows for judicial review in one situation inapplicable in that case -- when a complaint is filed fifty days before an election. Since the one exception for judicial review was not applicable, Rainey found no judicial jurisdiction to hear the matter. Finally, the decision noted that the legislature has constitutional authority over the qualification of its own members, and concluded that judicial oversight at this point "would not only contravene the clear language of the State Ethics Act, it would also violate separation of powers". Rainey, 745 S.E.2d at 84.

Of course, Rainey did not expressly overrule Thrift. This is because they are two separate proceedings that have nothing to do with one another. Rainey only addressed the civil regulatory functions of the House Ethics Committee under the Ethics Act, and not the Attorney General's constitutionally unassailable right to initiate the investigation and prosecution in the criminal realm. Rainey was a declaratory judgment action – a civil remedy under a civil statute of procedure, brought in civil Common Pleas court and not General Sessions court. Nothing in Rainey addressed what happens in the criminal realm of a State Grand Jury investigation or in a criminal prosecution conducted by the constitutional officer with the sole authority to do so. Undoubtedly, the appropriate Ethics Committee or Commission has exclusive jurisdiction as the civil regulatory body, but the Attorney General has the exclusive power to handle criminal matters, and Rainey only addresses the former point. Indeed, Justice Beatty joined by Justice

Hearn in Rainey's concurrence recognized these obvious and undeniable points, stating: "[T]he Attorney General's office, ***either on its own initiative or via a referral*** from the House of Representatives Legislative Ethics Committee, could have sought a criminal determination of the alleged misconduct." 745 S.E.2d at 87 (emphasis added) (citing Thrift). See also Dem. Party of Ky. v. Graham, 976 S.W.2d 423, 430 (Ky. 1998) (Simply because another administrative body possesses authority to refer a criminal matter to the Attorney General "does not mean the Attorney General must wait [for that body] to make a determination before conducting his own investigation and submitting his evidence to a properly constituted grand jury.").

Similarly, State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003) held that a requirement of referral from another agency infringes upon the constitutional powers of the Attorney General as the State's chief prosecuting officer and violates separation of powers. Our Supreme Court has also recognized that a legislative committee cannot constitutionally be given executive powers. State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982). See also Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 558 S.E.2d 511 (2002) [The legislature does not have the power to create a law then execute it]; Sptg. Co. v. Miller, 135 S.C. 348, 132 S.E. 673, 677 (1924) [... the Legislature of the State may not, consistently with the constitutional requirement here involved, undertake to both pass laws and to execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators ... ."].

Moreover, the fact that the Attorney General's request for SLED to conduct a criminal investigation was spurred by a citizen complaint does not somehow mean that it is in the same posture as the citizen action filed in Rainey. The vast majority of criminal investigations start with some sort of a citizen complaint, whether it is a 911 call, a report to police, a yell for help, or a letter to the prosecutor who asks then law enforcement to look into the matter. Unlike the litigant in Rainey, though, the Attorney

General *has* the power to initiate such a criminal investigation, and prosecution if ultimately warranted.

C. Separation of powers

Third, the principle of separation of powers, referenced in Rainey as precluding subject matter jurisdiction in that case, does not serve to remove subject matter jurisdiction in this case. Art. I, § 11 of the Constitution, one of the constitutional provisions authorizing the creation of a State Grand Jury by the General Assembly, provides in part as follows:

> "Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide.

(emphasis added). The language used in Art. I, § 11, "nothing contained in this Constitution" is overriding as to other constitutional barriers, should such barriers be deemed to exist. This would include the separation of powers provision contained in Art. I § 8 of the State Constitution. See, e.g. Crosby v. State, 456 N.Y.S.2d 680, 442 N.E.2d 1191, 1193 (1982) [construing similar language in the New York Constitution as lay[ing] to rest all State constitutional attacks on the workers compensation laws falling within its scope...."]; Bryan v. State Roads Commission, 736 A.2d 1057, 1063 (Md. 1999) [similar language in Maryland Constitution providing that "nothing in this Constitution prohibits trial by jury of less than 12 jurors ...," encompasses all provisions of the Maryland Constitution, so as "to permit a six person jury" in civil cases]. Thus, the plain language of Art. I, § 11 is comprehensive and makes it clear that the separation of powers provision in the South Carolina Constitution, does not strip the State Grand Jury of subject matter jurisdiction in this case.

Indeed, there is case law in South Carolina which concludes that a statute providing legislators with a privilege or immunity which intrudes upon the inherent powers of another branch would itself violate separation of powers. In Williams v. Borden's Inc., 274 SC. 275, 262 S.E.2d 881 (1980), the South Carolina Supreme Court struck down a statute which attempted to give lawyer-legislators immunity from court appearances during legislative sessions and committee meetings. In the Court's view, "the attempt by the General Assembly to deprive the courts of the discretionary power to grant or deny continuances violates the doctrine of separation of powers, as set forth in Article I, Section 8 of the South Carolina Constitution ...." 274 S.C. at 279, 262 S.E.2d at 884. The judicial power, set forth in Art. V of the state Constitution is, concluded the Court, infringed by such statute because the power of the judiciary "to determine whether a continuance should be granted ...." is exclusively a power of the judiciary. 274 S.C. at 280, 262 S.E.2d at 884.

Likewise, here, to afford immunity to a member of the General Assembly pursuant to § 8-13-540(3), by requiring referral from the House Ethics Committee in order for there to be a State Grand Jury investigation or prosecution of a legislator would infringe upon the exclusive province of the executive branch, most particularly the powers of the Attorney General, as the State's chief prosecuting officer of the State, as provided in Art. V, § 24 of the South Carolina Constitution. State v. Thrift, supra. Such would provide criminal immunity by the Committee, a power only possessed by the Attorney General. State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003).

Moreover, Art. III, § 11 and § 12 also referenced in Rainey, do not require a different conclusion. The Supreme Court only recently in Anderson v. S.C. Election

Commission, 397 S.C. 551, 725 S.E.2d 704 (2012) held that Art. III, § 11, which affords each house the power to judge the qualifications of its members, does not remove subject matter jurisdiction from the courts to adjudge questions of law, such as the interpretation of a statute. The Court noted that "[t]he construction of a statute is a judicial function and responsibility." 397 S.C. at 555, 725 S.E.2d at 706. Clearly also, courts cannot be deprived of subject matter jurisdiction to try prosecutions or to oversee grand jury proceedings by Art. III,, § 11. Such is inherent in the power of the judiciary. Moreover, again, it is the power of the Attorney General, pursuant to Art. V, § 24, to serve as chief prosecutor of the State. See Thrift, supra. See also Grimball v. Beattie, 174 S.C. 422, 177 S.E. 668, 674 (1934) [pursuant to Art. III, § 11, the judiciary can have no voice in their [members of each house] qualifications to be members of the General Assembly.] Therefore, neither Art. III, § 11, nor § 12 [expulsion of members by respective house] may serve to deprive this court of jurisdiction in this case.

Further, case law clearly interprets similar provisions as not preventing prosecutions [or criminal investigations] of members of the Legislature. In Burton v. United States, 202 U.S. 344, 366-367 (1906), the United States Supreme Court interpreted similar provisions [to Art. III, §§ 11 and 12] as not preventing the prosecution of a United States Senator for a conflict of interest violation. There, the Court found that "there is no necessary connection between the conviction of a Senator of a public offense prescribed by statute and the authority of the Senate in the particulars named." [to judge qualifications of members or to expel members]. The Court concluded that "'No man in this country ... is so high that he is above the law.'" Id. at 368, quoting U.S. v. Lee, 106 U.S. 196, 220 (1882). See also State v.

Gregorio, 451 A.2d 980 (N.J. 1982). [no immunity for legislator from criminal prosecution].

Finally, the provision granting privilege to members of the General Assembly, found in the South Carolina Constitution deals with civil cases, not criminal. Art. III, § 14 of the Constitution provides that

> The members of both houses shall be protected in their persons and estates during their attendance on, going to and returning from the General Assembly, and ten days previous after the adjournment thereof. But these privileges shall not protect any members who shall be charged with treason, felony or breach of the peace.

It is well recognized that the term "treason, felony or breach of the peace" includes all crimes. Williamson v. United States, 207 U.S. 425, 445-446 (1908); People v Flinn, 362 N.E.2d 3 (Ill. 1977). Our Supreme Court, in Eaddy v.Eaddy, 283 S.C. 582, 584, 324 S.E.2d 70 (1984), confirmed this limitation, noting that the privilege relates to an "exemption from service of civil process ...." As such, this constitutional privilege for legislators from civil process during the session may be waived. Thus, any argument that this privilege "deals with subject matter jurisdiction is without merit." Id. Accordingly, inasmuch as the State Constitution expressly disclaims immunity for legislators from criminal prosecution, this Court is unable to find such an immunity in the separation of powers provision or in any other provision of the Constitution or statutes.

Ultimately, though, there is no separation of powers issue as the referral system in 8-13-540 simply addresses the procedures to be followed by the House Ethics Committee – to include a criminal referral. It simply does not address the Attorney General's independent right to prosecute crime or law enforcement's duty to investigate crime. Section 8-13-1520 flatly makes all violations of the Ethics Act a crime just like any other crime, and this section criminalizing the Ethics makes no reference to the procedures in -540 being a predicate process. Undoubtedly, it is up to the Legislature

to determine whether someone indicted or convicted of a crime should remain a member of the body, or should receive some other reprimand or discipline. That power in no way affects the right of the Attorney General to seek a conviction in the first place, or law enforcement or the State Grand Jury to investigate criminal activity in the first place.

D. The History of the State Grand Jury Fully Demonstrates that Investigations of Members of the General Assembly Do Not First Require a Referral From Either the House or Senate.

Fourth, the State Constitution in Art. III, § 11 – which bestowed upon each House the power to judge the qualifications of its members – does not "immunize" a House member from a State Grand Jury investigation prior to inquiry by the House. Such a contention is utterly at odds with the wishes of the voters in creating and in not restricting the jurisdiction of the State Grand Jury and with the General Assembly in bestowing public corruption jurisdiction upon that investigative body. See Art. I, § 11; Art. V, § 22 of the South Carolina Constitution (1895 as amended) [authorizing State Grand Jury with such powers as General Assembly may provide.]

In the late 1980s and early 1990s, the State witnessed the "Lost Trust" scandal in South Carolina, In response, an effort was then made to restrict the jurisdiction of the State Grand Jury to disallow it from investigating public corruption. The voters overwhelmingly defeated the placement of such a limitation in the Constitution, strongly endorsing the idea that any public corruption by public officials – including by members of the Legislature – could be investigated by the State Grand Jury. The Legislature heard the voters. Subsequently, the General Assembly indeed enacted § 14-7-1630(3), which bestows such public corruption jurisdiction, and which makes no exception for any particular category of public official, such as members of the General Assembly.

Thus, the history surrounding the creation of the State Grand Jury, and most particularly the rejection by the voters to place constitutional limitations upon that

investigative body, completely refutes any argument that members of the General Assembly could somehow be exempted from the investigative reach of that body, either based upon Art. III, § 11 or upon any other immunity or privilege afforded legislators by the Constitution. See State v. Long, 406 S.C. 511, 753 S.E.2d 425, 426 (2014) ["When the Court is called to interpret our Constitution, it is guided by the principle that both the citizenry and the General Assembly have worked to create the governing law."]. Indeed, Long is clear that "the General Assembly may not limit the authority granted to the Attorney General through art. V, § 24." Long, 406 S.C 511, 753 S.E.2d at 427.

This history also refutes any notion that the State Grand Jury's jurisdiction to investigate public corruption, and thus this Court's jurisdiction as presiding judge of the State Grand Jury, is somehow limited by the procedures in section 8-13-540. The State Grand Jury's requisite "subject matter jurisdiction" to investigate public corruption is authorized by in accordance with § 14-7-1630 to include 'a crime, statutory, common law or other, involving public corruption," and § 14-7-1615(B) generally defines "public corruption" as "*any* unlawful activity, under color of or in connection with any public office or employment" of a public official, or a candidate for public office.

In addition, pursuant to the 1992 amendments to the State Grand Jury Act, the General Assembly provided that "[t]he expanded jurisdiction of the State Grand Jury system applies to offenses committed both before and after the effective date of this act." See Act No. 335 of 1992 (Section 2). Thus, even as to public corruption offenses committed between the time of passage of the first State Ethics Act, enacted in 1975, and its major overhaul in 1991, the State Grand Jury possesses express authority to investigate such offenses. Accordingly, it is clear that the Legislature intended the State Grand Jury's jurisdiction to investigate public corruption cannot be governed by 8-13-

540(3) because this provision of the State Grand Jury Act relates back even prior to the very existence of § 8-13-540(3). In sum, the State Grand Jury's public corruption jurisdiction is clearly independent of § 8-13-540(3), as evidenced by Section 2 of the State Grand Jury Act, as enacted in 1992.

In State v. Adams, 319 S.C. 509, 462 S.E.2d 308 (Ct. App. 1995), Judge Hearn, speaking for the Court of Appeals, concluded that the impaneling judge of the State Grand Jury simply must examine the petition for State Grand Jury impanelment to determine if the language in the petition "track[s] the language of Section 14-7-1630 ..." and that "the Attorney General fully complied with the requirements of Section 14-7-1630 and the grand jury was properly impaneled." The same procedure occurred here, and thus jurisdiction is appropriate pursuant to -1630's grant of jurisdiction over public corruption.

E. The Grand Jury is not limited solely to Ethics Act investigation, and *Rainey* could have no effect on non-Ethics Act crimes.

Finally, it is an important point to note that even if Thrift and the undeniable constitutional prerogatives were entirely ignored because of some overly expansive and erroneous view of language taken out of context from Rainey, such a conclusion would only apply to Ethics Act offenses. The grand jury is not so limited in its review, and has broad powers to investigate and to go where the evidence leads them. South Carolina has the common law offense of misconduct in office, which is a flexible and versatile crime that can be violated by public officers who wilfully violate the general duty of good faith and accountability, as well as any other statutory or common law duty. State v. Hess, 279 S.C. 14, 301 S.E.2d 547 (1983). Nothing in Rainey possibly could affect the validity of an investigation into this as well as other possible non-Ethics Act crimes.

CONCLUSION

The bottom line is that Thrift's plain language is dispositive of this issue when it flatly says: "The absence of a complaint to the ethics commission will **never** operate as a limitation upon the state's independent right to initiate a criminal prosecution." 440 S.E.2d at 355 (emphasis added). To hold that the Attorney General can be somehow prohibited from initiating a criminal investigation is flatly repugnant not only to the South Carolina Constitution but also repugnant to basic notions of good government for the people of South Carolina. Ethics Act violations clearly are criminal, and a State Grand Jury investigation has been properly initiated. As such, the Attorney General as the State's chief prosecutor needs no referral or permission from any committee or administrative commission before he can exercise his constitutional powers to prosecute statutory crimes like violations of the Ethics Act.

Therefore, this Court concludes Rainey has no effect on the validity of the current investigation despite the fact that there was no referral from the House prior to initiation.

AND IT IS SO ORDERED this _____ day of _____, 2014.

_____
The Honorable L. Casey Manning
Acting Presiding Judge of the State Grand Jury

_____, South Carolina.

FILED
MAY 12 2014
JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury Investigation # M 2014-237	ORDER

This matter initially came before the Court by motion of Robert W. Harrell, Jr. to disqualify Attorney General Wilson from participation in any State Grand Jury investigation of Mr. Harrell upon the ground that a conflict of interest existed. Following a hearing on March 21, 2014, with regard to the motion to disqualify the Attorney General, this Court contacted the parties and *sua sponte* raised the issue of subject matter jurisdiction. After briefing by both sides, a hearing was held on May 2, 2014. Having carefully considered the positions of both sides, this Court finds it lacks subject matter jurisdiction. Because this Court finds it lacks subject matter jurisdiction, it need not reach the issue of disqualification.

I. The General Assembly vested exclusive original subject matter jurisdiction over alleged violations of the State Ethics Code in Executive and Legislative agencies.

Determining the existence of subject matter jurisdiction is a threshold issue that must be satisfied before a court can ever address the merits of a matter. Subject matter jurisdiction is the sole source of a court's power to adjudicate an issue and is conferred by the Constitution and statutes. Hamilton v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 685-86 (2009). Without subject matter jurisdiction, anything that a court does is void *ab initio*. Coon v. Coon, *364* S.C. 563 (2005). Resultantly, this Court has a duty to take notice of and rectify any overstepping of jurisdictional boundaries. Hamilton, 385 S.C. at

637, 686 S.E.2d at 686 ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.")

Original jurisdiction in civil and criminal cases lies with the Circuit Court, except in specified instances where exclusive jurisdiction is conferred to another entity. S.C. Const. art. V, § 11. In determining whether the Legislature has vested jurisdiction in an entity other than the Circuit Court, a court must look to the relevant statute. Rainey v. Haley 404 S.C. 320, 745 S.E.2d 81 (2013). The statutes at issue here are S.C. Code Ann. §§ 8-13-510 et seq. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. The South Carolina Supreme Court has interpreted the jurisdiction over the Ethics Code to be as follows:

> The extensive and unambiguous statutory scheme contemplates the receipt, processing and resolution of ethics complaints against members of the General Assembly in the respective chambers of the Legislature. Therefore, it is clear the Legislature intended the respective Ethics Committees to have **exclusive** authority to hear alleged ethics violations of its own members and staff.
>
> Rainey v. Haley, 404 S.C. 320, 323-25, 745 S.E.2d 81, 83 (2013) (emphasis added)

The allegations of the citizen's complaint giving rise to this investigation were conclusively within the Ethics Code. Despite multiple requests, the Attorney General has failed to offer or present to the Court any evidence or allegations which are criminal in nature. Therefore, the Court is left only with uncontroverted allegations of ethics violations propounded by a citizen's letter. *See* (Transcript March 21, 2014 Hearing at pg. 48, line 20 – pg. 49, line 4).

Rainey clearly establishes that ethics investigations concerning members and staff of the Legislature are solely within the Legislature's purview to the exclusion of the Courts[1]. The State Ethics Code establishes a comprehensive, highly-technical process by which alleged violations of the Ethics Code must be resolved. Section 8-13-540(3)(d) of the Ethics Code mandates a Legislative Ethics Committee to refer alleged criminal violations to the Attorney General.

Even assuming *arguendo* that the circuit court has subject matter jurisdiction over ethics proceedings at all times, the Attorney General's initiation of this matter is premature. Any investigation by the State Grand Jury at this stage is illegitimate because the Act's administrative remedies have not been exhausted. Rainey v. Haley, 404 S.C. 320, 327-28, 745 S.E.2d 81, 85 (2013).

II. Exercise of jurisdiction over the present complaint would not only contravene the State Ethics Act, but would also violate the separation of powers.

Article III, Section 11 of the State Constitution requires that each House of the General Assembly "shall judge ... the qualifications of its own members ..." Our Supreme Court has opined that, except where constrained by an express provision of the Constitution, no other branch of government is permitted to adjudicate questions concerning the operations or procedures of either House of the General Assembly. Culbertson v. Blatt, 194 S.C. 105, 95 S.E.2d 218 (1940).

The South Carolina Supreme Court held in Rainey that exercise of subject matter jurisdiction by the Circuit Court over a violation of the State Ethics Code "would not only

[1]The only exception exists when a complaint concerning a member or candidate is lodged during the 51 day period before an election in which the member or candidate is a candidate. It is only during this limited period that the exclusivity of jurisdiction is relinquished. Rainey v. Haley 404 S.C. 320, 745 S.E.2d 81(2013).; S.C. Const. art. V, § 11

contravene clear language of that statute, which generally placed investigations concerning members and staff of the Legislature solely within the Legislature's purview, but would also violate separation of powers principles in state constitution". Const. Arts. 1, § 8, 3, § 12, 5, § 11; Code 1976, §§ 8–13–530, 8–13–540.Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013).

Separation of Powers issues inevitably turn on views about the appropriate powers of each branch and how they should interact. The Attorney General seeks to bring this case within the ambit of a criminal prosecution and under the State Grand Jury Act. Notwithstanding that the matter is an Ethics Act violation complaint[2], Attorney General Wilson contends that it also rises to the level of criminal activity under his jurisdiction[3]. This argument, however, is contrary to the finding in State v. Thrift, which provides that Ethics Act violations are civil in nature, not criminal. State v. Thrift 312 S.C. 282, 306. 440 S.E.2d 341, 355 (1994). Thus, until the South Carolina House of Representatives Ethics Committee has either referred the matter to Attorney General Wilson or has otherwise acted on the complaint, exclusive jurisdiction resides solely within the South Carolina House of Representatives Ethics Committee.

Based upon the foregoing and after full consideration of this matter, I conclude that the State Grand Jury, a part of the court system and the Judicial Branch of government, lacks subject matter jurisdiction at the present time to consider and

[2] Attorney General continued to characterize the complaint as an ethics complaint even after the matter was referred to SLED. *See* Affidavit of Attorney General ("On February 14, 2013, a citizen complaint was delivered to this Office regarding possible **ethics violations** by Speaker Robert Harrell.") (emphasis added)

[3] On February 14, 2013, the same day the Attorney General's office received the citizen's ethics complaint, it sent a letter to SLED with the subject line "Re: Preliminary Criminal Inquiry".

investigate the alleged Ethics Act violations. As a consequence any action heretofore taken by the Grand Jury is null and void as it failed to act with jurisdiction. This is a matter solely within the purview of the South Carolina House of Representatives Legislative Ethics Committee. Accordingly, this Court lacks subject matter jurisdiction to have received a petition to convene a Grand Jury and to have convened a Grand Jury and the action heretofore taken in that regard is null and void as the Grand Jury lacked jurisdiction to have acted in this matter.[4]

IT IS THEREFORE ORDERED AND DETERMINED that this Court lacks subject matter jurisdiction, and that the Court also lacked subject matter jurisdiction to convene a Grand Jury with regard to Mr. Robert W. Harrell, Jr.

IT IS FURTHER ORDERED that this Court's order convening the Grand Jury is hereby rescinded and revoked and that neither the Grand Jury nor any other investigative agency shall take any further action concerning the ethics violations allegations discussed herein until such time as a final determination is made by the House of Representatives Legislative Ethics Committee and/or referred by the House of Representatives Legislative Ethics Committee to the Attorney General pursuant to S.C. Code Ann. §§ 8-13-510 et seq.

AND IT IS SO ORDERED!

The Honorable L. Casey Manning
Presiding Judge

May 12 2014

[4]This order is not issued pursuant to S.C. Code Ann. §14-7-1630(G) because subject matter jurisdiction was lacking to convene the Grand Jury *ab initio*.

SCPC
scpolicycouncil.org

OUR MISSION
is to educate members and all South Carolinians about state and local public policy based on the traditional South Carolina values of individual liberty and responsibility, free enterprise and limited government.

February 14, 2013

Attorney General Alan Wilson
Rembert Dennis Building
1000 Assembly Street
Room 519
Columbia, SC 29201

Dear Alan,

I appreciate your decision to accept and consider the enclosed ethics Complaint against Speaker of the House, Robert Harrell, for what appears to be multiple, and possibly criminal, violations of state ethics laws. Your consideration of the Complaint will be free of the multiple conflicts of interests inherent in the House Ethics Committee process.

We do not file this Complaint lightly or without supporting documentation. Indeed, we hoped that by now these concerns would have been investigated and addressed. But months later the public still has no answers as to a pattern of alleged continuing ethics violations by the Speaker of the House. As you know, in South Carolina the Speaker has duties that far exceed those in other states. He has extraordinary powers over the functions of all three branches of our government, and yet he is not elected statewide. In the attached Complaint, we outline five examples of potential violations of ethics laws that seem to demonstrate a pattern of abuse of power that is extremely disturbing to us as well as many others.

Our organization is not equipped to delve more deeply into these concerns than we already have, nor are we able to investigate any other areas in which there may have been ethics violations. We have limited our Complaint to the five issues for which there seems to us little question that the Speaker was not in compliance with the law. We believe a thorough investigation is warranted to determine if that is the case, and also to determine if there were/are other violations which have not yet been brought to light.

As I told you when we first discussed this matter several weeks ago, I think the House Ethics Committee is institutionally unsuited to afford due process in this particular matter, for multiple reasons. The House Ethics Committee has been re-configured in a manner not consistent with statute and thus its ruling could be challenged; moreover, the apparent ethics violations, if proven, could be plausibly seen as a pattern of public corruption that would be out of the jurisdiction of the House Ethics Committee to investigate. Finally, there are conflicts of interest inherent in the House ethics process which cannot be successfully addressed.

Nonetheless, at your suggestion during those earlier discussions, we in good faith explored the process by which we might file a Complaint with the House Ethics Committee, and in doing so we have come to better understand the multiple conflicts inherent in that process -- conflicts so blatant that no reasonable person could possibly assume objectivity on the part of the House Ethics Committee, even if such objectivity were practiced by its members and its staff. Simply put, a Complaint against the Speaker of the House presents unique conflicts for which there is no formal process to resolve. For the House Ethics Committee to have considered such a Complaint would have most certainly been a violation of the due process to which all parties in the process are entitled.

First, the Speaker is the presiding officer of the House, and as such has ultimate authority over all employees of the House, including the Clerk's office, Committee Staff (including Ethics Committee Staff), counsel to the Speaker's office and communications staff for the Speaker's office. Not only would it be impossible for us to be assured complete objectivity on the part of any staff member, it is unreasonable to ask those staff members to participate in an investigation of their boss. In addition, several of the House employees may well have knowledge of the Speaker's actions referenced in a Complaint, and thus could not possibly be involved in the Complaint process itself. Because the Speaker is their supervisor, they could be at risk for retaliation if they divulged information unfavorable to him.

Second, as presiding officer of the House, the Speaker would ultimately be responsible for authorizing the hiring and payment of an independent investigator. We could not reasonably be assured that any investigator hired and authorized by the House with the Speaker as its presiding officer could be objectively retained.

Third, a finding of the House Ethics Committee of probable cause would have to be presented first to the Speaker of the House himself.

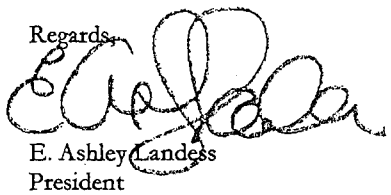
Fourth, if the Speaker wanted to appeal any finding of the House Ethics Committee, he is the only one authorized to call the General Assembly into session for that purpose.

Clearly, the House Ethics Committee's process is not designed to consider a Complaint filed against the Speaker of the House. There is no formal process by which the inherent conflicts could be resolved, and thus no party to a complaint against any House Speaker could be assured of objectivity or fairness.

Again, I truly appreciate your consideration and appreciation of our due-process concerns and your decision to accept and investigate the Complaint. This is a serious matter and your action today

reassures us – and more importantly, the citizens of this state – that you will ensure that a fair and impartial process is afforded to all parties with regard to our concerns.

Regards,



E. Ashley Landess
President

STATE OF SOUTH CAROLINA

In the matter of:
ROBERT "BOBBY" HARRELL, JR.
Candidate/Speaker of the House of Representatives,
Dist. #114

COMPLAINANT: South Carolina Policy Council

ADDRESS: 1323 Pendleton St.
Columbia, SC 29229

TELEPHONE NUMBER: (803) 779-5022

RESPONDENT: Robert "Bobby" Harrell, Jr.

ADDRESS: 2000 Sam Rittenberg Blvd
Suite 124
Charleston, SC 29407

TELEPHONE NUMBER: (843) 556-9075

TITLE: Speaker of the House of Representatives

1. State the clear, detailed facts upon which you base your complaint against the above-named respondent. (If additional space is needed, attach supplemental sheets.)

The South Carolina Policy Council ("SCPC") – along with multiple citizens, organizations and South Carolina journalists – has publicly raised serious, valid and documented concerns that the Speaker of the House Robert Harrell, Jr. has engaged and may continue to engage in an ongoing pattern of abuse of power that appears to violate multiple South Carolina ethics laws. SCPC believes that such violations rise to the level of public corruption, as has been, unfortunately, the case in previous matters involving SC public officials.

An investigation by the appropriate public officials, in this case, the Attorney General, is not only warranted but necessary to protect SC citizens from the dire consequences of a corrupt government – consequences that the SC Ethics Laws are expressly designed to prevent. To avoid any allegations of whitewashing, the appearance of partiality or bias, or undue influence, the House Ethics Committee should immediately refer this Complaint to the Attorney General. SCPC submits the following:

I. If Robert Harrell used his office for his own financial benefit and that of his family business, he may have violated South Carolina law.

SC Code § 8-13-700 states that public officials cannot use their position in office for financial gain. The law states they cannot knowingly use their official office to obtain an economic interest for themselves or family members. The law is also quite clear that public officials are not permitted in any way to use their positions to influence a governmental decision in which they, a family member or a business have an economic interest. Attached documents show a pattern in which the Speaker appears to have done exactly that by using his position as Speaker of the House to solicit business for his private company and also to influence decisions of government officials in order to benefit his private business – a business in which he and certain family members did have/appear to still have an economic interest.

In a 2010 letter (see exhibit A), the Speaker deliberately mentioned his official position of Speaker in the first sentence of a marketing letter sent to hospitals to pitch his private business. The legislature clearly has some regulatory – and fiscal – authority over hospitals. By mentioning his position in the letter – regardless of the context – the Speaker makes his official position an immediate issue for regulated hospitals. According to emails involving Board of

Pharmacy officials, some of the hospitals subsequently contacted the Board to request the Board's "position on this letter" so they could all respond "in the same manner." (see exhibit J). One staff member noted that she had already received numerous complaints about the Speaker's letter (see exhibit J). The request from hospitals was put on the Board of Pharmacy's agenda (see exhibit J). Subsequently, it was decided that the request regarding the Speaker's letter would not be put on the agenda to avoid allowing "the hospitals to use the SC BOP to attempt to resolve their challenge on this issue" and so that the SC BOP will not be used as a scapegoat in the issue (see exhibit J). In a February 29, 2012 email discussing a regulatory issue that had been raised, a Board of Pharmacy staff member specifically notes that "Bobby Harrell is involved" (see exhibit B).

In 2011, it appears that the Speaker asked the Office of Licensure and Compliance to email a copy of a doctor's license to a pharmaceutical company (see exhibit K). In an email to the Board of Pharmacy, the office manager from the Speaker's company said that "Bobby Harrell told me that you could help me out in obtaining a physician's license." (see exhibit K). A Board of Pharmacy staff member states that she had received multiple requests since the Speaker's first request. Another staff member asks why she is emailing the licenses, stating that if the Speaker wants to see if a doctor has a license, he has to go on the Licensee Lookup website. She continues by stating, "You should not be emailing copies of anyone's license simply for the asking." (see exhibit K). The staff member replied that she was told to continue emailing copies of doctors' licenses upon the Speaker's request.

In an exchange of emails, fear was expressed that although the type of practice that the Speaker was pressing was against the law, if they pressed too hard, the Speaker "could certainly hurt us in other legislative ways." (see exhibit K). The email concluded with "I think the

practice should be stopped, but who is going to stand up to the Speaker of House and win? It's a lot like playing with fire!" (see exhibit K).

The attached documents also appear to show other instances where the Speaker used his position as Speaker of the House to attempt to obtain financial gain for his private business. In a hand-written note on his official Speaker of the House letterhead, Speaker Harrell demands "urgent attention" to his company's permit (see exhibit C) from the Board of Pharmacy Licensing Division. Additional documents show that a member of the SC Board of Pharmacy did believe that the Speaker used his position with regard to an unfavorable interpretation of the SC Pharmacy Practice Act by the Board, and also show that the Speaker attempted to influence the permitting process for his business (see exhibit D). According to these documents, the Speaker deliberately raised the issue of his position as Speaker, both verbally and in writing, with public officials, insisted on personal calls and meetings with public officials, and he urged public officials to act favorably toward his company. According to the documents, the Speaker also engaged his Statehouse staff in the process of acting for his private business. The Board member expressed multiple times his concern that the situation with the Speaker was being treated differently than any other, and that the Speaker was upset with decisions by the Board that affected the Speaker's business. On there face these documents raise serious concerns regarding the Speaker's use of his office to influence multiple government officials with regard to his business.

II. Robert Harrell seems to have broken the law by using campaign funds for personal purposes.

An article by the Charleston Post and Courier on September 24, 2012 documented the Speaker's reimbursement to himself from his campaign account for more than $325,000 (see exhibit F). In a follow up to this story, the Charleston Post and Courier reported on October 17, 2012 that the Speaker's office had indicated that part of the reimbursement accounted for expenses related to the Speaker's travel in his personal plane, including trips to and from Columbia for the legislative session (see exhibit G). The law is clear that campaign funds can only be used for either campaign purposes or for ordinary expenses in connection with public office. Because the Speaker failed to specifically disclose the nature of each trip for which he was reimbursed, it is impossible to determine whether any of the other reimbursements are in compliance with state law. Furthermore, newspaper reports quote the Speaker's spokesman saying that the Speaker arbitrarily determined his own reimbursement rate by obtaining estimates for private charters and reimbursing himself less, but did not have a "set determination" on how much less. By choosing an arbitrary formula of his own design, the Speaker clearly did not follow any state model for appropriate reimbursement. In addition, by reimbursing himself rather than vendors directly, and then by failing to provide detailed descriptions of the nature of the original expenses, Speaker Harrell has avoided reporting the purpose of the original expenditures.

The Speaker also appears to have reimbursed himself beyond the actual cost of the flights (i.e., fuel), according to a breakdown he provided to the media, and included payment for his loan, taxes and "depreciation." Such costs appear to be personal expenses and not "ordinary," nor incurred in connection with his official duties as Speaker of the House.

III. Robert Harrell's appointment of his brother to a position on the Judicial Merit Selection Commission seems to be against South Carolina law.

By appointing his brother to the Judicial Merit Selection Commission, the Speaker appears to be in violation of SC Code § 8-13-750. (see exhibit H). The law clearly states that a public official may not cause the employment of a family member to a position which he/she manages or supervises, and that a public official may not participate in the discipline of a public employee who is a family member. Subsection D of the SC Code 2-19-10, which establishes the Judicial Merit Selection Commission and the terms of its members, specifies that members of the commission that are not General Assembly members are subject to removal by their appointer. In this case, the Speaker has caused the employment of a family member to a position for which he alone is in the position to administer the ultimate discipline of removal. This law was designed to prevent conflicts of interest such as the one created here, and violation of this particular law compromises the integrity of our judicial system and raises serious concerns regarding the lack of oversight and enforcement of the law with regard to the Speaker.

IV. Robert Harrell has publicly stated that he failed to maintain certain records to document his expenditures. State law requires candidates to maintain such records for four years.

State law requires that candidates maintain detailed records of campaign expenses for four years. The Speaker has recently stated publicly that he does not have some of those records and that he paid back his campaign the amount he claimed he couldn't document (see exhibit I). It is not clear that the Speaker has offered any documentation to any public official to substantiate that those records are the only ones he does not have or that the amount he paid back to his campaign was the appropriate amount. This is further evidence of the Speaker's pattern of failing to disclose the true nature of his campaign expenditures. The appropriate authority should investigate so that the public should not have to rely solely on the word of the Speaker or any public official as to whether the Speaker has properly followed the law.

V. Robert Harrell did not adequately itemize reimbursements to himself from his campaign account as the law requires.

In the attached September 24, 2012 article in the Post and Courier regarding the Speaker's reimbursements, it was noted that the Ethics disclosure documents that were reviewed did not appear to be in compliance with SC Code section 8-13-1360, which states that, "candidate reimbursements must be itemized so that the purpose and recipient of the expenditure are identified" (see exhibit F). The article states that an attorney for the State Ethics Commission – which does not oversee campaign practices of House and Senate members, but oversees that of all other elected officials (for whom the practices are the same as for legislators with regard to the SC Ethics Law) – indicated that the Speaker's records made for "incomplete disclosure," and that the method he used to reimburse himself "shouldn't be done."

If the Speaker were a private employee, his reimbursements likely would not be permissible. The Internal Revenue Service, through its accountable plan rules, requires employee expenses to: (1) have a business connection; (2) be adequately accounted for within a reasonable period of time; and (3) be returned to the employer within a reasonable period of time if they are in excess. The appropriate authority should investigate whether reimbursements were adequately itemized.

2. Set forth all applicable House Rules and/or Statutory Code sections alleged to have been violated by the Respondent.

SC Code Ann. § 8-13-700

SC Code 8-13-750

SC Code Ann. § 8-13-1348

SC Code Ann. § 8-13-1360

SC Code Ann. § 14-7-1615(B)

3. Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.

Robert "Bobby" Harrell, Jr.
2000 Sam Rittenberg Blvd
Suite 124
Charleston, SC 29407

J. Robert (Bobby) Bradham
915 Folly Road #A
Charleston, SC 29412
Telephone: (843) 795-5452

Lee Ann Bundrick
Synergy Business Park
Kingstree Building
Licensing Suite 202
110 Centerview Drive
Columbia, SC 29210

Mailing Address
PO Box 11927
Columbia, SC 29211-1927

Telephone: (803) 896-4700

Christian Benton PrimaryRx/Palmetto State Pharmaceuticals
2000 Sam Rittenberg Blvd., Suite 3009
Charleston, SC 29407
(843) 408-4375

Sharon Dantzler (legal counsel, SC board of Pharmacy)
4008 Verner Street
Columbia, SC 29204
(803) 782-4045

David Grimm
2000 Sam Rittenberg Blvd
Suite 124
Charleston, SC 29407

Beverly Gould
Synergy Business Park
Kingstree Building
Licensing Suite 202
110 Centerview Drive
Columbia, SC 29210

Mailing Address
PO Box 11927
Columbia, SC 29211-1927

Telephone: (803) 896-4700

John Davis Harrell
2000 Sam Rittenberg Blvd
Suite 124
Charleston, SC 29407

and

Harrell Law Firm, PA
2001 Harrell Square
Charleston, SC 29407
Telephone: (843) 766-4700

Donald Hottel
P.O. Box 11867
Columbia, SC 29211
Telephone: (803) 734-3230 business

Cathy Hazelwood
South Carolina Ethics Commission
5000 Thurmond Mall
Suite 250
Columbia, SC 29201
Telephone: (803) 253-4192

Greg Foster
1100 Gervais Street
Columbia, SC
Telephone: (803) 734-3125

Patrick Dennis
Judiciary Committee
South Carolina House of Representatives

Post Office Box 11867
Columbia, SC 29211
Telephone: (803) 734-3120

David Christian, III
Co-manager, Walmart
Columbia, SC

Roselind Bailey-Glover
Synergy Business Park
Kingstree Building
Licensing
110 Centerview Drive
Columbia, SC 29210

Mailing Address
PO Box 11927
Columbia, SC 29211-1927

Telephone: (803) 896-4620

Laura McDaniels
Initial Licensing Supervisor
(803) 896-4641

Clelia Sanders
Inspector, SC Board of Pharmacy
(803) 260-9818

Robert L. Spires

Don Ray
(803) 751-2385

Patricia H. Powell
(803) 777-2218

4. State with specificity, the dates, places, and times at which or during which such allegations took place.

See response to Number 1 above.

5. State the names of any persons present during such alleged actions or possessing evidence of such alleged actions.

See responses to Numbers 1 and 3 above.

6. Set forth a list of and provide a copy of any documents related to your complaint regarding Respondent.

See Attachments to Complaint.

7. State any other facts that you feel are pertinent to the allegations against the Respondent. (Use additional space if necessary.)

SCPC requests that the Committee take the immediate action of referring this Complaint to the Attorney General. All parties to any complaint are entitled to assume complete objectivity on the part of the officials charged with investigating and ruling on the complaint. Such objectivity must be inherent in the process in order to protect all parties from undue influence over any officials charged with duties regarding the complaint, and also from any capriciousness on the part of those officials. The integrity of our justice system is dependent upon such an objective process, and also on a process in which matters are investigated by the proper officials who can be relied upon to have the appropriate training necessary, and that the official entities charged with such investigation are themselves created and maintained in a manner that cannot itself be subject to challenge. In the case of all of the above, the Committee is demonstrated not to be the appropriate authority to take any action on this Complaint except to refer it to the Attorney General, and to do so immediately for the following reasons:

1. This matter contains multiple instances of potential violations of the SC Ethics Act and establishes a pattern thereof that appears rise to the level of criminal public corruption defined in

SC Code Section 14-7-1615. In any matter involving criminal violations, the Committee is required to refer the matter to the Attorney General. SC Code section 14-7-1615.

2. This matter should not be considered by this Committee because the Committee was re-constituted and expanded to include ten members rather than the six prescribed by the statute that created the committee, and thus any ruling by the Committee could be subject to challenge. SC Code Section 8-13-510

3. This matter should not be considered by this Committee because the conflict of interest presented is unique and unparalleled, as well as inherent and unresolvable.

CERTIFICATION:

To the best of my knowledge and belief, the information herein is true, correct, and complete. If errors or omissions are subsequently determined to exist, this report will be amended.

Sworn to me this ___ day of February, 2013.

Notary Public of South Carolina

My commission expires: _____

Attachments to Complaint

Exhibit A

1. Letter from Speaker of the House Robert Harrell, Jr. discussing private business interests.

Exhibit B

1. Emails from the Board of Pharmacy concerning Speaker of the House Robert Harrell, Jr. and his nephew David Grimm.

Exhibit C

1. A message on Speaker of the House Robert Harrell, Jr.'s office letterhead to the Board of Pharmacy requesting urgent attention for a license in a private business matter.

Exhibit D

1. Board of Pharmacy emails describing conversations with Speaker of the House Robert Harrell, Jr. concerning licensing.

Exhibit E

1. Palmetto State Pharmaceuticals officers and employees list.

Exhibit F

1. Charleston Post and Courier September 24, 2012 article discussing Speaker of the House Robert Harrell, Jr.'s reimbursements from campaign funds.

Exhibit G

1. Charleston Post and Courier October 17, 2012 article discussing Speaker of the House Robert Harrell, Jr.'s reimbursements for flights.

Exhibit H

1. Judicial Merit Selection Commission Members list showing Speaker of the House Robert Harrell, Jr.'s brother John Davis Harrell as an appointed member.

Exhibit I

1. The State September 27, 2012 article that discusses Speaker of the House Robert Harrell, Jr.'s lack of reporting or accounting for campaign reimbursements.

Exhibit J

1. Emails sent from Chief Drug Inspector/Administrator, Lee Ann F. Bundrick, containing copies of a letter sent from Speaker of the House Robert Harrell, Jr. to hospitals.

2. The origination of the email chain concerning remarks from David Grimm and Robert Spires.

Exhibit K

1. Emails documenting requests from Speaker of the House Robert Harrell, Jr. and the multiple related requests that followed. Within these emails is seen the internal conflicts that resulted with being asked to make special arrangements for the Speaker.

2. An email chain from Don A. Ray of the South Carolina Pharmacy Association discussing the Speaker's past attempt to not follow legal standards and expressing a worry that the Speaker may hurt the Association in legislative ways.

EXHIBIT A

From: ROBERT L SPIRES [redacted]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act? They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and no have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

Robert E. Harrell, Jr.

Wednesday, October 20, 2010

I am writing you today not in the capacity as Speaker of the House of South Carolina, but as a business owner. I am the President of Palmetto State Pharmaceuticals, a drug repackaging company located in Charleston. Palmetto State Pharmaceuticals is a healthcare services company which positively addresses the issue of growing healthcare costs for both the practice and the patient. We do this by offering a comprehensive point of care pharmaceutical dispensing program which makes it practical, affordable, and profitable for clinics and private practices to enjoy the benefits of point of care dispensing while providing patients a more convenient and cost effect option in filling their prescriptions.

Our innovative system allows for the provision of the full breadth of quality care, which today includes providing patients with low cost medications at the time of the health care visit. Directly providing medications to patients is a change that is desired by both patients and third party payers as a progressive and responsive practice which is cost effective and will expedite the healing process by improved compliance and better patient communications. In a recent national study, three out of four patients Americans said they would have their prescriptions filled by a physician vs. going to a pharmacy.*

Having worked with hundreds of physicians and practices across the country in a variety of clinical settings, it was a natural progression for us to expand our dispensing program to work within a Hospital's Emergency Room. ER's now have the ability to provide their patients the meds they need when they need them most. Your patients will have the option to fill their prescription at the time of check-out. For patients being seen after hours and weekends, this will provide a much more convenient option vs. having to wait until a retail pharmacy opens. Additionally, many pharmacies are not located conveniently for patient access resulting in the scripts not being filled and decreasing the clinical outcomes.

Palmetto State Pharmaceuticals offers a seamless turn-key program that includes pharmaceutical claims processing, hardware, software, comprehensive training, administrative and software support, program coordination, credentialing with the PBMs, and all of this is combined with unmatched customer service. Our program offers detailed scripting and reconciliation statements.

In addition to increased patient compliance and satisfaction, our dispensing program has the potential to generate a substantial revenue stream for your hospital. We offer a superior, turnkey program that is simple and easy for your staff to use.

I would like the opportunity to discuss our ER Dispensing Program with you and your staff to determine if it is a good fit for your patients and your hospital's bottom line. My partner, David Grimm, is the director of this program and you may reach him at (843) 768-7633, (office) or via email at david@palmettostatepx.com.

I look forward to hearing back from you soon.

Sincerely,

Bobby Harrell
President
Palmetto State Pharmaceuticals

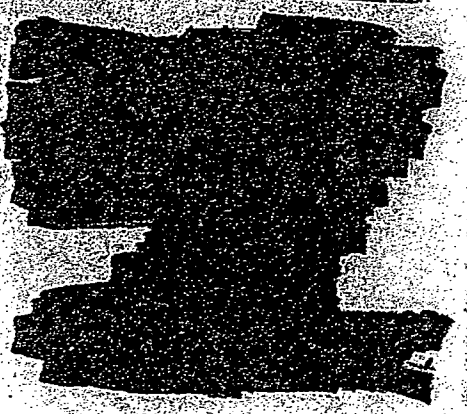
* PharmaLive, August, 30, 2007 article Patients to Doctors: "Save Me a Trip to the Pharmacy"

Harrell Square 2668 Ion Parkway 2nd. Fl. N. Charleston, SC 29418
Telephone 843-971-5300

EXHIBIT B

Lee Ann Bundrick

From: Beverly Gould
Sent: Wednesday, February 29, 2012 2:33 PM
To: Lee Ann Bundrick
Subject: FW: Regulatory Question



Please review the situation below. Bobby Harrell is involved.
Thanks,

Beverly Gould
Administrative Assistant
Board of Pharmacy
SC Department of Labor, Licensing & Regulation
110 Centerview Dr, Columbia SC 29210
Phone: (803) 896-4722
Fax: (803) 896-4596
Email: Beverly.Gould@llr.sc.gov

Please click on the link below to complete the Customer Service Satisfaction Survey. It only takes a minute to complete and will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thank you very much.

http://www.llr.state.sc.us/dev/polsurvey/index.asp

From: Olivia Eitzman [redacted]
Sent: Wednesday, February 29, 2012 12:39 PM
To: Beverly Gould
Subject: Fwd: Regulatory Question

Beverly,

I am currently a consultant pharmacist for Rock Tenn and Heinz Companies in Florence,both of which have permits from LLR Board to operate. I am also pharmacist in charge at McLeod Outpatient Pharmacy. I am being asked to serve as consultant at Honda as well. It is the intention of McLeod Occupational Health to operate at Honda as a dispensing pharmacy without a pharmacist present. I am forwarding a letter sent to me of their intent. Can you tell me if this information in the letter below is correct and what my role as consultant would be in this case? I don't want to do anything to jeopardize my pharmacist license.

Olivia Eitzman

Sent from my iPad

Begin forwarded message:

From: OEitzman@mcleodhealth.org
Date: February 27, 2012 6:05:41 PM EST



To: [redacted]
Subject: Fw: Re: Regulatory Question

-----Forwarded by Olivia Eitzman/MRMC/McLeod_Health on 02/27/2012 06:05PM -----

To: David Grimm <david@primaryrx.com>, Chuck Rozak/MRMC/McLeod_Health@McLeod
From: Octavia Williams-Blake/MRMC/McLeod_Health
Date: 02/25/2012 10:27PM
Cc: Olivia Eitzman/MRMC/McLeod_Health@McLeod
Subject: Re: Regulatory Question

Chuck, after pondering Friday's conversation, I realized when I stated this was not dispensing, I was thinking about the medications that are in our industries that require a "non-dispensing" license. This of course is not the case, with Honda and PrimaryRX, this would be dispensing, thus not requiring a "non-dispensing" license. As you stated, the SC Pharmacy statute says only a Pharmacist or Physician can dispense medications but the SC Nurse Practitioner Act and subsequent legal interpretations on the Pharmacy act say the Physician can designate certain medical acts to the licensed Nurse Practitioner or Physician Assistant. These designated medical acts include the distribution of pre-packaged and labeled medications with the exception of Scheduled II narcotics.

In addition, as it relates to the physician "owning" the pre-packeged medication, the intent is not to dictate who purchases the medications, it is intended to dictate who "owns" the medications. Therefore, there should not beean issue with McLeod purchasing the medications that Dr. Hyman will own, he is the supervising MD for the NP onsite at Honda and can delegate the medical act of dispensing to her.

Please advise asap as we are scheduled for a walk through on 2/27/2012 and go live on 3/5/2012. My intent is to contract with Olivia for consulting for this industry also.

Octavia

-----David Grimm <david@primaryrx.com> wrote: -----

To: "OWilliams@mcleodhealth.org" <OWilliams@mcleodhealth.org>
From: David Grimm <david@primaryrx.com>
Date: 02/24/2012 06:48PM
Cc: "crozak@mcleodhealth.org" <crozak@mcleodhealth.org>
Subject: Regulatory Question

Octavia,

After our conversation earlier today, I spoke with my partner, Bobby Harrell regarding the legal issue brought up by Mr. Rozak. The question of how a physician that works for a hospital, that is not fully owned by physicians, meet the regulations for the dispensing of medications in South Carolina has been addressed before. Back in 2007, Bobby Harrell met with the South Carolina Department of Labor, Licensing and Regulations Chief Deputy General Counsel, Sharon Dantzler. After multiple conversations, Ms. Dantzler provided a response to our company in a letter clarifying the LLR's position. I am attaching a copy of that letter to this email for your review. Below is an excerpt from the letter that directly address this situation:

"Because the medical practice in question is not fully owned by licensed physicians, any drug inventory must be owned personally by the dispensing physician in order that the dispensing facility be exempt from permitting requirements. S.C. Code 40-43-

60(I). The physician's contractual relationship with the hospital does not figure into this licensing issue."

I will be in Florence on Monday at the Honda site at 10AM but I will also make myself available to meet with you and Mr. Rozak if you would like to discuss this further. Please let me know if you want to meet or if you need anything further.

I look forward to hearing back from you soon.

Best Regards,

David Grimm
Founding Partner
Palmetto State Pharmaceuticals / PrimaryRx
2000 Sam Rittenberg Blvd. Suite 116
Charleston, SC 29407
843.769.7633 Office
david@primaryrx.com

From: Octavia Williams-Blake <owilliams@mcleodhealth.org>
Date: Fri, 24 Feb 2012 07:19:34 -0600
To: David Grimm <david@primaryrx.com>
Subject: Re:

Dave, please proceed with ordering everything above the TO BE DISCUSSED, (added two more from the "no longer under $8 list)

thanks,

Octavia

Octavia Williams-Blake
Director, Occupational Health
McLeod Health
843-777-5355 (Office)
843-777-5296 (Fax)
owilliams@mcleodhealth.org

NOTICE: This e-mail message and all attachments transmitted with it may contain legally PRIVILEGED and CONFIDENTIAL information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and/or notify the postmaster (postmaster@mcleodhealth.org), and delete this message and all copies and backups thereof. Thank You.

[attachment "Scan 1.pdf" removed by Octavia Williams-Blake/MRMC/McLeod_Health]

EXHIBIT C

Office of the Speaker
South Carolina House of Representatives
P. O. Box 11867
Columbia 29211
(803) 734-3129

ROBERT W. HARRELL, JR.
SPEAKER OF THE HOUSE

DISTRICT 114
CHARLESTON-DORCHESTER
COUNTIES

HOME ADDRESS
15 CASA BIANCA DRIVE
CHARLESTON, SC 29407
(843) 572-1500

May 2, 2006

We would appreciate your urgent attention to this request.

Bobby Harrell

RECEIVED
MAY - 3 2006
BOARD OF PHARMACY

281

FedEx. US Airbill

Express

8565 0838 5967

RECIPIENT: PEEL HERE

fedex.com 1.800.GoFedEx 1.800.463.3339

1 From This portion can be removed for Recipient's records.

Date

FedEx Tracking Number 856508365967

Sender's Name

Phone 843 572-1500

Company STATE FARM INSURANCE/HARREL

Address 8316 RIVERS AVE

City NORTH CHARLESTON State SC ZIP 29406

2 Your Internal Billing Reference

3 To

Recipient's Name

Phone

Company

Recipient's Address

Address

City State ZIP

0327924019

Recipient's Copy

4a Express Package Service

FedEx Priority Overnight

FedEx Standard Overnight

FedEx First Overnight

FedEx 2Day

FedEx Express Saver

4b Express Freight Service

FedEx 1Day Freight

FedEx 2Day Freight

FedEx 3Day Freight

5 Packaging

FedEx Envelope*

FedEx Pak*

FedEx Box

FedEx Tube

Other

6 Special Handling

SATURDAY Delivery

HOLD Weekday at FedEx Location

HOLD Saturday at FedEx Location

No

Yes

Dry Ice

Cargo Aircraft Only

7 Payment

Sender

Recipient

Third Party

Credit Card

Cash/Check

Total Packages

Total Weight

Total Charges

8 NEW Residential Delivery Signature Options

South Carolina House of Representatives
ROBERT W. HARRELL, JR., SPEAKER
P. O. BOX 11867
Columbia, South Carolina 29211

RECEIVED
MAY - 3 2006
BOARD OF PHARMACY

Board of Pharmacy
Attn: Licensing

RECEIVED
MAY - 3 [illegible]
BOARD OF PHARMACY

EXHIBIT C

Given to CS 5/5/06 PPA.

FOR BOARD USE ONLY
Date Permit Mailed:
Date Permit Issued:
Date New Permit Fee Paid: 5/5/06
Amount Paid: $200.00
Check Number: [redacted]
Date Referred to Inspector: 5/5/06
Inspected By:
Date of Inspection:
Date Approved for Issuance:

Permit Number Assigned: 5500 8831

South Carolina Department of Labor, Licensing & Regulation
Board of Pharmacy

New Non-Dispensing Drug Outlet Permit Application

This permit authorizes a facility to administer and store legend drugs. Facilities requiring a Non-Dispensing Drug Outlet Permit include, but are not limited to, clinics, wholesalers, manufacturers, and distributors. A Non-Dispensing Drug Outlet Permit requires a consultant pharmacist, unless the facility is engaged in manufacturing, wholesaling, or distributing.

RECEIVED
MAY - 3 2006
BOARD OF PHARMAC

[X] New Facility
[ ] Change to Existing Permit
  [ ] Change of Ownership
  [ ] Change of Name
  [ ] Change of Location (From one city to another)

DBA Name of Facility: Palmetto State Pharmaceuticals
Location of Facility (Street & Number): 2060 Sam Rittenberg Blvd. #116
City: Charleston County: Charleston Zip Code: 29407
Telephone Number: 843-769-7633 Fax Number: 843-769-7693
Name of Corporation:
Mailing Address:
City: State: Zip Code:
Date of Expected Opening: May 15, 2006 Days & Hours Facility Will Be Open: 8am-6pm

Name(s) of Owner(s) or Corporate Officers:
Robert W. Harrell, Jr.
David Grimm

Check One:
[ ] Wholesaler, Distributor (01)
[X] Repackager (02)
[ ] Manufacturer (03)
[ ] Family Planning (04)
[ ] Industrial Health (05)
[ ] Clinic (09)
[ ] Detention Center (10)
[ ] Other- Specify (08)

Please describe the activity, product, and service that require this type of permit. (Attach a separate sheet if necessary.)
Pharmaceutical Repackaging

Name and Title of Responsible Person Designated as Permit Holder: David Grimm
Contact Phone #: 843-769-7693
Name and Title of Contact Person if other than Permit Holder:

Name of Consultant Pharmacist: Clinton M. Templeton License Number: 010660
Telephone Number at which Consultant Pharmacist can be reached: 843.749.1172

If new application is based on a change to existing permit, list permit number, former name, ownership and/or location:

I hereby certify that the Non-dispensing Drug Outlet for which this permit is sought will be conducted in full compliance with the statutory laws of this State pertaining to pharmacy and that the drug outlet will be under the supervision of a licensed pharmacist as required by law.

[redacted] 5/2/2006
Signature of Permit Holder Date

[redacted] 2 May 06
Signature of Consultant Pharmacist Date

Personal information provided in this application may be subject to public scrutiny or release under the S.C. Freedom of Information Act or other provisions of federal and state law.

Your completed application along with the $200 new permit fee must be received in the Board office at least forty-five (45) days before the required permit is needed. Please send completed applications and fees to:

LLR-Board of Pharmacy
110 Centerview Drive, Suite 306 (29210)
P.O. Box 11927
Columbia, SC 292 11-1927
Telephone: (803) 896-4700

SS-8 2000

EXHIBIT C

Cle,

Monte Templeton, the R.Ph. will be in contact with you about this facility. It needs to be done ASAP after Monte calls, see Mr. Bryant because this is the "Speaker of the House" Bobby Harrell.

Thanks
SG

EXHIBIT D

Sheila Young

From: Lee Ann Bundrick
Sent: Tuesday, May 23, 2006 11:04 AM
To: Sheila Young; Cleila Sanders
Subject: FW: Palmetto State Pharmaceuticals=Physician office medicationdispensing entity

FYI
-----Original Message-----
From: Bobby Bradham [mailto:bradhab@musc.edu]
Sent: Tuesday, May 23, 2006 10:58 AM
To: [redacted]
Cc: Lee Ann Bundrick
Subject: Palmetto State Pharmaceuticals=Physician office medicationdispensing entity

** High Priority **

Fellow Board Members:

Palmetto State Pharmaceuticals housed in Charleston, S.C. recently sent a letter to all pharmacy technicians in the Charleston, S.C. area (may have been sent to all S.C. pharmacy technicians but I have been the recipient of phone calls, office visits, etc. from those in my employment and others in the Charleston area).

This company is an operation that has purchased a pharmacy robot (ScriptPro, I hear) that will be repackaging medications to be taken by their pharmacy technicians to physician offices to be dispensed to patients of those physicians. It seems it is being promoted as something of a "pyramid" scheme and will be an extra source of revenue for the physicians.

The President of this company is Bobby Harrell (Speaker of the S.C. State House) House of Representatives member from Charleston, S.C. The CEO is David B. Grimm, a former marketing employee at MUSC. The Development Manager is R.W. "Trey" Harrell III (Bobby Harrell's son).

Because they are repackaging medications, they were told by the S.C. Board of Pharmacy inspector that they needed a repackaging permit from the FDA (we were told by the Charleston FDA office that this would be required, and we have dealt with this type of situation before and have been told such). Rep. Harrell (particularly his S.C. State House assistant, Don Hoddle (spelling?) are very upset and Mr. Hoddle has scheduled a phone conference with me and Lee Ann for this afternoon with Rep. Harrell (4:00 PM today, 5-23-06).

In addition, because there is no RPh on staff (they only will have a RPh pharmacy consultant--a Navy RPh "moonlighting" to perform this task is what I understand at this point). Because of this, I have shared with my pharmacy technicians and those inquiring of me about the letters they received, they will not be able to work as a "registered" pharmacy technician under the S.C. Board of Pharmacy since there will not be an RPh present.

In addition, the pharmacy technicians who have talked with the HR person at Palmetto Pharmaceuticals, have been told they will be working also in prescriber offices dispensing and selling these repackaged medications to patients. Since they will not be employees of the physician but of Palmetto Pharmaceuticals, they cannot be the "designated employee of the physician giving the medication to the patient" as is prescribed by the S.C. Pharmacy Practice Act of a physician or his designated employee dispensing medication.

Rep. Harrell and his office assistant, Don Hoddle, have asked for each of your names and

phone nos. so you each should be hearing from them on this issue. They are, to say the least, not happy that they have invested all of this energies, time and monies without thoroughly realizing the legal ramifications of who, what and how patients in S.C. can be receiving medication with the safety and welfare of the citizens of S.C. paramount in all of this. "Making a fast buck" is not and should not be paramount in such a vital health care function as you know with all of the years of training you have and continue to invest in your wealth of knowledge for the patients.

Please call me if you think I can help you with your understanding of this issue any further

Thanks!
Bobby

J. Robert (Bobby) Bradham, R.Ph., M.Ed., C.O.
Manager, Ambulatory Pharmacy Services
Department of Pharmacy Services
Clinical Assistant Professor, College of Pharmacy
Medical University of South Carolina
150 Ashley Av., RTA 616, POB 250584
Charleston, S.C. 29425
843-792-2665
843-792-0566 (Fax)
[redacted] (email)

Sheila Young

From:	Bobby Bradham [bradhab@muse.edu]
Sent:	Thursday, May 25, 2006 12:28 PM
To:	Lee Ann Burdrick; Sheila Young
Cc:	jbracewell@scrx.org
Subject:	Palmetto State Pharmaceuticals/Bobby Harrell

Lee Ann:

Since our phone "conference" with Bobby Harrell, I have had some time to think about what has transpired thus far. And, one poignant point that has come out of this is that, at any other site *proposing* such an enterprising operation, our board representative(s) would be meeting/conversing with the pharmacist consultant and not with one of the "owners" of the operation (especially one where the only pharmacy "interface" would be that pharmacist consultant). It will be the pharmacist consultant who will be responsible for seeing that the operation meets the requirements of the S.C. Pharmacy Practice Act on a daily & continued basis! It will be his/her license that will be in jeopardy if/when compliance is not a part of the daily operational mode.

By conversing with Bobby Harrell, we were already making this "different" since he was so adamant in his conversation that he wanted this enterprise to be treated the same as any other operation and not any exceptions be made because of "who" he was! The exception was already being made by his insistence on the phone "conference" with you and I!

Just a thought! (At my age, I might have a few more over the holiday weekend!).
Bobby

Sheila Young

From: Bobby Bradham [bradhab@musc.edu]
Sent: Friday, May 26, 2006 4:47 PM
To: Lee Ann Burdick; Sheila Young
Cc: bmcewen@scbop.org
Subject: Bobby Harrell/David Grimm

Lee Ann,
I received a call from Bobby Harrell a short while ago (about 4:00 PM) stating they have received letters of clearance from FDA and also from the legal staff of the Board of Medicine and our legal counsel at Board of Pharmacy for them to proceed.

Bobby is having David Grimm (who I just hung up from) fax me all of those letters of clearance. Bobby Harrell was calling me since "you are my First Congressional District Representative to the BOP and hope you can help me get my BOP permit so we can open start repackaging medications by the following week...."

Also, in the conversation with Bobby Harrell, he revealed that David Grimm is his nephew. In my conversation with David Grimm, he revealed his wife is an employee of MUSC and is one of the "managers" working to get the new MUSC Hospital opened (I think I have met with her on this project!!).

If he has a letter of "OK" from Sharon Dantzler and Rick Wilson, I am unhappy that it was done without your input as you had requested, Lee Ann!
Bobby

J. Robert (Bobby) Bradham, R.Ph., M.Ed., C.O.
Manager, Ambulatory Pharmacy Services
Department of Pharmacy Services
Clinical Assistant Professor, College of Pharmacy
Medical University of South Carolina
150 Ashley Av., RTA 616, POB 250584
Charleston, S.C. 29425
843-792-2665
843-792-0566 (Fax)
bradhab@musc.edu (email)

EXHIBIT E

Palmetto State Pharmaceuticals — List of Key Staff Members

Robert Harrell Jr:
President/Founding Partner
University of South Carolina - Bachelor's of Science, Business Administration.
Experiences:
- Owner/Operator of State Farm Insurance Agency for more than 25 years.
- Owner/Operator of Oak Haven of Charleston Assisted Living Facility for seven years
- 14 years in South Carolina State of Representatives

Duties:
- Business Partner - As President, Mr. Harrell has final approval in all operations.

David Grimm - Nephew
CEO/COO/Founding Partner
Rhode Island College - Bachelor's of Arts: Communications
Experiences:
- Two years experience as a Data Analysis Medical University of South Carolina
- 15 years experience in medical sales and marketing

Duties:
- Developed concept/business model for Palmetto State Pharmaceuticals and the MinuteMeds Program.
- Oversee daily operations of Palmetto State Pharmaceuticals and MinuteMeds Program.
- Marketing and Sales

Susan Kammeraad-Campbell -
Marketing and Communications/Founding Partner/Vice President
Miami University - Bachelor' of Arts: Political Science/Journalism
Experiences:
- Five years experience as Director of Marketing Publication
- 25 years experience in communications, publishing, writing, and medical journalism

Duties:
- Developed concept/business model for MinuteMeds
- Formulary Development
- Continued program development
- Marketing and Sales
- Communications



Robert Harrell III — SO

Developmental Manager/Founding Partner

University of South Carolina - Courses of Study: Management and Economics

Experiences:

- Manager of Harrell Farms

Duties:

- Director Product Development
- Manage the Shipping/Receiving aspect of Palmetto State Pharmaceuticals

Sarah LeVasseur

Program Director

Clarion University - Bachelor's of Science - Concentration: Gerontology Minor: Psychology

Experiences:

- Ten years experience in residential and long term health care
- Three years management experience in long term health care

Duties:

- Manage the daily operations of the repackaging center and the MinuteMeds Program.
- Manage the Program Technicians.
- Develop and implement training programs and quality assurance.

Monty Templeton

Consultant Pharmacist

28 years experience as a licensed pharmacist

Augusta State - Bachelor's of Science: Biology

University Mercer School of Pharmacy - Bachelor's of Science

Duties:

- Serve as a consultant pharmacist
- Quality Assurance
- Random & Routine Inspections

RECEIVED
MAY
BOARD OF

NaPrell VanBuren

Lead Program Technician

Fifteen years experience as a Certified Pharmacy Technician

Duties:

- Monitoring and Participating in the overall operations at the repackaging center
- Maintaining compliance with regulatory agencies
- Quality Assurance

EXHIBIT F

79° Clear
Hi: 79° Low: 58°
Charleston, SC | 5 Day Forecast | Hurricane Guide

Customer Care · Shopping · Jobs · Autos · Real Estate · Pets · Classifieds · Obituaries · Place an Ad · Become a Member · Get Connected · Login

Search Articles All

Home · News · Sports · Business · Multimedia · Entertainment · Features · Special Sections · Blogs · Editorial · Index

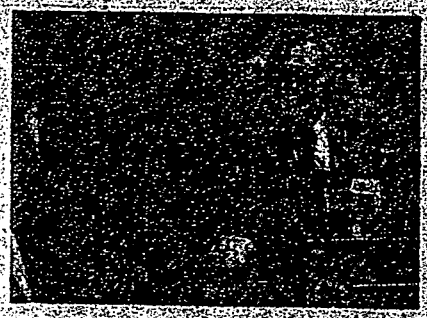
Home > News

Harrell offers no details on self-reimbursement of $325,000 from campaign funds

Reuben Dudley | Posted: Monday, September 24, 2012 12:05 a.m.
UPDATED: Tuesday, October 2, 2012 4:21 p.m.

Text size: A A A

0 Tweet 0 Recommend 0 Print Email



FILE/The State Bobby Harrell, Speaker of the House, speaks at a press conference in the lobby of the State House in this 2008 file photo.

South Carolina House Speaker Bobby Harrell has reimbursed himself more than $325,000 from his campaign war chest since 2008 but has produced no receipts or itemized invoices accounting for the spending, a Post and Courier examination has found.

State politicians must maintain such documentation for four years to prove they are using campaign money for political rather than personal spending. Harrell told the newspaper that all his expenses are legitimate. But the State Ethics Commission said that without the required documentation, it is impossible to confirm that Harrell spent the money properly.

State law also requires candidates to itemize their expenditures on disclosure forms filed with the commission. Portions of Harrell's forms lack such itemization. Asked about the matter, Harrell's office said in a statement: "The Speaker is in full compliance with all requirements of the SC Ethics Act."

Many of the reimbursements cover the speaker's costs for using his private plane for "official legislative trips and politically related travel," Harrell's office said in an emailed response to the newspaper's questions. The office said flying the four-seat, single-engine

Harrell's Plane

S.C. House Speaker Bobby Harrell is a licensed pilot who can fly three passengers in his fixed-wing Cirrus SR22, a single-engine propeller plane that was manufactured in 2001, according to the Federal Aviation Administration database.

The model retails new for $449,900, though a fully-loaded plane costs an additional $170,000, according to the manufacturer, which bills the SR22 as "luxury travel at its ratified best."

Harrell registered his plane

Get the latest Clemson news

Get the latest Clemson news

Related Content

Harrell: 'I probably will be more specific' on financial records

Answers sought from House Speaker Bobby Harrell on

AP World And National News

- Obama asks for another chance to meet his goals
- Ind. GOP Senate candidate stands by rape comment
- Islamic militant group in Syria rejects truce
- Oregon scientists make embryos with 2 women, 1 man
- Libyan militia takes former Gaddafi stronghold
- Parents: Slain NJ girl was treated like 'trash'
- BBC scandal raises questions for incoming NYT boss
- Prison, $7 billion fine for French rogue trader
- Google canoeses map popular Grand Canyon trails
- NHL's Islanders moving to Brooklyn in 2015

Recent Photos and Videos

Galleries Videos


Kristie Higdon Remembered


Porter-Gaud vs. Ashley Hall


Oct. 21 Trophy Case

reimbursements

Questions over Harrell self-reimbursement could make race out of speaker's post

Watchdogs urge scrutiny of S.C. lawmakers' business ties

Experts see S.C. public disclosure laws as lax

Rep. Jim Merrill faces ethics questions over work with Realtors

S.C. House staffer criticized for 8-week, paid leave

Money 'speaks': S.C. House Speaker Bobby Harrell's PAC doled out big money in campaign donations, contracts

Cirrus SR22 costs "as much as $800 or $900" a leg. His office did not respond to written questions asking how the speaker arrived at those figures. Harrell pilots the plane himself.

In addition to attending campaign events and fundraisers for other House members, Harrell said in a statement that he uses the funds for travel related to his legislative duties.

"While South Carolina is known for having a rough and tough political history, I never thought I'd be attacked for saving taxpayers money by using campaign funds instead of state funds to pay for official Legislative expenses," Harrell said in his statement.

Flight logs filed with the Federal Aviation Administration show Harrell has flown the 30-minute route between Charleston and Columbia more than 110 times since 2008. Other destinations include Augusta during the week of the Masters Golf Tournament in 2009, Miami and Key West, the flight logs show.

Harrell, who was elected to the House in 1992, has repaid himself nearly a quarter-million dollars for travel expenses over the past four years, the newspaper found. On his campaign finance reports, the Charleston Republican provided no descriptions of where he went or the reasons for the trips.

Along with requiring that expenditures be itemized on state filings, South Carolina law says that politicians using campaign funds must "maintain and preserve all receipted bills and accounts ... for four years." The newspaper asked to review all such documents related to Harrell's political travel and other reimbursed expenses. Harrell did not respond to multiple requests from the newspaper over the past month to provide those invoices or any other documents showing how the nearly $326,000 was spent.

Harrell "is not being accountable by any stretch of the imagination let alone the letter of the law," said Edwin Bender, executive director of the National Institute on Money in State Politics, an independent group that monitors campaign finance laws. "This is someone who has become brazen because he's so confident of his power."

Harrell did not address most of the questions the newspaper submitted in writing on Aug. 30. Harrell declined repeated requests to be interviewed.

Harrell's office provided no explanation as to why Harrell reimbursed himself rather than directly paying vendors such as airport fuel services, restaurants or hotels.

Early in the newspaper's examination, the Ethics Commission, an independent state agency, criticized the lack of receipts and itemizations, noting that Harrell's reimbursement practices made for "incomplete disclosure" and "shouldn't be done."

On Tuesday, however, Commission Executive Director Herbert R. Hayden refused to discuss the issue, saying his agency was not authorized to weigh in. The commission, which has commented freely in the past on ethics matters involving state lawmakers, depends on nearly $323,000 in general funds appropriated by the state Legislature for about half of its annual budget.

On Friday, Harrell spokesman Greg Foster confirmed that the plane is registered to Harrell's business, Pierpont Air, an LLC whose business address is listed as his State Farm insurance office on Sam Rittenberg Boulevard.

The speaker keeps the plane at Atlantic Aviation, a private airport on South Aviation Road in North Charleston. An Atlantic employee said the short-term rate to keep a single-engine plane such as Harrell's in a hangar is $100 nightly. She said she did not have long-term rates available. Other plane expenses include fuel, maintenance, certification and insurance.

Charleston County property tax records show Harrell's Pierpont Air paid $4,300 in taxes on the plane in 2011, down from more than $5,000 in 2009.

Renee Dudley

The Laws

SECTION 8-13-1302. Maintenance of records of contributions, contributors, and expenditures.

(A) A candidate, committee, or ballot measure committee must maintain and preserve an account of:

(1) the total amount of contributions accepted by the candidate, committee, or ballot measure committee;

(2) the name and address of each person making a contribution and the amount and date of receipt of each contribution;

(3) the total amount of expenditures made by or on behalf of the candidate, committee, or ballot measure committee;

(4) the name and address of each person to whom an

Follow Post and Courier

LowCountryMarketplace.com

Roper St Francis Northwoods ER
2233 Northwoods Blvd
North Charleston, SC
(843) 574-8735

Roper St Francis Diagnostic Services-Folly Rd
347 Folly Rd
Charleston, SC
(843) 762-2520

Northside Christian School
7301 Northside Dr
North Charleston, SC
(843) 797-2636

Restaurants • Entertainment • Health • Real Estate • Home & Garden • Coupons

P&C Most Popular

Emailed Shared

1. Nassau St. area struggles to escape its past
2. More hotels planned near Marion Square
3. Co-founder of local Young Survival Coalition loses battle with cancer, but her legacy endures
4. Retirement worries grow; 30-somethings most uneasy
5. Man wounded by gunfire after leaving Berkeley County night club
6. Report: Missing James Island woman found in Florida
7. Porter-Gaud Cyclones take title, Cathedral also wins
8. Clemson president Barker admonishes fans for booing reference to U.S. President during football game
9. Woman hit by SUV on Shem Creek Bridge Sunday in critical condition
10. Man's body found on Folly Beach

speaker's office contacted the Ethics Commission regarding its involvement with this story.

"Neither the Speaker nor anyone in his office has told the Ethics Commission that they should not talk to anyone," Foster said in an email.

The Rules

Enforcement of rules on self-reimbursement and record keeping rests with the House Ethics Committee, a panel of six of Harrell's fellow lawmakers. Campaign contributions to five of them through a political action committee he is affiliated with. Through the PAC, money has been given to more than 130 legislative candidates.

Committee Chairman Roland Smith, who has received at least $2,000 from the PAC, said he "can't comment on anything about the Ethics Committee."

"I'm not trying to avoid the situation," the Aiken Republican said. "You know I can't afford to talk about it. I can't talk about it."

South Carolina law says campaign expenses "must be drawn from the campaign account."

Cathy Hazelwood, general counsel for the state Ethics Commission, the independent agency that is separate from the Ethics Committee, initially told the paper that the wording "means no reimbursing."

It "shouldn't be done because you're not accurately disclosing what the campaign is actually buying," Hazelwood said in an Aug. 30 email to the newspaper.

In the email she offered this example: "A campaign should have a specific expenditure to a staff member and not to the candidate who's paying the staff member." Anything else "makes for incomplete disclosure," she wrote. Prior to last week's no-comment directive from executive director Hayden, to whom she reports, Hazelwood also had discussed the issue at length via telephone.

But when the newspaper sought additional information from the Ethics Commission last week, after Hazelwood's interpretation was disputed by a lawyer working for the Legislature, Hayden said in an email: "We are not authorized to comment on matters involving members of the General Assembly."

Hayden referred the paper to the House Ethics Committee.

Patrick Dennis, a House attorney who has worked with that committee, had asked Hazelwood for her interpretation of the reimbursement law in an Aug. 30 email obtained by The Post and Courier. He sent the note hours after the newspaper submitted its initial inquiries in writing to Harrell's office.

Hazelwood responded to Dennis: "When reimbursements are done to the candidate you don't know who they paid or how much or what for. You just have a bald description of reimbursement to candidate with little or no detail."

Contacted Wednesday, Dennis disagreed with that interpretation.

"There's absolutely nothing wrong with self-reimbursement as long as the extent being reimbursed is a legitimate campaign-related expense," Dennis said. "It doesn't matter whether you pay yourself or not as long as you don't lie about it."

Despite that difference of opinion, Dennis and Hazelwood both agreed that the record-keeping portion of the law is clear.

expenditure is made including the date, amount, purpose, and beneficiary of the expenditure;

(5) all receipted bills, canceled checks, or other proof of payment for each expenditure; and

(6) the occupation of each person making a contribution.

(B) The candidate, committee, or ballot measure committee must maintain and preserve all receipted bills and accounts required by this article for four years.

SECTION 8-13-1360: Contribution and expenditure reporting form; contents.

(A) The State Ethics Commission shall develop a contribution and expenditure reporting form which must include:

(1) a designation as a pre-election or quarterly report and, if a pre-election report, the election date;

(2) the candidate's name and address or, in the case of a committee, the name and address of the committee;

(3) the aggregate total of all contributions, loans, and other receipts during the reporting period and the year-to-date total; the amount, date, and a brief description of each expenditure made during the reporting period, the name and address of the entity to which the expenditure was made, and the year-to-date total of expenditures to that entity. Credit card expenses and candidate reimbursements must be itemized so that the purpose and recipient of the expenditure are identified;

(B) A candidate or committee must disclose all information required on the form developed under this section.

"You are supposed to be able to substantiate what you report on your disclosure if the committee or the commission asks to do so," Dennis said.

If a politician can't do that?

"I haven't ever dealt with that situation," he said. "I'm not prepared to answer that question."

The newspaper five times over the past month asked whether Harrell's office could provide either itemizations or receipts describing his reimbursed spending, as required by law. Harrell's office said the speaker is in overall compliance with the law.

Oversight

Bender, of the Montana-based National Institute on Money in State Politics, called Harrell's relationship with both the Ethics Commission and the House Ethics Committee a "fox-and-hen-house classic."

"He's a very powerful guy, and no one wants to do anything for fear of retribution," Bender said.

Harrell's campaign donors should be concerned by the lack of accounting for the nearly $326,000 the speaker reimbursed himself, Bender said.

"People are giving him money to represent them as citizens," he said, noting the public has no way of knowing how the reimbursements were spent. "When someone is raising in the six figures and running unopposed -- they don't have to use that money to campaign."

Harrell's office said his business affairs as a State Farm insurance agent and his personal travel expenses "are not paid for using campaign funds." Harrell did not reimburse himself for the trip to Augusta during the Masters or for the trip to Key West, although he did reimburse himself for two trips to Miami for National Speakers Conference Executive Committee meetings, Foster said in an email.

"The Speaker's duties require him to travel more than the average member," Foster wrote.

The public is right to be skeptical of campaign spending, said Bob Stern, a former administrator of the Council on Governmental Ethics Laws, a national association of ethics officials and experts.

"How are they supposed to enforce the personal use law if they can't see the records?" he asked.

Travel Costs

Harrell reimbursed himself for travel about 40 times since 2008 for a total of $231,561, the newspaper's analysis of the records shows.

On nine separate dates, he paid himself $10,000 or more. Three times he paid himself more than $20,000 on a single day for what he reported as travel. Amounts listed on the reports include "travel costs incurred over several months," according to Harrell's office. The date listed on the campaign finance report indicates when the check was cut, not when the actual travel took place, the office said.

Harrell's Ethics Commission filing, which does not list travel and other expenses individually, conflicts with the state law that says "Candidate reimbursements must be itemized so that the purpose and recipient of the expenditure are identified."

Harrell's office refused to answer the newspaper's questions about the lack of itemization.

Foster said the "role of speaker includes various additional responsibilities that require the speaker to travel and represent the entire House, the House Republican Caucus and the state of South Carolina." Harrell traveled for federal court proceedings, funerals, meetings involving the National Speakers Conference and more, his office said in its statement.

In his statement, Harrell said: "While state funds should never be used to pay for political expenses, I also make it a point to try and save taxpayers money by using campaign funds to cover costs associated with many of my duties as House speaker."

In a separate email, Foster added: "For many of these trips, it would have been completely appropriate and justified for him to have used the State Plane. Instead, Speaker Harrell chose to use his own plane and by doing so save taxpayers thousands of dollars."

In addition to the campaign reimbursements, records show Harrell has taken annual taxpayer-funded stipends, according to statements of economic interest filed each year since 2008. The "in-district" rate for state lawmakers generally is $12,000 a year. Harrell reported receiving $44,999 in taxpayer-paid "salary, per diem, mileage, etc." on his 2012 income statement filed with the Ethics Commission.

The newspaper reviewed filings submitted by the 21 members of the Charleston County legislative delegation and found that other lawmakers also reimbursed themselves directly from campaign coffers. None of them, however, approached Harrell in the amounts and frequency of self-reimbursements.

Other Costs

Harrell also reimbursed himself for a variety of expenses beyond travel, bringing the total reported reimbursements since 2008 to $325,830, the newspaper's analysis found.

He took more than $7,500 over the past four years to pay for Christmas gifts and flowers for his staff and for fellow lawmakers.

This year, he reimbursed himself more than $58,600 for administrative and clerical staff. His campaign reports offered no additional details. In its statement, Harrell's office said those expenses "were related to Regina Keene, executive assistant and scheduler for the speaker who works out of his Charleston office."

Harrell's office did not respond to follow-up questions asking why the campaign did not pay Keene directly. In an email, Foster said "all appropriate state and federal payroll taxes are withheld and filed as appropriate."

Rather than pay a phone and internet provider directly, Harrell paid himself more than $16,000 since 2008 to cover those and other "communications" and "computer services" costs, his filings show. Instead of paying the U.S. Postal Service, he paid himself more than $1,200 for postage over that time, the reports show. No receipts were provided.

Other lawmakers, including S.C. Reps. Seth Whipper and Jenny Horne, made detailed disclosures that reported direct payments to vendors.

Whipper, D-North Charleston, bought stamps at the Pinehaven Post Office in North Charleston for $84, according to one of his reports. Horne, R-Summerville, reported paying $225 in April to the Post Office on North Gum Street in Summerville.

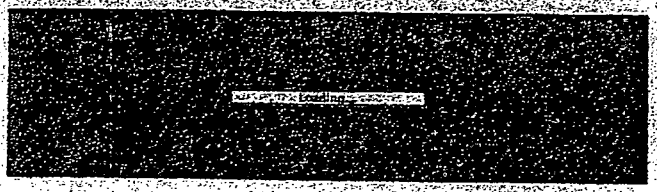
Horne's fuel charges also were detailed. She reported paying $52.50 to the Shell station on North Main Street in Summerville for gas to travel to a "Caucus Tax Committee meeting," according to the filing. Other legislators reported gas mileage reimbursement to specific meetings or campaign events.

Driving a car is not practical for the speaker, his spokesman said.

"Using his own plane allows him to attend and address many more of these duties than had he driven to them all, and allows him to get back home to his family."

Reach Renee Dudley at 937-5550 or on Twitter @renee_dudley.

Editor's note: Earlier versions of this story need correcting. South Carolina law does not require House Speaker Bobby Harrell to produce for the public receipts or itemized invoices accounting for how he spent campaign funds. It does require him to maintain the records, receipts or other proof of payment for campaign expenditures dating back four years.
The Palmetto Leadership Council, a political action committee affiliated with Harrell, has given campaign contributions to certain legislative candidates and members. The House Ethics Committee is a separate and independent body that does not report to Speaker Harrell.



Post A New Comment Notice about Commenting

Enter your comment here...

Submit

About P&C
About
Staff
Contact
Mobile Site
Mobile Apps

Follow P&C
Email Newsletters
RSS
Facebook
Twitter

Services
Become a Member
Place an Ad
Advertising Rates
Access Advertising Account

Your Account
Manage Your Membership

Site Links
News
Sports
Weather
Business
Features
Supplements
Blogs
Editorial
Classifieds

Related Properties
The Post and Courier – Charleston, SC
The Salisbury Post – Salisbury, NC
The (Kingstree) News – Kingstree, SC
Moultrie News – Mount Pleasant, SC
Summerville Journal-Scene – Summerville, SC
Goose Creek Gazette – Goose Creek, SC
The Clemmons Courier – NC
Waccamaw Times – Waccamaw, SC
Evening Post Books – Charleston, SC
The Georgetown Times – Georgetown, SC
Aiken Standard – Aiken, SC
The Charleston Mercury – Charleston, SC
The Berkeley Independent – Moncks Corner, SC
Davie County Enterprise – NC
The Star – North Augusta, SC

The Post and Courier - © 1995-2012 - Evening Post Publishing Co. All rights reserved.
Registration on or use of this site constitutes acceptance of our Terms of Service, Privacy Policy and Parental Consent Form.

The Post and Courier

Answers sought from House Speaker Bobby Harrell on reimbursements

Renee Dudley
Facebook Twitter

Posted: Tuesday, September 25, 2012 12:12 a.m.
UPDATED: Tuesday, October 2, 2012 4:25 p.m.



Harrell

Watchdog groups and the state Democratic Party are calling on the state attorney general to look into how House Speaker Bobby Harrell spent nearly $326,000 he reimbursed himself from his campaign account.

The issue

South Carolina House Speaker Bobby Harrell has reimbursed himself more than $325,000 from his campaign war chest since 2008 but has produced no receipts or itemized invoices accounting for the spending as required by state law.

Harrell, who was elected to the House in 1992, has repaid himself nearly a quarter-million dollars for travel expenses over the past four years, the newspaper found.

On his campaign finance reports, the Charleston Republican provided no descriptions of where he went or the reasons for the trips.

State politicians must maintain such documentation for four years to prove they are using campaign money for political rather than personal spending.

State law also requires candidates to itemize their expenditures on disclosure forms filed with the commission.

Before this election season, Harrell has run unopposed in every election since 2000.

Additionally, two state lawmakers have called on Harrell to publicly release itemized invoices detailing how he used the money.



The S.C. Policy Council, S.C. Democratic Party and S.C. Common Cause want Attorney General Alan Wilson to investigate how Harrell documented and spent the money he took from campaign coffers.

In a statement, Wilson's spokesman said "it is premature for this office to comment at this time."

"We will review the matter and take necessary action, if warranted," spokesman J. Mark Powell said in the statement.

Extra Photos


Harrell

Related Content

Harrell: 'I probably will be more specific' on financial records

Harrell offers no details on self-reimbursement of $325,000 from campaign funds

Money 'speaks' S.C. House

RELATED STORY:

Questions over Harrell self-reimbursement could make race out of speaker's post

For more than a month, Harrell has produced no receipts or itemized invoices accounting for his spending, The Post and Courier reported Monday.

Harrell's spokesman, Greg Foster, released a statement Monday saying "the Speaker is in full compliance with all aspects of our state's ethics laws."

Speaker Bobby Harrell's PAC doled out big money in campaign donations, contracts

Since Aug. 30, the newspaper repeatedly asked Harrell's office whether he could produce receipts and itemize expenditures showing how the money was spent. Harrell has failed to do so.

Lt. Gov. Glenn McConnell, formerly the S.C. Senate president, said he is "assuming he's got every receipt."

"If he's got the receipts and invoices, he should just release those," the Charleston Republican said of Harrell.

Yes or no?

On Friday, after posing the same question multiple times, the newspaper sent the following email to Harrell's office: "State yes or no whether the Speaker at this time has the receipts and itemized documents required under state law to justify his reimbursements."

He refused to say whether such invoices or itemizations exist.

But in a statement Monday, Foster said: "A point the Post & Courier reporter either failed to grasp or failed to accurately report, as (sic) that Speaker Harrell does in fact keep detailed itemized records of all campaign expenditures and receipts should the Ethics Committee ever wish to review and confirm any expense."

Foster again refused to provide the receipts and other documents.

Section 8 of the S.C. Ethics Law requires candidates to "maintain and preserve all receipted bills and accounts required by this article for four years."

Section 8 also states "candidate reimbursements must be itemized so that the purpose and recipient of the expenditure are identified." Candidates "must disclose all information required on the form developed under this section," the law states.

Portions of the forms Harrell filed with the State Ethics Commission, an independent government agency, included none of the itemizations and none of the receipts.

Investigation request

Even though the documents are filed with the independent Ethics Commission, enforcement of Section 8 rests with a separate body — the House Ethics Committee, a panel of six of Harrell's fellow lawmakers. A political action committee with which Harrell is affiliated has given

campaign contributions to five of them.

Committee Chairman Roland Smith — who has received at least $2,000 from the PAC — told the newspaper last week he "can't afford to talk about" Harrell's campaign spending.

Ashley Landess, president of the S.C. Policy Council, a libertarian think tank, called Smith's approach "disgraceful," saying she doesn't trust the committee to investigate thoroughly.

"Citizens deserve some public official in this state to stand up for them," Landess said, urging the attorney general to investigate the matter.

John Crangle, executive director of S.C. Common Cause, said he hand-delivered a letter Monday afternoon in which the watchdog group formally requested an investigation.

Dick Harpootlian, president of the S.C. Democratic Party, said Harrell's failure to produce documentation "demonstrates a contempt for the law."

"This is a financial shell game — make as much money as you can off of public service," Harpootlian said. "I join in the call for Attorney General Wilson to investigate this immediately."

In a statement, Wilson's spokesman indicated he would not take immediate action.

"By law, the House Ethics Committee would be the initial reviewing authority," Powell said in the statement.

Last month, Wilson and Gov. Nikki Haley toured the state touting ethics reform. In a press release Aug. 20, Haley said current ethics laws are "too confusing, too insular, and most of all, far too weak."

She continued: "The most important thing a public official can do is to try and right the wrongs they come across in public life."

The governor declined to be interviewed Monday. In a statement, Haley spokesman Rob Godfrey said, "We're not interested in taking pot shots at Speaker Harrell."

"We're sure he will tend to these matters, as he should," Godfrey wrote.

Demanding accountability

Landess said state lawmakers must demand accountability.

"It falls to every member of the House to seek explanation of the speaker's activities and why this

has gone unchallenged," she said.

One state lawmaker said he trusts Harrell is playing by the rules.

"I would take the speaker at his word that this has been travel for campaign-related business," said S.C. Rep. Chip Limehouse, a Charleston Republican.

Harrell, who was elected to the House in 1992, has repaid himself nearly a quarter-million dollars for travel expenses over the last four years, the newspaper found.

S.C. Rep. Ralph Norman, a York Republican, was more skeptical than Limehouse.

"He's gonna have to go overboard now to explain why he hasn't provided this so far," Norman said. "This isn't something he can stonewall. There are enough people in the House that are gonna demand that he answer."

Norman summed it up this way: "You can't govern effectively if you're under this cloud of suspicion. How is he gonna make laws if he's not abiding by them?"

Reach Renee Dudley at 937-5550 or on Twitter @renee_dudley.

Editor's note: Earlier published versions of this story need correcting.
South Carolina law does not require House Speaker Bobby Harrell to produce for the public receipts or itemized invoices accounting for how he spent campaign funds. It does require him to maintain the records, receipts or other proof of payment for campaign expenditures dating back four years. Both stories should have indicated the Palmetto Leadership Council, a political action committee affiliated with Harrell, has given campaign contributions to certain legislative candidates and members.
The Post and Courier regrets the errors.

EXHIBIT G

$150 WIN A $150 Gift Card! HealthyLink

Harrell's office says speaker reimbursed himself below market value for flights

Stephen Largen | Posted: Wednesday, October 17, 2012 12:45 a.m.
UPDATED: Wednesday, October 17, 2012 8:50 a.m.

Text size: AAA

Tweet 0 Recommend 0 Print Email



AP World And National News

- Meningitis outbreak deaths rise to 19
- 5 dead in apparent arson-homicide at Denver bar
- Man pleads guilty in plot to kill Saudi ambassador
- Government: Violent crimes rose 19 percent in 2011
- Legal path to US from Cuba still complicated
- Study: Multivitamins may lower cancer risk in men
- Supreme Court halts turnover of secret IRA tapes
- Feds: Suspect sent 'cannon fodder' to Somalia
- Family: Ex-Sen. McGovern 'no longer responsive'
- LA County assessor arrested in corruption case

CHARLESTON SCENE the app for iPhone get.stay.shop.play! GET IT NOW>

Calculations

The following is a partial breakdown of how House Speaker Bobby Harrell said he arrived at his cost-to-fly his plane. For example, between 2008 and 2011, Harrell's office said, he paid:

$14,980 for insurance at a cost of $61.90 per flight hour

$19,497 in Charleston County property taxes at a cost of $80.58 per flight hour

$37,629 in loan interest expenses at a cost of $155 per flight hour

$32,758 in depreciation costs

Harrell often makes the approximate 30-minute flight from Charleston to Columbia, setting him apart from most of his legislative colleagues, who drive to the Statehouse.

In addition to job-related trips, Harrell, a Charleston Republican, also uses his plane for personal travel.

"He enjoys being a pilot and enjoys flying," Foster said.

Cost Of Flying

Owning and flying a plane is expensive, as a breakdown of Harrell's ownership costs provided by his office shows.

Foster said Tuesday that from summer 2008 through 2011, the period for which Harrell is required by law to maintain receipts detailing his reimbursements, the speaker reimbursed himself about $94,000 for flights on his plane.

How did he arrive at that total?

Foster said Harrell obtained several estimates from charter companies for the cost of a leg, selected the cheapest price, then reimbursed himself less than that amount.

Foster said Harrell didn't have "a set determination" of how much less he paid himself back. "Overall, he made sure to do it less," Foster said.

Charter companies' rates generally include fuel, maintenance and pilot costs in addition to profit.

A frequent Harrell flight over the past four years has been the round trip between Charleston and Columbia.

Flight logs filed with the Federal Aviation Administration show Harrell has flown that route more than 110 times since 2008.

One charter company estimated the cost of a private flight from Charleston to Columbia in a single-engine aircraft at $900 (the company did not have a specific estimate for an SR22).

Foster said it's cheaper for charter companies to fly their planes than it is for the speaker to fly his aircraft because charter companies are able to spread their costs over more flights.

What The Law Says

According to state law governing the use of campaign funds for personal expenses, officials may not spend an amount "clearly in excess of the fair market value of services, materials, facilities, or other things of value received in exchange."

Nothing in state law provides specific direction for flight reimbursements.

State Ethics Commission attorney Cathy Hazelwood said the charter rate "could be the fair market value."

The Ethics Commission does not have oversight of Senate or House members such as Harrell. That responsibility falls to the Senate and House Ethics committees.

An attorney for the House Ethics Committee said that Harrell consulted with committee staff before reimbursing himself for flights, to assure that how he planned to do so complied with state ethics law.

According to Harrell's office, the $94,000 the speaker reimbursed himself for use of the plane involved 155 hours of flying. That would mean Harrell reimbursed himself $606.45 per hour.

at a cost of $135 per flight hour.

Background On Reimbursements

What's the issue with Bobby Harrell's reimbursements?

Harrell has reimbursed himself about $280,000 from his campaign account since the summer of 2008. That total includes reimbursements for flights on his plane and other spending.

By law, Harrell has to retain four years' worth of receipts detailing those expenses. Harrell has returned $23,800 to his campaign account, saying he lost the receipts related to that spending during a move.

The Post and Courier first reported on the reimbursements, but Harrell declined to allow the newspaper to view the receipts.

The speaker then allowed a reporter for The Associated Press to review them. He still has not permitted the newspaper to review the receipts, but this week released to the paper a breakdown of his flight costs.

Harrell is not required by law to publicly release the receipts. Several watchdog and political groups have said that without the required documentation, it is impossible to confirm that Harrell spent the money properly.

The Post and Courier on Facebook
Like
12,357 people like The Post and Courier.

LowCountryMarketplace.com
Cypress Lowcountry Grille
167 Fay St
Charleston, SC
(843) 727-0111
NHC Healthcare of Charleston
2330 Ashley Crossing Dr
Charleston, SC
(843) 766-5228
Roper St Francis Hospital
316 Calhoun Street
Charleston, SC
(843) 724-2450
Restaurants · Entertainment · Health · Real Estate · Home & Garden · Coupons

P&C Most Popular

Emailed Shared

1. Charleston on top of the world in tourist ranking
2. Update: Traffic back to normal after Vice President Biden leaves funeral
3. Friends, relatives of slain West Ashley woman felt 'something wasn't right'
4. Charleston County lists surprising properties for delinquent tax sale
5. Charleston may face street flooding, Folly may get more erosion due to moon tides and Hurricane Rafael
6. Missing 17-year-olds from Sangaree located
7. Man accused of killing 14-year-old nephew pleads guilty
8. Adopted son now faces murder charge in shooting death of West Ashley woman
9. Should wives obey? Comments spur debate over role of Christian women
10. Mentoring through sports: Area coaches filling father figure void

That figure is less than what Foster said it actually costs Harrell to fly, which Harrell calculates was more than $800 per hour.

"It cost him money out of his pocket to fly his airplane," Foster said.

How did Harrell calculate his actual costs?

In addition to direct operating costs, such as fuel, oil and oil changes, Harrell's explanation of his costs also includes many other expenses.

The out-of-pocket hourly costs Harrell tabulated include insurance, maintenance, property taxes, loan interest, depreciation and airplane hangar costs. Each of those totals are factored into what Harrell said is his hourly cost to fly his plane. The costs are based on Harrell flying an average of 60 hours each year between 2008-11 between personal and state-related travel.

Maintenance was Harrell's greatest cost.

A per-hour cost estimate for flying an SR22 provided by Cirrus does not include many of the costs Harrell factored in. Still, Foster contends that the company's estimate doesn't reflect the true costs of flying.

Flying Vs. Driving

By claiming reimbursements for flying his plane for trips to Columbia from Charleston, Harrell charged his campaign account much more than he would have been entitled to receive from the state for a car mileage reimbursement.

Lawmakers can claim mileage expenses for one trip from home to Columbia and back during each week of the legislative session.

State representatives receive 44.5 cents per mile.

A round-trip from a home Harrell owns in West Ashley to the Statehouse totals about 228 miles, which would entitle the speaker to a reimbursement of $101.46.

Using the hourly flight cost provided by Harrell, the speaker would reimburse himself just over $600 for the round-trip flight between Charleston and Columbia.

'Actual Expenses'

Harrell's flight reimbursements could be examined in a prospective House Ethics Committee investigation of his campaign reimbursements and related receipts.

The committee is not allowed to accept a complaint within 50 days of an election in which the subject of the complaint is running. Harrell is seeking re-election on Nov. 6.

The leader of a state watchdog group has said he plans to file a complaint with the committee on Nov. 7.

Asked whether Harrell would be confident presenting the expenses he shared with the newspaper to the committee, Foster responded, "These are the actual expenses that the speaker incurred in operating this airplane."

"No matter how you add it up, he reimbursed himself for less than the actual cost."

Comments [10]

Login to comment

Page 1 of 3

Next Next

Billy Harding

10-17-12 at 05:25 AM

Report Abuse

Shady Shady Shady! There are no other words describe Mr Harrells explanation. Like I've mentioned before the best and most effective way to resolve this issue is this. Have the FBI get involved and do a complete investigation and while this is all pending, put a complete freeze on his financial and personal assets. You want to see how fast he comes clean when the money dries up. In the meantime if you hold an account with his insurance agency please switch companies. There is no reason to be doing business with criminals.

John Cecil
10/17/12 at 02:41 PM

Report Abuse

Speaker Harrell has accepted over $600,000 in campaign contributions. What exactly does he do with this money besides fly back and forth between Columbia and Charleston? He has run unopposed for the past several elections. Could he respond to why residents of South Carolina are paying 25% higher home owners insurance rates than North Carolina and Georgia? He is an insurance agent and Speaker of the House. Has he accepted funds from special interest such as insurance companies? Does he feel campaign contributions influence the higher rate in South Carolina than that of North Carolina and Georgia? Or perhaps his petition challenger John Steinberger could respond to some of these concerns?

David Coe
10/17/12 at 10:07 AM

Report Abuse

When are we going to get another raving support of Harrell from Riley? "It takes one to know one. Birds of a feather fly together. If it smells like a duck, looks like a duck, walks like a duck, it is corrupt duck eating a rat." Stop the corruption in State, County and City officials, and see if we can retrieve some of the respect they used to have. Everyone is sick the way the political picture that has been drawn in South Carolina. This is apparent by the percentages of voters that voted in the past primary elections. WE NEED HELP!!!

Julian Hodgekiss
10/17/12 at 09:13 AM

Report Abuse

You put Harrell and Foster on the witness stand under oath, they get caught in perjury.

Julian Hodgekiss
10/17/12 at 09:13 AM

Report Abuse

You put Harrell and Foster on the witness stand under oath, they get caught in perjury.

About P&C
About
Staff
Contact
Mobile Site
Mobile Apps

Site Links
News
Sports
Weather
Business
Features
Supplements
Blogs
Editorial
Classifieds

Follow P&C
Email Newsletters
RSS
Facebook
Twitter

Services
Become a Member
Place an Ad
Advertising Rates
Access Advertising Account

Your Account
Manage Your Membership

Related Properties
The Post and Courier - Charleston, SC
The Salisbury Post - Salisbury, NC
The Kingstree News - Kingstree, SC
Moultrie News - Mount Pleasant, SC
Summerville Journal-Scene - Summerville, SC
Goose Creek Gazette - Goose Creek, SC
The Clemmons Courier - NC
Waccamaw Times - Waccamaw, SC
Evening Post Books - Charleston, SC
The Georgetown Times - Georgetown, SC
Aiken Standard - Aiken, SC
The Charleston Mercury - Charleston, SC
The Berkeley Independent - Moncks Corner, SC
Davie County Enterprise - NC
The Star - North Augusta, SC

The Post and Courier - © 1995 - 2012 - Evening Post Publishing Co. All rights reserved.
Registration on or use of this site constitutes acceptance of our Terms of Service, Privacy Policy and Parental Consent Form.

EXHIBIT H

JUDICIAL MERIT SELECTION COMMISSION MEMBERS

January 8, 2013

Senate Appointees:

Senator Larry A. Martin (2012)
101 Gressette Bldg.
Columbia, SC 29201
(803) 212-6610
Bus: P.O. Box 247, Pickens, SC 29671
(864) 306-2126

Senator Floyd Nicholson (2009)
608 Gressette Bldg.
Columbia, SC 29201
(803) 212-6000
Bus: 527 Bryte St., Greenwood, SC 29649
(864) 388-8377

Senator George E. "Chip" Campsen, III (2012)
305 Gressette Bldg.
Columbia, SC 29201
(803) 212-6340
Bus: 360 Concord St., Suite 201
Charleston SC 29401
(843) 722-0123

Professor Emeritus John P. Freeman (2001)
2329 Wilmot Ave.
Columbia, SC 29205
(803) 254-4667 [Home]

Ms. Kristian M. Cross (2013)
Collins and Lacy
1330 Lady St., 6th Floor
Columbia, SC 29201
P.O. Box 12487 (29211)
(803) 255-0497 [Office]

House Appointees:

Representative F.G. Delleney, Jr. (1997)
512 Blatt Bldg.
Columbia, SC 29201
(803) 734-3120
Bus: P.O. Drawer 808, Chester, SC 29706
(803) 581-2211

Representative Alan D. Clemmons (2008)
519C Blatt Bldg.
Columbia, SC 29201
(803) 734-3113
Bus: 1800-A North Oak Street
Myrtle Beach, SC 29557
(843) 448-4246

Representative David J. Mack, III (2008)
328D Blatt Bldg.
Columbia, SC 29201
(843) 734-3192
Bus: 4340 Evanston Blvd.
North Charleston, SC 29418
(843) 225-4869

John Davis Harrell, Esq. (2007)
Harrell Law Firm, P.A.
2000 Sam Rittenberg Blvd., Ste. 2001
Charleston, SC 29407
(843) 766-4700 [Office]

H. Donald Sellers, Esq. (2007)
Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, SC 29602
(864) 240-3232 [Office]

Senate Counsel:	Jane O. Shuler, Chief Counsel	(803) 212-6629
House Counsel:	Patrick G. Dennis	(803) 734-3120
Staff:	Jaynie Jordan	(803) 212-6623

EXHIBIT I

The State
South Carolina's Newspaper

Back

Wednesday, Jan 16, 2013

Posted on Thu, Sep 27, 2012

SC House speaker insists his spending has been legal

By SEANNA ADCOX
The Associated Press

Campaign spending by House Speaker Bobby Harrell has come under fire recently, ratcheting up pressure to overhaul state ethics laws criticized for being vague and open to interpretation.

Harrell, one of the state's most powerful politicians, was adamant he did nothing improper and showed The Associated Press documents Tuesday to back up his assertions. He acknowledged, however, that he could be more specific on campaign finance forms about how he is reimbursed from his campaign account when he uses his personal credit card and pays bills online, among other things.

Harrell, speaker since 2005, has reimbursed himself about $280,000 from his campaign account since the summer of 2008, according to quarterly spending reports filed with the state. The reasons for the spending were largely generic, such as "legislative travel" and "conference fees." Some were downright confusing: "staff Christmas," which Harrell explained to AP was presents for staff.

The vague descriptions, first reported by The Post and Courier, brought about accusations that the Charleston Republican couldn't account for hundreds of thousands of dollars taken from his campaign. A government watchdog group has called for an investigation, but South Carolina's law doesn't appear to require him to be more specific on the forms.

"The current ethics structure is grossly flawed. We need a different type of enforcement mechanism," said John Crangle of the watchdog group Common Cause.

Harrell has not faced strong opposition in years, and with his name recognition, he doesn't have to spend tons of money to win re-election. Still, he's raised $470,000 in the last two years, and has more than $144,000 available, according to his latest campaign finance report.

State law allows campaign donations to be spent on campaigning or official duties, which are broad for Harrell because of his leadership role.



Robert Harrell

A look at S.C. speaker's campaign reimbursements

House Speaker Bobby Harrell has reimbursed himself about $280,000 from his campaign since the summer of 2008. State law requires him to keep expense records for four years. He showed The Associated Press documents to support his withdrawals. Here are some examples and his explanations:

June 19, 2012: $3,976 for "administrative assistant." Covers most of the monthly pay for an employee in his Charleston business office whose duties include legislative scheduling and keeping

"The way I've been doing it is within the law," Harrell said. "Going forward, I probably will be more specific."

Last week, Harrell put nearly $23,000 back into his campaign account, acknowledging in a letter to the Ethics Committee that a four-year review determined he didn't have records for that amount in withdrawals. While he believes the expenses were legitimate, he said, he doesn't have the documents to support them.

He attributed the missing records to moving an office in Charleston in 2011.

Ethics reform promises to be much-debated when the Legislature reconvenes in January. Both the House and Senate are working on plans to close ethics loopholes, such as requiring public officials to disclose all of their income and who's paying them. Republican Gov. Nikki Haley, herself the subject of an investigation, toured the state touting her own plan.

Haley, a former House member, was cleared by the House Ethics Committee in June of allegations she illegally lobbied for a hospital and an engineering firm as a state representative.

Harrell criticized Haley's fly-around, saying then her own ethics case emphasized the need for reform.

State law, which also offers virtually no guidance on reimbursements, requires candidates to maintain expense records for four years – something Harrell says he has done.

Harrell, a 10-term incumbent, showed AP a stack of documents to back up his withdrawals, including American Express bills, phone bills, hotel invoices and pay stubs. Harrell did not allow copies to be made, saying the bills also contained personal spending and information. He also noted they were not public documents under state law.

The director of a libertarian think tank called on Harrell to release the documents.

"We need to see the documentation to have complete confidence the speaker did indeed reimburse himself for actual cost and that the travel is legitimate," said Ashley Landess of the SC Policy Council, which is promising to stir up a grass-roots movement to demand ethics reform.

Most of Harrell's largest reimbursements involved flights on his single-engine plane to Columbia and to legislative events across the state. For those, he offered spreadsheets, such as one detailing a $17,325 withdrawal in May 2011 for 30 trips flown over seven months.

State law does not address how such reimbursements should be calculated. Harrell, who holds a commercial pilot's license, said he determines what charter companies charge to fly his same aircraft for the leg, then reimburses himself less than that.

Harrell said he saves taxpayers money by flying his own plane on trips when he could've used the state's plane, and it allows him to get to multiple events in a day he otherwise couldn't.

Crangle, of Common Cause, said he will try to file his complaint with the House Ethics Committee this week, and will ask the panel to waive its jurisdiction and send the case to the attorney general. He contends there's a conflict of interest because five of its six members received donations from the Palmetto Leadership Council, a pro-business fundraising group Harrell supports.

up with his campaign account. A payroll service cuts her check along with the other employees of his insurance agency, and he reimburses himself from his campaign for a portion.

Feb. 2, 2012: $36,733.26, a many-month lump sum for the "administrative assistant" hired in January 2011. Harrell didn't start to reimburse himself until this date. This is the largest single reimbursement in four years.

May 9, 2012: $591.71 "phone reimbursement" for monthly Verizon bill. Harrell says the entire bill is paid online and includes cell phones used by family members. He gets reimbursed for his, his spokesman's, and two assistants' cell phones and their AirCards.

Feb. 6, 2012: $11,951 for "legislative travel." Harrell American Express bill showed he paid for airline tickets, hotel stay, and meals in San Francisco. Harrell, immediate past president of the National Speakers Conference, said the trip was the group's executive committee meeting. State law allows campaigns to spend money only by check, debit card, or online transfers. Harrell said that is why he uses his personal credit card to pay such travel expenses.

June 3, 2008: $22,008 for "travel." A spreadsheet showed Harrell, a pilot, made 35 trips on his plane between November 2008 and May 2009. Reasons include fundraisers, business meetings and trips to the State House.

The committee's options, if it found wrongdoing, include public or private reprimands, fines, or ordering corrective action, which can include paying a campaign back.

Former Gov. Mark Sanford paid the state's largest ethics fine in 2010, when he agreed to pay $74,000 to resolve dozens of state Ethics Commission charges that he violated state ethics laws with his campaign spending and travel. He also agreed to put about $3,000 back into his campaign account as a reimbursement for personal use of campaign funds.

© 2013 TheState.com and wire service sources. All Rights Reserved. http://www.thestate.com

EXHIBIT J

Lesia Kudelka

From: Lee Ann Bundrick [bundrick@scdlr.com]
Sent: Tuesday, November 02, 2010 10:28 AM
To: Marilyn Crouch
Cc: Bobby Bradham ([redacted]), [redacted]
Subject: FW: Letter from Bobby Harrell
Attachments: Bobby Harrell Letter.pdf

Please place on the November Agenda.

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks.

http://www.llr.state.sc.us/polsurvey/index.asp

From: ROBERT L SPIRES [mailto:rlspires@bellsouth.net]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act? They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and not have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

Lesia Kudelka

From: Lee Ann Bundrick [lbundrick@scdll.com]
Sent: Tuesday, November 02, 2010 10:30 AM
To: Addison Livingston; Al Tootle; Bobby Bradham (jrbradham@comcast.net); dmbanks@cvs.com; Leo Richardson (drrichardson@bellsouth.net); medcabdb@yahoo.com; mobleyrx@componium.net; Rose, Dock Henry (dhrose@charter.net); Ciella Sanders; Eddie Durant; Ernest Shuler; Joe Newton; Larry Grant; Ray Trotter; Rosemary Buguski
Subject: FW: Letter from Bobby Harrell
Attachments: Bobby Harrell Letter.pdf

FYI

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks

http://www.llr.state.sc.us/polsurvey/index.asp

From: ROBERT L SPIRES [mailto:rspires@bellsouth.net]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act? They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and not have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

Lesia Kudelka

From: Lee Ann Bundrick [bundrick@scdlr.com]
Sent: Tuesday, November 02, 2010 10:31 AM
To: Bobby Bradham (jrbradham@comcast.net)
Subject: FW: Letter from Bobby Harrell
Attachments: Bobby Harrell Letter.pdf

Do you want to send a letter to Mr. Grimms requesting additional information regarding the structure etc. and request that he appear before the Board?.

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks

http://www.llr.state.sc.us/polsurvey/index.asp

From: ROBERT L SPIRES [mailto:rlspires@bellsouth.net]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harrell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act?. They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and not have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

From: "Lee Ann Bundrick" <bundrick@scdlr.com>
To: "Bobby Bradham" [redacted]
Sent: Tuesday, November 2, 2010 10:30:57 AM
Subject: FW: Letter from Bobby Harrell

Do you want to send a letter to Mr. Grimms requesting additional information regarding the structure etc. and request that he appear before the Board?

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey; it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks.

http://www.llr.state.sc.us/polsurvey/index.asp

From: ROBERT L. SPIRES [mailto:rlspires@bellsouth.net]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harrell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act? They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and not have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

Lesia Kudelka

From: Lee Ann Burdrick [burdrick@scdlr.com]
Sent: Wednesday, November 03, 2010 1:50 PM
To: Marilyn Groulx
Subject: FW: Letter from Bobby Harrell

FYI.

Lee Ann F. Burdrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks

http://www.llr.state.sc.us/polsurvey/index.asp

From: [redacted] [mailto:[redacted]]
Sent: Tuesday, November 02, 2010 8:24 PM
To: Lee Ann Burdrick
Subject: Re: Letter from Bobby Harrell

Lee Ann:

Robert Spires request will not be honored as the November agenda is already established and the Chairperson is the only one that can add/delete anything this late in the process! The board members might address this issue in executive session for some future discussion! I will not allow the hospitals to use the SC BOP to attempt to resolve their challenge on this issue!!!!!!!!! We will not be used as a scapegoat in this issue!!!!!!!!!

My thoughts!

Bobby

—— Original Message ——

Lesia Kudelka

From: Ray Trotter [rtrotter@scalh.com]
Sent: Tuesday, November 02, 2010 3:14 PM
To: rtrotter@scheart.com
Subject: FW: Letter from Bobby Harrell
Attachments: Bobby Harrell Letter.pdf

From: Lee Ann Bundrick [mailto:lbundrick@scalh.com]
Sent: Tuesday, November 02, 2010 10:30 AM
To: Addison Livingston; Al Tooley; Bobby Bradham ([redacted]); dmtanks@cvs.com; Leo Richardson (drlrichardson@bellsouth.net); [redacted]; mobley@compuram.net; Rose, Dock Henry ([redacted]); Cleta Sanders; Eddie Durant; Ernest Shuler; Joe Newton; Larry Grant; Ray Trotter; Rosemary Boguski
Subject: FW: Letter from Bobby Harrell

FYI

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks.

http://www.llr.state.sc.us/polsurvey/index.asp

From: ROBERT L SPIRES [mailto:rlspires@bellsouth.net]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act?. They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and not have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

-----Original Message-----
From: "Lee Ann Bundrick" <bundricl@scdlr.com>
To: "Carmelo Cinqueonce" <ccinque@scrx.org>; jtbradham[redacted]; "Lee Ann Bundrick" <BUNDRICL@llr.sc.gov>; "Richard Davis" <rdavis@capconsc.com>
Sent: Thursday, November 4, 2010 5:36:19 PM
Subject: RE: Bobby Harrell letter

Carmelo,

Thanks for the FYI. I have already received numerous complaints about this letter. Chairman Bradham is in the process of determining how he wants to handle.

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator,
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks

http://www.llr.state.sc.us/polsurvey/index.asp

From: Carmelo Cinqueonce [mailto:ccinque@scrx.org]
Sent: Thursday, November 04, 2010 2:06 PM
To: jtbradham[redacted]; Lee Ann Bundrick; Richard Davis
Subject: Bobby Harrell letter

FYI

Carmelo Cinqueonce, MBA
Chief Executive Officer
South Carolina Pharmacy Association
1350 Browning Road
Columbia, SC 29210
803-354-9977
cell 803-463-4788
fax 803-354-9207
ccinque@scrx.org
www.scrx.org

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or

Lesia Kudelka

From: Lee Ann Bundrick [bundrickl@scdlr.com]
Sent: Friday, November 05, 2010 11:08 AM
To: jbradham@comcast.net
Subject: RE: Bobby Harrell letter

I have forwarded it to Ms. Dantzler to review and advise.

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4700
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks.

http://www.llr.state.sc.us/polsurvey/index.asp

From: [redacted] [mailto:[redacted]]
Sent: Friday, November 05, 2010 10:10 AM
To: Lee Ann Bundrick
Subject: Re: Bobby Harrell letter

Lee Ann:

I will be coming to Columbia to be at the SCPhA House of Delegates meeting that Sunday. I will be back in Columbia the next day to prepare for the SC BOP meeting as well. I will share the Harrell letter in my presentation.... have you shown it to Ms. Dantzler? It might be best to have her "legal" opinion re: this issue before I decide what I should/should not say.

I will also have a SCPhA Foundation meeting following the HOD meeting.

Bobby

Lesia Kudelka

From: Lee Ann Bundrick [bundricl@scdlr.com]
Sent: Friday, November 05, 2010 11:07 AM
To: Sharon Dantzler
Subject: FW: Letter from Bobby Harrell
Attachments: Bobby Harrell Letter.pdf

Please review and advise.

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
Office of Board Services
(803) 896-4709
(803) 896-4596 (fax)
www.llr.state.sc.us/pol/pharmacy
www.llr.state.sc.us/pol/longtermhealthcare

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks

http://www.llr.state.sc.us/polsurvey/index.asp

From: ROBERT L SPIRES [mailto:rlspires@bellsouth.net]
Sent: Monday, November 01, 2010 4:28 PM
To: Hugh Mobley; LeeAnn Bundrick
Subject: Letter from Bobby Harrell

Attached is a copy of the letter that Bobby Harell sent to hospitals. Hospitals are asking what is the Board of Pharmacy's position on this letter in respect to the Pharmacy Practice Act?. They would like to seek a response from the Board so that each hospital will be able to respond in the same manner and not have several different responses adding to the confusion. Please place this on the agenda for the November Board of Pharmacy meeting for discussion.

Thanks, Robert

Leslie Kudelka

From: Beverly Gould [Beverly.Gould@llr.sc.gov]
Sent: Friday, March 09, 2012 3:15 PM
To: Olivia Eitzman
Subject: RE: Regulatory Question

Olivia,
I don't believe Ms. Bundrick has met with the Medical and Nursing Boards' administrators yet to discuss the situation. I will let you know as soon as I have a decision. I'll also check with Lee Ann as to when they might possibly meet.

Beverly Gould
Administrative Assistant
Board of Pharmacy
SC Department of Labor, Licensing & Regulation
110 Centerview Dr. Columbia SC 29210
Phone: (803) 896-4722
Fax: (803) 896-4596
Email: Beverly.Gould@llr.sc.gov

Please click on the link below to complete the Customer Service Satisfaction Survey. It only takes a minute to complete and will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thank you very much.

http://www.llr.state.sc.us/dol/polsurvey/index.asp

From: Olivia Eitzman [mailto:[redacted]]
Sent: Wednesday, February 29, 2012 12:39 PM
To: Beverly Gould
Subject: Fwd: Regulatory Question

Beverly,
I am currently a consultant pharmacist for Rock Tenn and Heinz Companies in Florence both of which have permits from LLR Board to operate. I am also pharmacist in charge at McLeod Outpatient Pharmacy. I am being asked to serve as consultant at Honda as well. It is the intention of McLeod Occupational Health to operate at Honda as a dispensing pharmacy without a pharmacist present. I am forwarding a letter sent to me of their intent. Can you tell me if this information in the letter below is correct and what my role as consultant would be in this case? I don't want to do anything to jeopardize my pharmacist license.
Olivia Eitzman

Sent from my iPad

Begin forwarded message:

From: OFitzman@mcleodhealth.org
Date: February 27, 2012 6:05:41 PM EST
To: [redacted]
Subject: Fw: Re: Regulatory Question

----Forwarded by Olivia Fitzman/MRMC/McLeod_Health on 02/27/2012 05:05PM ----

To: David Grimm <david@primaryrx.com>, Chuck Rozak/MRMC/McLeod_Health@McLeod
From: Octavia Williams-Blake/MRMC/McLeod_Health
Date: 02/25/2012 10:27PM
Cc: Olivia Fitzman/MRMC/McLeod_Health@McLeod
Subject: Re: Regulatory Question

Chuck, after pondering Friday's conversation, I realized when I stated this was not dispensing, I was thinking about the medications that are in our industries that require a "non-dispensing" license. This of course is not the case with Honda and PrimaryRX, this would be dispensing, thus not requiring a "non-dispensing" license. As you stated, the SC Pharmacy statute says only a Pharmacist or Physician can dispense medications but the SC Nurse Practitioner Act and subsequent legal interpretations on the Pharmacy act say the Physician can designate certain medical acts to the licensed Nurse Practitioner or Physician Assistant. These designated medical acts include the distribution of pre-packaged and labeled medications with the exception of Scheduled II narcotics.

In addition, as it relates to the physician "owning" the pre-packaged medication, the intent is not to dictate who purchases the medications, it is intended to dictate who "owns" the medications. Therefore, there should not be an issue with McLeod purchasing the medications that Dr. Hyman will own; he is the supervising MD for the NP onsite at Honda and can delegate the medical act of dispensing to her.

Please advise asap as we are scheduled for a walk through on 2/27/2012 and go live on 3/5/2012. My intent is to contract with Olivia for consulting for this industry also.

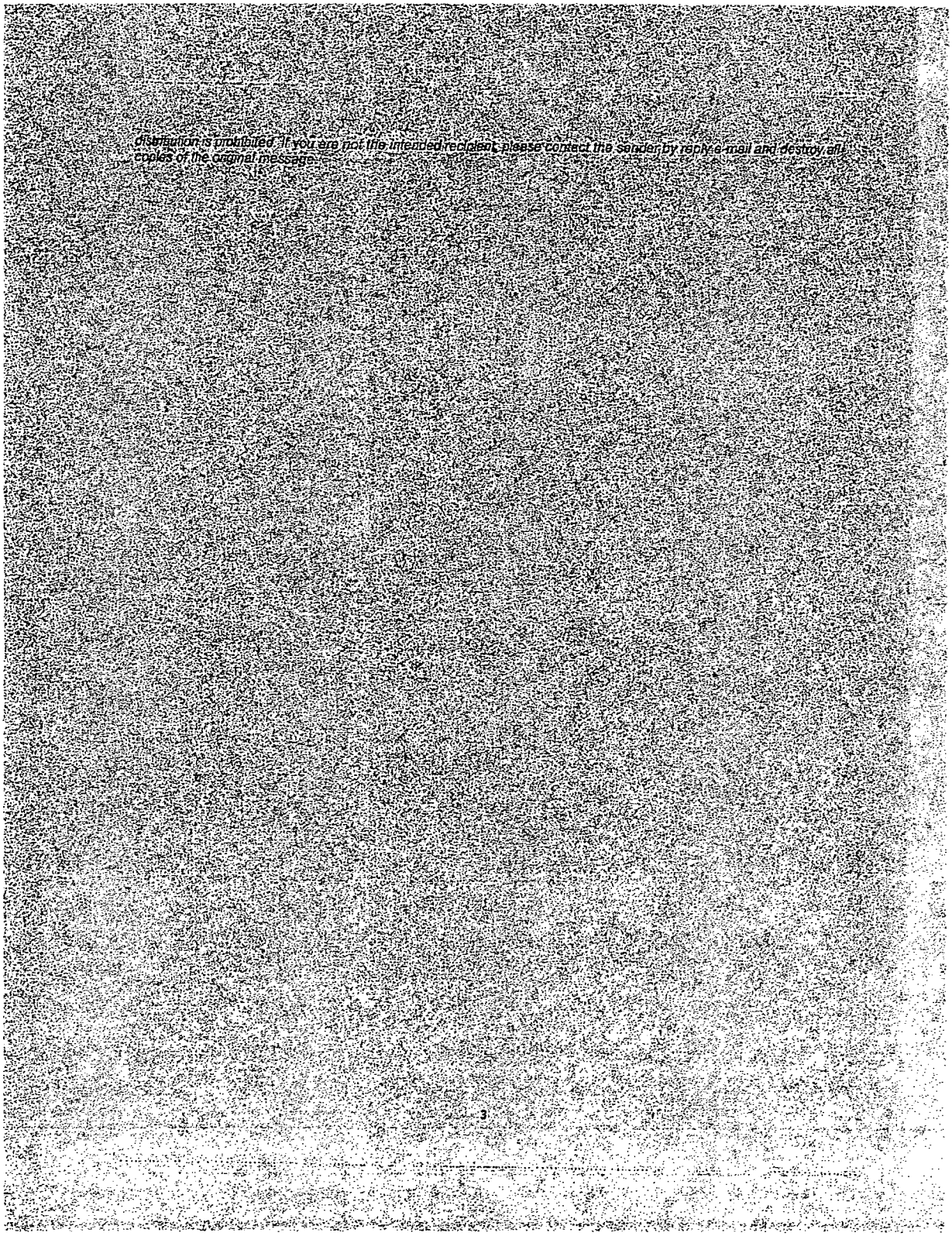
Octavia

----David Grimm <david@primaryrx.com> wrote: ----

To: "OWilliams@mcleodhealth.org" <OWilliams@mcleodhealth.org>
From: David Grimm <david@primaryrx.com>
Date: 02/24/2012 06:48PM
Cc: "crozak@mcleodhealth.org" <crozak@mcleodhealth.org>
Subject: Regulatory Question

Octavia,

After our conversation earlier today, I spoke with my partner, Bobby Harrell regarding the legal issue brought up by Mr. Rozak. The question of how a physician that works for a hospital, that is not fully owned by physicians, meet the regulations for the dispensing of medications in South Carolina has been addressed before. Back in 2007, Bobby Harrell met with the South Carolina Department of Labor, Licensing and Regulations Chief Deputy General Counsel, Sharon Dantzler. After multiple conversations, Ms. Dantzler provided a response to our company in a letter clarifying the LLR's position. I am attaching a copy of that letter to this email for your review. Below is an excerpt from the letter that directly address this situation:



distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Leela Kudelka

From: Dean Grigg [dean.grigg@llr.sc.gov]
Sent: Thursday, March 01, 2012 2:39 PM
To: Lee Ann Bundrick; Sara McCartha
Subject: RE: Regulatory Question

That's my understanding as well. Probably a good idea to get Nancy's and Bruce's input.

From: Lee Ann Bundrick
Sent: Wednesday, February 29, 2012 4:32 PM
To: Dean Grigg; Sara McCartha
Subject: FW: Regulatory Question

Please review the questions below and the original e-mail. We probably need to get Bruce and Nancy involved. It is my understanding that a NP can't dispense.

Lee Ann F. Bundrick, RPh
Chief Drug Inspector/Administrator
Board of Pharmacy and Long Term Health Care Administrators
SC Dept. of Labor, Licensing and Regulation, 110 Centerview Dr., Columbia, S.C. 29210
Telephone 803-896-4700
Fax 803-896-4596

Email: bundrick@llr.sc.gov
Website: www.llr.state.sc.us

Please click on the link below to complete the Customer Service Satisfaction Survey. It only takes a minute to complete and will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thank you very much.

http://www.llr.state.sc.us/dev/poll/survey/index.asp

From: Beverly Gould
Sent: Wednesday, February 29, 2012 2:33 PM
To: Lee Ann Bundrick
Subject: FW: Regulatory Question

Please review the situation below. Bobby Harrell is involved.
Thanks,

Beverly Gould
Administrative Assistant
Board of Pharmacy
SC Department of Labor, Licensing & Regulation
110 Centerview Dr, Columbia SC 29210
Phone: (803) 896-4722
Fax: (803) 896-4596
Email: Beverly.Gould@llr.sc.gov

Because the medical practice in question is not fully owned by licensed physicians, any drug inventory must be owned personally by the dispensing physician in order that the dispensing facility be exempt from permitting requirements. S.C. Code 40-43-60(1). The physician's contractual relationship with the hospital does not figure into this licensing issue.

I will be in Florence on Monday at the Honda site at 10AM but I will also make myself available to meet with you and Mr. Rozak if you would like to discuss this further. Please let me know if you want to meet or if you need anything further.

I look forward to hearing back from you soon.

Best Regards,

David Grimm
Founding Partner
Palmetto State Pharmaceuticals / PrimaryRx
2000 Sam Rittenberg Blvd. Suite 116
Charleston, SC 29407
843-769-7633 Office
david@primaryrx.com

From: Octavia Williams-Blake <owilliams@mcleodhealth.org>
Date: Fri, 24 Feb 2012 07:19:34 -0600
To: David Grimm <david@primaryrx.com>
Subject: Re:

Dave, please proceed with ordering everything above the TO BE DISCUSSED. (I added two more from the "no longer under $8 list).

thanks

Octavia

Octavia Williams-Blake
Director, Occupational Health
McLeod Health
843-777-5355 (Office)
843-777-5296 (Fax)
owilliams@mcleodhealth.org

NOTICE: This e-mail message and all attachments transmitted with it may contain legally PRIVILEGED and CONFIDENTIAL information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and/or notify the postmaster (postmaster@mcleodhealth.org), and delete this message and all copies and backups thereof. Thank You.

[attachment "Scan 1.pdf" removed by Octavia Williams-Blake/MRMC/McLeod_Health]

NOTICE: This e-mail message and all attachments transmitted with it may contain legally PRIVILEGED and CONFIDENTIAL information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and/or notify the postmaster (postmaster@mcleodhealth.org), and delete this message and all copies and backups thereof. Thank You.

Please click on the link below to complete the Customer Service Satisfaction Survey. It only takes a minute to complete and will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thank you very much.

http://www.llr.state.sc.us/dev/polsurvey/index.asp

From: Olivia Eitzman [mailto:oeitzbliss@sc.rr.com]
Sent: Wednesday, February 29, 2012 12:39 PM
To: Beverly Gould
Subject: Fwd: Regulatory Question

Beverly,

I am currently a consultant pharmacist for Rock-Tenn and Heinz Companies in Florence, both of which have permits from LLR Board to operate. I am also pharmacist in charge at McLeod Outpatient Pharmacy. I am being asked to serve as consultant at Honda as well. It is the intention of McLeod Occupational Health to operate at Honda as a dispensing pharmacy without a pharmacist present. I am forwarding a letter sent to me of their intent. Can you tell me if this information in the letter below is correct and what my role as consultant would be in this case? I don't want to do anything to jeopardize my pharmacist license.

Olivia Eitzman

Sent from my iPad

Begin forwarded message:

From: Oeitzman@mcleodhealth.org
Date: February 27, 2012 6:05:41 PM EST
To: [redacted]
Subject: Fw: Re: Regulatory Question

----- Forwarded by Olivia Eitzman/MRMC/McLeod Health on 02/27/2012 06:05PM -----
To: David Grumm <david@primaryrx.com>, Chuck Rozak/MRMC/McLeod Health@McLeod
From: Octavia Williams-Blake/MRMC/McLeod Health
Date: 02/25/2012 10:27PM
Cc: Olivia Eitzman/MRMC/McLeod Health@McLeod
Subject: Re: Regulatory Question

Chuck, after pondering Friday's conversation, I realized when I stated this was not dispensing- I was thinking about the medications that are in our industries that require a "non-dispensing" license. This of course is not the case; with Honda and PrimaryRX, this would be dispensing, thus not requiring a "non-dispensing" license. As you stated, the SC Pharmacy statute says only a Pharmacist or Physician can dispense medications but the SC Nurse Practitioner Act and subsequent legal interpretations on the Pharmacy act say the Physician can designate certain medical acts to the licensed Nurse Practitioner or Physician Assistant. These designated medical acts include the distribution of pre-packaged and labeled medications with the exception of Scheduled II narcotics.

In addition, as it relates to the physician "owning" the pre-packaged medication, the intent is not to dictate who purchases the medications, it is intended to dictate who "owns" the

medications. Therefore, there should not be an issue with McLeod purchasing the medications that Dr. Hyman will own. He is the supervising MD for the NP onsite at Honda and can delegate the medical act of dispensing to her.

Please advise asap as we are scheduled for a walk through on 2/27/2012 and go live on 3/5/2012. My intent is to contract with Olivia for consulting for this industry also.

Octavia

----David Grimm <david@primaryrx.com> wrote: ----

To: "OWilliams@mcleodhealth.org" <OWilliams@mcleodhealth.org>
From: David Grimm <david@primaryrx.com>
Date: 02/24/2012 06:48PM
Cc: "grozak@mcleodhealth.org" <grozak@mcleodhealth.org>
Subject: Regulatory Question

Octavia,

After our conversation earlier today, I spoke with my partner, Bobby Harrell regarding the legal issue brought up by Mr. Rozak. The question of how a physician that works for a hospital, that is not fully owned by physicians, meet the regulations for the dispensing of medications in South Carolina has been addressed before. Back in 2007, Bobby Harrell met with the South Carolina Department of Labor, Licensing and Regulations Chief Deputy General Counsel, Sharon Dantzler. After multiple conversations, Ms. Dantzler provided a response to our company in a letter clarifying the LLR's position. I am attaching a copy of that letter to this email for your review. Below is an excerpt from the letter that directly address this situation:

"Because the medical practice in question is not fully owned by licensed physicians, any drug inventory must be owned personally by the dispensing physician in order that the dispensing facility be exempt from permitting requirements. S.C. Code 40-43-60(1). The physician's contractual relationship with the hospital does not figure into this licensing issue."

I will be in Florence on Monday at the Honda site at 10AM but I will also make myself available to meet with you and Mr. Rozak if you would like to discuss this further. Please let me know if you want to meet or if you need anything further.

I look forward to hearing back from you soon.

Best Regards,

David Grimm
Founding Partner
Palmetto State Pharmaceuticals / PrimaryRx
2000 Sam Rittenberg Blvd. Suite 116
Charleston, SC 29407
843.769.7633 Office
david@primaryrx.com

From: Octavia Williams-Blake <owilliams@mcleodhealth.org>
Date: Fri, 24 Feb 2012 07:19:34 -0600
To: David Grimm <david@primaryrx.com>
Subject: Re:

Dave, please proceed with ordering everything above the TO BE DISCUSSED, (added two more from the "no longer under $8 list").

thanks,

Octavia

Octavia Williams-Blake
Director, Occupational Health
McLeod Health
843-777-5355 (Office)
843-777-5296 (Fax)
owilliams@mcleodhealth.org

NOTICE: This e-mail message and all attachments transmitted with it may contain legally PRIVILEGED and CONFIDENTIAL information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and/or notify the postmaster (postmaster@mcleodhealth.org), and delete this message and all copies and backups thereof. Thank You.

[attachment "Scan 1.pdf" removed by Octavia Williams-Blake/MRMC/McLeod_Health]

NOTICE: This e-mail message and all attachments transmitted with it may contain legally PRIVILEGED and CONFIDENTIAL information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and/or notify the postmaster (postmaster@mcleodhealth.org), and delete this message and all copies and backups thereof. Thank You.

Lesia Kudelka

From: Clella Sanders [sandersc@llr.sc.com]
Sent: Tuesday, January 18, 2011 2:32 PM
To: hugh@mobley1x.com
Subject: PIC for Boyd Pharmacy

Of note, this Bobby Hamel's pharmacy. The PIC is not listed as Art and another pharmacist has never worked there.

Clella Sanders, RPh.
Inspector, SC Board of Pharmacy
LLR, Office of Board Services
803-260-9818

EXHIBIT K

Rez,

Remember when Representative Bobby Harrell requested that I e-mail a copy of a doctor's license to a pharmaceutical company? I have received multiple requests since then. Should I continue? I am keeping track of the ones I am e-mailing. I received another request today.

Laura McDaniels
Initial Licensing Supervisor
Office of Licensure and Compliance
Initial Applications-Health & Medical
W: (803) 896-4641
F: (803) 896-4525
www.llronline.com

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks.
http://www.llr.state.sc.us/polsurvey/index.asp.

Lesia Kudelka

From: Laura McDaniels [mcdanil@scdlr.com]
Sent: Wednesday, December 15, 2010 5:59 PM
To: Christian L. Benton
Subject: RE: SC Physician's license
Attachments: Dr Neidenbach.pdf

Good evening Mr. Benton,

Attached is a copy of Dr. Peter J Neidenbach's license.

If I can be of further assistance, please do not hesitate to contact me.

Thank you,

Laura McDaniels
Initial Licensing Supervisor
Office of Licensure and Compliance
Initial Applications Health & Medical
W: (803) 896-4641
F: (803) 896-4525
www.llronline.com

Please click on the link below to complete the Customer Service Satisfaction Survey; it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. Thanks.
http://www.llr.state.sc.us/polsurvey/index.asp

From: Christian L. Benton [mailto:cbenton@primaryrx.com]
Sent: Wednesday, December 15, 2010 5:28 PM
To: Laura McDaniels
Subject: SC Physician's license

Good evening Mrs. McDaniels,

Bobby Harrell told me that you could help me out in obtaining a physician's license. I need a copy of a license for Dr. Peter J. Neidenbach with Westside Dermatology in Spartanburg, SC. If there is any other information I need to give you, please let me know.

Thank you.

Christian Benton

Christian L. Benton
Office Manager, AP/AR Coordinator
PrimaryRx/Palmetto State Pharmaceuticals
2000 Sam Rittenberg Blvd., Suite 3009
Charleston, SC 29407

email: cbenton@primaryrx.com
direct line: 843.408.4375
fax: 888.318.5567
web: www.primaryrx.com

Lesia Kudelka

From: David Christian, III (christiand@scdlr.com)
Sent: Tuesday, January 25, 2011 10:31 AM
To: Laura McDaniels; Roselind Bailey-Glover
Subject: Re: (No subject)

Yes

Sent from my Verizon Wireless Phone

---- Reply message ----
From: "Laura McDaniels" <mcdanil@scdlr.com>
Date: Tue, Jan 25, 2011 10:16 am
Subject:
To: "Roselind Bailey-Glover" <glover@scdlr.com>
Cc: "David Christian, III" <christiand@scdlr.com>

Roz,

Remember when Representative Bobby Harrell requested that I e-mail a copy of a doctor's license to a pharmaceutical company? I have received multiple requests since then. Should I continue? I am keeping track of the ones I am e-mailing. I received another request today.

Laura McDaniels
Initial Licensing Supervisor
Office of Licensure and Compliance
Initial Applications-Health & Medical
W: (803) 896-4641
F: (803) 896-4525
www.llronline.com

Please click on the link below to complete the Customer Service Satisfaction Survey, it only takes a minute to complete. This will let my supervisor know if you were satisfied or dissatisfied with the service you received from me.
Thanks
http://www.llr.state.sc.us/polsurvey/index.asp

Lesia Kudelka

From: Roselind Bailey-Glover [gloverr@scdlr.com]
Sent: Tuesday, January 25, 2011 12:22 PM
To: Laura McDaniels
Subject: RE:

Okay.

From: Laura McDaniels
Sent: Tuesday, January 25, 2011 11:57 AM
To: Roselind Bailey-Glover
Subject: RE:

I have no idea. It started with one request that came from House Speaker Bobby Harrell. I have received several requests since then.

From: Roselind Bailey-Glover
Sent: Tuesday, January 25, 2011 11:53 AM
To: Laura McDaniels
Subject: RE:

I saw that, but why are we doing that??

From: Laura McDaniels
Sent: Tuesday, January 25, 2011 11:47 AM
To: Roselind Bailey-Glover
Subject: RE:

David said yes.

From: Roselind Bailey-Glover
Sent: Tuesday, January 25, 2011 10:22 AM
To: Laura McDaniels
Cc: David Christian, III
Subject: RE:

Why are you doing that??? If he wants to see if a doctor has a license he has to go on the Licensee Lookup website.

You should not be emailing copies of anyone's license simply for the asking. What's his reasoning??

Roz

From: Laura McDaniels
Sent: Tuesday, January 25, 2011 10:17 AM
To: Roselind Bailey-Glover
Cc: David Christian, III
Subject:

Lesia Kudelka

From: Don Ray [sandtrap461@yahoo.com]
Sent: Monday, November 08, 2010 10:18 PM
To: Patricia Powell; Wayne Weart; John Pugh; KristyBrittain; Newtonj@llr.sc.gov; Pam Whitmire; Rob Hubbard; Spencer A. Morris; Steve McElmurray; Terry Blackmon; Carmelo Cinqueonce
Cc: Jennifer L. Baker
Subject: RE: Robert Harrell letter

This is a very difficult subject that has been addressed before. Bobby Harrell has been told that this type of practice is not in the best interest of the patients and the Board of Pharmacy said it was against the law since no physician was actually overseeing the dispensing. Mr. Harrell said if that was the case then he would change the law. For the most part, that ended the discussion.

If we press too hard, he could certainly hurt us in other legislative ways. I would like to see SCPhA, SCSHP, and SCMA unite with the Board of Pharmacy and the Board of Medical Examiners to discourage and/or stop this practice. Most physicians are only selling generics, not filling third parties, and are only making about $20K extra per year. The pharmacists are not seeing the patients whole prescription history. There is very little money for these physicians for the increase in liability, headaches, record keeping, etc.

People like Bobby Harrell and Hugh Leatherman are exactly what is wrong with the legislative process in SC. They are precisely what Nikki Haley is against and that is why she has pushback from some of the Republicans. I would strongly suggest talking this whole concept over with Richard Davis in detail. You could easily spend a lot of time, effort, and money on this to no avail. Additionally, it could cost us with our Medicaid proviso, LLR overhaul, etc. I think the practice should be stopped, but who is going to stand up to the Speaker of the House and win? It's a lot like playing with fire!

Don A. Ray, RPh
South Carolina Pharmacy Association
Board of Directors, IPP
Home 803-407-1668
Work 803-751-2385
Mobile 803-318-3378
Sandtrap461@yahoo.com
don.ray@amedd.army.mil

— On **Fri, 11/5/10, Carmelo Cinqueonce** *<ccinque@scrx.org>* **wrote:**

From: Carmelo Cinqueonce <ccinque@scrx.org>
Subject: RE: Robert Harrell letter
To: "Powell, Patricia" <PowellP@sccp.sc.edu>, "Weart, Wayne" <weartcw@musc.edu>, "Don Ray" <[redacted]>, "John Pugh" <jwpugh@bellsouth.net>, "Brittain, Kristy" <brittain@musc.edu>, Newtonj@llr.sc.gov, "Pam Whitmire" <pawtiger@bellsouth.net>, "Rob Hubbard" <[redacted]>, "Spencer A. Morris" <[redacted]>, "Steve McElmurray" <stevemcrx@comcast.net>, "Terry Blackmon" <blackmont@ftc-i.net>, "Weart, Wayne" <weartcw@musc.edu>
Cc: "Jennifer L. Baker" <jlbaker@scrx.org>
Date: Friday, November 5, 2010, 4:02 PM

Lesia Kudelka

From: Carmelo Ciaqueonce [cciraue@scrx.org]
Sent: Tuesday, November 16, 2010 7:59 PM
To: Don Ray; Newton@fmc.sc.gov; John Pugh; Jon Wallace; Kristy L. Brittain; pawtioer@[redacted]; Powell.P@cco.sc.edu; Rob Hubbard; Spencer A. Morris; stevemcrx@[redacted]; Terry Blackmon; Wayne Wear; Abangan@musc.edu; cjcmurraysody@gmail.com; probstea@email.sc.edu; hoi@musc.edu; davisjh@musc.edu; Ballowe@MUSC.edu; buchanlc@email.sc.edu; pg42@musc.edu; shugart@musc.edu; Jennifer L. Baker
Cc:
Subject: Bobby Harrell letter update

Dear Board members,

During the Board of Pharmacy meeting today the matter of Speaker Bobby Harrell and his solicitation letter was presented by Chairman Bobby Bradham. Chairman Bradham asked Board Legal Counsel Sharon Dantzler to comment on the matter.

According to Ms. Dantzler the mere act of issuing the letter does not violate state statutes or the practice act. In fact, there may be a scenario in which the proposed business venture would be legal in the ER, however unlikely it may seem (the ER doctor owning the inventory and otherwise complying with the practice act). Until the ER acts on and attempts to implement the proposed business model LLR and or the Board can't act. However, once the model is in place it must comply with all state statutes. At which time the Board can investigate to ensure it is in compliance with the practice act and respond accordingly.

Carmelo Ciaqueonce, MBA
Chief Executive Officer
South Carolina Pharmacy Association
1350 Browning Road
Columbia, SC 29210
803-354-9977
cell 803-463-4788
fax 803-354-0207
cciraue@scrx.org
www.scrx.org

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Thanks for the information Patti.

All very valid concerns and observations. We've been aware of Speaker Harrell's business for sometime and every few years the issue pops up... and no there is no pharmacist involvement in the process.

I've shared with Richard Davis and the Board of Pharmacy and spoke with Lee Ann today about it. The Board of Pharmacy is looking into it and may issue a letter. I'll keep you posted.

As a rule, emergency rooms can only dispense a 72 hour supply and physicians are prohibited from dispensing medication with few exceptions and only in instances where they own the inventory. So I'm not sure what Harrell is proposing is legal to begin with.

Carmelo Cinqueonce, MBA
Chief Executive Officer
South Carolina Pharmacy Association
1350 Browning Road
Columbia, SC 29210
803-354-9977
cell 803-463-4738
fax 803-354-9207
cinquet@scpx.org
www.scpx.org

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Powell, Patricia [mailto:PowellP@sccp.sc.edu]
Sent: Friday, November 05, 2010 2:56 PM
To: Weart, Wayne; Carmelo Cinqueonce; Don Ray; John Pugh; Brittain, Kristy; Newton@llr.sc.gov; Pam Whitmire; Rob Hubbard; Spencer A. Morris; Steve McElmurray; Terry Blackmon; Weart, Wayne
Cc: Carmelo Cinqueonce; Jennifer L. Baker
Subject: RE: Robert Harrell letter

I definitely agree that this is an issue that needs to be discussed. I have a couple thoughts on the subject...

I found a copy of the news article he referenced that summarizes the "study". Unfortunately, due to copyright laws, I cannot send the article to the board electronically. However, they did not say anything about not making paper copies. I can provide hard copies at our next meeting, if desired. Quick summary – telephone survey of about 1000 people across the US. Households with children and ages 25-34 were the patients who would prefer getting their meds from their physician. However study was funded and conducted by Purkinje, a company who specializes in "surprise!" physician point of care dispensing. No information was provided about how the patients where selected on what questions they were asked.

If there is a pharmacist involved in this process, I do not necessarily have a problem with it, especially considering some ER departments have full time pharmacists who oversee medication use in the ER. However no where on their website (www.primaryrx.com) does it mention pharmacist involvement.

My main concern with this issue has to do with the legislative consequences if we pursue this. Will it jeopardize our ability to introduce and pass legislation this session if we are also fighting with the Speaker of the House? Also, playing devil's advocate, how are Representative Harrell's actions any different than Representative Spires sponsoring legislation that will help increase business for community pharmacy (i.e. flu shots)? I think we need to be very cautious how we approach this issue because the last thing I want to happen is for it to affect our legislative agenda. Would it be a good idea to bring Richard Davis in on this issue?

Take Care!

Patti

Patricia H. Powell, PharmD, BCPS
Assistant Professor
South Carolina College of Pharmacy - USC Campus
Office: (803) 777-2218
Email: powellp@sccp.sc.edu

From: Weart PharmD, C. Wayne [mailto:weartcw@musc.edu]
Sent: Thursday, November 04, 2010 11:37 AM
To: Carmelo Cinqueonce; Don Ray; John Pugh; Brittain, Kristy; Newton@lrr.sc.gov; Pam Whitmire; Powell, Patricia; Rob Hubbard; Spencer A. Morris; Steve McElmurray; Terry Blackmon; Weart, Wayne
Cc: Carmelo Cinqueonce; Jennifer L. Baker
Subject: FW: Robert Harrell letter

Dear Colleagues, I wanted to share this e-mail and attached letter from Lewis current President of SCSHP and ask that we might get together about this ASAP either via a conference call or just prior to the SCPhA House of Delegates Meeting on the 14th. I have had at least one very recent conversation with a primary care physician

who believes that this does help their patients and I totally disagree but we need to come at this as a united profession. I would like for us to discuss this and the best approach before we make any decisions. I would appreciate your thoughts and comments. Have a wonderful week! Wayne

C. Wayne Weart, Pharm D, BCPS, FASHP, FAPhA

Professor of Clinical Pharmacy and Outcome Sciences

SC College of Pharmacy

Professor of Family Medicine

Medical University of SC

280 Calhoun Street

Charleston, SC 29425

843-792-3606

weartcw@musc.edu

From: Lewis McKelvey [mailto:lmckelvey@presby.edu]
Sent: Thursday, November 04, 2010 11:21 AM
To: Weart PharmD, C. Wayne
Subject: Robert Harrell letter

Wayne – as per my phone discussion....

Just want to share this letter with SCPhA leadership in an attempt to: 1) make a unified objection to the SC BOP regarding the ER Dispensing Program; 2) consider an ethics complaint against Mr. Harrell for the blatant abuse of his "capacity as Speaker of the House of South Carolina" to promote his business interests; and 3) consider sharing your objections to an expansion of ER dispensing with the SCHA. If you determine that there are more issues, please share them with me.

Thanks, and I look forward to your response.

Lewis

Lewis McKelvey, Pharm.D.

Assistant Dean, Experiential Education

Presbyterian College School of Pharmacy

307 N. Broad Street

Clinton, SC 29325

P: 864-938-3866

F: 864-938-3903

lmckelvey@presby.edu

