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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2016-CP-26-1614

Robert Palmer ..... Appellant

vs.

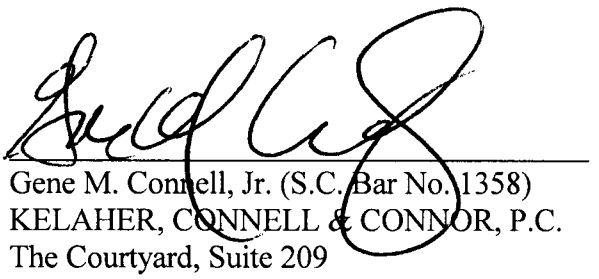
State of South Carolina, Horry County and David Weaver ..... Defendants

Of which State of South Carolina is the ..... Respondent

PETITION FOR REHEARING
AND REHEARING *EN BANC*

The Appellant, pursuant to Rule 221 of the South Carolina Appellate Court Rules, moves this Court for a rehearing of its Opinion filed April 17, 2019 and received by Appellant's attorney on April 17, 2019. Further, pursuant to South Carolina Appellate Court Rule 219, Appellant requests a rehearing *en banc*. The basis of Appellant's request for rehearing and rehearing *en banc* is set forth in the attached Memorandum of Law.

Respectfully submitted,



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April 29, 2019

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MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR REHEARING AND REHEARING *EN BANC*

On April 17, 2019 this Court issued its Opinion No. 5641 affirming the trial court's dismissal of this case. The Appellant requests this Court hear this matter *en banc* pursuant to South Carolina Appellate Court Rule 219. Appellant cites SCACR 219 (a)(2) which provides "when the proceeding involves a question of exceptional importance" the Court may hear a matter *en banc*. The question presented is: Can an individual maintain an action in South Carolina for wrongful conviction under the United States or South Carolina Constitutions? This question is one of exceptional importance and thus qualifies for rehearing *en banc*. See *Williamson v. Middleton*, 383 S.C. 490, 681 S.E. 2d 867 (S.C. 2009 (a rehearing *en banc* may be granted only upon the listed grounds).

The Appellant, in response to this Court's Opinion, offers the following additional arguments concerning issues raised which this Court did not address.

I. THE COURT OF APPEALS DID NOT ADDRESS *NELSON V. COLORADO*, 137 S. Ct. 1249 (2017) AND ITS APPLICATION TO THIS CASE.

Prior to the hearing, Appellant advised the Court that he had become aware of a recent United States Supreme Court Opinion which had direct bearing on this case. Appellant sent an email to the Court supplementing his brief to add the case of *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) to his argument. In *Nelson*, the United States Supreme Court ordered that all fines paid by a person wrongfully convicted must be refunded. The majority opinion written by Justice Ginsburg stated, "Just as the restoration of liberty on reversal of a conviction is not compensation, neither is the return of money taken by the State on account of the conviction." 137 S. Ct. at 1250.

Approximately half of the argument before this Court involved the meaning of the *Nelson* case. Appellant asserts that the Supreme Court of the United States based on *Nelson* would find that Appellant has a federal constitutional right to a civil remedy for wrongful conviction.

Justice Ginsburg's discussion of the above quoted passage equates the restoration of liberty with the restoration of property and thus implicates the Due Process clause of the United States Constitution which is one of the points Appellant has cited for authority in this case.

The Due Process clause protects liberty as well as property. The very core of the Fourteenth Amendment states "liberty" is "freedom from personal restraint" And broadly speaking, the Supreme Court and its doctrine has systemically accorded far greater constitutional protection to "liberty" in its essential form than to an interest in property. The question thus arises: If Due Process requires nothing more than "minimal procedures" to vindicate through monetary recovery the deprivation of one's property, why should it require anything more to vindicate the deprivation of one's liberty? The answer of course to the question is a resounding "No."

Appellant asserts that Nelson is directly right on point. Both liberty and property are enumerated in the Due Process clause of the Constitution and ought to be treated equally. Justice Ginsburg makes this point in the above quoted passage.

It is nonsensical to not hold that "liberty" as defined in the Due Process clause does not receive the same protection as "property" when both are in the same sentence in the Constitution. In other words, one's liberty is just as important as the taking of one's property. Appellant made this point during oral argument, but the Court failed to address *Nelson* and its impact in its Opinion. Appellant requests the Court do so on rehearing and find a civil remedy exists as a matter of law.

II. THE COURT OF APPEALS DID NOT ADDRESS APPELLANT'S ARGUMENT THAT ARTICLE I SECTION 3 OF THE UNITED STATES CONSTITUTION REQUIRES A REMEDY FOR WRONGFUL CONVICTION.

The opinion written by the Court does not address Article I Section 3 of the United States Constitution and Appellant's argument that he was entitled to compensation for deprivation of his "liberty." This argument is made in Appellant's brief in Section II in which Appellant argues that he was deprived of liberty without due process of law. Appellant's counsel respectfully submits that the Court did not address this general principle in regard to the United States Constitution. (See Appellant's brief (pp. 6-7) and Appellant's citation of the Fifth Amendment and the case of *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). Appellant requests a ruling on this point.

III. THE COURT OF APPEALS DID NOT ADDRESS ARTICLE I SECTION III OF THE SOUTH CAROLINA CONSTITUTION.

This Court's Opinion is silent as to Article I Section 3 of the South Carolina Constitution and its application to a wrongful conviction. Appellant raised the issue that he was entitled to due process and/or compensation for wrongful conviction (without the takings argument). Appellant cited several South Carolina cases including *Kearse v. State Health and Human Services Finance Commission*, 318 S.C. 198, 456 S.E.2d 892 (1995). However, this issue was not addressed by the

Court. Appellant requests that this specific issue be addressed by the Court. Specifically, Appellant requests that the Court address whether Article I Section 3 of the South Carolina Constitution provides a remedy for wrongful conviction.

IV. THE COURT OF APPEALS ERRED IN HOLDING THAT APPELLANT HAD OFFERED NO SUPPORTING CASE LAW FOR HIS PROPOSITION THAT A CIVIL REMEDY WAS AVAILABLE FOR WRONGFUL CONVICTION.

This Court's Opinion states no case law or citation had been argued for this proposition. Appellant believes that pages 7, 8 and 9 of his brief provide numerous citations as to why there is a civil remedy under the Constitution for wrongful conviction. Appellant cited numerous Supreme Court precedents from other jurisdictions for his proposition.

Appellant cited specific case law from Alabama, Alaska, Michigan, Iowa, Missouri, Oklahoma, Utah, Kansas and Indiana that both the State and Federal Constitutions hold that taking of "labor" is protected under their respective State Constitutions. Appellant respectfully asserts that the Court erred in stating "Palmer fails to cite any statutory or case law to demonstrate he has a legally protected property interest." Appellant asserts that the cases from the above jurisdictions clearly provide such authority. Appellant directs the Court to pages 7, 8 and 9 of his Final Brief. Thus, Appellant requests a specific ruling as to why a wrongful conviction is not a taking of Appellant's labor.

V. THE COURT OF APPEALS DID NOT ADDRESS THE ISSUE THAT THE DUE PROCESS CLAUSE OF THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS PROTECTS LIBERTY AS WELL AS PROPERTY.

The Appellant throughout his brief argued that if property is protected under the due process clause, then liberty must be protected. Those concepts are both found in the same clause. Appellant made this argument and cited *Nelson* and numerous other cases. Appellant requests that the Court

make a ruling as to why it finds "liberty" is not protected in the same manner as property under the due process clause of both the United States and South Carolina Constitutions.

VI. THE COURT OF APPEALS ERRED IN NOT ADDRESSING APPELLANT'S ARGUMENT THAT HIS "LABOR" IS PROTECTED BY THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS.

Appellant in his briefs argued that the State of South Carolina through its wrongful conviction deprived Appellant of his labor because he was incarcerated and unable to work. This Court in its Opinion wrote: "We find the circuit court correctly determined Plaintiff's argument had no merit." This Court further stated: "Palmer fails to cite any statutory or case law to demonstrate that he has a legally protected property interest."

Appellant respectfully disagrees. Appellant provided exhaustive citations to other cases holding that Appellant's labor was protected and multiple state courts have explicitly held that governmental appropriation of labor is protected by state or federal takings clause without a finding of a duty. Appellant argued to the Court as an analogy that wrongfully convicting an individual and incarcerating him was a taking of his ability to earn a living, i.e., his labor. Appellant cited the following cases for his proposition: Alaska: *DeLisio v. Alaska Super. Ct.*, 740 P.2d 437 (Alaska 1987); Arkansas: *Arnold v. Kemp*, 813 S.W.2d 770 (Ark. 1991); Indiana: *Sholes v. Sholes*, 760 N.E.2d 156, 163-164 (Ind. 2001); Kansas: *State ex rel. Stephan v. Smith*, 747 P.2d 816, 842 (Kan. 1987); Iowa: *McNabb v. Osmundson*, 315 N.W.2d 9, 16 (Iowa 1982); Missouri: *State ex. rel. Scott v. Roper*, 688 S.W.2d 757, 769 (Mo. 1985); Oklahoma: *Bias v. State*, 568 P.2d 1269, 1272 (Okla. 1977); Utah: *Bedford v. Salt Lake County*, 447 P.2d 193, 195 (Utah 1968).

It is respectfully submitted that this Court erred in not applying the above cases to the situation described in this brief. Finally, the Court fails to explain why both the United States

Constitution and South Carolina Constitution have the terms life, liberty or property in Article I Section 3 and how property has a remedy while the taking of liberty has no remedy.

VII. THE COURT OF APPEALS DID NOT ADDRESS APPELLANT'S ARGUMENT THAT MULTIPLE COURTS AROUND THE COUNTRY HAVE CREATED AN IMPLIED CAUSE OF ACTION UNDER THE UNITED STATES AND/OR THEIR STATE CONSTITUTIONS.

The Court in its Opinion cited *Spackman ex rel. Spackman v. Bd. of Educ, of Box Elder Cty. Sch. Dist.*, 16 P.3d 533, 535 (Utah 2000) for the proposition that "the Utah Constitution does not expressly provide damage remedies for constitutional violations," and thus, "there is no textual constitutional right to damages for one who suffers a constitutional tort." 16 P.3d at 537. However, Appellant asserts that this Court's citation of *Spackman* actually stands for the proposition which Appellant has put forth in his brief, i.e., there is a remedy under the Constitution for wrongful conviction.

In *Spackman*, the issue was Utah's Constitution, specifically Article I Section 7 which is the same clause Appellant cites in the South Carolina Constitution. The Utah Constitution states: "No person shall be deprived of life, liberty or property without due process of law."

The Utah Supreme Court held that clause is self-executing meaning essentially a cause of action could be brought based on that section of the Constitution. The Utah Supreme Court observed that it had already defined and enforced that particular clause on numerous occasions without implementing legislation and cited several cases for that proposition. *State v. Copeland*, 765 P.2d 1266 (Utah 1988) (invalidating certain statutory provisions on due process grounds); *State v. Fulton*, 742 P.2d 1208 (Utah 1987) (applying the due process principles in an evidentiary issue); *State v. Tarafa*, 720 P.2d 1368 (Utah 1986) (applying due process principles to challenged jury instructions); *Burgess v. Maiben*, 652 P.2d 1320 (Utah 1982) (applying due process principles to contempt proceedings).

The Utah Supreme Court directly addressed money damages for the violation of a self-executing clause of the Utah Constitution which is exactly the same language in the South Carolina Constitution. The Utah Supreme Court further provided that when there is no statutory right to damages for one who suffers a constitutional tort, Utah courts will employ the common law. The Court then went on to hold that a plaintiff must establish three elements before he or she may proceed with a private suit for damages under the constitution. The Court stated as follows:

> First, a plaintiff must establish that he or she suffered a "flagrant" violation of his or her constitutional rights. See *Dick Fischer Dev. v. Dept. of Admin.* 838 P.2d 263, 268 (Alaska 1992); see also *Bott*, 922 P.2d at 734-735, 739-740 (describing the level of defendant's culpability necessary to create damages liability.) In essence, this means that a defendant must have violated "clearly established" constitutional rights "of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed. 2d 396 (1982). To be considered clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 639-40, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987) (citations omitted). The requirements that the unconstitutional conduct be "flagrant" ensures that a government employee is allowed the ordinary "human frailties of forgetfulness, distractibility or misjudgment without rendering [him or her] self liable for a constitutional violation." Bott, 922 P.2d at 739-40.
>
> Second, a plaintiff must establish that existing remedies do not redress his or her injuries. This second requirement is meant to ensure that courts use their common law remedial power cautiously and in favor of existing remedies. We urge caution in light of the myriad policy considerations involved in a decision to award damages against a governmental agency and/or its employees for a constitutional violation. Moreover, we urge deference to existing remedies out of respect for separation of powers' principles. In general, the legislative branch has the authority, and in many cases is better suited, to establish appropriate remedies for individual injuries. By requiring courts to defer to relevant legislative determinations of appropriate remedies, we respect the legislature's important role in our constitutional system of government.
>
> Third, a plaintiff must establish that equitable relief, such as an injunction, was and is wholly inadequate to protect the plaintiff's rights or redress his or her injuries.
>
> *Spackman*, 16 P.3d at 538.

In sum, *Spackman* does not assist this Court, but in fact gives credence to Appellant's arguments. Simply put, if there is a flagrant violation of Appellant's constitutional rights and no available remedy the Constitution mandates a remedy.

Other state Supreme Courts have adopted this view and have gone even further. At least one Supreme Court has found an implied right of damages under Article XI of its Constitution since this Opinion was issued. See *Zullo v. State of Vermont*, 2019 VT 1 (Vt. 2019) (Vermont Supreme Court holds that Vermont Constitution requires a meaningful remedy.) See also *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017) (equal protection and due process clauses provided direct action for money damages in Iowa). (The Iowa Supreme Court found it was the Court's duty to act in situations in which the political branch of the government fails to do so.)

See also *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (United States Supreme Court rules that an implied cause of action exists for an individual whose Fourth Amendment freedom from unreasonable search and seizure had been violated by federal agents); *Carlson v. Green*, 446 U.S. 14, 64 L.Ed.2d 15 (1980) (Supreme Court allows damage claim against prison based on Eighth Amendment since Congress neither expressly provided nor prohibited a damages remedy); see also *Davis v. Passman*, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed. 2d 846 (1979) (permitting damage claim for violation of Fifth Amendment due process guarantee in context of wrongful discharge of employee).

Further, many states have adopted implied causes of action for constitutional torts including New York. See *Brown v. State of New York*, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S. 2d 223 (1996); *Corum v. University of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (1992) (direct cause

of action available under North Carolina Constitution for free speech);[1] *Binett v. Sabo*, 244 Conn. 23 710 A.2d 688 (Conn. 1998) (holding a cause of action under the Connecticut Constitution for violations of Article I, Sections 7 and 9 of the State Constitution for unreasonable search and seizures); *see also Widgeon v. Eastern Shore Hospital Center*, 300 Md. 520 479 A.2d 921 (1984); *Gay Law Students v. Pacific Telephone and Telegraph Co.*, 24 Cal. 3rd 458, 595 P.2d 592 (1979); *Phillips v. Youth Development Program, Inc.*, 390 Mass. 650, 459 N.E.2d 453; *Newell v. Elgin*, 34 Ill. App. 3rd 719, 340 N.E.2d 342 (1976); *Bott v. DeLand*, 922 P.2d 732 (Utah 1996); *Smith v. Dept. of Public Health*, 428 Mich. 540, 410 N.W.2d 749 (1987).

The Oklahoma Supreme Court found an implied cause of action under the Oklahoma Constitution notwithstanding the Oklahoma Governmental Tort Claims Act. See *Bosh v. Cherokee County Building Authority*, 2013 OK 9, 305 P3d 994 (2013) (OK 2013) (Oklahoma Constitution Article 2, Section 30 provides a private right of action for excessive force).[2]

As of 1998, twenty-one states have recognized an implied cause of action for State Constitutional violations. The majority of legal scholars on the topic of state constitutional tort actions have favored an expansive right of action. 42 N.Y.L. Sch. L. Rev. at 450 n. 12. *Dorwart v. Caraway*, 312 Mont 1, 58 P3d 128 (Mont 2002); *Widgeon v. Eastern Shore Hospital Center*, 300 Md. 520, 479 A.2d 921 (1984) (damage remedy for violation of state constitutional rights involving illegal search); *Lloyd v. Borough of Stone Harbor*, 179 N.J. Super 496, 432 A2d 572 (1981) (affirming damage award under tort claims act for violation of state constitutional rights); *Mayes v. Till*, 260 SO2d 578 (Miss. 1972); *Bull v. Armstrong*, 254 Ala 390, 48 SO2d 467 (1950); *State v.*

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[1] This case is noteworthy in that much of South Carolina law comes from North Carolina because it is our closest sister state.

[2] This case is support for Appellant's argument in Section XII of the Petition for Rehearing since the Oklahoma Supreme Court held that the Tort Claims Act could not override the Oklahoma Constitution.

Lindway, 131 Ohio St 166, 2 NE2d 490 cert denied 299 U.S. 506, 57 S.Ct. 36, 81 L.Ed. 375 (1936); *Sparkman v. Bd of Education* 2000 UT 87, 16 P3d 533 (2000); *In Re Wretlind* 225 Minn 554, 32 N.W.2d 161 (1948); and *Nelson v. Town of St. Johnsbury Select Board,* 115 A3d, 423 2015 VT 5 (VT 2015) (Vermont Constitution self-executing and enforceable without implementing legislation). All these cases hold that an individual may redress a state or federal constitutional deprivation by instituting a damage claim regardless of the lack of a specific statute. See generally **Friesen, State Constitutional Law**, Section 7.02(2) and 7.07(1) for a list of states viewing favorable damage remedies for violations of state constitutional provisions.

It is respectfully submitted that this Court did not in its Opinion address those states which have adopted *Bivens* style causes of action for constitutional torts. Appellant requests this Court rule that a *Bivens* style implied cause of action exists under the South Carolina Constitution.

VIII. THE COURT OF APPEALS DID NOT ADDRESS WHETHER A *BIVENS* STYLE CAUSE OF ACTION IS AVAILABLE UNDER THE UNITED STATES CONSTITUTION.

The Opinion does not address Appellant's request that the Court hold the United States Constitution allows a *Bivens* style cause of action for wrongful conviction (especially in light of *Nelson*). Appellant raised this issue in his brief and at oral argument. However, this Court has not ruled on that point. Appellant made such a request on page 16 of his brief: "Appellant submits that both the United States and South Carolina Constitutions provide a *Bivens* remedy and that the failure to do so is itself a constitutional violation." Appellant asserts it was error for the Court not to hold such a right exists under the United States Constitution. See *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017) for authority.

IX. THE COURT OF APPEALS DID NOT ADDRESS APPELLANT'S ARGUMENT THAT FAILURE TO PROVIDE A REMEDY FOR WRONGFUL CONVICTION VIOLATED FUNDAMENTAL FAIRNESS.

As cited in his brief, Appellant made the argument that fundamental fairness requires a remedy for wrongful conviction. The South Carolina Supreme Court has gone out of its way to define "fundamental fairness" in such a manner as to obtain justice. See *Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009) (the court finds it was fundamentally unfair to suspend a driver's license twelve years after conviction).

The Court in its Opinion does not address the issue of fundamental fairness and Appelllant's argument that the case law and the South Carolina Constitution require a remedy for wrongful conviction. See *McWee v. State*, 357 S.C. 403, 593 S.E.2d 450 (2004) (If one seeks to infringe on a liberty interest then fundamental fairness is implicated); *See also State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013) (lifetime monitoring without a hearing is unconstitutional).

Appellant requests a specific ruling on Appellant's fundamental fairness argument.

X. THE COURT OF APPEALS DID NOT ADDRESS APPELLANT'S ARGUMENT THAT ARTICLE I SECTION 9 OF THE SOUTH CAROLINA CONSTITUTION IS APPLICABLE.

Appellant made the argument in his brief and at the hearing that South Carolina's Constitution required a remedy for every wrong. Article I Section 9 of the South Carolina Constitution Courts: Speedy Remedy provides as follows:

> All courts shall be public and every person shall have speedy remedy therein for wrongs sustained.

Appellant argued that a wrongful conviction is a wrong as defined in Article I Section 9 of the South Carolina Constitution which requires Appellant be given a remedy. Our Supreme Court in *State v. Lagerquist*, 254 S.C. 501, 176 S.E.2d 141 (1970), *cert denied*, 91 S.Ct. 912, 401 U.S.

937, 28 L.Ed. 2d 216 (1970) cited with approval the definition of "wrongs" to include every injury as described in *Davis v. Whitlock*, 90 S.C. 233, 73 S.E. 171 (1911),

Appellant requests that this Court issue its ruling requiring that South Carolina Constitution provide a remedy for a wrongful conviction pursuant to Article I Section 9 of the South Carolina Constitution.

XI. THE COURT OF APPEALS ERRED IN FAILING TO ADOPT RESTATEMENT OF TORTS 2D § 874A.

In his brief, Appellant requested that the Court issue a ruling finding that Restatement of Torts, 2d § 874A be adopted by the Court. It provides that a court may imply a civil remedy from a legislative or constitutional provision even though one is not expressly provided.

Appellant requested that the Court adopt Restatement of Torts, 2d § 874A. The Opinion issued by this Court does not address this issue. Appellant requests that the Court adopt Restatement of Torts, 2d § 874A and thus find a remedy for Appellant for his wrongful conviction. See *Brown v. State of New York*, 89 N.Y.2d 172, 674 N.E.2d 1129, 652 N.Y.S. 2d 223 (1996).

XII. THE COURT OF APPEALS ERRED IN HOLDING THAT APPELLANT HAD NOT PRESERVED AND ARGUED THAT THE SOUTH CAROLINA TORT CLAIMS ACT CANNOT PREEMPT THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS.

In its Opinion the Court held that Palmer had abandoned his argument that the South Carolina Tort Claims Act cannot override the South Carolina and United States Constitution. This Court indicated that no authority had been cited in Appellant's brief as to this issue. Appellant directs the Court to Section 10 of its brief (page 21).[3] In that section of the brief, Appellant argued that the South Carolina Tort Claims Act could not override the South Carolina or United States

[3] See also *Bush v. Cherokee County Building Authority* , 305 P.3d 994 (OK 2013) for additional authority for this proposition.

Constitution. Appellant argues that the South Carolina Constitution is supreme and that the legislature cannot limit constitutional torts through the enactment of a statute. (S.C. Code Ann. § 15-78-10, et seq. Further, because the South Carolina Constitution is supreme, no other citation is necessary for Appellant's argument. In effect, Article I, Section 3 of the South Carolina Constitution cannot be overridden by the Tort Claims Act. Thus, Appellant's arguments were preserved for review by this Court.

XIII. CONCLUSION

Appellant requests the Court reconsider and rehear this case *en banc*. This is a matter of statewide importance and the entire Court should hear this case *en banc* pursuant to SCACR 219(a)(2) which provides an *en banc* hearing is appropriate when a question is of exceptional importance.

Respectfully submitted,

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April 29, 2019

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The Honorable Benjamin H. Culbertson, Circuit Court Judge

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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Petition for Rehearing and Memorandum of Law in Support of Petition for Rehearing** on the Respondent, on the 29th day of April 2019, by depositing a copy of same in the United States Mail, postage prepaid, to:

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Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 29th day of April 2019.

Donna H. Hand
Notary Public for South Carolina
My Commission Expires: 3-28-26

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April 29, 2019

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Appellate Case No. 2017-000567
Robert Palmer vs. State of South Carolina, Horry County and David Weaver
C/A No. 2016-CP-26-1614
Our File No. 2015-0325C

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellants' **Petition for Rehearing, Memorandum of Law in Support of Petition for Rehearing** and **Proof of Service** of same in the above-captioned matter. I also enclose our check for $50.00 for the filing fee. Please return a filed copy to this office in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated document on Respondents through counsel of record.

With best regards, I am

Sincerely yours,

Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Andrew F. Lindemann, Esquire
Lisa A. Thomas, Esquire
J. Emory Smith, Jr., Deputy Attorney General
Robert D. Cook, Solicitor General
Alan Wilson, Attorney General
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