

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
Carmen T. Mullen, Circuit Court Judge

RECEIVED

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SC Court of Appeals

Appellate Case No. 2018-002128

Lower Court Case Nos. 2017-GS-47-35, 2017-GS-47-36,
2017-GS-47-37, and 2018-GS-47-49

The State Respondent,

v.

James H. Harrison Appellant.

RECORD ON APPEAL
Volume 1 of 5

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FILED

MAR 31 2017

STATE GRAND JURY OF SOUTH CAROLINA

JAMES H. PARKS
CLERK, STATE GRAND JURY

IN RE: STATE GRAND JURY
INVESTIGATION NO. 2016-257

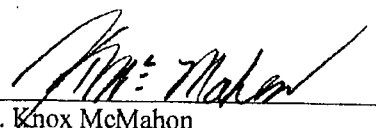
ORDER EXTENDING THE TERM
OF THE TWENTY-EIGHTH
STATE GRAND JURY

This matter is before the Court upon motion of the prosecutor for State Grand Jury Investigation 2016-257 to extend the term of the twenty-eighth state grand jury pursuant to S.C. Ann. §14-7-1630(D).

It appears that the twenty-eighth state grand jury was impaneled pursuant to an order signed by the Honorable Clifton Newman and filed on May 11, 2016. Thereafter, the twenty-eighth state grand jury was qualified and selected on June 9, 2016.

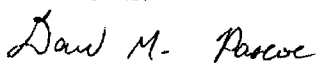
It further appears that State Grand Jury Investigation 2016-257 will not be concluded before the term of the twenty-eighth state grand jury expires and that transfer of the investigation to the twenty-ninth state grand jury would be impractical due to the complexity of the case and the volume of testimony already received. Accordingly,

IT IS ORDERED that the term of state grand jury twenty-eight is hereby extended by six (6) months.


R. Knox McMahon
Presiding Judge
State Grand Jury

March 31, 2017

I SO MOVE:


David M. Pascoe
Solicitor, First Judicial Circuit

ROA 000001

FILED

DEC 04 2017

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

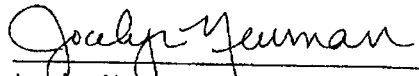
IN RE:

STATE GRAND JURY INVESTIGATION)
NO.2016-257)
_____)

**ORDER EXTENDING THE TERM OF THE
TWENTY-EIGHTH STATE GRAND JURY**

This matter is before the Court upon motion of the Acting Attorney General in the above-referenced state grand jury investigation pursuant to S.C. Ann. 14-7-1630(D) to extend the term of the twenty-eighth state grand jury for the purpose of investigation 2016-257 on the ground that the investigation will not be concluded before the current term of the twenty-eighth state grand jury expires and because transfer of the investigation to another state grand jury would be impractical due to the complexity of the case and the volume of testimony already received. Accordingly,

IT IS ORDERED that the current term of state grand jury twenty-eight, which was empaneled by order of the Honorable Clifton Newman on July 9, 2016 is hereby extended by six (6) months.


Jocelyn Newman,
Presiding Judge
State Grand Jury

December 1, 2017

ISO MOVE:

Th 3. Scott, III FOR DMP
David M. Pascoe
Acting Attorney General

ROA 000002

FILED

NOV 20 2018

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

State of South Carolina)

Indictment Nos.: 2017-GS-47-35
2017-GS-47-36
2017-GS-47-37
2018-GS-47-49

v.)

James Harrison,)

**ORDER DENYING DEFENDANT'S
POST-TRIAL MOTIONS**

Defendant.)
_____)

THIS MATTER came before the Court by way of Defendant James Harrison's Post-Trial Motions filed November 5, 2018. Defendant moves this Court for a new trial and for a verdict in arrest of judgment, reconsideration of the Court's sentences, and an appeal bond. For the reasons set forth below, Defendant's Post-Trial Motions are denied.¹

BACKGROUND

On Friday, October 26, 2018, at approximately 10:15 p.m. after a week-long trial, the jury returned a verdict of guilty against Defendant for statutory misconduct in office, common law misconduct in office and perjury, but did not find Defendant guilty of criminal conspiracy. Despite the late hour, Defendant requested immediate sentencing which I accommodated, and I sentenced Defendant to 18 months on the common law misconduct and perjury charges and 12 months for statutory misconduct in office, all to run concurrent.

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs, as requested by both parties. Rule 59(f). SCRCP; Pollard v. City of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994).

(NIA)

ROA 000003

DISCUSSION

I. Motion for a New Trial

It is well settled that the grant or refusal of a new trial is within the discretion of the trial court judge. *State v. Simmons*, 279 S.C. 165, 303 S.E.2d 857 (1983)). Where there is no evidence to support a conviction, an order granting a new trial should be upheld." *State v. Smith*, 316 S.C. 53, 447 S.E.2d 175, 176 (1993). "However, where there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." *State v. Prince*, 316 S.C. 57, 63, 447, S.E.2d 177, 181 (1993) (citing *Miller*, 287 S.C. 280, 337 S.E.2d 883).

Throughout the week-long trial, witnesses for the State testified that the Defendant was paid almost \$900,000 over 12 years by Richard Quinn & Associates (RQA), a firm that represents lobbyist principals, and failed to disclose that relationship. Further, the trial record contains emails, financial records, and other documentary evidence obtained from the offices of RQA establishing that relationship, and support the guilty verdicts returned by the jury. I find there was competent evidence to uphold the jury's verdict and find no basis to grant a new trial.

a. Statutory misconduct in office.

The crime of statutory misconduct in office requires the State to prove (1) that the Defendant was a public officer whose authority is limited to a single election or judicial district and (2) that the Defendant is guilty of either official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression. S.C. Code Ann. § 8-1-80.

The record at trial contains both testimony and documentary evidence demonstrating that the Defendant's employer, RQA, was compensated for services by various lobbyist's principals. The evidence presented is that Defendant was aware of his employer's lobbyist principal clients and that he voted on legislation for some of these clients. The record also contains Defendant's

Statements of Economic Interest, which demonstrate that Defendant—while an elected member of the House of Representatives—failed to disclose the payments made by lobbyist's principals to his employer, as required by the State Ethics Act. This evidence, as well as the advisory opinions in response to letters written by Defendant, to the House Ethics Committee contained in the record, supports the jury's verdict that Defendant is guilty of statutory misconduct in office by consciously failing to report income received by a business with which he was associated for a period of 12 years.

b. Common law misconduct in office.

Common law misconduct in office requires the State to prove that Defendant willfully and dishonestly failed to properly and faithfully discharge duties imposed by law while a public official. *State v. Hess*, 279 S.C. 14, 20, 301 S.E.2d 547, 551 (1983).

The same evidence above supports the jury's verdict that Defendant's failure to disclose this income was a willful and dishonest violation of § 8-13-1130 which states a "person required to file a statement of economic interest shall further report to the appropriate supervisory office the name of any person he knows to be ... a lobbyist's principal and who has in the previous calendar year ... purchased from a business with which the filer is associated, goods or services in an amount in excess of two hundred dollars"—particularly in combination with Defendant's year 2000 Statement of Economic Interest, on which his income from RQA was properly reported. The jury could have reasonably inferred from this evidence that Defendant knew the correct manner of reporting this income, but willfully and dishonestly chose to stop reporting it to conceal the identities of these lobbyist's principals.

c. Perjury.

(23)

Pursuant to S.C. Code Ann. § 16-9-10(A)(1), “[i]t is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.” The source of the perjury charge in this case is Defendant’s March 15, 2017 state grand jury testimony wherein when asked why he was receiving payment from RQA and First Impressions when he was Chairman of the House Judiciary Committee, Defendant stated Richard Quinn “asked me if I would consider—and he might have started asking me before if I’d consider coming to work for them. I think he enjoyed the way I seemed to handle my campaign and could help him on other campaigns.” Harrison also testified “but I knew that, as long as I worked on campaigns and nothing more, that I didn’t feel I had a conflict of interest.”

Given the lack of evidence that Defendant worked on any campaign and with no work product to show what he did at RQA, at best, the jury could have found Defendant’s testimony misleading and at worst, giving false testimony, either of which would sustain a verdict of guilty for perjury.

II. Motion for Verdict in Arrest of Judgment

The grounds for a verdict in arrest of judgment must be based upon insufficiency on the face of the indictment or a fatal defect appearing in the record, but may not be based upon the sufficiency of evidence to support the indictments. *State v. Taylor*, 348 S.C. 152, 159-60, 558 S.E.2d 917, 920 (Ct.App.2001) (citations omitted). The record does not contain any defect to merit a verdict in arrest of judgment.

a. Subject matter jurisdiction and scope of authority.

Defendant argues that all indictments against him should be dismissed with prejudice as Solicitor Pascoe did not have the jurisdiction or authority to prosecute him for these indictments.



Pursuant to S.C Code Ann. § 14-7-1630(A)(3), the state grand jury is empowered with statewide jurisdiction to investigate and issue indictments for crimes involving public corruption. This jurisdictional provision encompasses both statutory and common law crimes involving public corruption, as well as crimes “arising out of or in connection with a crime involving public corruption.” *Id.* The Supreme Court in *Pascoe v. Wilson* states “nothing in the exhibits . . . suggests that Pascoe’s authority in the redacted legislators matter did not include all the power of the attorney general including the impaneling of a state grand jury.” *Pascoe v. Wilson*, 416 S.C. 628, 788 S.E.2d 686 (2016). For this Court to hold that Solicitor Pascoe’s authority is limited solely to the two redacted legislators and render him unable to pursue any other alleged wrongdoers (legislators) discovered in the course of this public corruption investigation, would subvert the purpose of the state grand jury investigation.

b. Double Jeopardy.

Defendant’s motion also raises the additional ground for a verdict in arrest of judgment arguing that the guilty verdicts for statutory misconduct in office and common law misconduct in office violate the Double Jeopardy Clause of the United States and South Carolina Constitution. This argument is erroneous because the two misconduct offenses stand as separate and distinct offenses.

“The Double Jeopardy Clauses of the United States and South Carolina Constitutions operate to protect citizens from being twice placed in jeopardy of life or liberty for the same offense.” *State v. Jolley*, Op. No. 5128 (May 8, 2013), *citing State v. Brandt*, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011). In cases where two or more violations arise from the same conduct, courts use the “same evidence” or “*Blockburger*” test to determine if the offenses are identical for purposes of double jeopardy’s prohibition. *See State v. Lawrence*, 266 S.C. 433, 223 S.E.2d



856 (1976), citing *Blockburger v. U.S.*, 284 U.S. 299 (1932). The *Blockburger* "same elements" test states that two offenses are distinct, and not barred by double jeopardy, if one requires proof which the other does not. *Id.* Application of the *Blockburger* test is a mechanical exercise, requiring a technical comparison of the elements of each offense. *State v. Cuccia*, 353 S.C. 430, 438, 578 S.E.2d 45, 49 (Ct.App.2003). "A mere overlap in proof does not constitute a double jeopardy violation." *Id.* at 50.

As stated above, the crime of statutory misconduct in office requires the State to prove (1) that the Defendant was a public officer whose authority is limited to a single election or judicial district and (2) that the Defendant is guilty of either official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression. S.C. Code Ann. § 8-1-80. In contrast, common law misconduct in office requires the State to prove that Defendant willfully and dishonestly failed to properly and faithfully discharge duties imposed by law while a public official. *State v. Hess*, 279 S.C. 14, 20, 301 S.E.2d 547, 551 (1983). The elements of this definition include (1) willful and dishonest intent, (2) failed to properly and faithfully discharge duties imposed by law, and (3) that the Defendant be a public official.

Under the elements of common law misconduct in office, the Defendant must have acted "*willful and dishonestly*" to violate the State Ethics Act. The willful and dishonest conduct is a required element for the jury's determination. *Hess*, 279 S.C. at 20, 301 S.E.2d at 551. Statutory misconduct, however, does not require Defendant's conduct to be willful and dishonest. It merely requires that the Defendant act with "*habitual negligence*." The jury was charged that "[c]riminal negligence is the reckless disregard of one's duty as a public official." Thus, while common law misconduct requires that the Defendant acted with a dishonest and corrupt intent, statutory misconduct requires only that the Defendant acted with the lesser *mens rea* of criminal

CA

negligence. While the jury could have determined that the Defendants conduct rose to the level of corruption, fraud, or oppression, "[a] mere overlap in proof does not constitute a double jeopardy violation," *Cuccia*, 353 S.C. at 438, 578 S.E.2d at 50.

Defendant argues that there is no reasonable way to discern if the jury applied the lower habitual negligence standard of proof, or element of offense, to the alleged ethics violations or if it applied the same willful conduct standard to both common law and statutory misconduct. However, the Court when discussing possible verdict forms throughout the trial and again when drafting the verdict form suggested to both parties that special interrogatories be propounded regarding the basis for any guilty finding, by the jury, on the statutory and common law misconduct in office charges, which the Defendant declined and the State concurred.

III. Motion for Reconsideration of the Court's Sentence.

Defendant's motion for reconsideration neither raises nor offers new grounds for the Court to reconsider the sentences imposed. I fully considered the Defendant's extensive public service, exemplary military record, lack of criminal history, excellent reputation in the community and documented health problems balancing that with the Defendant's breach of the public's trust and promoting respect for the law.

IV. Motion for Appeal bond.

Finally, proper service of a notice of appeal by a criminal defendant can operate to stay the execution of a sentence. Pursuant to § 18-1-90, "[b]ail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense." S.C. Code Ann. § 18-1-90.

With Post-Trial Motions pending, no notice of appeal has been filed to date and therefore this motion is premature. When filed, an appeal bond will be considered as is permitted by law.



CONCLUSION

For the reasons discussed above, Defendant's Post-Trial Motions are DENIED.

AND IT IS SO ORDERED.



Carmen T. Mullen
Presiding Judge

This 20 day of November, 2018.



ROA 000010

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

State of South Carolina

V.

James Harrison,

Defendant.

Case Nos.: 2017-GS-47-35
2017-GS-47-36
2018-GS-47-49

FILED

NGV 28 2018

JAMES R. PARKS
CLERK, STATE GRAND JUR

ORDER SETTING APPEAL BOND

Defendant James Harrison filed a Notice of Appeal from the above trial on November 26, 2018.¹ S.C. Code § 18-1-70 states “In criminal cases service of notice of appeal . . . shall operate as a stay of the execution of the sentence . . .” S.C. Code § 18-1-90 provides “Bail may be allowed to a Defendant in all cases which the appeal is from the trial, conviction, or sentence for a criminal offense.”

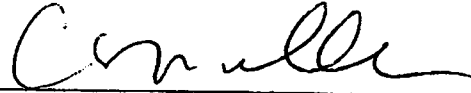
Defendant Harrison was convicted after a jury trial, and sentenced by this Court on October 26, 2018 for statutory misconduct in office, common law misconduct in office, and perjury. In considering the granting of bond, I take into account the nature of the offenses, the possibility of flight by the Defendant², the Defendant's ties to the community and his documented health issues.

After careful consideration, I am setting Defendant Harrison's bond at Two Hundred and Fifty Thousand Dollars (\$250,000) cash or surety with a 10% option to be paid to the State Grand Jury Clerk of Court.

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs, as requested by both parties. Rule 59(f). SCRPC; *Pollard v. City of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994).

² Defendant has turned in his passport as a condition of his previous bond and it will remain with the State Grand Jury Clerk of Court until all appeals are exhausted.

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read 'C. Mullen', written over a horizontal line.

Carmen T. Mullen
Presiding Judge

This 28 day of November, 2018.

W. H. H. H. 3/16/2016
SLED Chief Date

David M. Pascoe 3/15/16
First Circuit Solicitor Date

Acknowledged
Clerk Newman

STATE GRAND JURY OF SOUTH CAROLINA 3/18/16

CASE INITIATION MEMORANDUM

TO: State Grand Jury Section
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3693

ATTN: David M. Pascoe
Solicitor/Special Prosecutor
First Circuit Solicitor

FROM: Jeremy C. Smith
Special Agent
SC Law Enforcement Division (S.L.E.D.)
803-896-7250

DATE: March 14, 2016

Title of Case (Main subject name or code name):

FILED

MAR 18 2016

JAMES R. PARKS
CLERK, STATE GRAND JURY

SUBJECTS IDENTIFIED		
SUBJECT	DATE OF BIRTH	ADDRESS
Richard Melvin Quinn Junior AKA Rick Quinn		115 John Preston Drive Lexington, SC
James Henry Merrill IV AKA Jim Merrill		2401 Daniel Island Drive Charleston, SC

ROA 000013

SYNOPSIS OF INVESTIGATION

Synopsis is to include when and how case initiated, any informant information, quantity and type of narcotics or pornographic material, arrests, significant criminal history, and results of investigation to date. (Attach separate sheet for synopsis.)

Assets potentially available for seizure: N/A

Jurisdiction (Information regarding multi-county activity): Included but not limited to Richland, Lexington, Charleston and Berkeley Counties

Other agencies involved to date:

(X) SLED () ICE () ATF () DEA () FBI () Highway Patrol
() U. S. Marshal's Service

() Sheriffs' Departments or Police Departments (Specify):

(X) Solicitor's Office (Specify): 1st Circuit Solicitor's Office

Organizational Chart (Attach organizational chart on separate sheet if feasible):
N/A

Synopsis

On February 14, 2013, the South Carolina Law Enforcement Division (SLED) commenced an investigation at the request of the South Carolina Attorney General into possible financial crimes committed by the Speaker of the House of Representatives, Robert W. Harrell. Subsequently, the Attorney General recused his office from prosecutive authority on the case and by letter dated July 24, 2014 transferred prosecutive authority over the investigation to First Circuit Solicitor David Pascoe. As set forth more fully in the following paragraphs, during the continued investigation of then-speaker Harrell, SLED developed evidence that former House Majority Leaders Jim Merrill [REDACTED] [REDACTED] of 2401 Daniel Island Drive, Charleston, SC and Rick Quinn [REDACTED] of 115 John Preston Drive, Lexington, SC

also engaged in alleged financial crimes during their respective tenures as House Majority Leader and/or State Representatives. Specifically, it was discovered that Merrill and Quinn used their positions to direct funds to businesses in which they or family members held a controlling interest. In a letter dated July 17, 2015, the Attorney General's Office requested that upon SLED's completion of the investigation into Jim Merrill and Rick Quinn, "the report be forwarded to Solicitor David Pascoe for a prosecutive decision."

Merrill is the sole proprietor of Geechie Communications, a company to which he directed funds. On August 28, 2013, Merrill told SLED Agents, as Majority Leader, he would put together a team on the House Republican Caucus to come up with a plan for the election cycle. Merrill reported that the Majority Leader of the House decided who was on the caucus team and involved in the decision making process on how campaign material was produced. Additionally, on January 6, 2016, Executive Director of the House Republican Caucus, Charles Cannon, reported to SLED Agents that the Majority Leader was the ultimate decision maker on how to spend caucus funds and which vendors to use. Merrill informed SLED Agents during his interview that he would subcontract with other companies for printing services. After they completed the work, he would mark the invoices up by twelve to

fifteen percent. He would then send a Geechie Communications invoice to the House Republican Caucus or to the Palmetto Leadership Council for payment. Thus, the evidence indicates that Merrill directed funds to a business he controlled for personal financial gain. Geechie Communications also did some direct mailers, survey work and possibly some radio ads for the Palmetto Leadership Council that was usually coordinated with the House Republican Caucus.

Quinn directed campaign funds to Richard Quinn & Associates (RQ&A), which is owned by his father Richard Quinn. Many of Quinn's expenditures went directly to RQ&A for "fundraising services", but then changed to Capital Campaigns in 2014. Capital Campaigns appears to be a straw-man for RQ&A. There is also prima facie evidence to suggest that no services were actually provided for expenditures Rick Quinn made to RQ&A for "fundraising services." Capital Campaigns was listed as providing "fundraising services" for Rick Quinn or Quinn for House. Through documentation provided, Capital Campaigns was allegedly owned by an employee of RQ&A named Tom McGrath. Capital Campaigns was doing business as RQ&A while McGrath was an employee of RQ&A. McGrath told SLED Agents his clients would write a check to Capital Campaigns, not to RQ&A. He would then write a check to RQ&A and RQ&A would take out taxes, social

security, and other expenses and pay him by direct deposit. Capital Campaigns was not registered with the Secretary of State's Office as a Limited Liability Corporation (LLC) until December 17, 2015. This practice was suspicious in its appearance and SLED requested financial records and invoices to trace the funds in question and to determine whether actual work was performed. Copies of invoices were provided from RQ&A and Capital Campaigns by Tom McGrath, but not the original electronic files, thereby making it impossible to authenticate those records. The sequential order of the invoice numbers--- provided raised suspicion as to their authenticity.

On February 16, 2016 SLED Lieutenant (Lt.) Dave Lawrence requested an additional interview with Tom McGrath through his Attorney Debbie Barbier. On March 2, 2016 S/A Jeremy C. Smith and Lt. Lawrence requested additional documents and an interview with Rick Quinn through his Attorneys' Gregg Harris, Sherri Lydon and Matthew Richardson. On March 3, 2016 S/A Smith and Lt. Lawrence requested documents from Attorney Mark Moore that Moore obtained from the House Republican Caucus. On March 8, 2016 S/A Smith and Lt. Lawrence met with Attorney Scott Schools and requested a follow-up interview with Jim Merrill. As of March 14, 2016 no request has been answered and no response has been received.

Due to the discontinued cooperation of the parties involved, it will be necessary to subpoena witnesses and documents from across the State. This matter is within the public corruption jurisdiction of the State Grand Jury because it involves unlawful activity by public officials in connection with their public office. The investigatory power of the State Grand Jury is necessary because the investigation will necessarily involve a detailed financial investigation that to be successful will require subpoenaing bank, business, and tax records from entities across the State.

FILED

OCT 18, 2017

James R. Parks

CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

-VERSUS-

JAMES H. HARRISON

DEFENDANT.

CASE NO. 2017-GS-47-35
INDICTMENT FOR MISCONDUCT IN
OFFICE

S.C. Code Ann. §8-1-80

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina, on this 18th day of October, 2017, the State Grand Jurors present upon their oath:

MISCONDUCT IN OFFICE

S.C. Code Ann. §8-1-80

That beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, the Defendant, JAMES H. HARRISON, a public officer, committed acts and omissions constituting official misconduct, fraud, corruption or habitual negligence, to wit: the Defendant, while an elected member of the South Carolina House of Representatives and Candidate for State Office, repeatedly violated provisions of the Ethics Government Accountability and Campaign Reform Act of 1991.

All against the peace and dignity of this State and in violation of §8-1-80, Code of Laws of South Carolina (1976), as amended.



David M. Pascoe
First Circuit Solicitor
Acting Attorney General

A TRUE

Bill

ROA 000019

FILED

OCT 18, 2017

James R. Parks

CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

-VERSUS-)

JAMES H. HARRISON)

DEFENDANT.)

CASE NO. 2017-GS-47-36

INDICTMENT FOR COMMON LAW
MISCONDUCT IN OFFICE

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina, on this 18th day of October, 2017, the State Grand Jurors present upon their oath:

COMMON LAW MISCONDUCT IN OFFICE

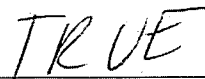
That beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, and while an elected member of the South Carolina House of Representatives, the Defendant, JAMES H. HARRISON, willfully and dishonestly failed to properly and faithfully discharge the duties of his public office imposed upon him by law, to wit: by using the office and position of Member of the South Carolina House of Representatives and Candidate for State Office to willfully and dishonestly violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991, the Defendant did commit acts or omissions in breach of his duty of good faith and accountability to the public.

All against the peace and dignity of the State and in violation of the common law of South Carolina.



David M. Pascoe
First Circuit Solicitor
Acting Attorney General

A



Bill

ROA 000020

FILED

OCT 18, 2017

James R. Parks

CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

-VERSUS-)

JAMES H. HARRISON)

DEFENDANT.)

CASE NO. 2017-GS-47-37

INDICTMENT FOR CRIMINAL
CONSPIRACY

S.C. Code Ann. §16-17-410

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina, on this 18th day of October, 2017, the State Grand Jurors present upon their oath:

CRIMINAL CONSPIRACY
S.C. Code Ann. §16-17-410

That beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006, through November 9, 2012, and ending on a date or dates unknown at this time to the State Grand Jury, in Richland County, the Defendant, JAMES H. HARRISON, unlawfully did unite, combine, conspire, confederate, agree and have tacit understanding with another to violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991 and to commit acts and omissions constituting statutory and common law misconduct in office, to wit: Defendant combined with Richard M. Quinn, Sr. and others, whose names are both known and unknown to the State Grand Jury, to use the office and position of members of the South Carolina General Assembly to willfully and dishonestly fail to properly and faithfully discharge the duties of public office imposed by law; to violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991; and to commit acts and omissions constituting official misconduct, fraud, corruption or habitual negligence.

All against the peace and dignity of this State and in violation of the Ethics Government Accountability and Campaign Reform Act of 1991; §16-17-410 and §8-1-80, Code of Laws of South Carolina (1976), as amended; and the common law of South Carolina.

ROA 000021



David M. Pascoe
First Circuit Solicitor
Acting Attorney General

A TRUE

Bill



STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

-VERSUS-)

JAMES H. HARRISON,)

DEFENDANT.)

CASE NO. 2018-GS-47-49

INDICTMENT FOR PERJURY

S.C. Code Ann. §16-9-10

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina on this 23rd day of August 2018, the State Grand Jurors present upon their oath and charge as follows:

PERJURY
S.C. Code Ann. §16-9-10

That on March 15, 2017, in Richland County, JAMES H. HARRISON did willfully give materially false, misleading, and incomplete testimony under oath before the State Grand Jury of South Carolina, which was duly impaneled by the Chief Judge for the State Grand Jury to investigate public corruption involving current and former members of the South Carolina General Assembly and others, to wit:

COUNT 1

When HARRISON was asked why he was receiving payment from Richard Quinn & Associates and First Impressions when he was Chairman of the House Judiciary Committee, HARRISON testified under oath that Richard Quinn “asked me if I would consider—and he might have started asking me before if I’d consider coming to work for them. I think he enjoyed the way I seemed to handle my campaign and could help him on other campaigns.” HARRISON also testified, “[b]ut I knew that, as long as I worked on campaigns and nothing more, that I didn’t feel I had a conflict of interest.”

This testimony was willfully false, misleading, incomplete, and material to the matters under investigation by the State Grand Jury in one or more of the following particulars:

- a. HARRISON'S testimony was material because it misrepresented the nature of his employment with Richard Quinn & Associates to the Grand Jury;
- b. Richard Quinn & Associates paid HARRISON more than \$800,0000 from 1999, when he was first hired, until 2012, when his employment relationship ended. However, HARRISON provided very little, if any, work on political campaigns while employed by Richard Quinn & Associates. To the contrary, during this same time period, HARRISON sponsored, co-sponsored and voted on Legislation that favored clients of Richard Quinn & Associates and met with corporate clients of Richard Quinn & Associates to discuss legislative affairs;
- c. HARRISON gave incomplete testimony by failing to inform the grand jury that he was hired by Richard Quinn & Associates in an operational or managerial role, which he described to the House Ethics Committee as "Partner and Chief Operating Officer";
- d. Witnesses' sworn testimony before the Grand Jury and evidence gathered contradicts HARRISON'S sworn testimony that he was only hired to work on political campaigns;
- e. HARRISON'S testimony contradicts his own statement to the House Ethics Committee in 1999 when he was first hired. In written correspondence to the House Ethics Committee, HARRISON explained his position with Richard Quinn & Associates as follows:

I have recently accepted the position of Partner and Chief Operating Officer with Richard Quinn & Associates (RQ&A), a Columbia consulting and public relations firm. . . . As a way of background, RQ&A manages election campaigns for candidates for various federal, state and local offices and, in addition, the firm provides public relations and communications services for its corporate clients, several of whom are registered as lobbyist principals. As Chief

Operating Officer (a salaried position), my responsibilities would include managing the day-to-day operations of the firm, as well as providing public relations/corporate communications services for its clients.

All done in violation of Section 16-9-10, Code of Laws of South Carolina (1976), as amended, and against the peace and dignity of this State and contrary to the law in such case made and provided.

COUNT 2

When HARRISON explained to the Grand Jury why he went off payroll and became a contract consultant, HARRISON testified "Mr. Quinn asked me if I would consider going off-payroll and become a contract consultant. And I did that. And we discussed, because I was not available as much as maybe I had been early, that my salary was significantly reduced because I acknowledged to them I didn't think I could put the time into it that we initially had agreed that I would do."

This testimony was willfully false, misleading, incomplete, and material to the matters under investigation by the State Grand Jury in one or more of the following particulars:

- a. HARRISON'S testimony was material because it misrepresented the nature of his employment with Richard Quinn & Associates to the Grand Jury;
- b. Witnesses' testimony before the Grand Jury and evidence gathered contradicts HARRISON'S sworn testimony;
- c. HARRISON'S testimony contradicts his own statement to an agent of the Federal Bureau of Investigations in which he stated his salary was being reduced because Richard Quinn and Associates was experiencing "cash flow" problems.

All done in violation of Section 16-9-10, Code of Laws of South Carolina (1976), as amended, and against the peace and dignity of this State and contrary to the law in such case made and provided.

David M. Pascoe

David M. Pascoe
First Circuit Solicitor
Acting under authority of Supreme Court Order

A TRUE Bill

[REDACTED]

Foreperson

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	CASE NOS.:
	)	2017-GS-47-35; 2017-GS-36 and
	)	2017-GS-47-37
vs.	)	
	)	
JAMES H. HARRISON,	)	DEFENDANT HARRISON'S MOTION
	)	FOR
DEFENDANT.	)	PRELIMINARY HEARING
	)	AND
	)	DISMISSAL OF INDICTMENTS

Defendant James H. Harrison (also referred to herein as "Harrison" or "Defendant Harrison"), by and through the undersigned counsel, respectfully moves this Court for an Order dismissing the above captioned indictments on the grounds that the State Grand Jury had insufficient evidence to issue the aforementioned indictments and lacked subject matter jurisdiction over these charges.

I. PROCEDURAL HISTORY.

On or about October 18, 2017, the State Grand Jury returned three indictments against Defendant Harrison. Those indictments included charges for Misconduct in Office (Case No. 2017-GS-47-35); Common Law Misconduct in Office (Case No. 2017-GS-47-36); and Criminal Conspiracy (Case No. 2017-GS-47-37). Harrison served in the South Carolina House of Representatives from 1989 through 2012, when he retired

and became the South Carolina Code Commissioner.¹ The State Grand Jury indictments each refer to alleged conduct by Defendant Harrison during his tenure as an elected member of the South Carolina General Assembly and employment with First Impressions/RQA.²

The first indictment³ alleges a violation of S.C. Code Ann. § 8-1-80 and states in part that:

"beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, the Defendant, JAMES H. HARRISON, a public officer, committed acts and omissions constituting official misconduct, fraud, corruption or habitual negligence, to wit: the Defendant, while an elected member of the South Carolina House of Representatives and Candidate for State Office, repeatedly violated provisions of the Ethics Government Accountability and Campaign Reform Act of 1991."

The second indictment⁴, for common law misconduct in office, states in part as follows:

"[t]hat beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, and while an elected member of the South Carolina House of Representatives, the Defendant, JAMES H. HARRISON, willfully and dishonestly failed to properly and faithfully discharge the duties of his public office imposed upon him by law, to wit: by using the office and position of Member of the South Carolina House of Representatives and Candidate for State Office to willfully and dishonestly

¹ Harrison also worked as an employee of First Impressions (which also operated as Richard Quinn & Associates ("RQA")) from approximately late 1999 until late 2012. Although a factual dispute exists as to whether First Impressions and RQA actually operated as separate entities for purposes of the case against Harrison, and without conceding any fact regarding those entities, this motion and memorandum will refer to those business entities simply as First Impressions/RQA. First Impressions/RQA engaged in public relations and corporate consulting services, as well as political campaign consulting. Harrison was hired to perform political campaign consulting duties.

² During his tenure in the S.C. House of Representatives and during his employment with First Impressions/RQA, Harrison also maintained an active and separate law office.

³ The first indictment is also referred to herein as "statutory misconduct."

⁴ The second indictment is also referred to herein as "common law misconduct."

violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991, the Defendant did commit acts or omissions in breach of his duty of good faith and accountability to the public.”

Last, the State Grand Jury true billed an indictment for the charge of criminal conspiracy⁵, pursuant to S.C. Code Ann. § 16-17-410, alleging in part that:

“beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, and while an elected member of the South Carolina House of Representatives, the Defendant, JAMES H. HARRISON, unlawfully did unite, combine, conspire, confederate, agree and have tacit understanding with another to violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991 and to commit acts and omissions constituting statutory and common law misconduct in office, to wit: Defendant combined with Richard M. Quinn, Sr. and others, whose names are both known and unknown to the State Grand Jury, to use the office and position of members of the South Carolina General Assembly to willfully and dishonestly fail to properly and faithfully discharge the duties of public office imposed by law; to violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991; and to commit acts and omission constituting official misconduct, fraud, corruption or habitual negligence.”

II. DEFENDANT HARRISON IS ENTITLED TO A PRELIMINARY HEARING TO DETERMINE WHETHER THE STATE GRAND JURY PROPERLY FOUND PROBABLE CAUSE FOR THE THREE INDICTMENTS.

Ordinarily, a defendant is not entitled to a preliminary hearing questioning the existence or lack of sufficient probable cause for criminal charges if a grand jury has returned an indictment or indictments against that defendant. See, S.C. Rules of Criminal Procedure 2(b) (preliminary hearing shall not be held if defendant is indicted by a grand jury). However, the general rule, prohibiting a preliminary hearing where a grand jury has indicted a defendant, is abrogated in circumstances where a defendant is indicted by the State Grand Jury. As such, this Court may conduct a preliminary hearing

⁵ The third indictment is also referred to herein as “conspiracy.”

to determine whether this State Grand Jury issued indictments based upon sufficient probable cause and whether the State Grand Jury has subject matter jurisdiction in this matter. If probable cause does not exist for any indictment, then Defendant Harrison is entitled to dismissal of that criminal charge.⁶

In *State v. Green*, 337 S.C. 67, 522 S.E.2d 602 (Ct.App. 1999), the South Carolina Court of Appeals reaffirmed the principle that a defendant may challenge the State Grand Jury's subject matter jurisdiction by challenging the sufficiency of the evidence presented to the State Grand Jury as the basis for its indictment(s). The *Green* Court relied on the South Carolina Supreme Court's holding in *State v. Evans*, 322 S.C. 78, 470 S.E.2d 97 (1996). *Green* was indicted by the State Grand Jury for trafficking in cocaine, trafficking in crack cocaine, and resisting arrest. The indictment alleged that each drug offense occurred in Aiken County or Aiken County and a county in the State of Georgia. *Green, supra* at 603. Pursuant to a motion by the government requesting that the trial court rule on the issue of "whether the State Grand Jury had subject matter jurisdiction over the offenses charged," the circuit court held a preliminary hearing. *See, Green*, 522 S.E.2d at 603. During the hearing, the government presented testimony of an officer involved in the drug investigation but was unable to present live testimony from a confidential informant involved in the case. *Id.* "The trial

⁶ Penal, or criminal, statutes are strictly construed against the State and in favor of a purported defendant. *See, State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002); *State v. Fowler*, 322 S.C. 157, 470 S.E.2d 393 (Ct. App. 1996).

judge found no evidence of multi-county significance and dismissed the indictment [against Green] for lack of subject matter jurisdiction without prejudice.” *Id.*⁷

Although the Court of Appeals found that the trial court erred in dismissing the State Grand Jury indictment’s charges against Green, the Court reaffirmed the principle that a State Grand Jury defendant may attack the State Grand Jury’s subject matter jurisdiction by challenging the sufficiency of the evidence presented at the State Grand Jury proceedings leading to indictment. Further, the Court of Appeals addressed the proper standard of review for a trial court conducting a preliminary hearing in a State Grand Jury case. *State v. Green* clearly establishes the right to a preliminary hearing on the question of whether the State Grand Jury had received and considered sufficient evidence to properly return an indictment.

“[T]he State Grand Jury operates under a very specialized procedure under which a defendant is permitted to obtain and review all evidence which was considered in handing down an indictment.” *Green, id.* at 604 (citing *State v. Evans*, 470 S.E.2d at 99 at n. 1). Reversing the circuit court’s finding that the government failed to establish evidence of multi-county significance at the “preliminary hearing,” and the South Carolina Court of Appeals held that the State Grand Jury lacked subject matter jurisdiction. *Id.* The proper review by the trial court, at a preliminary hearing, should be on “evaluating the sufficiency of the evidence before the Grand Jury” in determining whether there was subject matter jurisdiction. *Id.* at 604-05.

⁷ While the State’s appeal was pending, the Aiken County Grand Jury subsequently indicted Green on four of the six counts contained in the State Grand Jury indictment. *Id.* Green pleaded guilty to those four counts and the Court of Appeals held that the State’s appeal was moot as to those charges, but not the remaining two charges contained in the original State Grand Jury indictment. *Id.* at 603-04.

Prior to the Court of Appeals decision in *Green*, the South Carolina Supreme had previously recognized that due to the unique circumstances surrounding the State Grand Jury, a defendant may challenge the sufficiency of the evidence supporting an indictment. Specifically, the Supreme Court stated as follows:

"As we noted in *State v. Gunn* [citation omitted], the State Grand Jury operates under a very specialized procedure under which a defendant is permitted to obtain and review all evidence which was considered in handing down an indictment. See also, S.C. Code Ann. § 14-7-1700 (1995). According, [the defendant] had an opportunity to review the evidence to determine whether the State Grand Jury, in fact, investigated him for 'multi-county' crimes. At no time has [the defendant] challenged the sufficiency of the evidence which was before that body, nor is there any evidence in the record before us. If [the defendant] was concerned with the evidence which was considered by the State Grand Jury, it was incumbent upon him to challenge this evidence prior to a jury being sworn. Cf., *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963); *State v. Jacobs*, 238 S.C. 234, 119 S.E.2d 735 (1961).

State v. Evans, 322 S.C. 78, 470 S.E.2d 97, 99 n. 1. Thus, both the South Carolina Supreme Court and the Court of Appeals have held that a defendant is entitled to a preliminary hearing requiring the government to establish that there was sufficient evidence before the State Grand Jury supporting each and every indictment returned by the State Grand Jury.

Based upon a clearly established right, Defendant Harrison respectfully moves, first, that this Court schedule and hold a preliminary hearing in this matter; second, that the Court order the State to provide the Court with copies of all evidence and transcripts relevant to the State Grand Jury's charges against this defendant; and third, that the Court determine, based upon testimony, State Grand Jury materials, and pertinent legal

authority, whether there was sufficient evidence presented and considered by the State Grand Jury to support indictments against Mr. Harrison.⁸

III. LEGISLATORS, SUCH AS HARRISON, ARE NOT SUBJECT TO SECTION 8-1-80 (STATUTORY MISCONDUCT) AND, THEREFORE, THE STATE GRAND JURY COULD NOT HAVE FOUND PROBABLE CAUSE TO ISSUE THE FIRST INDICTMENT.

Defendant Harrison contends that the first indictment issued against him by the State Grand Jury, for statutory misconduct in office, should be dismissed because there was insufficient evidence presented and considered by the State Grand Jury establishing that a member of the South Carolina General Assembly can be indicted pursuant to S.C. Code Ann. § 8-1-80. As described herein above, Indictment No. 2017-GS-47-35 alleges that Harrison violated the misconduct statute by “repeatedly violat[ing] provisions of the Ethics Government Accountability and Campaign Reform Act of 1991” (also referred to herein as the “Ethics Act”).⁹ The alleged misconduct by Harrison all occurred during his tenure as a candidate for, or member of, the South Carolina House of Representatives. Similar to the necessity of presenting evidence showing a multi-county significance in drug cases, there must have been a demonstration, to the State Grand Jury, establishing probable cause that § 8-1-80 is applicable to members of

⁸ Defendant Harrison does not contend that a preliminary hearing held by this Court should follow any procedure different than required by Rule 2, SCRCrimP. For example, the Defendant believes the procedure set forth in the Summary Judges Benchbook is applicable to this matter. See, Summary Judges Benchbook, “Preliminary Examinations,” attached hereto as Exhibit A. Thus, the rules of evidence should be followed, the State must show probable cause as to each element of the crimes charged, and the State has the burden of proving probable cause. *Id.*

⁹ Interestingly, neither Harrison nor any of the co-defendants in this State Grand Jury case were indicted under the Ethics Government Accountability and Campaign Reform Act of 1991, which itself carries criminal and civil penalties for violations of the Act.

the South Carolina General Assembly. *Cf.*, *State v. Evans*, 470 S.E.2d at 98; *State v. Adams*, 319 S.C. 509, 462 S.E.2d 308, 310-11 (Ct. App. 1995).

S.C. Code Ann. § 8-1-80 does not apply to members of the South Carolina General Assembly. The statute provides, as stated hereinabove, that any "public officer" may be indicted and found guilty of "official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression." The term "public officer," for purposes of Title 8, Chapter 1 of the S.C. Code of Laws means "all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of the various State boards and other persons whose duties are defined by law." Incontrovertibly, Harrison was not a college trustee, a member of a State board, nor were his duties as a legislator defined by any State law. Likewise, elected members of the General Assembly are not "commissioned" pursuant to South Carolina law. A commission is *evidence* of the appointment to an office. *See generally*, *State v. Graham D. Bridgers, III*, 329 S.C. 11, 495 S.E.2d 196 (1997) (*citing State v. Lewis*, 181 S.C. 10, 186 S.E.2d 625 (1936)).¹⁰ Harrison was *elected, not appointed*, to the South Carolina House of Representatives.

Additional evidence that Section 8-1-80 is inapplicable to South Carolina legislators can be found in the express terms of the penalties provided by the statute. If the public officer is convicted under § 8-1-80, the statute requires that the presiding trial judge "shall order a certified copy of the indictment to be immediately transmitted to the

¹⁰ "The governor, in granting a commission, acts ministerially" *Bridgers*, 329 S.C. at 34. *See also*, S.C. Const. art. VI, § 6 ("The Governor shall commission all officers of the State. All commissions shall be issued in the name and by the authority of the State of South Carolina, sealed with the Great Seal, signed by the Governor, and countersigned by the Secretary of State." The Governor of South Carolina does not issue a "commission" to the elected members of the South Carolina General Assembly.

Governor who *must* . . . declare the office to be vacant (emphasis added).¹¹ It is firmly established, under South Carolina law, that the Governor has no authority to suspend a member of the General Assembly, appoint a temporary replacement to the House or Senate, or declare a legislative seat vacant.

S.C. Const. art. VI, § 8 provides that public officers may be removed from office for incapacity, misconduct, or neglect of duty, in such manner as provided by law whenever there is no method of trial or removal set forth in the South Carolina Constitution. The Constitution provides that each house of the South Carolina General Assembly is empowered to expel its members, and thereby create a vacancy in a legislative office. See, S.C. Const. art. VI, § 12.¹² Absolutely no constitutional provision recognizes the authority of the Governor to appoint or suspend a member of the South Carolina House of Representatives or Senate.

In addition to the absence of constitutional authority allowing for the application of § 8-1-80, 100, or 110 to be executed as to legislators, South Carolina statutory law provides specific circumstances and the manner in which a member of the General

¹¹ See also, S.C. Code Ann. § 8-1-100 ("Except as provided in Section 8-1-110, any state or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in event of suspension shall appoint another in his stead until he shall be acquitted. In case of conviction the office shall be declared vacant by the Governor and the vacancy filled as provided by law." S.C. Code Ann. § 8-1-110 provides for the same suspension, temporary appointment, and vacancy of office as set forth in § 8-1-100, except the Governor loses discretion, and is mandated to act, in cases where the public officer is charged with embezzlement or misappropriation of funds.

¹² Concomitant with the power to expel its members, only each chamber of the General Assembly may determine the qualification of anyone to sit as a member of those bodies. See, S.C. Const. art. VI, § 12.

Assembly may be suspended from office.¹³ S.C. Code Ann. § 8-13-560 (contained in the State Ethics Act) provides as follows:

"A member of the General Assembly who is indicted in a state court or a federal court for a crime that is a felony, a crime that involves moral turpitude, a crime that has a sentence of two or more years, or a crime that violates election laws must be suspended immediately without pay by the presiding officer of the House or Senate, as appropriate. The suspension remains in effect until the public official is acquitted, convicted, pleads guilty, or pleads nolo contendere. In the case of a conviction, the office must be declared vacant. In the event of an acquittal or dismissal of charges against the public official, he is entitled to reinstatement and back pay."

Thus, Section 8-13-560 provides for the specific manner of suspending members of the legislature rather than the general and inapplicable Section 8-1-80. A specific statute governs in place of a general statute. *See, Witzig v. Witzig*, 325 S.C. 363, 479 S.E.2d 297, 299 (Ct. App. 1996) ("It is a well-settled principle of statutory construction that 'specific laws prevail over general laws'"). Because it is impossible to apply the penalty provisions set forth in Sections 8-1-80 and 100-101, probable cause cannot exist for the statutory misconduct indictment and Harrison is entitled to have the first indictment dismissed.

IV. THERE IS NO PROBABLE CAUSE SHOWING THAT HARRISON CRIMINALLY VIOLATED ANY DISCLOSURE REQUIREMENTS OF THE STATE ETHICS ACT AND THE SECOND INDICTMENT SHOULD BE DISMISSED.

Although the indictments against Harrison fail to identify specific statutes of the State Ethics Act which the State contends were violated in this case, this motion

¹³ Ironically, the specific statutes applicable to the suspension of an indicted legislator are found in the very State Ethics Act which the State alleges Harrison and his co-defendants violated. *See*, S.C. Code Ann. § 8-13-560. *See also*, Ops. S.C. Atty Gen. Sept. 11, 2014 (explaining that the Speaker Pro Tem, as presiding officer, had the authority to suspend from office Speaker of the House Bobby Harrell), attached hereto and incorporated herein as Exhibit B.

categorizes potential violations into three subject areas of concern for the State.¹⁴ First, the State believes that Mr. Harrison should have recused himself from certain legislative votes or legislation sponsorship. Second, the State alleges that Harrison “over-reported,” on his Statement of Economic Interests Form, legal fees, earned from his law practice, thereby, implying that Harrison simultaneously “underreported income from First Impressions or Richard Quinn & Associates (also referred to herein as “RQA”). Finally, the State raises the question of whether Harrison was required to report income from First Impressions because of that company’s, or associated business’, lobbyist principal clientele.¹⁵

As to the issue of recusal, there are no legislative votes or sponsorship of legislation which affected an economic interest requiring Mr. Harrison’s recusal. S.C. Code Ann. § 8-13-700(A) provides that “[n]o public official, public member or public employee may knowingly use his official office, membership, or employment to obtain an ***economic interest*** for himself, a family member, or an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official’s, public member’s, or public employee’s use that does not result in additional public expense.” (emphasis added). The determination of whether a

¹⁴ There is no evidence that Harrison improperly engaged in lobbying on behalf of any First Impressions/ RQA clients or that he took any legislative action at the behest of Richard Quinn, Jr., or in exchange for improper remuneration. As such, this motion addresses the only discernible theories of prosecution derived from meetings between counsel for the Defendant and State.

¹⁵ Harrison never accepted, nor is there any evidence even hinting acceptance of, any compensation or other thing of value directly from any lobbyist principal. S.C. Code Ann. § 8-13-710(A) requires a legislator “who accepts anything of value from a lobbyist principal . . . [to] report the value of anything received on his statement of economic interests” Thus, without any showing of probable cause to believe that this statute was implicated in this case, the Court does not need to consider it for purposes of this motion to for a preliminary hearing and dismissal of the indictments.

legislator, such as Harrison, when employed by First Impressions/RQA, has a duty to recuse himself from legislative activity is, thus, governed by whether he or she has a disqualifying "economic interest" in the legislation.¹⁶

S.C. Code Section 8-13-100 defines the term "economic interest" and governs the recusal question. Specifically, the definitions section of the Ethics Act provides as follows:

"'Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class."

See, S.C. Code Ann. § 8-13-100(11)(a) and (b) (emphasis added).

In reviewing Jim Harrison's legislative votes and House Bill sponsorships during his period of employment with First Impressions, there are no legislative matters which affected solely a client of First Impressions/RQA. For example, although SCANA, AT&T, and the Trial Lawyers Association were clients of First Impressions/RQA, all of the legislation co-sponsored or voted on by Harrison benefited or affected the entire

¹⁶ Again, for purposes of this discussion, we are treating, without conceding, that First Impressions and Richard Quinn & Associates are not separate and distinct business entities or that Mr. Harrison should have viewed both business entities as one ongoing business concern.

industries of which those clients were members, rather than solely those individual client entities. Harrison never voted on or sponsored legislation which affected an "economic interest" for himself or a business with which he was associated. Thus, pursuant to the plain language of the Ethics Act, it is impossible that the State Grand Jury was presented with evidence showing probable cause that Harrison should have recused himself from any actions, as required by the Ethics Act.

A second issue arising under the Ethics Act is the State's theory that Defendant Harrison was "over-reporting" certain income, while failing to disclose other "reportable income." While the Defendant contends that the Ethics Act never required Mr. Harrison to report any income from First Impressions/RQA, there likewise was no "over-reporting" of income from Mr. Harrison's law practice. S.C. Code Ann. § 8-13-740 governs disclosures related to the representation of persons by a public official before governmental entities. Mr. Harrison complied with the aforementioned statute and, therefore, it is impossible for the State's theory or allegation to be evidence of any crime.

Section 8-13-740(B) provides that "[a] member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities."¹⁷ Rather than "over" or "under" reporting any income, Jim

¹⁷ Section 8-13-740(A)(2)(c) allows a member of the General Assembly to represent another person in contested cases or in an agency's consideration of the drafting and promulgation of regulations in a public hearing.

Harrison was merely complying with the requirement reporting legal fees of clients he represented before the South Carolina Administrative Law Court. As opposed to the reporting requirement contained in § 8-13-740, there is no concomitant disclosure requirement for income Jim Harrison earned from First Impressions/RQA.

The State's third allegation of an Ethics Act violation by Harrison centers on the premise that the Defendant was required to disclose income earned from First Impressions/RQA pursuant to Section 8-13-1130 of the South Carolina Code of Laws.¹⁸ A person is required by the Ethics Act to "report to the appropriate supervisory office the name of any person he knows to be a lobbyist . . . or a lobbyist's principal . . . and knows that the lobbyist or lobbyist principal has in the previous calendar year purchased from the filer, a member of the filer's immediate family, an individual with whom the filer is associated, or a business with which the filer is associated, goods or services in an amount in excess of two hundred dollars." Again, assuming, arguendo, that Harrison was aware that lobbyist principals were clients of First Impressions/RQA the indictments must be supported by probable cause showing that Harrison intended to withhold disclosing the names of those lobbyist principals to the House of Representatives' Ethics Committee.

Further, even if we assume a disclosure requirement for Harrison, in this case, pursuant to § 8-13-1130, we do not believe that failure to report is properly included in this criminal proceeding. Section 8-13-1510 sets forth the civil and criminal penalties for late filing of or failure to file a report or statement required by Chapter 13 of the Ethics

¹⁸ Both the old *Thrift Brothers* and Bobby Harrelson cases require proof beyond a reasonable doubt that a public official intended to avoid compliance with the Ethics Act, with "intentionality" being a necessary element of any criminal prosecution under the Act.

Act. Section 8-13-1510 sets forth the civil penalties for the failure to file a report or statement required by Chapter 13. Only after the House Ethics Committee has provided required notice and levied the maximum civil fines, a legislator may be found criminally guilty and, in addition to fines, imprisoned for not more than thirty days (for a first offense), not less than a mandatory minimum of thirty days (for a second offense), or imprisoned for not more than one year (for a third offense). See, S.C. Code Ann. § 8-13-1510(A) and (B).

Section 8-13-1520's criminal provision applies only "[e]xcept as otherwise specifically provided in [Chapter 13]" Therefore, the plain reading of the Ethics Act specifically makes § 8-13-1510 applicable to any alleged failure to file a disclosure or statement required by § 8-13-1130. Further, it is clear and unambiguous that § 8-13-1510 sets forth a *civil prerequisite* prior to *any* criminal prosecution or liability.

V. THE STATE GRAND JURY LACKED PROBABLE CAUSE TO BELIEVE THAT HARRISON HAD AN AGREEMENT OR MUTUAL UNDERSTANDING WITH ANYONE TO VIOLATE THE STATE ETHICS ACT.

The third and final indictment against Harrison alleges that the Defendant conspired with Richard Quinn, Sr., and others, to violate the State Ethics Act and to "commit acts and omissions constituting official misconduct, fraud, corruption or habitual negligence."¹⁹ In order to establish a conspiracy, it is first necessary to show that two or more persons came to a mutual understanding or agreement to accomplish a common and unlawful design. See, *State v. Stuckey*, 347 S.C. 484, 556 S.E.2d 403 (Ct. App.

¹⁹ The portion of the indictment which allude to a criminal conspiracy by Harrison to "commit acts and omissions constituting official misconduct, fraud, corruption or habitual negligence" appears to reference the language set forth in S.C. Code Ann. § 8-1-80. As discussed hereinabove, Harrison cannot be charged with a criminal violation under § 8-1-80. Likewise, as discussed hereinabove, there are no criminal violations of the State Ethics Act by Harrison. Therefore, this memorandum discusses the lack of probable cause in terms of a general criminal conspiracy.

2001) (gravamen of criminal conspiracy is an agreement, combination, or mutual understanding); *State v. Hammitt*, 341 S.C. 638, 535 S.E.2d 459 (Ct. App. 2000) *reh'g denied, cert. granted, aff'd* 351 S.C. 634, 572 S.E.2d 263; *State v. Gunn*, 313 S.C. 124, 437 S.E.2d 75 (1993). "What is needed to establish criminal conspiracy is proof [the defendants] intended to act together for their shared mutual benefit within the scope of the conspiracy charged." *State v. Stuckey*, 556 S.E.2d at 412-13. "[B]ecause the *actus reus* of conspiracy is the agreement, the evidence must prove the agreement, not the object thereof." *State v. Crawford*, 362 S.C. 627, 608 S.E.2d 886, 893 (Ct. App. 2005).

There is no evidence, much less evidence rising to the level of probable cause, that Harrison entered into any agreement with Richard Quinn, Sr., or any other person, to violate any provision of the State Ethics Act.²⁰ Not only are the indictments vague and ill-defined as to the specific provisions of the State Ethics Act provisions that Harrison "conspired" to violate, there exists no evidence that Harrison intended to act together with anyone for their shared mutual benefit by non-disclosure, or other violative action, under the State Ethics Act.

During meetings between counsel for Harrison and the State, Defendant Harrison is able to surmise that a theory of the State's case is that Harrison "conspired" with Richard Quinn, Sr., and/or others, to refrain from filing disclosures of income earned from First Impressions/RQA. Problematically for the State's theory is the fact that the State Grand Jury could not have found probable cause on that basis, since there

²⁰ Although the indictment alleges that Harrison's co-conspirators include persons "whose names are both known and unknown to the State Grand Jury," the State has neither identified any other alleged co-conspirators known to the State Grand Jury, nor has the State produced discovery responses specifically regarding those "known" co-conspirators. The Defendant will raise and address this, and other, discovery issues in a separate motion, which will be filed with the Court.

exists absolutely no statute, under the State Ethics Act or otherwise, requiring Harrison to disclose income earned as an employee of First Impressions/RQA. Another theory of the State's case, gleaned from meetings between counsel, is that Harrison conspired to refrain from disclosing his employment with First Impressions/RQA in order for Richard Quinn, Sr. to continue to acquire clients who were also lobbyist principals under South Carolina law. Again, the misadventure of the State's theory is that there is absolutely no legal prohibition on Harrison working for a company whose clientele includes lobbyist principals. Therefore, under any theory under which the State is laboring, there was never any common and unlawful design forming the basis of a conspiracy.²¹ The State Grand Jury lacked probable cause to find a conspiracy and the third indictment, like the statutory and common law misconduct charges, should be dismissed.

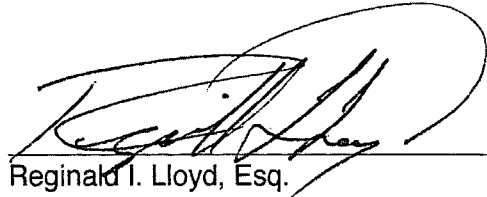
VI. CONCLUSION.

The three indictments issued by the State Grand Jury against Harrison, for statutory misconduct, common law misconduct, and criminal conspiracy lack any probable cause to support continuation of this case. Harrison, respectfully, requests that this Court schedule a preliminary hearing in this matter and, ultimately, dismiss the charges against him on the grounds of insufficient probable cause. This Motion may be supported by further memoranda, authorities, and exhibits as necessary to support such motion at or following a preliminary hearing.

²¹ Additionally, prior to becoming an employee of First Impressions/RQA, Harrison sought and obtained an opinion, from the House of Representatives Ethics Committee, as to whether he could work for an employer whose clientele included lobbyist principals. The opinion issued by the Ethics Committee is attached hereto as Exhibit C. Not only did the Ethics Committee approve Harrison's ability to work for First Impressions/RQA, he never violated any statute with which the Committee exhorted Harrison to comply.

Respectfully submitted,

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ATTORNEYS FOR THE DEFENDANT.

Camden, South Carolina

12th day of June 2018.

DEFENDANT HARRISON'S
EXHIBIT A TO
MOTION FOR PRELIMINARY HEARING
AND
DISMISSAL OF INDICTMENTS

Summary Judges Benchbook

F. Preliminary Examinations

Rule 2, South Carolina Rules of Criminal Procedure (SCRCrimP) gives defendants charged with offenses beyond the jurisdiction of magistrate and municipal courts certain rights to preliminary hearings, but differs from the statutory procedure in several important respects. The requirements of the rule are briefly summarized as follows:

1. Notice of Right to Preliminary Hearing

The rule requires that the defendant be informed of his right to a preliminary hearing both orally and in writing. If the offense is bailable, the notice must be given at the bond hearing. If the offense is non-bailable, the notice must be given him no later than would be required if the offense were bailable. S.C. Court Administration Form SCCA/512 must be given the defendant at the bond hearing, or, in the case of non-bailable offenses, no later than would be required if the offense were bailable. This form provides both the required written notice, and the simple form upon which the defendant may request the preliminary examination, as required by the rule. You should note at Item 3 of the Checklist for Magistrates and Municipal Judges that the defendant was given a copy of Form SCCA/512. This is the only means you have of checking yourself to see that proper notice was given the defendant. In addition, oral notice of rights to a preliminary hearing must be given the defendant at this time. So that you can be assured that the proper written and oral notices are given all defendants charged with general sessions court offenses, you should instruct the jailer to bring all such defendants before you when you appear to hold bond hearings. The defendants charged with non-bailable offenses would not be given bond hearings, of course, but could be given notice of their rights to preliminary examinations at what many magistrates and municipal judges call "first appearance hearings". Since a magistrate is required to be physically present at a detention facility at least twice in a twenty-four hour period, every defendant entitled to notice of a preliminary hearing would be informed of his rights within a day of his arrest, if incarcerated in a county detention facility.

Section 17-23-162 provides that "The affiant listed on an arrest warrant or the chief investigating officer for the case must be present to testify at the preliminary hearing of the person arrested pursuant to the warrant."

2. Effect of Indictment on Request for Preliminary Examination

Rule 2(b), SCRCrimP states that the preliminary examination shall not be held if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held.

3. Waiver of Right to Preliminary Examination

If the defendant fails to make a timely request for a preliminary examination, (see paragraph 4, below) he is deemed to have waived his right to request such hearing. Previously, if the defendant failed to appear at the hearing, the defendant's right to the preliminary examination was deemed to have been waived. Rule 2(b), SCRCrimP now provides, however, that: "The defendant may appear [either] by counsel or in person or both."

4. Time in Which Request for Preliminary Examination Must Be Made

The request for a preliminary hearing must be made within ten (10) days after the defendant is given notice of his right to a preliminary hearing. The request need not be on the form (SCCA/512) provided, but it must be in writing. Failure of the defendant to make a timely request will result in a waiver of his right to request such a hearing.

5. Time When the Preliminary Hearing Must Be Held

of General Sessions Court, to make his request. Rule 2(b), SCRCrimP, established a much less confusing method of computing the time within which to hold the preliminary hearing, and must be followed, instead of the statutory procedure. "Any delay in the holding of a preliminary hearing shall not be grounds for delay in the prosecution of the case in the Court of General Sessions." Rule 2(e), SCRCrimP.

6. Purpose and Scope of Preliminary Examination

The purpose of a preliminary examination is to determine if the State can show that there is probable cause to believe that the defendant committed the crime with which he has been charged, to warrant the defendant's detention and trial. In order to show probable cause, the State's case must be based on something more than the honest suspicions of law enforcement officers. The State must present reasonable grounds for showing the crime was committed and that the defendant committed it. The facts presented must be sufficient to persuade a reasonable man that the accused committed the crime charged. The rule does not provide for the preliminary examination as a discovery tool or "fishing expedition" for the defendant to learn the State's evidence. The defendant is given discovery opportunities in criminal cases by Rule 5, SCRCrimP, which allows the defendant to inspect and copy certain information held by the prosecution, and vice versa.

7. Right to Counsel at Preliminary Examination

A preliminary examination is a critical state in a criminal proceeding. Thus the defendant should have the opportunity to obtain counsel or have such appointed before the examination. State v. Taylor, 255 S.C. 268, 178 S.E.2d 244 (1970). However, the failure of a defendant to obtain or be given counsel in time to request a preliminary examination does not necessarily bar a higher court from obtaining jurisdiction or prejudice the defendant. Sanders v. South Carolina, 296 F Supp. 563 (D.S.C. 1969).

8. Notice to Victim to Attend

Upon scheduling a preliminary hearing in a case involving a victim, §16-3-1525(K) requires that the summary court judge reasonably must attempt to notify each victim of each case for which the defendant has a hearing of his right to attend. § 16-3-1525 (N) requires that notification may not be only by electronic or other automated communication or recording. After three such unsuccessful attempts, personal contact with the victim should be attempted.

9. Procedure in a Preliminary Examination

A preliminary examination is an administrative inquiry and not an adversary hearing. Rules of evidence are to be followed, although strict adherence is not required. For example, hearsay may be admitted at the examination. State v. Conyers, 268 S.C. 276, 233 S.E.2d 95 (1977). See also 1976-77 Op. Atty. Gen. No. 77-53. It would appear that the issue of whether or not the hearsay evidence is trustworthy and accurate enough to establish probable cause is an issue to be determined by the judge in light of all the circumstances. It is solely within the discretion of the magistrate or municipal judge as to whether or not to allow the prosecution to introduce hearsay evidence at the preliminary examination.

The State must show probable cause as to each element of the crime charged. Any valid objection by the defense may be raised. Other than the discovery rights given defendants by Rule 5, SCRCrimP, the defendant may not inspect the State's evidence. [See also State v. Flood, 257, S.C. 141, 184 S.C.2d 549 (1971), and State v. Miller, 289 S.C. 316, 345 S.E.2d 489 (1986).]

The magistrate or municipal judge begins a preliminary examination with the reading of the charge against the defendant. The defendant does not plead to the charge nor does he make a sworn statement at this proceeding. The defendant may, however, make an unsworn statement but this may not be used against him at trial. The defendant is not allowed to offer evidence on his behalf since the examination is used only to determine if the State can show probable cause. At the beginning of the preliminary examination or at any time prior to it, the defendant may demand a change of venue or make a motion that the judge disqualify himself.

After the charges have been read, the State presents its evidence of probable cause. The State's evidence is presented by a law enforcement officer or the solicitor. The magistrate or municipal judge does not present the State's case or give the appearance of prosecuting the defendant. The magistrate or municipal court judge may not examine the accused during this proceeding. The state may present physical evidence and witnesses. The State has the burden of proving probable cause, but it is not required to call all of its witnesses or produce all of its evidence. See State v. Cunningham, 275 S.C. 189, 268 S.E.2d 289 (1980). The defendant has the right to cross-examine any of the State's witnesses. If he chooses to cross-examine a witness, his voice may be used by the witness to identify him. State v. White, 243 S.C. 238, 133 S.E.2d 320 (1963). The testimony of the State's witnesses on cross-examination is not admissible in subsequent proceedings but may be used at trial to impeach that witness on prior inconsistent statements. Again, the defendant is not allowed to offer evidence or make any sworn statements at the preliminary examination. The only procedure to taking testimony at a

After the state's evidence has been presented, the defendant argues to the magistrate or municipal judge that probable cause does not exist. The state may then argue that there is probable cause and if such an argument is made, the defendant may reply to it. If the magistrate or municipal judge is not satisfied that probable cause has been shown, he must discharge the defendant from custody, meaning that he/she **must be released from incarceration**, provided the defendant has no other charges pending which require incarceration. Although the magistrate or municipal judge is required to discharge the defendant from custody, this is not a final determination of the charge. Such a discharge is not an acquittal and jeopardy does not attach. The charge may still be submitted for grand jury consideration and the defendant indicted after such consideration. Until such time, the defendant is bound by all the remaining terms of his bond, including appearance at trial, until the case is discharged or dismissed in the Court of General Sessions. Op. S. C. Atty. Gen., January 31, 2013.

If the magistrate or municipal judge is satisfied as to the state's showing of probable cause, the defendant is bound over for trial and is either released on bail if the offense is bailable, or committed to jail to await trial. After the preliminary examination has been held, the magistrate or municipal judge should forward all papers relating to the case immediately to the clerk of court. These papers (endorsed legibly with the title of the case, nature of the offense, kind of proceeding, and magistrate's name) shall include a report of the case with the names and addresses of all material witnesses and a synopsis of all testimony. The magistrate or municipal judge should complete and attach to these papers a "Certificate of Transmittal" (Form SCCA-215) and forward the appropriate copy of this form to Court Administration upon receipt by the clerk of court.

10. Closure of the Preliminary Examination

Judicial proceedings are presumed to be open to the public. Public policy considerations supporting this position include the need to insure public confidence in judicial proceedings. However the U.S. Supreme Court held that the Sixth Amendment right of a defendant to a speedy and public trial does not give the public a right of access to pretrial proceedings in all cases. Gannett Co., Inc. v. Depasquale, 443 U.S. 368, 99 S. Ct. 2898, 61 L. Ed. 2d (1979).

As a general matter, pretrial proceedings should be open to the public. Only in extremely rare cases should the pretrial proceeding be closed. Upon a motion to close the pretrial proceeding, the defendant must show: (1) that he will be denied a fair trial if the public or press is allowed access to the proceeding; and, (2) no other method of protecting the defendant's right to a fair trial is available. Persons with a legitimate interest in the proceedings (e.g. representatives of the news media) should be allowed to present reasons why the pretrial proceeding should remain open to the public, and why the defendant's right to a fair trial will not be jeopardized by an open hearing. After hearing the arguments both for and against closure of the proceeding, the judge must determine whether closure of the proceeding is necessary to protect the defendant's rights. Even in those instances where the prosecutor consents to the closing of the pretrial proceeding, the judge must make an inquiry and determine that no other alternative action will protect the defendant's right to a fair trial.

In most cases, alternative methods of protecting the defendant's right to a fair trial will be appropriate. In many cases the defendant may argue that prejudicial hearsay information (not admissible at trial) will be introduced at the preliminary and may be subsequently reported by the press. Rather than denying public access to the preliminary in such instances, the judge should consider alternative methods for preserving the defendant's right to a fair trial. For example, the witnesses may be sequestered at the preliminary as well as at the trial itself. Also, at trial more extensive voir dire of prospective jurors could eliminate those jurors who have prejudged the case based on news media accounts of the preliminary. Additionally, in highly publicized cases, the circuit court may permit a change of venue to another county less likely to receive the local news coverage received in the county of the alleged offense. Finally, a combination of these methods and others might be highly effective in assuring the defendant's right to a fair trial, while not denying public access to a pretrial proceeding.

If the judge finds that these alternatives will not adequately protect the defendant's right to a fair trial, then the pretrial proceeding may be closed. An express finding must be made, however, that the exclusion of the press is required to protect the defendant's right to a fair trial and that no other method of protecting this right is available, and this finding must be made a part of the record. (See Steinle, et al v. Lollis, 279 S.C. 375, 307 S.E.2d 230 (1983). One example where a potential proceeding may be closed is when a confession by the defendant is to be introduced in a highly publicized case. Such a confession if made public prior to trial may be so prejudicial that the defendant would be unable to strike a jury that has not prejudged the case due to pretrial publicity. However, the judge should enter into the record of such proceeding, the fact that no other less intrusive means of protecting the defendant's right exist and the reasons for reaching such a conclusion.

**DEFENDANT HARRISON'S
EXHIBIT B TO
MOTION FOR PRELIMINARY HEARING
AND
DISMISSAL OF INDICTMENTS**

ALAN WILSON
ATTORNEY GENERAL



September 11, 2014

The Honorable James E. Smith, Jr.
Richland County Judiciary Committee
335C Blatt Bldg.
Columbia, 29201

The Honorable Todd Rutherford
House Minority Leader
335B Blatt Bldg.
Columbia, 29201

Dear Representatives Smith and Rutherford:

You seek an opinion regarding the legal status of Mr. Robert W. Harrell, both as Speaker of the House and as a member of the House, following the recent indictment of Mr. Harrell. Specifically, you ask the following:

- 1) Speaker Harrell's elected position as member of the South Carolina House of Representatives;
- 2) Speaker Harrell's position as Speaker of the South Carolina House of Representatives;
- 3) Whether or not South Carolina law or House Rules would allow Speaker Harrell to continue to serve as Speaker after the issuance of the indictment on September 10, 2014;
- 4) Would South Carolina law operate to effectuate the above – impacts without the House convening; and
- 5) Under the circumstances which occurred today, at what time or event would the Speaker Pro Tem assume the responsibilities of the Office of Speaker?

In addressing your various questions, we note that the Speaker was indicted on nine counts in the Court of General Sessions for Richland County. Among the charges were common law misconduct in office, statutory misconduct in office (§ 8-1-80) and violations of the Ethics Act for use of campaign funds for personal use (§ 8-13-1348). We will first analyze the statutory procedures for suspension and removal of members of the General Assembly and then resolve your specific questions.

Law/Analysis:

S.C. Code Ann. Section 8-13-560, a part of the State Ethics Act, provides as follows:

Unless otherwise currently or hereafter provided for by House or Senate rule, as is appropriate:

- (1) A member of the General Assembly who is indicted in a state court, or a federal court for a crime that is a felony, a crime that involves moral turpitude, a crime that has a sentence of two or more years, or a crime that violates election laws must be suspended immediately without pay.

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by the presiding officer of the House or Senate, as appropriate. The suspension remains in effect until the public official is acquitted, convicted, pleads guilty, or pleads nolo contendere. In the case of conviction, the office must be declared vacant. In the event of an acquittal or dismissal of charges against the public official, he is entitled to reinstatement and back pay.

- (2) If the public official is involved in an election between the time of suspension and final conclusion of the indictment, the presiding opinion of the House or Senate, or the Governor, as appropriate, shall again suspend him at the beginning of his next term. The suspended public official may not participate in the business of his public office.

(emphasis added). It is our understanding that at least one of the indictments in question concerns common law misconduct in office, a misdemeanor, but an offense which carries a penalty of up to ten years. See *State v. Follin*, 352 S.C. 235, 249, 573 S.E. 812, 819 (Ct. App. 2002) ["Lewis was sentenced to ten years imprisonment on the official misconduct charge."] In addition, the allegation of using campaign funds for personal use would most probably constitute a crime of moral turpitude, as certainly would any alleged false claims. Thus, while the offenses for which Speaker Harrell was indicted are misdemeanors, such fact is irrelevant to the question of suspension. Section 8-13-560 would be applicable here and would be controlling.

Section 8-13-560(1) uses the term "must be suspended immediately". We have, in the past, construed similar language as constituting a mandatory, ministerial duty to suspend immediately, thus affording the suspending authority no discretion whatsoever. See *Op. S.C. Atty. Gen.*, No 4358, May 27, 1976 (1976 WL 22977) [Governor is mandated "to suspend such officer upon indictment by a grand jury."]; *Op. S.C. Atty. Gen.*, No. 93, July 23, 1981 (1981 WL 96596) [upon indictment for embezzlement, "the Governor has the mandatory duty imposed upon him of suspending Mr. Avant from office."]; *Op. S.C. Atty. Gen.*, May 27, 1983 (1983 WL 181898) ["the Governor has the mandatory duty to suspend the mayor"].

The question then becomes who is the suspending authority in this instance. Section 8-13-560 references the "presiding officer of the House. . . ." Of course, the Speaker of the House normally presides over the House and typically carries out the suspension process; but in this instance, the Speaker himself is the subject of indictment. House Rule 1.8 states that the "Speaker Pro Tempore shall preside in the absence of the speaker." (emphasis added). Rule 1.6 of the House provides that "[t]he Speaker may vote in all cases (except when he may be personally or pecuniarily interested)." Thus the issue is whether the Speaker is "absent" for purposes of the House Rule, so that the Speaker Pro Tem may act in his stead, or whether the Speaker is personally or pecuniarily interested, so that he is disqualified. We conclude that, by operation of law, the Speaker Pro Tem is legally required to act in this case instead of the Speaker because the Speaker is "absent" and is disqualified because he is "personally or pecuniarily interested."

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In Northcutt v. Howard, 130 S.W.2d 70 (Ky. 1939), the Kentucky Court construed a statute providing for the appointment of a commonwealth's attorney by the circuit judge "in the absence of the commonwealth's attorney." The Court concluded as follows:

[i]t is argued for appellant that the commonwealth attorney is absent in legal effect when he is either disqualified or, for some reason, disabled from performing the functions of his office, and that when his own actions are being investigated by the grand jury in any investigations pending before it. This argument is unquestionably sound. There can be no doubt that if the commonwealth attorney was under indictment he would be disqualified from prosecuting the case against himself, and the circuit court in such case has the right to appoint a commonwealth attorney pro tem to conduct the trial of the felony charge against the commonwealth attorney. This being true, it follows as a matter of course, that when the grand jury is actually investigating such a charge against the commonwealth attorney, he is thereby automatically disqualified from assisting the grand jury in such investigation. 130 S.W.2d at 71-72.

See also, Raper v. State, 317 So.2d 709 (Miss. 1975) [term "absent" includes disqualification].

Likewise, it is our opinion that, in this instance, the Speaker of the House is "absent" for purposes of Rule 1.8, and that the Speaker Pro Tem is required to suspend the Speaker pursuant to § 8-13-560. The purpose of § 8-13-560 is the protection of the public interest. In this regard, it has been stated that "an official indicted for [misconduct in office] should be separated from the office pending trial. . . ." Bessette v. Comm. Of Public Works, 204 N.E.2d 909, 912 (Mass. 1965). As stated above, the duty to suspend is mandatory and ministerial. See, Sumpter v. State, 98 S.W. 719, 720 (Ark. 1906) [statute "requires the court to suspend a county officer indicted for malfeasance in office."]

For purposes of § 8-13-560, it is thus the indictment itself which mandates as a matter of law the suspension of an individual. See, Gov. v. McConigle, 637 N.E.2d 863, 865 (Mass. 1994) ["the indictment itself provided sufficient cause for a suspension."]; Sumpter v. State, *supra* ["as a matter of public policy, he (the officer) is prevented from exercising the duties of the office while an indictment is pending against him."]; Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231 (1956) [suspension pending trial serves to "tie (the officer's) . . . hands for the time being."]; Tisdale v. Sheheen, 777 F.Supp. 1270 (D.S.C. 1991), vacated as moot, 502 U.S. 932 (1991) [House Rule 3.12 "requiring suspension of a member (of the Legislature) upon his indictment"]; Leedy v. Brown, 113 P. 177, 179 (Okla. 1910) ["when the grand jury returned the finding into court, and it was ordered to be filed, the order of suspension was made."]; Cf. Parker v. State Hwy. Dept., 224 S.C. 263, 78 S.E.2d 382, 385 (1953) ["Upon receipt of such report, it is mandatory upon the Department to suspend the license of the person so convicted. No discretion is allowed in the matter. . . . The suspension follows as a consequence and effect of committing the offense."]

In short, the indictment renders the Speaker "absent" as a matter of law. He may not "participate in the business of his public office" pursuant to the express terms of § 8-13-560; in

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the words of the Northcutt Court, he is absolutely disqualified from acting. Moreover, it is an inherent conflict of interest to make a decision regarding one's self. As our Supreme Court emphasized in Lide v. Fidelity and Deposit Co. of Md., 179 S.C. 161, 183, S.E. 771, 774 (1936) "it would be a monstrosity to permit a judge to sit in judgment in one's own case, or in one in which he is interested in the outcome." Likewise, as our Court stated in Singletary v. Carter, 1 Bail. 467, 1830 WL 1348 (1830), "there is no proposition, which would be more universally concurred in, than that no officer should be permitted to act in his own case." Further, § 8-13-560 requires that a member, upon the requisite indictment, must be suspended immediately "without pay." Clearly, this would give the Speaker a "pecuniar[y] interest," which would disqualify him pursuant to Rule 1.6. Thus, we construe House Rules 1.6 and 1.8 as disqualifying the Speaker from acting in this instance and that the Speaker Pro Tem would be the "presiding officer" for purposes of § 8-13-560. See Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967) [Speaker Pro Tem is "presiding officer" for purposes of ratification of a Bill].

Courts have also concluded that such statutory requirements of mandatory suspension, based upon indictment, are constitutional. For example, in Eaves v. Harris, 364 S.E.2d 854 (Ga. 1988), the Supreme Court of Georgia stated that "[b]alancing the public good against the indicted public official's right to hold office results in the conclusion that this law does not offend traditional notions of fair play and justice." 364 S.E.2d at 857. The Eaves Court quoted Brown v. Dept. of Justice, 715 F.2d 662, 667 (5th Cir. 1983), noting as follows:

[a]n indictment is a public record, and public knowledge of an individual formally accused of job-related crimes is still on duty would undoubtedly erode public confidence. . . . [suspension] pending disposition of the criminal charges thus safeguards the public interest. . . . In suspending an [officer] solely on the basis of his or her indictment, the agency is making no assertion about . . . guilt or innocence; rather, the suspension is merely a means of safeguarding the legitimate interests of the agency.

364 S.E.2d at 857, quoting Brown.

Rejecting any argument that a statute requiring removal under certain circumstances infringes upon the power of each house to punish its members, the Court in Erichetti v. Merling, 457 A.2d 309, 321 (N.J. 1982) concluded that "[t]here is no express statement that the removal clause is the sole means by which a legislator may lose his seat." See Art. III, § 12 of the South Carolina Constitution [each house may punish its members]. See also, Smith v. Arizona Citizens Clean Election Comm., 132 P.3d 1187 (Ariz. 2006). And, in Thompson v. Seigler, *supra*, our Supreme Court concluded that an Act providing for suspension and removal of an officer did not deprive the officer [Sheriff] of property without due process. According to the Thompson Court,

" . . . suspension without such notice does not deprive the officer of property without due process of law. Nor is a suspension wanting in due process or as a denial of equal protection of the laws because the evidence against the officer is not produced and he is not given an opportunity to confront his accusers and cross examine the witnesses."

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230 S.C. at 124, 94 S.E.2d at 235. See also, Ex Parte Wiley, supra ["We cannot pronounce the enactment, so far as it authorizes the suspension of a county solicitor under indictment violative of the Constitution."].

In summary, § 8-13-560 must be followed immediately by the Speaker Pro Tem. Such provision is a part of the State Ethics Act, an enactment which is generally applicable to all public officials, including members of the General Assembly. As the New Jersey Court concluded in State v. Gregorio, 451 A.2d 980 (N.J. 1982), the ethics "statutory scheme is 'as much a general law as the criminal law of the State, for violation of which any person including a legislator, may be subject to a prescribed penalty.'" 451 A.2d 989, quoting Comm. On Ethical Standards v. Perkins, 432 A.2d 116 (1981). Moreover, as our Supreme Court stressed in State v. Thrift, 312 S.C. 282, 306, 440 S.E.2d 341, 354 (1994), the purpose of the Ethics Act is the "fostering of public trust and confidence in government, and the promotion of the integrity of government through openness."

As to your question regarding any distinction between the status of Mr. Harrell as a member of the House and as Speaker of the House, it is our opinion that suspension of Mr. Harrell as a member, pursuant to § 8-13-560, has the legal effect of also suspending him as Speaker of the House. As we read the House Rules, a person cannot be Speaker unless he is a member of the House. Rule 1.6 provides that,

[t]he Speaker may vote in all cases (except when he may be personally or pecuniarily interested). . . . The presiding officer . . . may speak on points of order in preference to other members. . . .

(emphasis added). The fact that the Speaker may vote certainly implies that he be a member because non-members, such as officers of the House, are not allowed to vote. Moreover, reference to "other members" clearly indicates that the Speaker himself must be a member.

This conclusion is supported by the treatise, Jefferson's Manual and Rules of the House of Representatives. Section 26 thereof states:

[t]he officers of the House are the Speaker, who has always been one of its members and whose term as Speaker must expire with his term as a Member; and the Clerk, Sergeant-At-Arms, Doorkeeper, Postmaster and Chaplain . . . no one of whom has ever been chosen from the sitting membership of the House and who continue in office until their successors are chosen and qualified.

Further, South Carolinas' Constitution, pursuant to Art. III, § 3 mandates that the "House of Representatives shall consist of one hundred and twenty four members. . . ." If the Speaker were not selected from the membership of the House, there would be one "member" who was "missing" from the House at any time the House elected a non-member as Speaker. Thus, the Constitution manifestly contemplates that the Speaker be elected from the membership.

The Honorable James E. Smith, Jr.
The Honorable Todd Rutherford
Page 6
September 11, 2014

Conclusion

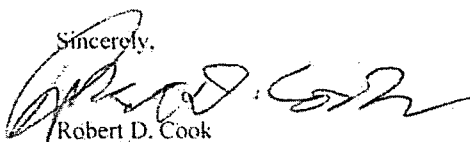
1. The obvious purpose of § 8-13-560, which is a part of the Ethics Act, is to protect the public interest in preventing "the inappropriate situation of having an official under indictment engaged in the duties of his office." Reynolds v. Comm'r of Commerce and Development, 214 N.E. 2d 69, 71 (Mass. 1966). Our own Supreme Court, in State v. Thrift, *supra*, emphasized that the overarching purpose of the Ethics Act is the "fostering of public trust and confidence in government." Section 8-13-560, which requires the immediate suspension of a House member under indictment for an offense carrying a sentence of more than two years, thus makes mandatory the immediate suspension of Mr. Harrell upon indictment for common law misconduct in office, which punishes by a sentence of up to ten years. Further, § 8-13-560 is also applicable because one or more of the charges for using campaign funds for personal use, as well as alleged false claims, would constitute a crime of moral turpitude.
2. Rule 1.8 of the House provides that the Speaker Pro Tem "shall preside" in the "absence" of the Speaker. We conclude that the Speaker is rendered "absent" by the indictment for common law misconduct in office, as well as the other charges. Here, the suspension order is the ministerial act of implementing the mandate of § 8-13-560, based upon the aforesaid indictments. In other words, the indictments themselves necessitate suspension, and Mr. Harrell is rendered disqualified from participation "in the business of his public office" as a matter of law upon indictment, pursuant to the express terms of § 8-13-560.
3. Further, Mr. Harrell is disqualified as a matter of law upon his indictment by the universal and long-held common law rule that no officer may be permitted to act in his own case. Section 8-13-560 requires that the suspension be "without pay." Thus, pursuant to the express terms of Rule 1.6 of the House, Mr. Harrell would be both "personally and pecuniarily interested." Accordingly, Mr. Harrell is disqualified from acting on his own suspension and the Speaker Pro Tem, as the "presiding officer" of the House, must carry out the immediate suspension required by § 8-13-560.
4. The indictments are public information and thus § 8-13-560 requires the Speaker Pro Tem to act "immediately" to suspend Mr. Harrell. While the crimes charged in the indictment, such as common law misconduct in office, are misdemeanors, such is irrelevant. It is the offenses referenced in § 8-13-560, such as those carrying sentences of more than two years and crimes of moral turpitude, which result in immediate mandatory suspension here.
5. Section 8-13-560, as part of the Ethics Act, is binding upon the House. Such provision is constitutional and does not infringe upon Art. III, § 12 of the Constitution (concerning the power of each house to punish its members), nor any other provision of the State or federal Constitution.
6. As to your specific questions regarding any distinction between the status of Mr. Harrell as a member of the House and as Speaker of the House, as noted above, § 8-13-560 suspends a member automatically, based upon the referenced indictments. Suspension of Mr. Harrell as a member of the House by virtue of § 8-13-560 thus also serves to suspend him as Speaker of the House. Only members of the House may serve as Speaker. See, *e.g.* Rule 1.6 of the House Rules (allowing the Speaker to vote on all matters unless personally and pecuniarily interested and

The Honorable James E. Smith, Jr.
The Honorable Todd Rutherford
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referencing that the Speaker "may speak on points of order in preference to other members." (emphasis added). Thus, clearly Rule 1.6 contemplates that the Speaker must be a member of the House. Further, Art. III, § 3 of the Constitution, mandating that the House consist of 124 members, reinforces that the Speaker be elected from House membership. Otherwise, a non-member who is elected Speaker would deprive the House of its full constitutional membership.

7. Section 8-13-560 requires immediate suspension by the "presiding officer" upon the types of indictments referenced in the statute. In this case, as stated, the "presiding officer" is the Speaker Pro Tem. Thus, reconvening the House in order to carry out the mandate of suspension is not required by § 8-13-560. The act of suspension is ministerial in nature and is delegated expressly to the "presiding officer" rather than to the House as a whole.

Sincerely,



Robert D. Cook
Solicitor General

DEFENDANT HARRISON'S
EXHIBIT C TO
MOTION FOR PRELIMINARY HEARING
AND
DISMISSAL OF INDICTMENTS

J. Roland Smith
Vice-Chairman

Becky Meacham
Chairman
Ruth D. Muldrow
Executive Secretary

Michael E. Easterday
Secretary
Lynn Seithel
Treasurer

House Legislative Ethics Committee

William E. Sandifer



John L. Scott, Jr.

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 519 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211

July 12, 1999

The Honorable James H. Harrison
P.O. Box 11867
Columbia, South Carolina 29211

RE: Formal Opinion

Dear Mr. Harrison:

This letter is in response to your request for a formal opinion regarding your ethical responsibilities as a member of the General Assembly and your position as Partner and Chief Operating Officer with Richard Quinn and Associates (RQ&A). The House Ethics Committee addressed your inquiry at its meeting on June 23, 1999, and ordered the issuance of the following opinion:

Generally

Nothing in the State Ethics Act prevents you from working for RQ&A. Section 2-17-80 prevents a legislator from receiving "anything of value" from a lobbyist or anyone acting on behalf of a lobbyist. However, the Ethics Act does not prohibit a legislator from providing services to a lobbyist's principal. Please refer to the definition of "lobbyist" in Section 2-17-10(13) and lobbyist registration requirements; "lobbyist's principal" is defined in Section 2-17-10(14); "anything of value" is defined in Section 2-17-10(1)(a). While the State Ethics Act does not prevent you from being employed by RQ&A, the Act does require certain disclosures if a conflict of interest should arise and may require other restrictions in your capacity as both a member of the General Assembly and as Partner and Chief Operating Officer of RQ&A. Because your position with RQ&A presents a novel issue to this Committee as it relates to your responsibilities as a legislator, the Committee advises you to inquire with the Committee or its staff with any specific questions regarding any future ethics issues.

ROA 000058

Retainer Prohibition

Section 2-17-110(G) prevents a "lobbyist, a lobbyist's principal, or a person acting on behalf of a lobbyist or a lobbyist's principal [from employing] on retainer a public official A retainer, for purposes of this section, is a payment for availability to perform services rather than for actual services rendered." This section clearly prevents any lobbyist's principal from keeping you on retainer so that you are available to perform services. A lobbyist's principal may only compensate you for the actual services you render.

Legislative/Contractual Limitations

Section 8-13-745(C) prevents a "member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent from entering into any contract for goods and services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole."

Section 8-13-700(A) prevents a legislator from "knowingly using his official office . . . to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated."

Section 8-13-700(B) states that a legislator may not "make, participate in making, or in any way attempt to use his office . . . to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest." See Section 8-13-100(11) for a definition of "economic interest".

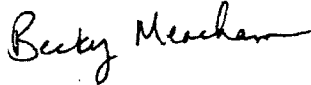
Reporting Requirements

Section 8-13-700(B) states that a legislator, "who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision and (2) . . . deliver a copy of the statement to the [Speaker of the House of Representatives]. The [Speaker] shall have the statement printed in the [House] journal and require that the [legislator] be excused from votes, deliberations, and other action on the matter on which a potential conflict of interest exists." See Section 8-13-100(11) for a definition of "economic interest".

Section 8-13-710(A) requires a legislator "who accepts anything of value from a lobbyist's principal . . . [to] report the value of anything received on his statement of economic interests [form]".

Thank for your request of this formal opinion. Please let me know if I may be of additional assistance to you. I hope this information is helpful.

Sincerely,

A handwritten signature in cursive script that reads "Becky Meacham".

Becky Meacham
Chairperson

sns/BM

Doug Smith
First Vice-Chairman

James H. Harrison
Chairman

John M. Knotts, Jr.
Second Vice-Chairman

John Graham Altman
Thomas Scott Beck
George E. "Chip" Campsen, III
William F. "Bill" Cotty
F.G. "Greg" Delleney
Michael E. Easterday
Ronald N. Fleming
Jerry N. Govan, Jr.
C. Anthony Harris, Jr.
John David Hawkins
Douglas Jennings, Jr.

Judiciary Committee



House of Representatives
P.O. Box 11867 Telephone: 734-3120
Columbia, South Carolina 29211

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James E. Smith, Jr.
Michael S. "Mickey" Whaley
Jackson S. "Seth" Whipper

Ashley Harwell-Beach
Asst. Staff Counsel

Swati N. Shah
Asst. Staff Counsel

June 17, 1999

The Honorable Becky Meacham
House Legislative Ethics Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Meacham:

I have recently accepted the position of Partner and Chief Operating Officer with Richard Quinn & Associates (RQ&A), a Columbia consulting and public relations firm. I respectfully request guidance from the House Ethics Committee relative to my ethical responsibilities as a member of the General Assembly with reference to the duties and responsibilities contemplated in this new position.

As a way of background, RQ&A manages election campaigns for candidates for various federal, state and local offices and, in addition, the firm provides public relations and communications services for its corporate clients, several of whom are registered as lobbyist principals. As Chief Operating Officer (a salaried position), my responsibilities would include managing the day-to-day operations of the firm, as well as providing public relations/corporate communications services for its clients. From time to time, these services may include contact with various federal, state and local government agencies. However, under no circumstances would they include "lobbying" as defined in Section 2-17-10(12).

In order to ensure that all of my professional activities are both legal and ethical, I respectfully request a formal opinion from the committee on this arrangement.

Thank you, in advance, for your guidance.

Sincerely,

A handwritten signature in dark ink, appearing to be "JH", written over a large, stylized circular flourish.

James H. Harrison

JHH/rwt

RECEIVED

JUN 17 1999
HOUSE ETHICS
COMMITTEE

ROA 000061

FILED

JUL 24 2018

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA	)	
	)	INDICTMENT NOS.: 2017-GS-47-35, 36, 37
vs.	)	
	)	
JAMES H. HARRISON,	)	STATE'S RESPONSE IN OPPOSITION TO
	)	DEFENDANT'S MOTION TO DISMISS
DEFENDANT.	)	
_____	)	

The State of South Carolina, by and through its lawfully designated prosecutor, David M. Pascoe, Jr., respectfully submits the following response to Defendant James H. Harrison's Motion for Preliminary Hearing and Dismissal of Indictments, filed June 12, 2018. As discussed more fully below, the laws of the State of South Carolina and the constitutional foundations of the grand jury system prohibit post-indictment preliminary hearings to challenge a grand jury's determination regarding probable cause. The Court should dismiss the instant motion without reaching the issue of probable cause because a grand jury's findings may not be reviewed by any court.

If the Court should determine that it may properly review the State Grand Jury's decision to issue true billed indictments against Defendant, the instant motion should nevertheless be denied on its merits. Throughout the entire period of time contemplated by the indictments, Defendant was a member of the General Assembly, and was thus a public officer within the meaning of the South Carolina Code of Laws. Prior to issuing the indictments, the grand jury heard ample testimony from which a reasonable person could determine that probable cause exists to find Defendant violated provisions of the Ethics, Government Accountability, and Campaign Reform Act, S.C. Code Ann. §§ 8-13-100, *et seq.*, that he did so with corrupt intent, and that Defendant formed an agreement with others to do so.

ROA 000062

Finally, the instant motion asks the Court to dismiss the indictments, claiming the grand jury “lacked subject matter jurisdiction over these charges.” Def. Mot at 1. However, following this initial request, Defendant offers no argument whatsoever that the State Grand Jury operated outside of its statutorily prescribed subject matter jurisdiction over crimes involving public corruption and conspiracy to commit the same. S.C. Code Ann. § 14-7-1630(A)(3) & (4). Because it is unclear what, if any, grounds Defendant has for dismissal on this basis, this request should also be denied.

I. A criminal defendant is not entitled to a post-indictment probable cause hearing.

The relief sought by the instant motion depends entirely on the erroneous proposition that Rule 2 of the South Carolina Rules of Criminal Procedure is abrogated when a criminal defendant is indicted by the State Grand Jury, and that a judge may therefore sit in judicial review of the grand jury’s probable cause determination. The cases cited by Defendant in support of this proposition merely contemplate pre-trial hearings addressing facial defects in the indictments or jurisdictional issues. They do not, in any way, authorize a court to sit in review of a grand jury’s findings because “[t]he grand jury gets to say—without any review, oversight, or second-guessing—whether probable cause exists to think that a person committed a crime.” Kaley v. United States, 571 U.S. 320, 328, 134 S. Ct. 1090, 1098 (2014). Rule 2, SCRCrimP is clear and unambiguous in its prohibition on the relief sought by Defendant, and the Court should deny the instant motion for a post-indictment probable cause hearing.

a. Rule 2, SCRCrimP strictly prohibits post-indictment probable cause hearings.

Rule 2 of the South Carolina Rules of Criminal Procedure provides that any criminal defendant charged with an offense not triable by a magistrate must be afforded an opportunity to conduct a hearing before a magistrate judge to determine whether probable cause exists to detain

and try the defendant. “The hearing **shall not be held**, however, if the defendant is indicted by a grand jury. . . .” Rule 2(b), SCRCrimP (emphasis added). The rule provides no caveats or exceptions for indictments by the State Grand Jury. See State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998) (“[A] trial court generally has no power to dismiss a properly drawn indictment issued by a properly constituted grand jury before trial unless a statute grants that power to the court.”).

Defendant argues that the South Carolina Court of Appeals decision in State v. Green, 337 S.C. 67, 522 S.E.2d 602 (Ct.App.1999), stands for the proposition that Rule 2 is abrogated in cases indicted by the State Grand Jury. However, Defendant merely confuses a pre-trial challenge to the State Grand Jury’s subject matter jurisdiction with a challenge to the grand jury’s determination that probable cause existed to issue the indictments. Subject matter jurisdiction may be challenged at any point, including in a hearing preliminary to trial. State v. Gentry, 363 S.C. 93, 100–102, 610 S.E.2d 494, 498–499 (2005).

The jurisdictional challenge in Green arose because the State Grand Jury is granted statewide subject matter jurisdiction over specific statutorily enumerated criminal activities. S.C. Code § 14-7-1630. The defendant in that case was charged with trafficking in narcotics, and the State Grand Jury only maintained subject matter jurisdiction to issue indictments “if the crime [was] of a multi-county nature. . . .” Id. Because the State Grand Jury Act, S.C. Code §§ 14-7-1600, *et seq.*, permits a defendant to obtain transcripts of proceedings before the State Grand Jury, the testimony and evidence presented to the grand jury is effectively incorporated into the indictments issued. State v. Evans, 322 S.C. 78, 81, 470 S.E.2d 97, 98 (1996); State v. Gunn, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993). Therefore, the trial court in Green permitted a pre-trial hearing to examine the grand jury evidence because that evidence informed the indictment itself.

The purpose of examining this evidence was to determine whether it was of a multi-county nature, so as to vest subject matter jurisdiction over the matter in the State Grand Jury. The Court of Appeals ultimately held that the trial court erred because it required the State to replicate its evidence during the hearing, rather than examine the transcripts of the proceedings before the grand jury. The State could not procure a key witness at the preliminary hearing who had testified before the grand jury, and the Court held that the witness's absence from the preliminary hearing did not merit dismissal for lack of subject matter jurisdiction because he had previously testified before the grand jury.

Defendant's motion argues that Green should be interpreted to permit the Court to review and overturn the probable cause determination of the grand jury. However, the Court in Green discussed review of State Grand Jury evidence to determine if it was of multi-county significance for the purpose of meeting the jurisdictional requirement of S.C. Code Ann. § 14-7-1630(A)(1) and was not instructing trial courts to examine the evidence before the State Grand Jury to evaluate whether or not it could support the grand jury's probable cause determination. This is clear from the Green court's citation to State v. Evans, which also has absolutely nothing to do with probable cause determinations.

While the jurisdictional hearing in Green did occur preliminary to trial—and was thus referred to as a preliminary hearing—it was not a probable cause hearing as contemplated by Rule 2, SCRCrimP. Likewise, in State v. Evans, 322 S.C. 78, 470 S.E.2d 97 (1996), which is also cited by Defendant's motion to support the conclusion that “a defendant is entitled to a preliminary hearing requiring the government to establish that there was sufficient evidence before the State Grand Jury supporting each and every indictment[.]” (Def. Mot. at 6) the Supreme Court examined the lower court's decision to vacate the defendant's convictions for lack of subject matter

jurisdiction—not for lack of probable cause. The footnote in Evans cited by Defendant's motion discusses the defendant's failure to challenge the sufficiency of the indictments, as evidenced by its citation to cases holding that a defendant failed to present such a challenge prior to trial. See State v. Young, 243 S.C. 187, 133 S.E.2d 210 (1963) (appellant's jurisdictional challenge was in fact a challenge to the sufficiency of the indictments, and such a challenge may not be made once a jury has been sworn); State v. Jacobs, 238 S.C. 234, 119 S.E.2d 735 (1961) (appellant's directed verdict motion challenging the sufficiency of the indictment was made after the swearing of the jury and was thus not timely).

Defendant's citation to Green and Evans does not support the proposition that a court may order a post-indictment hearing to challenge a grand jury's probable cause determination. Instead, Defendant's motion attempts to conceal an impermissible challenge to the grand jury's findings within an otherwise proper challenge to subject matter jurisdiction or to the sufficiency of an indictment. However, these cases, and the mandate of the United State Supreme Court discussed below, make clear that: (1) subject matter jurisdiction may be challenged at any point; (2) the sufficiency of an indictment must be challenged prior to the seating of a trial jury; and, (3) the grand jury's determination that probable cause exists to issue an indictment may not be reviewed at any time by any court. The instant motion does not challenge the subject matter jurisdiction of the State Grand Jury to issue the indictments¹, nor does it challenge the sufficiency of those indictments. Instead, the instant motion seeks to challenge the State Grand Jury's determination that probable cause exists to issue the indictments, and the Court should decline to sit in review of the conclusions of the State Grand Jury.

¹ As noted *supra*, Defendant's opening paragraph asks the Court to dismiss for lack of subject matter jurisdiction but fails to make any discernable argument that the State Grand Jury did not have jurisdiction to issue the indictments.

b. Rule 2 is unambiguous and is not subject to alteration by the Court.

Defendant's motion argues that Green and Evans abrogate the prohibition against post-indictment preliminary hearings found in Rule 2, SCRCrimP, effectively creating a statutory exception where none exists. Rule 2(b) clearly provides:

If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. **The hearing shall not be had, however, if the defendant is indicted by a grand jury** or waives indictment before the preliminary hearing is held. The defendant may appear by counsel or in person or both.

Rule 2(b), SCRCrimP (emphasis added).

As applied to Defendant's case, there is absolutely nothing ambiguous about this statute. "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 not right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citations omitted). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Id.

Defendant's tortured interpretation of Green and Evans is all the more untenable in light of the fact that there is no ambiguity in the statute that would permit the Court to infer an exception where none exists. Because there is no ambiguity—and indeed, Defendant does not argue that there is—the Court in Green and Evans could not have imposed any other meaning pursuant to the plain meaning rule. Further, those cases make absolutely no mention of Rule 2 or of probable cause, further eroding Defendant's argument that the prohibition on post-indictment preliminary hearings under Rule 2 is somehow abrogated in State Grand Jury cases.

c. There is no appropriate procedure for a post-indictment probable cause hearing.

Defendant's motion further confuses this issue by failing to discuss which court he believes should hear his probable cause challenge. Defendant suggests that his proposed probable cause hearing should not "follow any procedure different than required by Rule 2, SCRCrimP[.]" citing the Summary Judge's Benchbook. Def. Mot at 7, n. 8. However, Rule 2 is clear that any such hearing must proceed before a magistrate. Following an indictment by a grand jury, a magistrate has no jurisdiction over the case and "the circuit court judge [can] not restore the right to a preliminary hearing by ordering a post indictment preliminary hearing." State v. Ballington, 346 S.C. 262, 269, 551 S.E.2d 280, 28 (Ct. App. 2001), overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also, State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982).

Even the Summary Judge's Benchbook to which Defendant cites for procedural guidance maintains that "Rule 2(b), SCRCrimP states that the preliminary examination shall not be had if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held." Summary Judge's Benchbook § F(2) (emphasis original), Def. Mot. Exhibit A. Defendant seeks to retain the procedures of the Benchbook that benefit his position, while simply ignoring the fact that the procedures found in the Benchbook would run afoul of the clearly defined statutory mandate of Rule 2.

d. The weight of constitutional authority does not permit any review of a grand jury's probable cause determination.

The right to indictment by a grand jury found in Article I Section 11 of our State Constitution mirrors the indictment clause of the U.S. Constitution found in Amendment V. Because our state grand jury system is modeled on the federal system our Supreme Court often

relies on federal grand jury principals where state guidance is lacking. See, e.g., State v. Williams, 301 S.C. 369, 371, 392 S.E.2d 181, 182 (1990) (indictment may not be challenged on basis of incompetent evidence before the grand jury, citing U.S. v. Callandra, 414 U.S. 338, 94 S.Ct. 613 (1974)); Evans v. State, 363 S.C. 495, 505, 611 S.E.2d 510, 515 (2005) (State Grand Jury secrecy provisions mirror federal grand jury principles); State v. Follin, 352 S.C. 235, 246, 573 S.E.2d 812, 817 (Ct. App. 2002) (relying on federal grand jury principals to analyze State Grand Jury rules). Due to the fundamental nature of the question asked by Defendant's motion—whether a court may sit in review of a grand jury's probable cause determination—our Supreme Court would again follow federal jurisprudence that strictly prohibits any review of the determinations by a grand jury.

The United States Supreme Court recently addressed the issue of judicial review of grand jury determinations in Kaley v. U.S., 571 U.S. 320, 134 S.Ct. 1090 (2014), in which the Court held that the grand jury's findings are conclusive and unreviewable. The defendants in Kaley were charged with stealing and selling medical equipment. After a grand jury indicted the defendants, the government seized their assets pursuant to 21 U.S.C. § 853(e)(1), which permits pre-trial seizure of assets if probable cause exists to believe that the defendant committed the crime charged.² Of course, once a defendant has been indicted by a grand jury the question of probable cause has been answered. Thus, the Court recognized that any hearing to challenge probable cause for the forfeiture would, in effect, be a challenge to the grand jury's probable cause determination. Id. at 327, 134 S.Ct. at 1097. Noting that the district courts had split over whether to permit a

² The statute also requires a showing that the property at issue is connected with the crime. The government did not dispute that a defendant may challenge that prong of the statute, which does not conflict with the grand jury's probable cause determination. Kaley, 571 U.S. at 324 n.3, 134 S.Ct. at 1095 n.3.

hearing to contest probable cause for forfeitures, the Court took the opportunity to definitively rule that there can be no challenge to—or review of—a grand jury’s probable cause determination:

This Court has often recognized the grand jury’s singular role in finding the probable cause necessary to initiate a prosecution for a serious crime. An indictment fair upon its face, and returned by a properly constituted grand jury, we have explained, conclusively determines the existence of probable cause to believe the defendant perpetrated the offense alleged. And “conclusively” has meant, case in and case out, just that. We have found no authority for looking into and revising the judgment of the grand jury upon the evidence, for the purpose of determining whether or not the finding was founded upon sufficient proof. To the contrary, the whole history of the grand jury institution demonstrates that a challenge to the reliability or competence of the evidence supporting a grand jury’s finding of probable cause will not be heard. The grand jury gets to say—without any review, oversight, or second-guessing—whether probable cause exists to think that a person committed a crime.

Kaley, 571 U.S. at 328, 134 S. Ct. at 1097–98 (internal citations and quotations omitted for clarity); see also Costello v. U.S., 350 U.S. 359, 76 S.Ct. 406 (1956) (grand jury indictment may not be challenged even if it is based entirely on hearsay); U.S. v. Williams, 504 U.S. 36, 112 S.Ct. 1735 (1992) (the grand jury is an independent constitutional fixture and is not subject to supervisory authority be the courts).

The institution of the grand jury sits as a buffer between the government and an accused. Williams, 504 U.S. at 47, 112 S.Ct. at 1742. It belongs to no branch of the government but operates under an “arm’s length” relationship with the judiciary. Id. While certain procedural aspects of the grand jury’s operation are governed by statute, such as selection of jurors or sealing of materials, those rules are generally designed to protect the rights of witnesses and targets of the investigation. See id. at 48–49, 112 S.Ct. at 1743 (“we have insisted that the grand jury remain free to pursue its investigations unhindered by external influence or supervision so long as it does not trench upon the legitimate rights of any witnesses called before it.”) (internal quotations omitted)). No judge presides to supervise the proceedings of the grand jury. U.S. v. Calandra, 414 U.S. 338, 343, 94

S.Ct. 613, 617 (1974). The grand jury operates in secrecy and the grand jury alone decides the course of its investigation. Id. The Attorney General is not director of the grand jury, but instead serves the grand jury as its guide and legal advisor. S.C. Code Ann. § 14-7-1650(A). This autonomy of the grand jury to operate without government intervention is vital to its traditional function as “a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor.” Costello, 350 U.S. at 362, 76 S.Ct. 408.

Defendant’s motion asks this Court to depart from the traditional independence of the grand jury system and inject a level of governmental oversight into their decision-making process. To permit a court to invade the independent decision-making process of the grand jury would have the effect of eroding one of the most fundamental aspects of the institution—to stand between the government and the accused—and reduce it to merely another arm of the government. For the foregoing reasons the State respectfully requests the Court deny the instant motion and decline to infringe upon the State Grand Jury’s independent decision-making authority.

II. The grand jury had ample evidence before it to determine that probable cause existed to issue the indictments.

The Court should dismiss Defendant’s motion without conducting a hearing to challenge the grand jury’s probable cause determination. Nevertheless, any such challenge would fail on its merits because the grand jury considered ample evidence to determine that probable cause existed to issue the indictments against Defendant. Defendant’s claims that probable cause could not have existed for these indictments is based entirely upon patently incorrect statements of law and informal conversations with counsel for the State without a single citation to the thousands of pages of grand jury testimony.

- a. **Section 8-1-80 does apply to members of the General Assembly. However, the grand jury is not required to determine probable cause of the applicability of a statute.**

Initially, Defendant argues that the misconduct statute, S.C. Code Ann. § 8-1-80, does not apply to Defendant, therefore the State could not have presented sufficient evidence to the grand jury that the code section applies. There is no requirement—either for a probable cause determination or establishment of subject matter jurisdiction—that the State make legal arguments to a grand jury to demonstrate that a statute applies in the manner it is charged. If Defendant wishes to challenge the applicability of Section 8-1-80, the instant motion is not proper vehicle for such a challenge.

The grand jury sits as a fact-finding body, who's duty is to determine whether the facts and circumstances before them would excite a belief that the person charged was guilty of the crime. See Parrott v. Plowden Motor Co., 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965) (defining probable cause). The grand jury does not, however, sit in judgement of the law. Upon the presentation of Defendant's indictments for the grand jury's consideration, the State charged the grand jury on the law applicable to the indictments. Based on the facts before them, the grand jury determined that probable cause existed to issue the indictments against Defendant. There is absolutely no requirement that the State walk the grand jury through a legal analysis of the statute before they can properly determine that probable cause exists. Further, the very concept of probable cause is factual in nature, and the idea that a grand jury can make a probable cause determination that a legal framework applies is contrary to the very concept itself. See State v. Morris, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015) ("Probable cause is a 'commonsense, nontechnical conception [] that deal[s] with the factual and practical considerations of everyday

life on which reasonable and prudent men, not legal technicians, act.” (quoting Ornelas v. United States, 517 U.S. 690, 695, 116 S.Ct. 1657 (1996)).

While the issue of whether or not a legislator is a public officer is beyond the scope of the instant motion, it is nevertheless clear that a member of the General Assembly is a public officer. Section 8-1-10 of the South Carolina Code of Laws Annotated defines a public official as one who’s duties are defined by law. Our Supreme Court has elaborated on this code section, noting that it merely requires that the person’s “*public* duties are defined by law.” Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 764 (1907) (emphasis added). Members of the General Assembly have numerous duties prescribed by state law, including the South Carolina Constitution, which charges members of the General Assembly to gather and make new laws for the common good. S.C. Const. art. III, § 1A. Our state Constitution also prescribes various other requirements, such as the timing of their terms of office, the timing of sessions of the General Assembly, the taking of the oath of office, ect. Id. art. III, §§ 9, 10, 26.

Members of the General Assembly are also subject to the requirements of the South Carolina Code of Laws in the performance of their public duties. For example, the Ethics, Government Accountability, and Campaign Reform Act imposes numerous public duties, and its provisions clearly include members of the General Assembly. S.C. Code Ann. § 8-13-100(27) (“‘Public official’ means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office.”).

Defendant would prefer a narrow interpretation of the term “public officer” that ensures acts of misconduct by members of the General Assembly are kept “in house” so as to place them beyond the reach of criminal prosecution. However, such an interpretation is untenable. Members

of the General Assembly are public officers and are subject to criminal prosecution for misconduct in office pursuant to Section 8-1-80, as is any other public officer.

b. The civil remedies provided in the Ethics Act have no bearing on the State's prosecutorial discretion.

Defendant argues that he can not be held criminally liable for violations of the ethics act because “[o]nly after the House Ethics Committee has provided required notice and levied the maximum civil fines, a legislator may be found criminally guilty. . . .” Def. Mot at 15 (citing S.C. Code § 8-13-1510). This is simply a misstatement of the law as provided in State v. Thrift, 312 S.C. 282, 307, 440 S.E.2d 341, 355 (1994) (“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.”), and reaffirmed in Ex parte Harrell v. Attorney Gen. of State, 409 S.C. 60, 69, 760 S.E.2d 808, 812 (2014), overruled on other grounds by Pascoe v. Parks, 415 S.C. 643, 785 S.E.2d 360 (2016) (“Just as a decision (or lack thereof) by the [Board of Medical Examiners] would not delay or interrupt a concurrent criminal investigation, the status of a House Ethics Committee investigation cannot affect the Attorney General's decision regarding a criminal prosecution.”).

As an initial matter, Section 8-13-1510 provides penalties for late filing and failure to file a required statement. Defendant has not been indicted for a filing violation—he has been indicted for misconduct and conspiracy. That penalty section has no application to his case. More importantly, while Section 8-13-1510 provides for civil penalties for late filing, our state Supreme

Court made very clear in Ex Parte Harrell that the Attorney General's prosecutorial discretion cannot be infringed by any civil process.³

c. The grand jury heard ample evidence to determine that probable cause existed.

The grand jury considered three separate indictments against the Defendant: statutory misconduct in office, common law misconduct in office, and conspiracy. Within the many hours of testimony and evidence presented, the grand jury had ample evidence to believe that Defendant had committed the charged offenses—as evidenced by the fact that they returned true-billed indictments on each charge.

Statutory misconduct merely requires that Defendant commit acts constituting habitual negligence or corruption. S.C. Code Ann. § 8-1-80. To that end, the grand jury heard testimony that Defendant was employed by First Impressions, Inc. d/b/a Richard Quinn and Associates (“RQ&A”) between 2000 and 2012.⁴ During that period of time, Defendant did not report the name of any lobbyist principal that paid RQ&A for services. The grand jury heard testimony that RQ&A was retained by numerous lobbyist's principals and heard testimony from Defendant himself that he had knowledge of this fact.⁵ Section 8-13-1130 of the South Carolina Code of Laws Annotated

³ Defendant's motion also asserts that “[b]oth the old *Thrift Brothers* and Bobby Harrelson[sic] cases require proof beyond a reasonable doubt that a public official intended to avoid compliance with the Ethics Act, with ‘intentionality’ being a necessary element of any criminal prosecution under the Act.” Def. Mot. at 14 n.18. Assuming that this is a reference to State v. Thrift and Ex Parte Harrell, cited *supra*, those cases impose no such requirement. In footnote 9, Ex Parte Harrell merely expresses the Attorney General's internal policy with respect to intent. The Attorney General's policy cannot impose a non-existent scienter requirement.

⁴ If a probable cause hearing is ultimately required, specific citations to the transcripts will be presented at that time.

⁵ Indeed, the Ethics Committee opinion submitted as an exhibit to Defendant's motion demonstrates that he both knew that RQ&A was retained by lobbyist's principals and that the State Ethics Act required certain disclosures.

requires a public official to disclose the name of lobbyist principals who pay funds for services to a business with which the filer is associated, and Section 8-13-100 includes the filer's employer within that definition. Therefore, at a bare minimum, a reasonable person could believe—thus a grand jury could find probable cause—that Defendant was habitually negligent for failing to comply with disclosure requirements for 12 years.

Common law misconduct in office requires a willful and dishonest breach of public duties. State v. Hess, 279 S.C. 14, 20, 301 S.E.2d 547, 550 (1983). The grand jury heard testimony that Defendant attended meetings with lobbyist principal clients of RQ&A and co-sponsored legislation for lobbyist principal clients of RQ&A. Additionally, despite Defendant's testimony that he was employed to work on campaigns for RQ&A, other witnesses denied having any knowledge of Defendant's work on campaigns—including a witness who was the director of one such campaign. Given Mr. Quinn's strategy of parading his legislative connections to maintain his corporate clientele and the significant amount of money paid to Defendant by RQ&A, a reasonable person could believe that Defendant intentionally failed to make required disclosures in an effort to conceal RQ&A's work for lobbyist principals.

Finally, criminal conspiracy requires an agreement between two or more people to achieve some object by criminal means. Gunn, 313 S.C. at 133, 437 S.E.2d at 80 (1993). While the crux of the offense is the agreement, direct evidence of an agreement is not necessary, and the offense may be proved by circumstantial evidence alone. State v. Crawford, 362 S.C. 627, 641, 608 S.E.2d 886, 893 (Ct. App. 2005). For the same reasons that the grand jury could reasonably believe that Defendant intentionally failed to disclose the identity of RQ&A's corporate clients, the grand jury could also reasonably believe that Defendant formed an agreement with Mr. Quinn and others to do so.

The evidence and testimony described above is only one of many theories upon which the grand jury could have found sufficient probable cause to issue the indictments against Defendant. While no such challenge to the grand jury's findings should be permitted in the first instance, it would nevertheless be meritless because ample evidence was presented to the grand jury that it could have reasonably relied upon to determine that probable cause existed. The State strongly encourages Defendant to closely review the transcripts of proceedings before the grand jury for further insight into the State's case.

Conclusion

Defendant's motion asks the Court to infringe upon the grand jury's role as an independent decision-maker, free from governmental influence. To grant Defendant's request for a preliminary probable cause hearing would controvert the tradition and history of the grand jury system by imposing governmental supervision where none has previously existed. Further, to permit such a hearing would violate the clear and unambiguous prohibition of the South Carolina Code of Laws, which provides that such a hearing shall not be granted to a defendant once the grand jury has issued an indictment. For these reasons, the State respectfully requests the Court deny Defendant's Motion for Preliminary Hearing and Dismissal of Indictments in its entirety.

Respectfully submitted by,



David M. Pascoe
First Circuit Solicitor

July 23, 2018,
Orangeburg, South Carolina.

FILED

SEP 08 2017

IN THE STATE GRAND JURY OF SOUTH CAROLINA JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA,	)	INDICTMENT NUMBERS:	
	)		2017-GS-47-07
vs.	)		2017-GS-47-08
	)		2017-GS-47-09
JOHN E. COURSON,	)	STATE'S COMBINED RESPONSE	
	)	IN OPPOSITION TO DEFENDANT'S	
Defendant.	)	MOTIONS TO DISMISS INDICTMENTS	
	)		

The State of South Carolina, by and through its lawfully designated prosecutor, David M. Pascoe, Jr., respectfully submits the following combined response to Defendant John E. Courson's motions to dismiss filed July 20, 2017 and August 11, 2017 (collectively, the "Motions").

As discussed more fully below, the Motions should be denied because the undersigned acted within the authority designated to him by the Attorney General's Office—and confirmed by the South Carolina Supreme Court—by initiating a state grand jury investigation and acting as legal advisor to the state grand jury. *See Pascoe v. Wilson*, 416 S.C. 628 (2016); S.C. Code Ann. § 14-7-1650(A). Defendant's claim that the jurisdiction of a state grand jury investigation is limited to specific individuals based on correspondence that occurred outside of the state grand jury proceeding misconstrues both the law and function of a state grand jury investigation.

The Motions should also be denied because the common law offense of misconduct in office exists as a separate offense from statutory misconduct in office (S.C. Code Ann. § 8-1-80), requiring the state to prove facts not required by the statutory offense. Defendant's assertion that the elements are the same for both offenses is unsupported by a plain reading of the statute and would produce nonsensical results. Common law misconduct in office existed prior to the adoption of a separate statutory form of misconduct in office in 1829, was not abrogated by Act 2482 of 1829, and continues to exist as a separate offense with distinct elements as affirmed by the South

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Carolina Supreme Court in *State v. Hess*, 279 S.C. 14 (1983); *see also State v. Thrift*, 312 S.C. 282, 308, n. 19 (1994) (“The statutory offense created by the Ethics Act in no way impacts on our analysis of the common law crime of misconduct in office.”).

I. THE STATE GRAND JURY ACT PROVIDES SUBJECT MATTER JURISDICTION IN STATE GRAND JURY INVESTIGATIONS.

Defendant’s Motions assert that the indictments issued against him by the state grand jury should be dismissed with prejudice because Defendant is not one of the two individuals whose conduct necessitated empanelment of the state grand jury, and therefore this Court has no subject matter jurisdiction to hear the case. This argument is flawed as it misconstrues the relationship between the state grand jury and its legal advisor, whether that advisor is the elected Attorney General or a lawfully designated Solicitor vested with the full authority of the Attorney General. Put simply, the subject matter jurisdiction explicitly granted to the state grand jury is not contingent on the authority granted to a lawfully designated Solicitor. *See* S.C. Code Ann. § 14-7-1630(A)(3) (granting subject matter jurisdiction to the state grand jury over crimes “statutory, common law, or other, *arising out of or in connection with* a crime involving public corruption” (emphasis added)).

a. The presiding judge approved the indictments against Defendant.

First and foremost, the authority of the state grand jury to issue indictments against Defendant has been explicitly approved by the presiding judge of the state grand jury at that time, the Honorable Knox McMahon. The undersigned, as legal advisor to the state grand jury, acted within the authority provided by statute in presenting evidence and drafting indictments against Defendant for the state grand jury. The duty to assist the state grand jury in completing these tasks is imposed by the State Grand Jury Act in S.C. Code Ann. § 14-7-1650(A). Any further question as to the state grand jury’s authority to issue the indictments against Defendant were addressed by

Judge McMahon when they were returned to him for approval pursuant to S.C. Code Ann. § 14-7-1750. That section provides in part,

If the presiding judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this article, he shall return the indictment by order to the county where venue is appropriate under South Carolina law for prosecution by the Attorney General or his designee.

Following a vote of the grand jurors on March 16, 2017, the indictments were “true billed” and returned to Judge McMahon who approved the indictments as issued within the authority of the state grand jury. The indictments were returned to Richland County for prosecution by the Attorney General’s designee. *See Pascoe*, 416 S.C. at 644 (“We find . . . Pascoe was vested with the full authority to act as the Attorney General for the purpose of the investigation.”). Since the presiding judge of the state grand jury approved the indictments, any question regarding the state grand jury’s authority to issue them has been resolved.

- b. State statute provides the jurisdiction of the state grand jury and it is not restricted by any purported limitations imposed by the Attorney General’s Office.**

The facts and circumstances surrounding empanelment of the underlying state grand jury investigation are thoroughly discussed by the South Carolina Supreme Court in its decision in *Pascoe v. Wilson*, 416 S.C. 628 (2016). The Court in *Pascoe* explicitly determined that Solicitor Pascoe was vested with the full authority of the Attorney General’s Office to investigate potential criminal activity by two legislators discussed in a State Law Enforcement Division (SLED) investigative report. *Id.* at 644. In reaching this conclusion, the Court also held that the transfer of authority to Solicitor Pascoe occurred outside of the State Grand Jury Act. *Id.* at 641. Following the grant of authority by the Attorney General, Solicitor Pascoe determined that the matter before him was appropriate for the broad investigative powers of the state grand jury concerning crimes involving public corruption. *See* S.C. Code Ann. § 14-7-1610. Thereafter, the investigation of

legislators in the SLED report became a lawfully initiated state grand jury investigation. *Pascoe*, 416 S.C. at 647 (“we hold the initiation was lawful and valid”).

Defendant’s Motions cite various correspondence for the proposition that Solicitor Pascoe was limited only to investigate the two specified legislators. This argument is absurd. It defies logic to assert that the Attorney General intended to vest its power in a State Solicitor to investigate criminal activity but forbade the prosecutor from prosecuting the crime. Similarly absurd is the notion that the undersigned should have referred the investigation back to the Attorney General’s Office for prosecution after the Attorney General’s Office had recused itself due to a conflict of interest.¹

Defendant offers a list of prosecutorial options, arguing the undersigned should have taken one of these alternate courses of action instead of drafting indictments for the state grand jury. *See* Def. Mot at 9. None of these options are viable or appropriate. Defendant first suggests the undersigned should have presented evidence to the Attorney General’s Office “as set forth in 14-7-1630(B)” *Id.* Nothing in the code section cited by Defendant—or the rest of the State Grand Jury Act for that matter—“sets forth” the presentation of evidence to the Attorney General’s Office by a lawfully designated solicitor. Further, the Attorney General’s Office is recused due to a conflict of interest. Evidence of Defendant’s criminal conduct was discovered in the course of investigating the legislators in the SLED report. This evidence necessarily relates to the matter from which the Attorney General’s Office was recused. *See infra* Part I.c. Thus, it would be inappropriate to present such evidence to the recused office. Defendant’s second suggestion, seeking

¹ Nor should the undersigned have referred the matter to the Senate Ethics Committee. The authority to prosecute criminal matters is within the sole discretion of the Attorney General or one vested with the full authority of the Attorney General and is unaffected by the civil adjudicative powers of the General Assembly’s Ethics Committees. *Ex parte Harrell v. Attorney General of State*, 409 S.C. 60, 68-69 (2014).

disqualification of the Attorney General, is also an ineffective solution because the Attorney General's Office was already recused, as discussed by the Court in *Pascoe*. The charges against Defendant stem from a state grand jury investigation from which the Attorney General's Office was recused. Defendant's charges do not require a separate state grand jury investigation, as they "arise out of" the underlying public corruption investigation, and any further disqualification of the Attorney General's Office would be duplicative. *See, e.g., State v. Follin*, 352 S.C. 235 (Ct. App. 2002) (state grand jury investigation initiated based on conduct of a single individual resulting in indictment of numerous others).

The third option offered by Defendant is simply a misstatement of the law. Defendant's Motions assert the undersigned should have sought clarification about the Attorney General's recusal, citing S.C. Code Ann. § 14-7-1650(C)(2). The State Grand Jury Act was amended in 2015, eliminating the code section cited by Defendant. The provision for resolving disqualification doubts no longer exists. However, assuming, *arguendo*, that the provision did exist, it is still unnecessary as there is no doubt whatsoever regarding the fact that the Attorney General's Office is recused from this state grand jury investigation, in light of the Court's decision in *Pascoe v. Wilson*.

Finally, Defendant asserts the undersigned should have referred the matter to Fifth Circuit Solicitor Dan Johnson. The undersigned is the acting Attorney General for this state grand jury investigation. The only reason the acting Attorney General would recuse himself and designate a solicitor to continue the investigation and prosecution is if the acting Attorney General were disqualified due to a conflict of interest. *See* S.C. Code Ann. § 14-7-1650. The undersigned has no conflict of interest in this matter. Any issue regarding disqualification of the undersigned was resolved by Judge McMahon following his denial of the March 14, 2017 Motion to Disqualify the

Prosecution Team and SLED and for an Emergency *In Camera* Hearing. Because there is no conflict, there is no reason for the undersigned to assign the case to another solicitor.

As the Court held in *Pascoe v. Wilson*, Solicitor Pascoe was “vested with the full authority to act as the Attorney General for the purpose of the investigation.” *Id.* at 644. This grant of authority necessarily includes the power of the Attorney General to prosecute criminal activity, as this an essential function of the office. S.C. Const. art. V, § 24 (“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.”). Regardless of whether this authority was explicitly stated in correspondence referring to the investigation, it is inherent in the grant of the Attorney General’s authority.

Irrespective of the scope of authority that was or was not granted by the Attorney General’s Office to Solicitor Pascoe prior to initiation of the state grand jury investigation, jurisdiction over Defendant’s indictments is governed by the provisions of the State Grand Jury Act following the lawful initiation of a state grand jury investigation pursuant to S.C. Code Ann. § 14-7-1630(B). *See Pascoe*, 416 S.C. at 647 (“we hold the initiation was lawful and valid.”). Thereafter, the provisions of the State Grand Jury Act control the scope of the investigation, including the boundaries of subject matter jurisdiction:

The jurisdiction of the state grand jury impaneled pursuant to this article extends throughout the State. The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses: . . . (3) a crime, statutory, common law or other, involving public corruption as defined in Section 14-7-1615, a crime, statutory, common law or other, *arising out of or in connection with* a crime involving public corruption, . . . and any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime, statutory, common law or other, involving public corruption

S.C. Code Ann. § 14-7-1630(A)(3) (emphasis original and added). Hence, the applicable provisions of the State Grand Jury Act explicitly grant subject matter jurisdiction to the state grand

jury over crimes involving public corruption. The only limitation on this express statement of subject matter jurisdiction is by order of the presiding judge upon a finding of serious abuses of law by the Attorney General or his designee. No such order has been entered or sought in this matter. *See id.* § 14-7-1630(G).

- c. **Defendant's indictment was not the result of an expansion of the investigation, but notice was nevertheless served on the chief administrative judge an out of abundance of caution.**

Once a state grand jury investigation has been lawfully initiated—as here—the broad scope of the state grand jury's investigative authority may be expanded “as often as is necessary and appropriate” through written notification to the presiding judge of the state grand jury. S.C. Code Ann. § 14-7-1690. Significantly, the State Grand Jury Act places no caveats or restrictions on the circumstances that merit expansion of the grand jury's investigation. The only requirement is that the Attorney General or his designee provides written notice to the presiding judge.

The indictments issued against Defendant are not the fruit of an expanded investigation. In late 2016, SLED received a large volume of bank records pursuant to a state grand jury subpoena. These records included checks written to and from a bank account held by First Impressions, Inc. d/b/a Richard Quinn and Associates (“RQ&A”). The records were sought for their relevance to the state grand jury investigation of Rick Quinn, one of the legislators named in the SLED investigative report. In the months that followed receipt of these records, SLED worked to catalogue and analyze the bank records to search for evidence of political corruption. In the course of analyzing these financial records, SLED found a series of payments from Defendant's political campaign account to RQ&A and accompanying payments from RQ&A to Defendant personally. Specifically, SLED discovered 13 separate occasions on which checks drawn on the John Courson for Senate campaign account were paid to RQ&A for a total of \$247,829.81, and on or about the

same day RQ&A wrote a check to John Courson personally for a total of \$132,802.95. In sum, approximately 54% of the funds paid by Courson's campaign account to RQ&A were kicked back to Courson personally. The transactions were presented to the undersigned, who determined the payments violate state ethics and campaign laws. Thus, Defendant's indictments were not the result of an expanded investigation but were discovered in the course of the initial investigation.

Despite the fact that no expansion of the underlying investigation was necessary, the undersigned submitted written notice to the presiding judge pursuant to S.C. Code Ann. § 14-7-1690. *See* March 13, 2017 Letter, attached as **Exhibit A**. This notice was given out of an abundance of caution to protect the integrity of the underlying investigation. The indictments are properly issued within the scope of the state grand jury's broad investigative authority over crimes "arising out of or in connection with a crime involving public corruption". S.C. Code Ann. § 14-7-1630(A)(3). Therefore, regardless of the view taken on whether Defendant's indictments were issued within the scope of the underlying investigation or expanded investigation, the indictments are valid.

As discussed above, Defendant's argument that the indictments are invalid because Pascoe lacked authorization from the Attorney General's Office to investigate anyone other than the two legislators in the SLED report is fatally flawed because it mischaracterizes the source of the state grand jury's authority. The state grand jury's authority derives from the State Grand Jury Act, not from any grant of authority from the Attorney General's Office. *See id.* § 14-7-1630 (establishing the subject matter jurisdiction of the state grand jury throughout the state); *see also id.* § 14-7-1640 ("A state grand jury may return indictments irrespective of the county or judicial circuit where the offense is committed or triable."). The state grand jury is not limited by the powers of the Attorney

General. Rather, the role of the grand jury is to “enhance the effectiveness of investigative or prosecutorial procedures” by expanding upon the Attorney General’s powers. *Id.* § 14-7-1630(B).

Put simply, Defendant’s Motions incorrectly assert that the Defendant was indicted by the Attorney General’s designee whose limited authority required him to turn a blind eye to clear evidence of criminal conduct by anyone other than those named in the SLED report. To the contrary, the Defendant was indicted by the state grand jury acting within its statutorily prescribed subject matter jurisdiction and investigative authority. It is this broad authority “to detect and eliminate public corruption” that prompted the drafters of the state and federal constitutions to ensure the continued usage of the grand jury. *Id.* § 14-7-1610(C); U.S. Const. amend. V; S.C. Const. art. I, § 11.

II. COMMON LAW MISCONDUCT IN OFFICE IS A DISTINCT OFFENSE FROM S.C. CODE ANN. § 8-1-80.

Defendant next contends that the indictments against him for common law misconduct in office and statutory misconduct in office should be dismissed. Defendant’s arguments are based on misguided and incorrect interpretations of the applicable law and must be rejected.

a. Historical background and application of common law misconduct in office.

Following the foundation of our nation, the common law of England continued to apply with full force in the state of South Carolina as it did before the revolution. *Shecut v. McDowell*, 5 S.C.L. 38 (1812) (“our act of Assembly, passed in the year 1712, says, the Common Law of England shall be in as full force and virtue in this State as in England.”). This general principal is codified by the 1976 Code of Laws of South Carolina, which provides:

All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

S.C. Code Ann. § 14-1-50.

The South Carolina Supreme Court examined the validity of common law offenses deriving from English common law in its decision in *State v. Carson*, 274 S.C. 316 (1980). In *Carson*, the defendant was charged with misprision of felony after witnessing the murder of a Charleston shopkeeper and subsequently denying he was present at the scene. While addressing the existence of the common law offense of misprision of felony, the Court determined that “[t]he offense of misprision of felony is a part of the common law of England and of this country as well.” *Carson*, 274 S.C. at 318. Because of the existence of the English common law offense, “[i]t cannot be seriously questioned that the offense, cognizable at common law, exists in this state.” *Id.* (citing S.C. Code Ann. § 14-1-50). Further, the Court commented on the continuing existence of common law offenses, noting, “[i]t is clear that the common law will not be impliedly changed, but only by clear and unambiguous legislative enactment will the settled rules of common law be eroded.” *Id.* at 319. Absent such legislation, the common law must apply. *Singleton v. State*, 313 S.C. 75, 83 (1993) (“The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment.”).

Misconduct in public office was indictable at English common law prior to 1712. *Anonymous* (1704) 6 Mod 96, case 136 (87 ER 853) (“If a man be made an officer by act of Parliament, and misbehave himself in his office, he is indictable for it at common law, and any publick officer is indictable for misbehavior in his office.”); *Wyat* (1703) 11 Mod Rep 53 (88 ER880); Hawkins, *Treatise on the Pleas of the Crown*, n. 3, pp 167-68 (1716-1721). Therefore, unless the common law offense of misconduct in office is explicitly abrogated by legislative action, it remains in full force today.

Defendant's assertion that official misconduct did not become an indictable offense in South Carolina until passage of Act 2482 of 1829, (5 Stat. 390),² is simply incorrect. As discussed above, common law misconduct—and the rest of the common law of England—was officially adopted by legislative act in 1712, except those parts of the common law that were inconsistent with the laws and customs of the colony at the time. 2 S.C. Statutes at Large 413 (1712). Furthermore, South Carolina courts recognized misbehavior in public office as indictable prior to Act 2482 of 1829. *See, e.g., Rembert ads. Kelly*, 16 S.C.L. 65, 66, note *a* (1823) ("There is no doubt, however, that a justice of peace may be punished by *indictment*, for corruption in office." (emphasis original)); *State v. Porter*, 5 S.C.L. 175, 177 (1815) ("This is an indictment against a magistrate for extortion and mal-practice in office."); *Lining v. Bentham*, 2 S.C.L. 1, 6 (1796) ("a special action on the case was not a proper remedy. But if there had been any just cause of complaint on the part of the plaintiff, it should have been preferred by way of indictment in the court of sessions; and if he had been convicted of corruption or oppression, in his judicial capacity as a magistrate, it would have been the duty of the court to have punished him, by fine or imprisonment, or both, according to the nature of the offence.").

Defendant's assertion that the pre-1829 offense of misconduct was limited to judges and magistrates is similarly misguided, as none of the pre-1829 cases purport to limit the crime of official misconduct to judges and magistrates. To do so would have been inconsistent with common law, which held various public officers indictable for misbehavior. *See McBain*,

² Act 2482 of 1829, titled "An Act for the Punishment of Official Misconduct of District Officers" provides that should any public officer be guilty of "any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud or oppression" he shall be subject to a fine of \$1000 and imprisonment of up to one year. Further, upon conviction, the official's office shall be declared vacant.

Modernizing the Common Law Offence of Misconduct in a Public or Judicial Office, 7 J. Pol. L. no. 4, p. 46-99 (2014).

The Act 2482 in 1829 Act did not abrogate the common law; it was “in affirmance of the common law.” See *State v. Johnson*, 3 S.C.L. 155 (1802) (1739 statute providing justices of the peace with the power to fine for contempt of court did not derogate common law power to imprison for contempt, but was supplemental to common law authority). Indeed, common law offenses are not abrogated merely because there is a statutory offense proscribing similar conduct. *State v. Lyles-Gray*, 328 S.C. 458, 465 (Ct. App. 1997); *State v. Prince*, 316 S.C. 57, 66 (1993) (“it is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute.” (citation omitted)). Common law misconduct coexists with statutory misconduct and other ethics and misconduct statutes. See *State v. Thrift*, 312 S.C. 282, 308 n. 19 (1994) (ethics act of 1991 did not impliedly repeal old ethics act or common law misconduct); cf. *State v. Walker*, 311 S.C. 8 (Ct. App. 1992) (common law escape coexists with statutory escape). Part of the benefit of the common law is that it can be adapted to the changing needs of society. See *State v. Hess*, 279 S.C. 525 (1983) (noting the “versatile nature” of misconduct); see also *La Tour v. Stone*, 139 Fla. 681, 690, 190 So. 704, 708 (1939) (“the common law is sufficiently broad to punish as a misdemeanor, although there may be no exact precedent, any act which directly injures or tends to injure the public to such an extent as to require the State to interfere and punish the wrongdoer...” (quoting 16 C.J., Criminal Law § 23, p. 65,66.)).

b. Present day affirmation of common law misconduct in office.

Any doubt whether South Carolina continued to recognize official misconduct as a distinct common law offense was eliminated by the Supreme Court in *State v. Hess*, 279 S.C. 14 (1983).³ Affirming a conviction for common law misconduct, the *Hess* Court defined the offense in similar terms as the pre-1829 cases, emphasizing breach of a duty owed to the public and corrupt intent. In a second opinion addressing Hess's conviction for an additional misconduct charge, the Court further elaborated that misconduct can be prosecuted as a "continuous" crime, with multiple acts constituting a single offense. *Hess*, 279 S.C at 528.

Since 1983, the Supreme Court and Court of Appeals have continued to recognize common law misconduct as a distinct offense, adding to the clear lineage of case law from England to the present. *See, e.g., Thrift*, 312 S.C. at 308 n. 19 ("The statutory offense created by the Ethic Act in no way impacts on our analysis of the common law crime of misconduct in office."); *Lyles-Gray*, 328 S.C. at 465; *State v. Moore*, 2012 WL 10864535 (Ct. App. 2012) (unpublished opinion). Indeed, statistics provided by the Judicial Department show that there have been convictions for common law misconduct every fiscal year since at least 2000. *See* Convictions for Common Law Misconduct, 2000-2017, attached as **Exhibit B**.⁴ Thus, the weight of both historical precedent and

³ Incredibly, Defendant's Motions cite *Hess* for the proposition that the common law offense does not exist. Def. Mot. at 5. But while *Hess* notes that "South Carolina has no cases applying the common law of misconduct in office[.]" the Supreme Court went on to affirm the underlying convictions for common law misconduct, clarifying the elements of the offense. *Hess*, 279 S.C. at 20-21. Further, the Supreme Court later reaffirmed the existence of common law misconduct in *State v. Thrift*, stating, "[u]nder the applicable definition of a public official for common law misconduct in office as set forth in *Hess*, . . . the case at bar is not a close call factually." *Thrift*, 312 S.C. at 309. In light of these opportunities to strike down the offense, and the statistics cited *infra* in Exhibit B and n. 5, it is clear that *Hess* acknowledges the existence of the offense.

⁴ Since 2000, the South Carolina Judicial Department has reported 201 convictions for common law misconduct in office, including trial by jury.

South Carolina jurisprudence clearly demonstrates that the offense of common law misconduct in public office exists as a separate and distinct offense from S.C. Code Ann. § 8-1-80.

c. The elements of each offense are clear and distinct.

The South Carolina Supreme Court announced the elements of the offense of common law misconduct in office in its decision in *State v. Hess*. It examined a jury charge issued by the lower court for common law misconduct in office which stated, “[m]isconduct in office includes any act, omission, in breach of public concern by persons in public office provided it is done willfully and dishonestly.” *Hess*, 279 S.C. at 20. The Court approved this jury instruction as a satisfactory statement of the common law offense of misconduct in office. In determining that the lower court’s statement of common law misconduct was adequate, the Court specifically noted that the key element of the common law misconduct charge was that “dishonesty and corruption were required for any finding of criminal misconduct.” *Id.* at 21; *see also id.* at 20 (“Again, it should be noted, the willful and dishonest character of appellant’s conduct was the threshold fact issue to be determined by the jury.”).

The willful intent required by common law misconduct in office is not present in the statutory offense of misconduct in office. S.C. Code Ann. § 8-1-80 provides:

Any public officer whose authority is limited to a single election or judicial district who is guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression shall be liable to indictment and, upon conviction thereof, shall be fined not more than one thousand dollars and imprisoned not more than one year.

Curiously, Defendant’s Motions recite the elements of the statutory offense as, “(1) a public officer, (2) with a duty to the public imposed by office, (3) violates (breaches) said law owing a duty to the public, and (4) does so with evil intent.” Def. Mot. at 13. This is obviously a self-serving recitation of the elements, as a plain reading of the controlling statute contains no

requirement of “evil intent.”⁵ See also *State v. Green*, 52 S.C. 520 (1898) (distinguishing between section 8-1-60 requiring willful neglect and the misconduct statute section 8-1-80, which does not require willfulness).

The distinction between common law misconduct in office and statutory misconduct or habitual negligence in office is clear. Common law misconduct—which carries a greater penalty—requires the state to carry a greater burden and demonstrate that the defendant acted “willfully and dishonestly.” *Hess*, 279 S.C. at 20. Statutory misconduct requires only a finding of misconduct or habitual negligence, irrespective of the willfulness or “evil intent” of the public official. S. C. Code Ann. § 8-1-80. Indeed, if the Court were to credit Defendant’s interpretation of the elements of statutory misconduct in office, the state would be required to prove a public official possessed an “evil intent” while committing habitual negligence or habitual drunkenness. It is an absurd result, as one could not plausibly read the statute to require willful habitual negligence or willful habitual drunkenness.

- d. **The different elements of common law and statutory misconduct in office satisfy the *Blockburger* and *Easler* test for double jeopardy and included offenses.**

Because the common law offense of misconduct in office is separate and distinct from the statutory offense of misconduct in office, and requires proof of elements not found in the statutory crime, the remainder of Defendant’s arguments must also fail.

The Fifth Amendment of the United States Constitution protects a criminal defendant from prosecution of the same offense in more than one proceeding. *State v. Easler*, 327 S.C. 121, 129 (1997). The test to determine whether multiple indictments charge the same offense or separate

⁵ Defendant’s Motions also cite *State v. Tarrant*, 24 S.C. 593 (1886), for this misguided recitation of the elements of statutory misconduct. However, the Court in *Tarrant* makes no mention of the statutory offense, and is clearly discussing the intent element required for the common law offense.

offenses is “whether each provision requires proof of a fact which the other does not.” *Blockburger v. United States*, 284 U.S. 299, 304 (1932) (citations omitted). Thus, where the first offense contains elements not required in the second, the two offenses are not the same and do not offend the Double Jeopardy Clause of the Fifth Amendment. The *Blockburger* test has been expressly adopted by the South Carolina Supreme Court in *State v. Easler* and remains the sole test of double jeopardy for multiple punishments in a single prosecution. *See Easler*, 327 S.C. at 129.

Common law misconduct in office includes “any act, any omission, in breach of duty of public concern by persons in public office provided it is done willfully and dishonestly.” *Hess*, 279 S.C. at 20. In contrast, statutory misconduct in office does not contain willfulness or dishonesty as an element. *See supra* Part II.b. For the state to prove its case against Defendant for the crime of statutory misconduct in office the state must only demonstrate that a violation occurred, irrespective of the defendant’s knowledge of the violation. This distinction satisfies the common elements test under *Blockburger* and *Easler*, and the two offenses may be charged simultaneously without offending the Fifth Amendment.

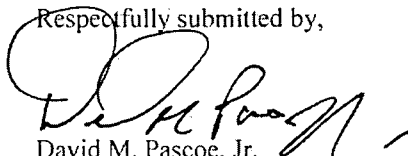
Defendant’s appeal to the Eighth Amendment of the United State Constitution is equally unavailing as it presumes that statutory misconduct in office imposes more requirements upon the state than the common law offense. In light of the above discussion, this is not the case as the common law offense imposes a greater burden than the statutory offense by requiring willful conduct. Notably, while Defendant argues the two offenses are the same for purposes of the Fifth Amendment, which they are not, he now argues the common law offense is instead a subset of the statutory offense, which it is not. “The lesser offense is included in the greater only if each of its elements is always a necessary element of the greater offense.” *Easler*, 327 S.C. at 134 (quotation omitted). Here, common law misconduct in office requires (1) the breach of a duty imposed by

law on a public official, and (2) that the breach is done "willfully and dishonestly." *Hess*, 279 S.C. at 20. Statutory misconduct in office requires only that a public official is guilty of any official misconduct. S.C. Code Ann. § 8-1-80. Clearly, common law misconduct in office is not a subset of statutory misconduct under the rule stated in *Easler*, as it requires an additional element not required of statutory misconduct.

Conclusion

The state grand jury acted well within its statutory subject matter jurisdiction by indicting Defendant for crimes arising out of a state grand jury investigation of public corruption. The indictments were approved by the presiding judge, and have been returned to Richland County for prosecution by the acting Attorney General, David M. Pascoe. Further, the existence of the distinct common law offense of misconduct in office has been affirmed by the Supreme Court in *State v. Hess*, and results in numerous convictions each year. Each indictment charges a separate, distinct offense for which the state must prove different elements, and thus the indictments are not multiplicitous. For these reasons and the foregoing discussion, the State respectfully submits that Defendant's Motions should be denied.

Respectfully submitted by,



David M. Pascoe, Jr.
First Circuit Solicitor

Exhibit A

March 13, 2017 Letter from Pascoe to McMahon

The State of South Carolina

OFFICE OF SOLICITOR

First Judicial Circuit

140 N. Main St., Suite 102
Summerville, SC 29484
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Orangeburg, SC 29116
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FAX (803) 533-6004
PTI (803) 533-6137

DAVID M. PASCOE
Solicitor

March 13, 2017

The Honorable R. Knox McMahon
Presiding Judge, State Grand Jury
Richland County Courthouse
1701 Main Street
Columbia, South Carolina 29201

RE: State Grand Jury Investigation 2016-257

Dear Judge McMahon:

The above-referenced State Grand Jury investigation was commenced to investigate financial crimes alleged to have been committed by certain South Carolina legislators. I am writing pursuant to S.C. Code Ann. Section 14-7-1690 to notify you that evidence of illegal activity by legislators and entities other than the two original targets has been uncovered and that the State Grand Jury investigation is being expanded to include the actions of these subjects.

Sincerely,

David M. Pascoe
Solicitor, First Judicial Circuit

ROA 000096

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	
	)	INDICTMENT NOS.: 2017-GS-47-35, 36, 37
vs.	)	
	)	
JAMES H. HARRISON,	)	MEMORANDUM REGARDING THE
	)	STATE GRAND JURY'S SUBJECT
DEFENDANT.	)	MATTER JURISDICTION
	)	

The State respectfully submits the following Memorandum Regarding the State Grand Jury's Subject Matter Jurisdiction to issue true billed indictments against the Defendant, James H. Harrison.

Pursuant to Section 14-7-1630(A)(3) of the South Carolina Code of Laws Annotated, the State Grand Jury is empowered with statewide jurisdiction to investigate and issue indictments for crimes involving public corruption. This jurisdictional provision encompasses both statutory and common law crimes involving public corruption, as well as crimes "arising out of or in connection with a crime involving public corruption" including conspiracy Id. For the purposes of this statute, "public corruption" is defined as "any unlawful activity, under color of or in connection with any public office or employment, of: (1) any public official. . . or (2) any candidate for public office. . . ." S.C. Code Ann. § 14-7-1615(B).

To satisfy this jurisdictional requirement, an otherwise valid indictment must simply contain an allegation that the underlying crime is either a crime involving public corruption or a crime arising out of or in connection with a crime involving public corruption. South Carolina Courts have primarily addressed this jurisdictional threshold in the context of the State Grand Jury's jurisdiction to investigate narcotics trafficking crimes that have significance in more than one county. See S.C. Code Ann. § 14-7-1630(A)(1). Addressing a jurisdictional challenge to such

a case, the Court of Appeals very clearly instructed that “[t]his jurisdictional mandate only requires that an otherwise valid indictment contain an allegation of multi-county significance.” State v. Green, 337 S.C. 67, 72, 522 S.E.2d 602, 604 (Ct.App.1999) (citing State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct.App.1996)).

The Court of Appeals in Green further instructed courts examining jurisdictional challenges to look to the State Grand Jury transcripts of testimony to determine whether the evidence presented meets the jurisdictional threshold. Notably, the indictment in Green did not contain an allegation of multi-county jurisdiction on its face, thus necessitating further review of the testimony before the grand jury. Relying on State v. Evans, 322 S.C. 78, 470 S.E.2d 97 (1996), the Green Court recognized that, because the transcripts of proceedings before the State Grand Jury are available to a defendant, both the indictments and the transcripts are effective to place the defendant on notice of the charges he must be prepared to meet. Therefore, courts may look to both the indictments and the transcripts of testimony to determine whether the evidence presented to the State Grand Jury meets the jurisdictional mandate of Section 14-7-1630.

In the instant case, the State Grand Jury’s jurisdiction derives from Section 14-7-1630(A)(3). This section requires that the allegations in the indictments concern crimes involving public corruption, crimes arising out of or in connection with public corruption, or conspiracy to commit crimes involving public corruption. Public corruption merely requires that the crime relate to a public office or employment of a public official. S.C. Code Ann. § 14-7-1615(B).

As applied to the indictments against Defendant—statutory misconduct in office, common law misconduct in office, and criminal conspiracy—the indictments standing alone meet this jurisdictional mandate. All that is required to meet the jurisdictional threshold is that “an otherwise valid indictment contain an allegation” that meets the mandate of Section 14-7-1630(A)(3). Green,

313 S.C. at 72, 522 S.E.2d at 604; see also Evans, 322 S.C. at 81, 470 S.E.2d at 98 (“we interpreted § 14-7-1630 as requiring an allegation of multi-county significance in an indictment to establish subject matter jurisdiction in the State Grand Jury.”). Defendant’s indictment for statutory misconduct in office provides, “the Defendant, JAMES H. HARRISON, *a public officer*. . . .” **Exhibit A** at 1. Defendant’s indictment for common law misconduct in office provides, “while an elected member of the South Carolina House of Representatives, the Defendant JAMES H. HARRISON. . . .” **Ex. A** at 2. Finally, Defendant’s indictment for criminal conspiracy provides, “Defendant combined with Richard M. Quinn, Sr. and others. . . to use the office and position of members of the South Carolina General Assembly. . . .” **Ex. A** at 3.

Each of Defendant’s indictments contains an allegation that Defendant committed the underlying offense in his capacity as a public officer or in connection with public office. By the clear language of Green and Evans, jurisdiction is established if an indictment contains allegations meeting the jurisdictional mandate of Section 14-7-1630; nothing more is required. Defendant’s appeals to the notion of probable cause as a jurisdictional standard are confusing at best and entirely irrelevant based on the very cases upon which he relies.

Nevertheless, while the State submits that the indictments themselves are sufficient to establish subject matter jurisdiction for State Grand Jury, the transcripts of testimony contain ample evidence of political corruption or “unlawful activity, under color of or in connection with any public office or employment of[] any public official. . . .” S.C. Code Ann. § 14-7-1615(B). What follows is a brief outline of specific citations to the record of testimony that demonstrates testimony and evidence received by the State Grand Jury relating to Defendant’s charges. There are over 3,000 pages of State Grand Jury testimony in this investigation. In an effort to minimize the time required of the Court to review testimony, the State has only included relevant portions

of transcripts that demonstrate the nature of the grand jury's investigation of Defendant's conduct. If the Court wishes to see the full transcripts of testimony, the State would certainly be happy to provide them. Finally, because other transcripts may relate to Defendant, the State would caution Defendant not to rely on the following as a comprehensive summary of testimony relating to his case.

Transcripts of Testimony before the State Grand Jury

Exhibit B - March 15, 2017 - Testimony of Lt. Jeremy Smith

p. 14, line 1-p. 15, line 10 - The grand jury hears about Harrison and his employment with RQ&A.

p. 16, lines 12-18 - The grand jury learns that Harrison was the Chairman of the House Judiciary Committee throughout the period of time that he was employed by RQ&A.

Exhibit C - March 15, 2017 - James Harrison

Mr. Harrison's own testimony provided the grand jury with a wealth of information relevant to the underlying indictments. While much of his testimony was established through other sources, Mr. Harrison's testimony and demeanor provided valuable insight to the grand jury for their consideration in issuing the indictments.

p. 11, line 8-p. 12, line 8 - The grand jury learned that Harrison's relationship with the Quinns began on the House floor, when he was assigned to share a desk with Rick Quinn. Harrison testified that he shared a desk on the House floor with Rick Quinn for 12 years.

p. 23, lines 8-22 - Harrison testified that he was a salaried employee for most of his time at RQ&A, and later went off-payroll to be a contract consultant.

p. 25, line 8-p. 26, line 20 - Harrison testified that he was aware RQ&A did work for lobbyist principals.

Exhibit D - August 15, 2017 - Testimony of Lt. Jeremy Smith

p. 7, line 10-p. 8, lines 5 - One of the many places in which the "Quinnndom" or the group of individuals loyal to Richard Quinn was discussed.

p. 14, line 22-p. 19, line 13 - Discussing the public officials directly paid by RQ&A and explaining to the grand jury that Section 8-13-1130 requires a public official to report the name of a lobbyist principal who pays more than \$200 for services to the public official's employer. The witness further explains that Harrison has never reported any of the income his employer has received from lobbyist principals.

Exhibit E - October 18, 2017 - Testimony of Lt. Jeremy Smith

p. 3, line 23–p. 5, line 13 - Generally describing the provisions of the Ethics Act violated by Harrison as well as the existence of a conspiracy. The witness specifically references Sections 8-13-700(A) and (B), 8-13-705(A) and (B), 8-13-1130, as well as 8-13-1348.

p. 5, line 14–p. 6, line 4 - Listing the various lobbyist principals who have retained RQ&A.

p. 20, lines 5–11 - The witness informs the grand jury that Harrison was a public officer who's authority is limited to a single election, thus making him liable to Section 8-1-80 and to common law misconduct in office.

p. 20, line 18–p. 21, line 6 - Harrison was a member of the General Assembly between 1989 to 2012 and he was employed by RQ&A between 2000-2012, receiving over \$800,000 from RQ&A during that time. Also, his final payment from RQ&A coincided with his departure from the legislature in November 2011. This is yet another example from which the grand jury could have reasonably believed that an agreement existed between Harrison, Richard Quinn, and others regarding Harrison's employment with RQ&A and the statutory violations resulting from his various failures to disclose.

p. 21, lines 6–8 - Harrison did not report any payments from lobbyist principals who paid RQ&A.

p. 21, lines 8–23 - Harrison failed to recuse himself from any legislation that benefitted RQ&A corporate clients, despite the fact that 40 percent of all legislation went through the committee he chaired.

p. 23, line 15–p. 25, line 10 - Harrison testified that he was aware that RQ&A had lobbyist principal clients.

Jury Charges

Prior to their deliberations, the grand jury was charged on the law applicable to each indictment. However, if the grand jury had been charged on a prior occasion regarding the law applicable to a particular charge, the grand jurors were instead asked if they would like to hear the charge again. For this reason, jury charges applicable to Defendant's indictments appear in separate transcripts, however the instructions specifically relating to Defendant are found in **Exhibit F - October 18, 2017 - Presentation of Indictments - p. 53, lines 9–25.**

Common Law Misconduct in Office:

Exhibit G - March 16, 2017 - Presentation of Indictments - p. 7, lines 13–25.

Exhibit H - May 16, 2017 - Presentation of Indictments - p. 11, lines 6–20.

Statutory Misconduct in Office:

Ex. G - p. 9, line 18–p. 10, line 3.

Ex. H - p. 5, lines 3–12.

Criminal Conspiracy:

Ex. F - p. 29, line 10–p. 30, line 2.

Individual Ethics Act Provisions:

Ex. F - p. 28, line 25–p. 51, line 24.

Ex. H - p. 11, line 20–p. 40, line 2.

Conclusion

Under the standard set forth in State v. Green and State v. Evans, an indictment only requires an allegation that meets the jurisdiction mandate of Section 14-7-1630. In the instant case, this only requires an allegation that the unlawful conduct was committed in connection with public office. To that end, each indictment against Defendant contains an allegation that the Defendant committed unlawful acts in his capacity as a member of the General Assembly. See Exhibit A. Furthermore, as the above transcript excerpts demonstrate, the very foundation of this State Grand Jury investigation lies in violations of state ethics laws committed by members of the General Assembly—this entire investigation is based on public corruption. In the course of investigating members of the General Assembly and an individual who employed members of the General

Assembly, the State Grand Jury has indicted four other legislators for the same offenses for which they have indicted Defendant, as well as Defendant's employer.

Because the indictments against Defendant are sufficient on their face to confer subject matter jurisdiction to the State Grand Jury pursuant to Section 14-7-1630(A)(3) and because the testimony before the State Grand Jury reinforces the fact that this entire investigation concerns public corruption, the State respectfully submits that the State Grand Jury possessed ample subject matter jurisdiction to issue the indictments against Defendant.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'W. Baker Allen', with a stylized flourish at the end.

W. Baker Allen
Assistant Solicitor
First Judicial Circuit

August 27, 2018,
Orangeburg, South Carolina.

EXHIBIT A

Indictments

FILED

OCT 18, 2017

James R. Parks

CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

-VERSUS-)

JAMES H. HARRISON)

DEFENDANT.)

CASE NO. 2017-GS-47-35
INDICTMENT FOR MISCONDUCT IN
OFFICE

S.C. Code Ann. §8-1-80

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina, on this 18th day of October, 2017, the State Grand Jurors present upon their oath:

MISCONDUCT IN OFFICE

S.C. Code Ann. §8-1-80

That beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, the Defendant, JAMES H. HARRISON, a public officer, committed acts and omissions constituting official misconduct, fraud, corruption or habitual negligence, to wit: the Defendant, while an elected member of the South Carolina House of Representatives and Candidate for State Office, repeatedly violated provisions of the Ethics Government Accountability and Campaign Reform Act of 1991.

All against the peace and dignity of this State and in violation of §8-1-80, Code of Laws of South Carolina (1976), as amended.



David M. Pascoe
First Circuit Solicitor
Acting Attorney General

A TRUE

Bill

ROA 000105

FILED

OCT 18, 2017

James R. Parks

CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

-VERSUS-)

JAMES H. HARRISON)

DEFENDANT.)

CASE NO. 2017-GS-47-36

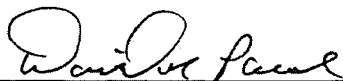
INDICTMENT FOR COMMON LAW
MISCONDUCT IN OFFICE

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina, on this 18th day of October, 2017, the State Grand Jurors present upon their oath:

COMMON LAW MISCONDUCT IN OFFICE

That beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006 through on or about November 9, 2012, in Richland County, and while an elected member of the South Carolina House of Representatives, the Defendant, JAMES H. HARRISON, willfully and dishonestly failed to properly and faithfully discharge the duties of his public office imposed upon him by law, to wit: by using the office and position of Member of the South Carolina House of Representatives and Candidate for State Office to willfully and dishonestly violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991, the Defendant did commit acts or omissions in breach of his duty of good faith and accountability to the public.

All against the peace and dignity of the State and in violation of the common law of South Carolina.



David M. Pascoe
First Circuit Solicitor
Acting Attorney General

A



Bill

FILED

OCT 18, 2017

James R. Parks

CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

-VERSUS-)

JAMES H. HARRISON)

DEFENDANT.)

CASE NO. 2017-GS-47-37

INDICTMENT FOR CRIMINAL
CONSPIRACY

S.C. Code Ann. §16-17-410

At a session of the State Grand Jury of South Carolina, convened at Columbia, South Carolina, on this 18th day of October, 2017, the State Grand Jurors present upon their oath:

CRIMINAL CONSPIRACY
S.C. Code Ann. §16-17-410

That beginning on a date or dates unknown at this time to the State Grand Jury but including September 1, 2006, through November 9, 2012, and ending on a date or dates unknown at this time to the State Grand Jury, in Richland County, the Defendant, JAMES H. HARRISON, unlawfully did unite, combine, conspire, confederate, agree and have tacit understanding with another to violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991 and to commit acts and omissions constituting statutory and common law misconduct in office, to wit: Defendant combined with Richard M. Quinn, Sr. and others, whose names are both known and unknown to the State Grand Jury, to use the office and position of members of the South Carolina General Assembly to willfully and dishonestly fail to properly and faithfully discharge the duties of public office imposed by law; to violate provisions of the Ethics Government Accountability and Campaign Reform Act of 1991; and to commit acts and omissions constituting official misconduct, fraud, corruption or habitual negligence.

All against the peace and dignity of this State and in violation of the Ethics Government Accountability and Campaign Reform Act of 1991; §16-17-410 and §8-1-80, Code of Laws of South Carolina (1976), as amended; and the common law of South Carolina.

ROA 000107



David M. Pascoe
First Circuit Solicitor
Acting Attorney General

A TRUE

Bill



EXHIBIT B

March 15, 2017

Testimony of Lt. Jeremy Smith

BEFORE THE SOUTH CAROLINA STATE GRAND JURY #28

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

INVESTIGATION NUMBER:)
SGJ2016-257)
-----)

ORIGINAL

TESTIMONY OF
**LIEUTENANT JEREMY CHRISTOPHER
SMITH**

Wednesday, March 15, 2017
9:38 a.m. - 10:19 a.m.

The testimony of LIEUTENANT JEREMY CHRISTOPHER SMITH was taken before the State Grand Jury #28 at The Rembert C. Dennis Building, Columbia, South Carolina, on the 15th day of March, 2017, before Barbara J. Howell, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 000110

1 Q: And give us -- you're going to -- and discuss
2 who else we're going to hear from today?

3 A: So we're also going to get into, today,
4 legislators that were paid by Richard Quinn and
5 Associates. That's going to be a topic you'll
6 hear throughout the day.

7 Q: And these were sitting legislators in the House
8 ---

9 A: Right.

10 Q: --- that, while they were in the House of
11 Representatives, were being paid by Richard
12 Quinn and Associates?

13 A: Right.

14 Q: Okay.

15 A: And you'll see right now some of these are
16 former. Former Representative Jim Harrison,
17 Tracy Edge and Thad Viers. Jim Merrill, who
18 was suspended. And we have Senator John
19 Courson on that list, as well. James Harrison,
20 goes by Jim Harrison, he was a representative
21 of House District 75 from 1989 to 2012. He is
22 an attorney. Presently is the Code
23 Commissioner and Director for the South
24 Carolina Legislative Council. He is the
25 registered agent for something called South



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ROA 000111

1 Carolina Conservative Action Alliance that has
2 ties back to the Quinns. He received \$50,000
3 from RQ&A. It was \$2,000 a month from October
4 1, 2010 to November 6th, 2012. There were no
5 payments to him after he left the House of
6 Representatives.

7 Q: So he left -- his last month in the House of
8 Representatives was in December of 2012, and,
9 after he leaves the House, the payments stop?

10 A: That's correct. Tracy Edge. Tracy Edge is a
11 former representative for House District 104
12 from 1997 to 2014. He was on the Ways and
13 Means Committee. He was a Legislator of the
14 Year at one point. He was a nine-term
15 representative. He lost his seat in 2014.
16 \$257,000 received from Richard Quinn and
17 Associates.

18 Q: Uh-huh.

19 A: Came out to \$3,200 a month from September 14th,
20 '06 to August of 2014. No payments after
21 leaving the House of Representatives.

22 Q: In fact, he lost in the primary in June of
23 2014. Correct?

24 A: That's correct.

25 Q: And the Quinns' last payment to Mr. Edge after



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1 he lost was in July, this check was written in
2 July of 2014?

3 A: Yes, sir.

4 Q: So he also -- once he's out of the House, he's
5 no longer receiving payments from Richard Quinn
6 and Associates?

7 A: No more payments.

8 Q: Okay. And you mentioned -- I wanted -- Tracy
9 Edge was in the -- on the very important Ways
10 and Means Committee?

11 A: Yes, sir, he was.

12 Q: Going back to Representative Harrison just for
13 one second, he was chairman of the House
14 Judiciary Committee. Correct?

15 A: Yes, sir.

16 Q: When he was getting \$2,000 a month from Richard
17 Quinn and Associates?

18 A: That's correct.

19 Q: Okay. Who's the next legislator that we hope
20 to hear from today?

21 A: Thad Viers. Viers was a representative from
22 House District 68 from 2002 to 2012. He was on
23 the Judiciary Committee. Just a little bit of
24 his background, he was arrested for harassment
25 in January of 2012 and pled guilty in 2014 to



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EXHIBIT C

March 15, 2017

Testimony of James Harrison

BEFORE THE SOUTH CAROLINA STATE GRAND JURY #28

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

INVESTIGATION NUMBER:)

SGJ2016-257)

ORIGINAL

TESTIMONY OF
JAMES H. HARRISON

Wednesday, March 15, 2017
12:29 p.m. - 1:35 p.m.

The testimony of JAMES H. HARRISON was taken before the State Grand Jury #28 at The Rembert C. Dennis Building, Columbia, South Carolina, on the 15th day of March, 2017, before Barbara J. Howell, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 000115

1 election, probably four -- four or five during
2 that period of time. I didn't have an opponent
3 every time, but every two or three elections,
4 I'd have one.

5 Q: Who managed your campaigns?

6 A: Richard Quinn.

7 Q: All of the campaigns?

8 A: The very first one, he didn't. I didn't know
9 much about politics and I had heard good things
10 about Mr. Quinn and I tried to get in touch
11 with them to see if they would do it and they
12 never would return my calls. So I ended up
13 hiring a fellow by the name of Rod Shealy.

14 Q: Yeah.

15 A: And Rod represented me in that first campaign.
16 Once I got to the House -- two people sit at a
17 desk together. And Rick Quinn, Richard's son,
18 was elected to the House the year before me and
19 I ended up sitting on -- in the same desk with
20 Rick for the next 12 years, I think it was.
21 Rick then lost a race and was out of the House
22 for about six years and then he ran again and
23 came back in later. But, during that first 12,
24 14 years, Rick and I sat together.

25 Q: And that's how you met the Quinns really? Was



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1 by ---
2 A: Yes.
3 Q: --- sitting with Rick Quinn, Jr., when he was
4 in the House?
5 A: Yes, sir.
6 Q: And, from that point on, is that when Richard
7 Quinn and Associates would run your campaigns?
8 A: They ran my campaign from that point forward.
9 Q: Okay. And what is your current relationship
10 with Rick Quinn, Jr.?
11 A: I consider Rick to be a friend. We probably
12 now talk twice a year.
13 Q: So not often?
14 A: Not very often. I mean, when I do try to call
15 him -- the Quinns are people -- are hard people
16 to get in touch with. Rick's probably the
17 worst one, that's probably why he lost his
18 election while we were in the House together.
19 He doesn't return phone calls and, over the
20 last five years, if I've sent him a text saying
21 let's get together and have lunch or something,
22 I might not hear from him for a week. So you
23 find out who your friends are when you are no
24 longer around sometimes.
25 Q: And, of course, you're not in the House any



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1 Q: Okay. You didn't have any misgivings about
2 being in the Legislature, sitting Legislature
3 and being paid by Richard Quinn and Associates?

4 A: None at all. Because I saw nothing
5 inappropriate with my representing various
6 candidates for local, state and national
7 office.

8 Q: Were you paid by the job or were you paid a
9 monthly retainer fee?

10 A: I was paid a salary for most of that period.
11 It was a set salary. Toward the end -- and I
12 can't tell you what year that would have been
13 without going back through my tax records --
14 but the Quinn -- Mr. Quinn asked me if I would
15 consider going off-payroll and become a
16 contract consultant. And I did that. And we
17 discussed, because I was not available as much
18 as maybe I had been early, that my salary was
19 significantly reduced because I acknowledged to
20 them I didn't think I could put the time into
21 it that we initially had agreed that I would
22 do.

23 Q: So, early on, you had a private law practice,
24 you were a legislator, chairman of the House
25 Judiciary and were on the payroll of First



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1 2008. It might have been 2010, but it was --
2 I mean, it was toward the end of the time that
3 I was affiliated with them.

4 Q: Okay. And how would you go about getting your
5 money? Would it be a wire transfer or a
6 paycheck?

7 A: Payroll deposit.

8 Q: Okay. You were aware at the time that Richard
9 Quinn and Associates, of course, represented --
10 or were -- had a lot of clients that were
11 lobbyist principals?

12 A: I was aware that Mr. Quinn did some work for
13 some lobbyist principals. Yes, sir.

14 Q: Such as the Trial Lawyers Association?

15 A: He did some work for them. Yes, sir.

16 Q: And, of course, the Trial Lawyers Association
17 has a lot of interest in the House Judiciary?

18 A: Yes, they do.

19 Q: South Carolina Ports, he represents them?

20 A: After I left, I think, he may have started
21 representing them. I don't believe he had any
22 involvement with the Ports prior to me leaving,
23 but then I wasn't involved in that part of the
24 business.

25 Q: And, if they did, you're not trying to mislead



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1 this Jury. You're just not aware of ---

2 A: I'm not aware that he represented the Ports

3 while I was there.

4 Q: It doesn't mean he wasn't, you're just ---

5 A: No. Exactly.

6 Q: Okay. That's what I wanted to make sure of.

7 A: Yes, sir.

8 Q: SCANA?

9 A: I was aware that he did some work for SCANA.

10 Q: Blue Cross Blue Shields (sic)?

11 A: Blue Cro- -- no, I'm not aware of any work for

12 Blue Cross, Blue Shield. The one's I'm aware

13 of, SCANA, BellSouth, AT&T -- and I don't

14 remember when those mergers occurred ---

15 Q: Uh-huh.

16 A: --- and when they went from being Bell South to

17 AT&T. But it was basically the -- that

18 telephone group. I believe Palmetto ---

19 Q: Palmetto Health?

20 A: --- Hospital.

21 Q: Uh-huh.

22 A: And I believe all of those he was already

23 representing before I went to work for RQA.

24 They didn't come later. They were entities

25 that he had been doing public relations work



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EXHIBIT D

August 15, 2017

Testimony of Lt. Jeremy Smith

BEFORE THE SOUTH CAROLINA STATE GRAND JURY #28

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

INVESTIGATION NUMBER:)

SGJ2016-0257)

ORIGINAL

TESTIMONY OF
**LIEUTENANT
JEREMY C. SMITH**

Tuesday, August 15, 2017
9:43 a.m. - 10:24 a.m.

The testimony of LIEUTENANT JEREMY C. SMITH was taken before the State Grand Jury #28 at The Rembert C. Dennis Building, Columbia, South Carolina, on the 15th day of August, 2017, before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 000122

1 2017, Judge McMahon ruled in the favor of SLED
2 and allowed us to begin reviewing those seized
3 documents. So since that time, we have
4 reviewed approximately 60,000 documents.
5 Numerous additional documents are in the
6 process of being screened for attorney client
7 privilege communications by the 16th Circuit
8 Solicitor's Office and they have not yet been
9 turned over to us. Some of those documents
10 will include communication between Jim
11 Harrison, who you've heard from before.
12 Attorney General Alan Wilson, another attorney
13 named Kevin Hall, who you will hear from, and
14 numerous other attorneys which have ben flagged
15 by the defense counsel as potentially
16 privileged information. And the remaining
17 documents will be reviewed as soon as we get
18 them. What do all those folks that I read to
19 you about that were indited have in common?
20 Well they have in common Richard M. Quinn, Sr.
21 The documents we've looked at so far
22 demonstrate that Richard Quinn and Associates
23 advertise its political connections and
24 influence to attacked and maintain consulting
25 contracts with corporate clients. Richard



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ROA 000123

1 Quinn is the architect of that business model.
2 Numerous documents that we've seen reference
3 the "Quinnndom," or the team of public officials
4 who are loyal to Mr. Quinn, and Richard Quinn
5 and Associates. As you can see in one of these
6 emails, he boasts about his influence to a
7 fellow political consultant, that being John
8 Weaver. And I'll just read this out loud to
9 you. As you can see, that's from an actual
10 email that we fished out. It says; "A few
11 months ago, our old buddy John" -- meaning
12 Courson, Senator Courson -- "became president
13 pro tempore of the South Carolina Senate. When
14 our other old buddy, Glenn McConnell became
15 Lieutenant Governor. We just knocked off a
16 long time GOP enemy in the South Carolina
17 Senate, Mike Rose, and replaced with a new
18 member of our extended family. Plus Rick's
19 star in the State House is rising again. Also
20 Trey" -- meaning Trey Walker who you will hear
21 from -- "is now the head governmental affairs
22 guy lobbyist for USC. Harry McMaster is now a
23 senior advisor -- he's now the governor. He's
24 senior advisor USC President and Alan Wilson,
25 our AG, is very likely to run for the minute



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1 A: You will.

2 Q: And of course, Lieutenant Governor Glenn
3 McConnell was a client of Richard Quinn and
4 Associates as well?

5 A: Yes.

6 Q: Okay. Go ahead. Thank you sir.

7 A: So, and just on that same topic, just to
8 illustrate, he attempted to secure Mr. Waters
9 and Burroughs and Chapin as a client by
10 showcasing what the attorney general referred
11 to. So secondly, we may as well go ahead and
12 be honest, we also wanted to showcase what the
13 attorney general referred to with that
14 unfortunate metaphor, our tentacles. Bragging
15 about it.

16 Q: And the tour was on January 29, 2013?

17 A: Correct.

18 Q: The letter would've been the next day on
19 January 30, 2013?

20 A: Yes.

21 Q: Okay. Thank you.

22 A: Okay. So we've talked about this before, just
23 to remind you some of the public officials who
24 were on the team that were directly paid by
25 RQ&A; Representative Quinn, Representative



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1 Merrill, Senator Courson -- they've all been
2 suspended from office. You heard from former
3 Representative Thad Viers, former
4 Representative Tracy Edge, former
5 Representative Jim Harrison, and Kenny Bingham.
6 I will bring these two gentlemen again, and we
7 have this gentleman scheduled to come to the
8 Grand Jury. So -- and that's important because
9 -- I bring those up because -- and keep in mind
10 you've heard from them before. I'm going to
11 remind you what they said. So just remember,
12 a public official must file a statement of
13 economic interest and report the names of
14 lobbyists who pay business with which the filer
15 is associated. So there we see the specific
16 law, 8-13-1110, persons required to file a
17 statement of economic interest. No public
18 official regardless of compensation may take
19 the oath of office or enter upon his official
20 responsibilities unless he has filed a
21 statement of economic interest in accordance
22 with the provisions of this chapter with the
23 appropriate supervisory office. And again,
24 keep in mind, 8-13-1130, report on names of
25 purchases by lobbyists. And we'll -- the laws



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1 going to define everything here. Okay. So a
2 person required to file the statement shall
3 further report the name of any person he knows
4 to be lobbyist principal and knows that the
5 lobbyist or lobbyist principal has in the
6 previous calendar purchased from the filer a
7 member of the filer's immediate family, an
8 individual with whom with the filer is
9 associated, or a business in which the filer is
10 associated. And that's highlighted because
11 that -- we're going to define that too. Goods
12 or services in the amount in excess of \$200.
13 So, definitions again, business in which he is
14 associated means a business of which the person
15 or a member of his immediate family, is a
16 director, office, owner, employee, a
17 compensated agent, a holder of stock worth
18 \$100,000 or more of fair market value, and
19 which constitutes five percent or more of the
20 total outstanding stock of any class. And so
21 one more time, we're going to talk about
22 lobbyists. Lobbyist means any person who is
23 employed, appointed, retained with or with or
24 without compensation by another person to
25 influence by direct communication with public

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ROA 000127

1 officials or public employees. And so that
2 means the action or vote of any member of the
3 general assembly, the governor, the lieutenant
4 governor, or any other statewide constitutional
5 officer concerning any legislation. The vote
6 of any public official or any state agency,
7 board, commission, concerning any covered
8 agency action or the actions of the governor or
9 any member of his executive staff concerning
10 any covered gubernatorial actions. The
11 lobbyist principal, which is a term you've
12 heard us mention before, means the person on
13 behalf -- on whose behalf and for whose benefit
14 the lobbyist engages in lobbying. And that is
15 im ---

16 Q: Can you go back one second for me?

17 A: Sure.

18 Q: Just to double check. All right.

19 A: Uh-huh (positive response).

20 Q: Because these are two separate things,
21 obviously.

22 A: Yes.

23 Q: Under 8-13-100, ---

24 A: Uh-huh (positive response).

25 Q: --- all right, an employee must report income



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1 that its employer gets from a lobbyist
2 principal.

3 A: Yes.

4 Q: If he's a legislator.

5 A: If he's a legislator.

6 Q: Tracey Edge has come before the Grand Jury and
7 -- well, you read his testimony?

8 A: I'm going to read his testimony.

9 Q: Oh, no. But you have in the past?

10 A: I have read it in the past.

11 Q: He's admitted that he was an employee of
12 Richard Quinn and Associates?

13 A: He has admitted he was employed at Richard
14 Quinn and Associates.

15 Q: And you have even more information in the last
16 several months concerning Tracey Edge than we
17 had back then?

18 A: We do. We do.

19 Q: And you'll get into that?

20 A: Yes.

21 Q: Jim Harrison has admitted when he was chairman
22 of the judiciary that he was an employee of
23 Richard Quinn and Associates?

24 A: Yes, sir.

25 Q: You have received more information concerning



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1 that employment?

2 A: Yes, sir.

3 Q: The fact he received a lot more money than we
4 ever thought he received. Correct?

5 A: Yes, sir.

6 Q: Okay. Did either one of them, according to
7 research so far, ever file with his statement
8 economic interest the amount of lobbyist
9 principal money that their employer, Richard
10 Quinn and Associates, was making during those
11 years?

12 A: Not according to the research we've done or any
13 of the documents we've looked at.

14 Q: Okay. And I'll let you go ahead.

15 A: Okay. So, we were talking about Mr. Edge, who
16 if you recall, you did hear testimony from Mr.
17 Edge the last time. Recall he was in the South
18 Carolina House of Representatives District 104
19 from 1997-2014. He was on the Ways and Means
20 committee, he was a former legislature of the
21 year. From what we've looked at, he's received
22 approximately \$257,000 from Richard Quinn and
23 Associates. He was a \$3200 dollars a month
24 from September 14, of '06 to August 2014. He
25 didn't receive any payments from Richard Quinn



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ROA 000130

EXHIBIT E

October 18, 2017

Testimony of Lt. Jeremy Smith

BEFORE THE SOUTH CAROLINA STATE GRAND JURY #28

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

INVESTIGATION NUMBER:)

SGJ2016-257)

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ORIGINAL

TESTIMONY OF
LIEUTENANT JEREMY C. SMITH

Wednesday, October 18, 2017
10:59 a.m. - 11:43 a.m.

The testimony of LIEUTENANT JEREMY C. SMITH was taken before the State Grand Jury #28 at The Rembert C. Dennis Building, Columbia, South Carolina, on the 18th day of October, 2017, before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 000132

1 Wednesday, October 18, 2017 @ 10:59 a.m.

2 QUORUM OF GRAND JURORS

3 AGENT SMITH - EXAMINATION BY MR. ALLEN:

4 Q: Good morning, Mr. Smith.

5 A: Good morning.

6 Q: You just indicated that you are assigned to
7 this investigation. Pursuant to this
8 investigation, Representative Jim Merrill has
9 been indicted by the Richland County Grand
10 Jury, is that correct?

11 A: Yes, sir.

12 Q: And Senator John Courson was indicted by the
13 State Grand Jury for the use of campaign funds
14 for personnel expenses, statutory misconduct in
15 office, and common law misconduct, is that
16 correct?

17 A: That's correct.

18 Q: And finally, Representative Rick Quinn was
19 indicted by the State Grand Jury for statutory
20 misconduct in office and common law misconduct
21 in office, is that correct?

22 A: That's correct.

23 Q: Now Lieutenant Smith, the State has presented
24 indictments to the Grand Jury this morning
25 which include indictments for criminal



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ROA 000133

1 conspiracy against Richard Quinn, Sr., Tracy
2 Edge, Jim Harrison, John Courson, and Rick
3 Quinn. Does the SLED have evidence that each
4 of these individuals conspired with another
5 that violate provisions of the Ethics
6 Government Accountability and Campaign Reform
7 Act of 1991?

8 A: Yes, sir. The evidence demonstrates that each
9 of these individuals conspired with another to
10 violate statutes in the Ethics Accountability
11 and Campaign Reform Act of 1991. This is
12 included, but not limited to, Section 2-1715
13 regarding persons prohibited from serving as a
14 lobbyist. Section 8-13-700(A), which prohibits
15 a public official from using his office to
16 obtain an economic interest. Section 8-13-
17 700(B), which prohibits a public official from
18 influencing a governmental decision in which he
19 or his employer has a economic interest.
20 Section 8-13-705(A), which prohibits any person
21 from giving anything of value to influence a
22 public official. Section 8-13-705(B), which
23 prohibits a public official from excepting or
24 seeking anything of value to be influenced in
25 his official duties. Section 8-13-1130, which



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1 requires a public official to report income
2 paid to the official or his employer by a
3 lobbyist principal. Then Section 8-13-1348,
4 which prohibits improper use of a campaign --
5 of a candidates campaign fund.

6 Q: And you'll be presenting some evidence on those
7 in a moment. But before we get into that, I
8 just want to be clear on the one point that,
9 does you evidence demonstrate that Mr. Edge,
10 Mr. Harrison, Mr. Courson, and Mr. Rick Quinn,
11 each individually conspired with Richard Quinn,
12 Sr.?

13 A: Yes.

14 Q: Thank you. Now before we get into the --
15 before we get into reviewing some of the
16 evidence, can you please remind the jurors some
17 of the lobbyist principals who do business with
18 the Richard Quinn and Associates are?

19 A: So some of the lobbyist principals are Palmetto
20 Health, the South Carolina Ports Authority, the
21 Trial Lawyers Association, SCANA, University of
22 South Carolina, AT&T, Blue Cross Blue Shield,
23 Citizens for Responsible Government, Greater
24 Columbia Chamber of Commerce, Walmart, School
25 Board Association, South Carolina Research



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1 Authority, Farm Bureau, Coastal Carolina
2 University, Grand Strand Business Association,
3 and the CFSA members, which is a pay day
4 lending organization.

5 Q: Now the Grand Jurors have already seen a great
6 deal of testimony in the past months and
7 evidence pertaining to some of the allegations,
8 but today I would like you to review some of
9 that evidence as pertains to each individual
10 that we've presented for them here today. So
11 beginning with Richard Quinn Sr., the State
12 earlier presented indictments for criminal
13 conspiracy and failure to register as a
14 lobbyist. If you will now review some of the
15 evidence SLED has to support the indictments.

16 A: So Richard M. Quinn Sr. -- remember at one
17 point we talked about seizing documents for the
18 search warrants. So the documents that we've
19 reviewed demonstrate that Richard Quinn and
20 Associates advertises his political connections
21 and influence to attract and maintain
22 consulting contracts with corporate clients.
23 Mr. Quinn would be the architect of that
24 business model. Numerous documents reference
25 to the "Quinnndom" or the "Team" of public



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1 Associates.

2 Q: Or its clients.

3 A: Or its clients that they had an economic
4 interest in. Mr. Harrison.

5 Q: Oh, thank you. Thank you. As with Tracy Edge,
6 let me ask you this question before we get to
7 Mr. Harrison. While Mr. Harrison was a member
8 of the House of Representatives, was he a
9 public officer whose authority is limited to a
10 single election or judicial district?

11 A: Yes.

12 Q: Now the State has presented indictments against
13 Mr. Harrison to the Grand Jury for criminal
14 conspiracy, statutory misconduct in office, and
15 common law misconduct. Please review some of
16 the evidence SLED has to support these
17 indictments.

18 A: Yes, sir. And again, you've heard from Mr.
19 Harrison prior to today. He was in the House
20 of Representatives from District 75 from 1989-
21 2012. He's currently the Code Commissioner and
22 Director for the South Carolina Legislative
23 Council. He's formerly employed as an attorney
24 and he's a long time employee of Richard Quinn
25 and Associates as well. He was paid over



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1 \$800,000 as a matter of fact. He began working
2 for them in the year 2000. Payments from
3 Richard Quinn and Associates stopped after he
4 left the House of Representatives in November
5 of 2012. The final payment was in fact
6 November 6, 2011. He did not report any
7 payments from lobbyist principals who paid RQ&A
8 on his statements of economic interest. He did
9 not recuse himself from voting on any
10 legislation that benefitted RQ&A corporate
11 clients. He testified that 40 percent of
12 legislation went through his -- one of his
13 committees, which would be the Judicial
14 Committee. Examples of things that he voted on
15 again are the Base Load Review Act, the SCANA
16 nuclear project, he voted in favor on April 18,
17 2007. The School Choice Tax Credits, H.480 --
18 4894, again that's a key issue for South
19 Carolina Citizens for Responsible Government
20 and you'll notice again a theme here as
21 Harrison was a primary sponsor on this bill on
22 February 23, 2012, as were Tracy Edge and Rick
23 Quinn. So again we're going to share with you
24 just a few emails that we have. And I'm just
25 kind of -- we talked about Tracy Edge and



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1 about, you know, them cutting his pay. This is
2 a -- again I guess we could refer to it as an
3 internal document from Raegan Quinn to her
4 father. She goes; I didn't want to point it
5 out, but it makes my big fat stomach hurt to
6 think about 1.25 million dollars gone. Your
7 entire fancy home would be more than paid for
8 if we only paid them -- meaning Jim Merrill,
9 Tracy Edge, and Jim Harrison -- if we only paid
10 fees as services were rendered. Services
11 rendered were worth \$200,000 at most. Meaning
12 one million dollars gone. Promise me we won't
13 hire Rick's friends in the legislature again if
14 he gets elected. We have to engage them, we
15 pay only after services are rendered, not just
16 as on going monthly retainer. And again, they
17 were talking that previously -- in that Jim
18 makes eight a month and will be cut to four,
19 still for doing nothing. I think we should be
20 -- I think he should be cut to two and Merrill
21 to two. Merrill will at least help with the
22 ports, is more likely to complain, so let's
23 bump him up a bit. I like Harrison better, but
24 his business -- and this will really incentives
25 them. So again, you know, these are -- go



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1 ahead.

2 Q: And if I may, maybe you can refresh my memory.
3 When Mr. Harrison testified before the Grand
4 Jury long ago, did he not testify that he
5 participated in a lot of campaign work despite
6 not being able to remember exactly which ones
7 beyond the McCain campaign?

8 A: That's exactly what he testified ---

9 Q: Yeah.

10 A: --- involving campaign work.

11 Q: And this internal document seems to indicate
12 that he in fact did nothing.

13 A: He did nothing. He testified before the Grand
14 Jury; Okay, you're aware -- the question was;
15 Okay. You were aware at the time that Richard
16 Quinn and Associates of course represented --
17 or were -- had a lot of clients that were
18 lobbyist principals? And he says; I was aware
19 that Mr. Quinn did some work for some lobbyist
20 principals. Question; SCANA? He said; I was
21 aware that he did some work for SCANA. And
22 again, documents that we found through our
23 document search, if you look, this indicate
24 that he was assigned as a consultant for
25 corporate clients of Richard Quinn and



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1 Associates. His name is listed -- this
2 document was found on a hard drive. It was
3 created -- the metadata says it was created on
4 1/24/2012 by a Quinn Reb, most likely Rebecca
5 Quinn Mustian. So we have Mr. Harrison here
6 for Bell South and Burroughs and Chapin, a
7 retainer of \$5,000-\$7,500. The consultant pay
8 was \$2,000 for that one and \$220 for that one.
9 And then he has also SCANA, he's getting \$2,000
10 for. And Unisys he's getting \$2,350 for. So
11 according to this document, they have him
12 linked up with a few corporate clients here.
13 Again, this is another document that would
14 indicated, based according to the email, this
15 Charles McFadden again, who you've heard the
16 name. It's an email exchange between Richard
17 Quinn, Sr. and SCANA executive Charles
18 McFadden; Jim Harrison will be out of town
19 Friday, but asked me to brief him on our
20 discussions. So again, linking the two. Mr.
21 Harrison's pay was also tied to corporate
22 clients. And we talked about that letter they
23 sent cutting their pay, it's basically the same
24 letter, and again it says: Several of our
25 biggest corporate retainers have cut back on



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1 monthly fees more than once. I value your
2 friendship and your skills as our operational
3 specialist. Over time RQ&A has paid you
4 \$851,000 for your counsel. Looking ahead,
5 please think about business development. If we
6 can add just a couple of new clients I could
7 justify restoring the consulting fee to past
8 levels or even higher. We just have to put our
9 heads together and think of ways we can add new
10 business for the firm.

11 Q: Okay. So moving on to John Courson, I'll ask
12 the same question I did for Mr. Harrison and
13 Mr. Edge. While Mr. Courson was a member of
14 the South Carolina Senate, was he a public
15 officer ---

16 A: Yes.

17 Q: --- whose authority is limited to a single
18 election or judicial district?

19 A: Yes, he was.

20 Q: Okay. Thank you. So the State has just
21 presented indictments against Mr. Courson for
22 criminal conspiracy and statutory misconduct in
23 office. Please review some of the evidence
24 SLED has to support these indictments.

25 A: Okay. Mr. Courson is a senator -- was a



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STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	CASE NOS.:
	)	2017-GS-47-35; 2017-GS-36 and
vs.	)	2017-GS-47-37
	)	
JAMES H. HARRISON,	)	DEFENDANT HARRISON'S REPLY
	)	TO THE STATE'S MEMORANDUM
DEFENDANT.	)	REGARDING THE STATE GRAND JURY'S
	)	SUBJECT MATTER JURISDICTION
	)	

Defendant James H. Harrison (also referred to herein as "Harrison" or "Defendant Harrison"), by and through the undersigned counsel, respectfully submits this Reply to the State's Memorandum Regarding the State Grand Jury's Subject Matter Jurisdiction. For the reasons set forth herein, as well as previous filings and arguments before this Court, the Defendant respectfully requests that this Court rule that the State Grand Jury lacked probable cause to find Ethics Act violations and, therefore, lacked subject matter jurisdiction in this case.

ARGUMENT

The sum total of the factual evidence against Defendant Harrison, supporting indictments by the State Grand Jury for statutory misconduct, common law misconduct and conspiracy, is as follows:¹

- 1) Harrison was paid by Richard Quinn & Associates ("RQA"), while he was a member of the House of Representatives from 1989 to 2012 and Chairman of the House Judiciary Committee, and that Harrison received no payments from RQA after he retired from the House of Representatives.

¹ All of the factual references contained herein are taken directly from the Transcripts of Testimony before the State Grand Jury, attached to the State's Memorandum Regarding the State Grand Jury's Subject Matter Jurisdiction ("State's Memo") as Exhibits A through H.

- 2) Jim Harrison and Rep. Rick Quinn were desk mates in the House and RQA ran Harrison's campaigns.
- 3) Harrison was paid a "set salary" while working for RQA as a campaign consultant, before being paid as a "contract consultant" by RQA near the end of his employment with the company.
- 4) Harrison was aware during his employment with RQA that the business also provided some services to "lobbyist principals."
- 5) Harrison never filed a Statement of Economic Interests ("SEI") disclosing the amount of "lobbyist principal money" earned by his employer, RQA.
- 6) A conclusory allegation by a State Law Enforcement Agent ("SLED") Harrison, Richard Quinn, Sr., Tracy Edge, John Courson, and Rick Quinn "conspired with another" to violate statutes in the Ethics Accountability and Campaign Reform Act of 1991 (the "Ethics Act").
- 7) Harrison was a "member of the House of Representatives" and, according to the SLED agent, "a public officer whose authority is limited to a single election or judicial district."
- 8) Harrison received a final payment from RQA in November, 2011; he did not report "any payments" from lobbyist principals who were clients of RQA; he did not recuse himself from voting on any legislation "that benefitted RQA corporate clients; forty percent (40%) of legislation went through the Judiciary Committee.
- 9) Legislation that Harrison voted on are the Base Load Review Act and H.4894 (a school choice tax credit bill).
- 10) Richard Quinn's daughter Raegan complained to her father in an email that Harrison should have been paid for services rendered rather than flat salaries.
- 11) Harrison could not remember campaign work he performed beyond the John McCain campaign, when he testified before the grand jury.
- 12) Internal RQA documents listed Harrison as a consultant for some lobbyist principal clients and allocated "retainer" payments to Harrison.
- 13) An email between Richard Quinn, Sr. and Charles McFadden, a SCANA executive, stating that "Jim Harrison will be out of town Friday, but asked me to brief him on our discussions."

The State's presentation of this case to the grand jury, as represented by its response to Defendant's Motion to Dismiss the Indictments, is disjointed and chaotic, at

best. The State failed to describe to the grand jury and fails to describe to this Court how specific facts amount to violations of specific Ethics Act statutes. Nonetheless, the Defendant raises just a few observations, supplementing his Motion to Dismiss, concerning the inadequacies of the State's case for subject matter jurisdiction based upon Ethics Act violations. Defendant Harrison's observations, herein, pertain to the obtuse regurgitation of all of the Ethics Act statutes read to the grand jury by the State's law enforcement witness. The statutes cited to the grand jury are 8-13-700; 705(A) and (B); 8-13-1110; 8-13-1120; 8-13-1130; 8-13-1308; 8-13-1331; 8-13-1348(A); and 8-13-1520.²

S.C. Code Ann. § 8-13-700 prohibits the use of his official office to "obtain an economic interest" for himself or a business with which he is associated, nor may he use his office to influence a governmental decision in which he or a business with which he is associated has an economic interest. S.C. Code Ann. § 8-13-705(A) and (B) generally prohibit the giving or taking of anything of value with the intent to influence the official actions of a public official. There is absolutely no evidence listed hereinabove, or otherwise presented to the State Grand Jury, suggesting that Harrison used his office,

² See, State's Memo, Exhibits F - H (Presentations of Indictments).

at any time, to "obtain an economic interest" for himself or RQA.³ There is no evidence that Harrison used his position as a member of the House of Representatives to influence a legislative decision in which he or RQA had a financial interest. Last, there was no evidence presented to the grand jury which would establish even probable cause to believe that anyone offered, or that Harrison accepted, anything of value with the intent to influence his legislative actions.

S.C. Code Ann. § 8-13-1110 and 1120 describe those persons required to file a Statement of Economic Interests and the required contents to be disclosed in the SEI. There was no evidence presented to the grand jury indicating that Harrison failed to file the required SEI.⁴ Section 8-13-1130 requires that a report should be filed, supplementing the SEI, with the appropriate supervisory office indicating the name of any lobbyist or lobbyist principal who has purchased goods or services exceeding two hundred dollars (\$200.00) from the filer or a business with which he is associated. While a law enforcement agent did testify before the grand jury that he found no report on file for Harrison pursuant to § 8-13-1130, the State failed to address whether any

³ The term "economic interest" is defined in § 8-13-100(11)(a) and "means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more. Under § 8-13-100(11)(b) the term "economic interest" "does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class." Subsection (b) has sometimes been referred to as a Safe Harbor provision or large class exemption and economic benefit to the specific public official exemption.

⁴ Based upon the State's Memo, as well as the indictments, discovery provided, and arguments before this Court, Defendant Harrison assumes that the State's repeated references to a requirement for Harrison to disclose income earned at RQA stems from their misapplication of the 2015-16 amended version of § 8-13-1120, rather than the version of the statute which existed during Harrison's tenure in the South Carolina House of Representatives.

omitted filing by Harrison was intentional or merely a technical violation. S.C. Code

Ann. § 8-13-1170 provides as follows:

“The appropriate supervisory office of may, in its discretion, determine that errors or omissions on statements of economic interest are inadvertent and unintentional and not an effort to violate a requirement of this chapter and may be handled as technical violations not subject to the provisions of this chapter pertaining to ethical violations. Technical violations must remain confidential unless requested to be made public by the public official, public member, or public employee filing the statement. In lieu of all other penalties, the appropriate supervisory office may assess a technical violations penalty not exceeding fifty dollars.”

In the absence of any evidence establishing probable cause to believe that an omitted 8-13-1130 addendum was an intentional omission on the part of Harrison, then there was no violation of the Ethics Act.

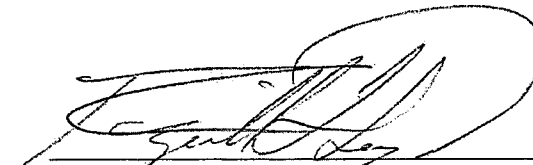
Sections 8-13-1308 and 1331 govern the filing of certified campaign reports and the solicitation of contributions by corporations from shareholders and others. S.C. Code Ann. § 8-13-1348(A) states that no candidate or public official may use campaign funds to defray personal expenses which are unrelated to the campaign or public office. Although the State made a rote presentation of a litany of statutes to the grand jury, presumably they concede that there was no evidence or allegation that Harrison used any campaign funds for personal expenses or otherwise violated 8-13-1308 and 1331. Lastly, the State mentioned § 8-13-1520, the penalty provision for the Ethics Act, to the grand jury. However the State never addressed, before the grand jury, § 8-13-1510, which is a specifically provided for exception to the criminal penalties contained in § 8-13-1520.

CONCLUSION

Thus, as stated in Defendant's Motion to Dismiss the Indictments, the arguments made during a hearing before this Court, and in this Reply, the State failed to establish probable cause to believe that any statute within the Ethics Act was violated by Harrison.⁵ The failure to establish a violation under the Ethics Act necessarily requires a finding that the State Grand Jury lacked subject matter jurisdiction over the indictments for statutory misconduct, common law misconduct, and conspiracy.

Respectfully submitted,

BY:


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Camden, South Carolina

This 31st day of August, 2018.

⁵ Any suggestion or insinuation by the State that Harrison's mere employment with RQA created an impermissible "economic interest" for him or RQA runs counter to the language and intent of the Ethics Act statutes and is a baseless interpretation that is inconsistent with the House Ethics Committee opinion written to Harrison, and attached to the Motion to Dismiss the Indictments, which unambiguously ruled that it was legal for Harrison to work for RQA, even if the business had lobbyist principal clients.

FILED

SEP 10 2018

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

vs.

JAMES H. HARRISON,

DEFENDANT.

Case No.: 2018-GS-47-49

**DEFENDANT HARRISON'S MOTION
REGARDING THE PERJURY
INDICTMENT FOR PROSECUTORIAL
VINDICTIVENESS**

Defendant James H. Harrison (also referred to herein as "Harrison" or "Defendant Harrison"), by and through the undersigned counsel, respectfully moves this Court for an Order dismissing the Indictment for Perjury on the grounds of prosecutorial vindictiveness, or in the alternative, to allow the Defendant to introduce evidence at trial relating to the State's vindictive actions.

BACKGROUND

On or about October 18, 2017, the State Grand Jury returned three indictments against Defendant Harrison. Those indictments included charges for Misconduct in Office (Case No. 2017-GS-47-35); Common Law Misconduct in Office (Case No. 2017-GS-47-36); and Criminal Conspiracy (Case No. 2017-GS-47-37). On or about August 23, 2018, the State Grand Jury returned an indictment against Harrison for Perjury, in violation of S.C. Code Ann. § 16-9-10. The perjury indictment is Case No. 2018-GS-47-49 and contains two counts of alleged perjury by Harrison arising from two statements made before the Grand Jury during testimony provided on March 15, 2017. This case is scheduled for trial by jury beginning on October 22, 2018.

This State Grand Jury matter has been under investigation and prosecution for approximately four (4) years. The defendant, Mr. Harrison, voluntarily appeared before the grand jury on March 15, 2017 and answered prosecutors' questions. On September 22, 2017, Harrison voluntarily met with agents of the State Law Enforcement Division ("SLED") and the Federal Bureau of Investigation ("FBI") for an unrestricted interview. Prior to Harrison's original three (3) indictments on or about October 18, 2017, the State possessed all information from Harrison, other witnesses, and documents which form the specious basis of the perjury counts in Indictment 2018-GS-47-49.

AUTHORITY

"The doctrine of prosecutorial vindictiveness developed as a corollary to the vindictiveness doctrine that precludes, as a matter of due process, imposition by a judge of a more severe sentence upon retrial after a defendant has successfully exercised a constitutional right or pursued a statutory right of appeal or collateral attack. *Maddox v. Elzie*, 238 F.3d 437, 446 (D.C.Cir. 2001). Comparable to that principle, vindictive prosecution "refers to a situation in which the government acts against a defendant in response to the defendant's prior exercise of constitutional or statutory rights." *United States v. Meyer*, 810 F.2d 1242, 1245 (D.C.Cir. 1987), *reh'g granted and opinion vacated*, 816 F.2d 695 (D.C.Cir. 1987), *reh'g denied and opinion reinstated*, 824 F.2d 1240 (D.C.Cir. 1987).

A party might raise and prevail on a claim of prosecutorial vindictiveness in one of two circumstances: (1) by demonstrating actual vindictiveness by the government or (2) by establishing a presumption of vindictiveness underlying the prosecution. Actual vindictiveness requires the movant to show proof "through objective evidence that a

prosecutor acted in order to punish the defendant for standing on his legal rights." *Id.*; see also, *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (1982). In order to establish a presumption of vindictiveness, a court "must find that a reasonable likelihood of vindictiveness exists - that is, that the [subsequent] indictment was 'more likely than not attributable to the vindictiveness on the part of' the [g]overnment." *United States v. Gary*, 291 F.3d 30, 34 (D.C.Cir. 2002) (quoting, *Alabama v. Smith*, 490 U.S. 794, 801 (1989)).

Without doubt, a prosecutor may seek a superseding or additional indictment against a defendant at any time prior to a trial on the merits. *United States v. Cole*, 755 F.2d 748, 757 (11th Cir. 1985); *United States v. Del Vecchio*, 707 F.2d 1214, 1216 (11th Cir. 1983). However, a superseding or new indictment must not have the purpose of harassing the defendant. *United States v. Edwards*, 777 F.2d 644, 649 (11th Cir. 1985). Thus, an additional or superseding indictment adding new charges that increase the potential penalty faced by the defendant would violate due process if the prosecutor obtained the new charge out of vindictiveness. *United States v. Spence*, 719 F.2d 358, 361 (11th Cir. 1983). The term "vindictiveness" for these purposes means that the prosecutor has a desire to punish a person for exercising his or her rights. *United States v. Goodwin*, 457 U.S. at 372. While a prosecutor's decision to seek heightened charges after a successful post-trial appeal is enough to invoke a presumption of vindictiveness, "proof of a prosecutorial decision to increase charges after a defendant has exercised a legal right does not alone give rise to a presumption in the pretrial context." *United States v. Miller*, 948 F.2d 631, 633 (10th Cir. 1991); accord, *United States v. Gamez-Orduno*, 235 F.3d 453, 462 (9th Cir. 2000).

Even though the United States Supreme Court declined to apply a presumption of vindictiveness in the pretrial context, the Court, nonetheless, left open the possibility that a defendant can prove actual vindictiveness, without the help of any presumption, and thereby establish a due process violation. *Goodwin*, 457 U.S. at 384; *accord*, *United States v. Wilson*, 262 F.3d 305, 314 (4th Cir. 2001). In *Wilson*, the United States Court of Appeals for the Fourth Circuit stated as follows:

It is now well established that a prosecutor violates the Due Process Clause of the Fifth Amendment by exacting a price for a defendant's exercise of a clearly established right or by punishing the defendant for doing what the law plainly entitles him to do. *See, U.S. v. Goodwin*, 457 U.S. 368, 372 (1982); *North Carolina v. Pearce*, 395 U.S. 711, 724 (1969). Thus, if a prosecutor responds to a defendant's successful exercise of his right to appeal by bringing a more serious charge against him, he acts unconstitutionally. *See, Blackledge v. Perry*, 417 U.S. 21, 28-29 (1974). Such retaliatory conduct amounts to vindictive prosecution and is unconstitutional. Indeed, "[t]o punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, and for an agent of the [government] to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is 'patently unconstitutional.'" *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978) (citations omitted).

Wilson, *id.*

As was noted by the South Carolina Supreme Court in *State v. Dawkins*, 247 S.C. 386, 377 S.E.2d 298 (1989):

"[t]he [prosecutor] is the representative not of the ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Id. (quoting, *Berger v. United States*, 295 U.S. 78, 88 (1935)).

Like other jurisdictions, South Carolina recognizes that a defendant may move to dismiss charges where a prosecutor employs improper methods or vindictive motive toward indicting a defendant. Even if a presumption of prosecutorial vindictiveness is inappropriate, a defendant may show a due process violation by showing actual vindictiveness on the part of a solicitor. *See e.g., State v. Blakely*, 402 S.C. 650, 742 S.E.2d 29, 32-33 (Ct. App. 2013); *State v. Fletcher*, 322 S.C. 256, 471 S.E.2d 702, 705 (Ct. App. 1996). In *State v. Davis*, Case No. 2017-GS-40-00312, April 13, 2017, the Honorable Jean Toal issued an order finding a presumption of vindictiveness by the solicitor's office and discussed a number of factors in that case which evidenced a due process violation arising from a retaliatory indictment.¹ Based upon the facts of this case and relevant authority, this court should find that the Acting South Carolina Attorney General has engaged in actual vindictiveness by indicting Mr. Harrison on two feeble counts of perjury.

As stated above, as background for this motion, the Acting Attorney General obtained indictments against Mr. Harrison for two counts of perjury approximately ten (10) months after initially levying charges against Harrison. The perjury indictment is allegedly based upon statements presumably so material to this case that the indictment could not only wait on charges presented to the grand jury in October, 2017, but also come well after Mr. Harrison made those statements in March and September of 2017. Further evidencing the vindictiveness and bad faith of the perjury indictment, the State slunk back to the grand jury to present this perjury charge only after this court

¹ Judge Toal's Order is attached hereto as Exhibit A.

ordered the State to file a response demonstrating that there exists sufficient evidence to establish State Grand Jury subject matter jurisdiction in this case.

Additionally, upon information and belief, the defendant is confident that evidence will show that the Acting Attorney General has made disparaging comments about the Mr. Harrison to at least one witness. Upon further information and belief, Mr. Harrison believes that evidence will establish that the Acting Attorney General attempted and failed to get persons unconnected to this case to pressure or persuade Mr. Harrison to plead guilty in this case immediately before seeking this perjury indictment. The prosecutors in this case acted with actual malice and vindictiveness in obtaining the perjury indictment only after he exercised his right to challenge the subject matter jurisdiction of the State Grand Jury and after it became clear that, despite their efforts to convince third parties to persuade Mr. Harrison to "take a plea," Mr. Harrison insists on exercising his Sixth Amendment right to trial.

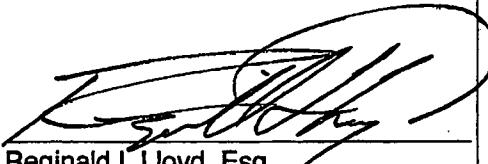
CONCLUSION

The perjury indictment against Mr. Harrison should be dismissed based upon the actual vindictiveness on the part of the prosecutor in this case. This indictment returned nearly on the virtual eve of trial is merely a vindictive tantrum meant to punish Harrison for exercising his constitutional rights in this case. In the alternative, if the Court does not dismiss the perjury indictment, the Court should order that the evidence of vindictiveness supporting this motion is admissible at trial. Evidence of vindictiveness on the part of the prosecutor is relevant to the issues of alleged falsity or incompleteness of statements, as well as materiality. This motion may be supported by

further memoranda, exhibits and arguments as necessary to support such motion at or following a hearing.

Respectfully submitted,

BY:


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Camden, South Carolina

10th day of September 2018.

FILED

STATE GRAND JURY OF SOUTH CAROLINA SEP 18 2018

STATE OF SOUTH CAROLINA	)	JAMES R. PARKS
	)	CLERK STATE GRAND JURY
vs.	)	INDICTMENT NOS. 2017-GS-47-35, 36, 37
	)	2018-GS-47-49
JAMES H. HARRISON,	)	
	)	STATE'S RESPONSE IN OPPOSITION
	)	TO DEFENDANT'S MOTION TO DISMISS
DEFENDANT.	)	FOR PROSECUTORIAL VINDICTIVENESS
	)	

The State of South Carolina, by and through its lawfully designated prosecutor, David M. Pascoe, Jr., respectfully submits the following response to Defendant James H. Harrison's Motion Regarding the Perjury Indictment for Prosecutorial Vindictiveness, filed September 10, 2018. As discussed more fully below, Defendant's motion is both legally and factually without merit. The Court should deny the instant motion because the perjury indictment was presented to the State Grand Jury on the basis of evidence discovered after Defendant's initial indictments and is not in any way related to Defendant's right to submit motions to the Court. In addition, the law clearly permits the State to add additional charges prior to trial when the prosecutor determines that the initial charges do not reflect the extent to which a defendant is legitimately subject to prosecution.

Legal Standard

While punishment is the purpose of all criminal proceedings, a distinction must be made between punishment for criminal conduct versus punishment for noncriminal, protected activity. U.S. v. Goodwin, 457 U.S. 368, 372, 102 S. Ct. 2485, 2488 (1982). Punishment of an offender for criminal wrongdoing is a proper motivation for a prosecutor to seek indictment.

To prevail on a claim for prosecutorial vindictiveness in the pre-trial context, a criminal defendant must demonstrate actual vindictiveness on the part of a prosecutor. Id. at 384, 102 S.Ct. at 2494. A presumption of vindictiveness is not applicable in the pre-trial setting because,

“[i]n the course of preparing a case for trial, the prosecutor may uncover additional information that suggests a basis for further prosecution or he simply may come to realize that information possessed by the State has a broader significance.” Id. at 381, 102 S.Ct. at 2492. Thus, it is unrealistic to assume that a prosecutor’s decision to file additional charges is meant to deter and penalize pre-trial motions. Id. at 381, 102 S.Ct. at 2493.

To prove actual vindictiveness the burden is upon the defendant to provide evidence showing the prosecutor harbored a “vindictive animus” and that the indictment “was brought ‘solely to punish’” on the basis of that vindictive animus. State v. Odom, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting United States v. Bell, 523 Fed.Appx. 956, 959 (4th Cir.2013) (emphasis original)). “In other words, to prove a claim of actual vindictiveness, a defendant must show, through objective evidence, that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus.” Id.

Discussion

The underlying State Grand Jury investigation involving Defendant has proceeded for two years.¹ Defendant’s involvement in this investigation due to his employment with Richard Quinn & Associates (“RQ&A”) was not known until early 2017 following an extensive analysis of RQ&A’s bank records. Due to Defendant’s failure to publicly report the lobbyist principals who paid a retainer to his employer, the State did not have a complete picture of Defendant’s relationship with RQ&A prior to his testimony before the State Grand Jury. On March 15, 2017, Defendant was permitted to voluntarily appear before the State Grand Jury as a courtesy, in lieu of being subpoenaed to do so. Through his testimony, the grand jury learned that Defendant was

¹ Defendant’s assertion that it has been under investigation for four years is presumably a reference to the Bobby Harrell investigation that has nothing to do with Defendant’s case, and is simply a self-serving exaggeration.

employed by RQ&A for approximately 12 years and that Defendant knew RQ&A was retained by lobbyist principals. However, Defendant also represented to the grand jury that he was hired only to work on political campaigns and that his responsibilities throughout the 12 years of his employment were limited solely to campaign activities. Based on evidence that included Defendant's testimony, the grand jury issued the first three indictments against Defendant on October 18, 2017.

The assertion in Defendant's motion that, "the State possessed all information from Harrison, other witnesses, and documents which form the specious basis of the perjury counts" is patently false. Def. Mot. at 2. A simple review of the discovery and grand jury transcripts in this case illustrate this point. However, defense counsel filed this motion without even reviewing the transcript of testimony and evidence presented to the State Grand Jury for its consideration of the perjury indictment last month. The key evidence and testimony proving Defendant's perjury was not received by the State until after his initial indictments. This new, post-indictment evidence and testimony led the State to present the perjury indictment to the grand jury. The timing of the indictment was a result of the State's confidence in newly gathered evidence proving Defendant's testimony was not truthful. The decision to issue the indictment had absolutely nothing to do with Defendant's motion or the Court's request for a jurisdictional memorandum.

In October 2017, when Defendant was initially indicted, the State was continuing to work through issues relating to emails and documents recovered through search warrants. Solicitor Kevin Brackett and his taint review team had not completed their privilege review, and the State was not yet in possession of the documents seized from RQ&A. Following a status conference in November 2017, the prosecution team received a box of hardcopy documents seized from RQ&A and began to review the documents. Within this box, the State discovered a draft

employment memorandum describing Defendant's role as the Chief Operating Officer ("COO") of RQ&A and indicating that he was to act as the "Partner of Record" for various RQ&A corporate clients. Employment Memo, attached as **Exhibit A**. The box of hardcopy documents also contained a July 12, 1999 letter from the House Legislative Ethics Committee addressed to Defendant. 1999 Ethics Opinion, attached as **Exhibit B**. The letter from the Ethics Committee indicates that Defendant described his role as "Partner and Chief Operating Officer," however, the letter written by Defendant requesting the opinion was not found among the seized documents. None of these critical items were in the State's possession prior to Defendant's October indictments. Moreover, in April and May of 2018, a grand jury witness confirmed that Defendant was not hired by RQ&A because of his political prowess, but was employed in an operational or managerial role.²

An even more recent item of evidence that prompted the indictment at issue was received by the State within the past few months. The State received a 1999 letter written by Defendant to the House Ethics Committee, which was attached to Defendant's motion for a preliminary hearing. The State had no knowledge of this letter until July or August of this year. 1999 Ethics Letter, attached as **Exhibit C**. The letter itself provides key information that confirms Defendant was not hired for his campaign work, as he had testified.

As described above, the State's decision to present an indictment for perjury against Defendant was the result of newly discovered evidence and testimony that directly contradicted Defendant's statements to the grand jury. The mere fact that the State presented the indictment

² It is also noteworthy that, at this time, the State and the grand jury were focused on preparing for the Courson trial and on the grand jury report. Defendant's case did not become a focal point until after those issues were resolved in late June.

while Defendant's motion was pending does not demonstrate vindictiveness where that indictment is based on newly discovered evidence.

With respect to Defendant's claims of vindictiveness on the basis of "information and belief," two points are key. First, his unsupported allegations do not rebut the presumption that the charging decision was lawful, and therefore the State does not need to offer any justification for bringing additional charges. Odom, 412 S.C. at 264, 772 S.E.2d at 154 ("only in a rare case would a defendant be able to overcome the presumptive validity of the prosecutor's actions"); Goodwin, 457 U.S. at 382, 102 S.Ct. at 2493 (prosecution has broad discretion to determine societal interest in prosecution); Bordenkircher v. Hayes, 434 U.S. 357, 98 S.Ct. 663 (1978) (state may use charges to induce plea bargains). Second, and more importantly, the State is unaware of any witness that could establish vindictive animus on the part of the State.

Defendant's theory that the indictment was issued as a means of pressuring him to plead guilty is also misguided. The State has not offered Defendant a plea deal. The State has, however, offered to meet with defense counsel to review the State's evidence prior to trial, but defense counsel declined. While Defendant's acquaintances have reached out on their own volition in an attempt to persuade the undersigned to pursue a negotiated resolution and the State has interviewed witnesses for trial who purport to be Defendant's friends, the State has not engaged any third party in an attempt to negotiate with Defendant. At this time, the State is looking forward to trial and has no plans to offer a plea deal. The State believes defense counsel's claim is as false as his extrajudicial statements to convince the media that the State is seeking a plea deal, which is simply not the reality of the case.³

³ "This is a desperate attempt to get my client to plead guilty,' Reggie Lloyd, Harrison's attorney, said Wednesday." John Monk, Ex-S.C. Rep. Harrison charged with lying to state grand

Conclusion

The perjury indictment issued against Defendant was the result of evidence and testimony gathered *after* Defendant's October 2017 indictments. The notion that the State would charge a defendant with perjury as retaliation for being asked to draft a simple jurisdictional memorandum is absurd. Defendant's assertion that vindictiveness exists "upon information and belief" is not a legitimate basis for dismissal of the indictment. The State is unaware of any witness that would corroborate Defendant's baseless accusations. Even if it were true, this does not amount to prosecutorial vindictiveness. For the foregoing reasons, the State respectfully requests the Court deny the instant motion.

Respectfully submitted by,



David M. Pascoe
First Circuit Solicitor

September 18, 2018
Orangeburg, South Carolina.

jury, The State, September 5, 2018,
<https://www.thestate.com/news/local/crime/article217852450.html>.

EXHIBIT A

RQ&A Employment Memo

Memo

To: Jim Harrison
From: Richard Quinn
Date: 04/19/99
Re: Partnership Agreement and Memorandum of Understanding Involving Jim Harrison and Richard Quinn & Associates (RQ&A)

Understanding of Relationship Involving Jim Harrison and RQ&A

RQ&A desiring to partner with Jim Harrison offers the following business agreement that has components consisting of Financial terms and Benefits, Responsibility of Parties, Outline of Method of Conflict Resolutions and Terms of Termination of Relationship:

Financial Agreement and Benefits of Parties

The following information details the financial terms and benefits between Trey Walker and RQ&A. Definition of terminology follows details.

Jim Harrison's Financial and Benefits Package

- 1) In exchange for his work product, Jim Harrison will receive Twenty Five Percent (25%) of all client retainers and or client billable time for which he functions and performs as the partner of record. The base client retainers detailed in point two of this section are exceptions to this percentage. All monies earned from base client retainers are detailed in point two of this section. For future clients, 25% retainer is considered to be the default percentage. This default percentage may be increased or lowered by mutual agreement of all parties involved.
- 2) In exchange for his work product, Jim Harrison will receive the following monies for acting as the partner of record for the following base clients:
- | | |
|-----------------------------|--------|
| a) SCANA | \$2000 |
| b) Bell South | \$2000 |
| c) Palmetto Health Alliance | \$2000 |
| d) Unisys | \$2000 |
- 3) While executing his duties and responsibilities for RQ&A, Jim Harrison is allowed to incur no more than Five hundred dollars per month in personal expense not reimbursable by

retainer clients. These personal expenses must be related to a client or potential client and must be documented. This monthly expense limit may only be increased with the express approval of Richard Quinn. Increases are temporary and only apply to the month that approval is received.

Jim Harrison's Responsibilities to Richard Quinn and Associates

- 1) In exchange for remuneration, Jim Harrison will function as the Partner of Record for clients mutually agreed upon by all parties. Responsibilities of the Partner of Record include but are not limited to: management of client projects, ensuring that all deadlines and schedules related to the client are punctual and timely; writing and designing first drafts for creative work and action plans that are then edited by Richard Quinn Sr.
- 2) In exchange for remuneration, Jim Harrison will function as the Chief Operations Officer (COO) of Richard Quinn and Associates. The COO is responsible for plan development and plan execution of office organization systems, book keeping systems, client services systems and business development.
- 3) In exchange for remuneration, Jim Harrison will participate in business planning for RQ&A on at least a quarterly basis. Jim Harrison will also be in charge the implementation of such plans.
- 4) As a partner of record, Jim Harrison agrees that all business relationships, information gained concerning clients of RQ&A, and information concerning RQ&A shall be held in strict confidence during this business relationship and at any time after the termination of this business relationship.

Terms of Termination of Relationship

- 1) Termination of this business relationship may be given by either party by giving written notice Thirty (30) days in advance of termination.
- 2) Jim Harrison agrees not to compete for RQ&A clients or offer services to any clients of RQ&A for a period of one year following the date of termination unless this clause is waived by Richard Quinn.

Richard Quinn
President of Richard Quinn and Associates

Date: _____

Jim Harrison
Associate Partner to Richard Quinn and Associates

Date: _____

RQA INCOME SHEET

Client	Jan	Feb	Mar	April	May
Amick Farms	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
Bell South	\$ -	\$ -	\$ -	\$ 5,000.00	\$ 5,000.00
BIPEC	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67
McCain for President	\$ -	\$ 26,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
Palmetto Health Alliance	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
SCANA	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00
S.C. Chamber	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
S.C. Republican Caucus	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Thurmond Monument Commission	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00
Unisys				\$ 8,500.00	\$ 8,500.00
	\$ 30,416.67	\$ 56,416.67	\$ 50,416.67	\$ 63,916.67	\$ 63,916.67

June	July	Aug	Sept	Oct	Nov	Dec
\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
\$ 4,166.67	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67	\$ 4,166.67
\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
\$ 9,750.00	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00	\$ 9,750.00
\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00
\$ 8,500.00	\$ 8,500.00	\$ 8,500.00	\$ 5,500.00	\$ 5,500.00	\$ 5,500.00	\$ 5,500.00
\$ 63,916.67	\$ 63,916.67	\$ 63,916.67	\$ 60,916.67	\$ 60,916.67	\$ 60,916.67	\$ 60,916.67

ROA 000166

Total

\$ 48,000.00
\$ 45,000.00
\$ 50,000.04
\$ 226,000.00
\$ 48,000.00
\$ 117,000.00
\$ 36,000.00
\$ 24,000.00
\$ 42,000.00
\$ 64,500.00
\$ 700,500.04

EXHIBIT B

July 12, 1999 House Ethics Opinion

J. Roland Smith
Vice-Chairman

Becky Meacham
Chairman
Ruth D. Muldrow
Executive Secretary

Michael E. Easterday
Secretary
Lynn Seithel
Treasurer

House Legislative Ethics Committee

William E. Sandifer



John L. Scott, Jr.

House of Representatives
P. O. BOX 11867 TELEPHONE 734-3114
ROOM 519 BLATT HOUSE OFFICE BUILDING
Columbia, SC 29211

July 12, 1999

The Honorable James H. Harrison
P.O. Box 11867
Columbia, South Carolina 29211

RE: Formal Opinion

Dear Mr. Harrison:

This letter is in response to your request for a formal opinion regarding your ethical responsibilities as a member of the General Assembly and your position as Partner and Chief Operating Officer with Richard Quinn and Associates (RQ&A). The House Ethics Committee addressed your inquiry at its meeting on June 23, 1999, and ordered the issuance of the following opinion:

Generally

Nothing in the State Ethics Act prevents you from working for RQ&A. Section 2-17-80 prevents a legislator from receiving "anything of value" from a lobbyist or anyone acting on behalf of a lobbyist. However, the Ethics Act does not prohibit a legislator from providing services to a lobbyist's principal. Please refer to the definition of "lobbyist" in Section 2-17-10(13) and lobbyist registration requirements; "lobbyist's principal" is defined in Section 2-17-10(14); "anything of value" is defined in Section 2-17-10(1)(a). While the State Ethics Act does not prevent you from being employed by RQ&A, the Act does require certain disclosures if a conflict of interest should arise and may require other restrictions in your capacity as both a member of the General Assembly and as Partner and Chief Operating Officer of RQ&A. Because your position with RQ&A presents a novel issue to this Committee as it relates to your responsibilities as a legislator, the Committee advises you to inquire with the Committee or its staff with any specific questions regarding any future ethics issues.

ROA 000169

Retainer Prohibition

Section 2-17-110(G) prevents a "lobbyist, a lobbyist's principal, or a person acting on behalf of a lobbyist or a lobbyist's principal [from employing] on retainer a public official A retainer, for purposes of this section, is a payment for availability to perform services rather than for actual services rendered." This section clearly prevents any lobbyist's principal from keeping you on retainer so that you are available to perform services. A lobbyist's principal may only compensate you for the actual services you render.

Legislative/Contractual Limitations

Section 8-13-745(C) prevents a "member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent from entering into any contract for goods and services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole."

Section 8-13-700(A) prevents a legislator from "knowingly using his official office . . . to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated."

Section 8-13-700(B) states that a legislator may not "make, participate in making, or in any way attempt to use his office . . . to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest." See Section 8-13-100(11) for a definition of "economic interest".

Reporting Requirements

Section 8-13-700(B) states that a legislator, "who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision and (2) . . . deliver a copy of the statement to the [Speaker of the House of Representatives]. The [Speaker] shall have the statement printed in the [House] journal and require that the [legislator] be excused from votes, deliberations, and other action on the matter on which a potential conflict of interest exists." See Section 8-13-100(11) for a definition of "economic interest".

Section 8-13-710(A) requires a legislator "who accepts anything of value from a lobbyist's principal . . . [to] report the value of anything received on his statement of economic interests [form]".

Thank for your request of this formal opinion. Please let me know if I may be of additional assistance to you. I hope this information is helpful.

Sincerely,



Becky Meacham
Chairperson

sns/BM

EXHIBIT C

June 17, 1999 Letter to House Ethics

Doug Smith
First Vice-Chairman

James H. Harrison
Chairman

John M. Knotts, Jr.
Second Vice-Chairman

John Graham Altman
Thomas Scott Beck
George E. "Chip" Campsen, III
William F. "Bill" Cotty
F.G. "Greg" Delleney
Michael E. Easterday
Ronald N. Fleming
Jerry N. Govan, Jr.
C. Anthony Harris, Jr.
John David Hawkins
Douglas Jennings, Jr.

Judiciary Committee



House of Representatives
P.O. Box 11867 Telephone: 734-3120
Columbia, South Carolina 29211

James S. Klaiber
Jesse Cordell Maddox
James G. McGee, III
Wallon J. McLeod
John L. Scott, Jr.
Lynn Seithel
J. Gary Simrill
Fletcher N. Smith, Jr.
James E. Smith, Jr.
Michael S. "Mickey" Whaley
Jackson S. "Seth" Whipper

Reginald I. Lloyd
Staff Counsel

Ruth W. Tidwell
Administrative Assistant

June 17, 1999

Ashley Harwell-Beach
Asst. Staff Counsel

Swati N. Shah
Asst. Staff Counsel

The Honorable Becky Meacham
House Legislative Ethics Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Meacham:

I have recently accepted the position of Partner and Chief Operating Officer with Richard Quinn & Associates (RQ&A), a Columbia consulting and public relations firm. I respectfully request guidance from the House Ethics Committee relative to my ethical responsibilities as a member of the General Assembly with reference to the duties and responsibilities contemplated in this new position.

As a way of background, RQ&A manages election campaigns for candidates for various federal, state and local offices and, in addition, the firm provides public relations and communications services for its corporate clients, several of whom are registered as lobbyist principals. As Chief Operating Officer (a salaried position), my responsibilities would include managing the day-to-day operations of the firm, as well as providing public relations/corporate communications services for its clients. From time to time, these services may include contact with various federal, state and local government agencies. However, under no circumstances would they include "lobbying" as defined in Section 2-17-10(12).

In order to ensure that all of my professional activities are both legal and ethical, I respectfully request a formal opinion from the committee on this arrangement.

Thank you, in advance, for your guidance.

Sincerely,

A handwritten signature in dark ink, appearing to be "JH Harrison", written over a large, stylized circular flourish.

James H. Harrison

JHH/rwt

RECEIVED

JUN 17 1999
HOUSE ETHICS
COMMITTEE

ROA 000173

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

Case No.: 2018-GS-47-49

vs.

JAMES H. HARRISON,

**DEFENDANT HARRISON'S MOTION
TO COMPEL RULE 5(a)(1)(C)
DISCLOSURE OF DOCUMENTS**

DEFENDANT.

Comes Now, the Defendant James H. Harrison (also referred to herein as "Harrison" or "Defendant Harrison"), by and through the undersigned counsel, who respectfully moves this Court for an Order compelling the State to immediately disclose any and all documents they intend to use in their case in chief.

Pursuant to Harrison's Omnibus Motion for Discovery and Production, filed on or about January 5, 2018, the Defendant in this case moved for the State to disclose and produce "all documents, tangible objects, reports of examination and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rules Five (5) and Six (6) of the South Carolina Rules of Criminal Procedure and *Brady v. Maryland*, 373 U.S. 83 (1963)." At a hearing before this Court, held on August 15, 2018, the State indicated that it would comply with Rule 5, SCRCrimP, and provide the defense with documents responsive to the pending discovery request, specifically documents the State planned to introduce in its case in chief. To date, the State has not disclosed, produced, or otherwise identified documents it intends to use in its case in

chief. The State has merely produced to the defense hundreds of thousands of pages of documents gathered throughout its investigation of this grand jury matter.

Rule 5 of the South Carolina Rules of Criminal Procedure provides, in part, that the prosecution, upon motion by the defense, shall identify "books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or **are intended for use by the prosecution as evidence in chief at the trial**, or were obtained from or belong to the defendant." Rule 5(a)(1)(C), SCRCrimP (emphasis added). The prosecution has thirty (30) days to respond to the defense's motion, or within such other time as may be ordered by the trial court. Rule 5(a)(3), SCRCrimP. These parties are approximately one month away from the trial of this case and the State has yet to provide disclosures related to the documents it intends to use in its case in chief at trial.

CONCLUSION

For the reasons stated herein, the Defendant moves this Court to Order the State to disclose, produce, or otherwise identify the documents, and other responsive items, it intends to use in its case in chief. This motion may be supported by further memoranda, exhibits and arguments as necessary to support such motion at or following a hearing.

Respectfully submitted,

BY:


Reginald I. Lloyd, Esq.

The Lloyd Law Firm, LLC
Post Office Box 1555
Camden, South Carolina 29021
(803) 408-0316 (p)
(844) 270-4813 (f)
lloydlaw3@gmail.com
S.C. Bar # 65024

L. Hunter Limbaugh
413 E. Springs Road
Columbia, South Carolina 29233
(803) 237-9719 (p)
S.C. Bar # 12932

ATTORNEYS FOR THE DEFENDANT.

Camden, South Carolina

18th day of September 2018.

STATE OF SOUTH CAROLINA

VS.

DEFENDANT HARRISON'S MOTION TO DISMISS INDICTMENTS

DEFENDANT.

There is no subject matter jurisdiction because, pursuant to the State Grand Jury Act, only the Attorney General or his designee may investigate and prosecute Harrison. Solicitor Pascoe's authority to investigate outside the geography of the First Judicial Circuit is limited to the designation to investigate

1

“the redacted legislators,” both of whom were House members. At no time has there been another designation or expansion of the designated solicitor’s authority beyond the redacted legislators. Without a designation or transfer of the Attorney General’s constitutional and statutory authority to a solicitor that does not have independent jurisdiction, this Court does not have subject matter jurisdiction because the indictments are not valid. Neither Solicitor Pascoe nor the presiding judge of the State Grand Jury can unilaterally expand the Attorney General’s designation of a solicitor or create such authority without disqualifying the Attorney General by motion and a hearing held in public.² Therefore, the indictments should be dismissed with prejudice.

I. FACTUAL AND PROCEDURAL HISTORY

More than four years ago, on February 14, 2013, a complaint alleging violations of the Ethics Act by then-Speaker of the House of Representatives, Robert W. Harrell, was forwarded by the Attorney General to South Carolina Law Enforcement Division (SLED). *Ex parte Harrell: In re State Grand Jury*, 409 S.C. 60, 62–63, 760 S.E.2d 808, 809 (2014). SLED investigated the allegations and reported its findings in December 2013 (hereinafter “SLED report”). *Pascoe*, 416 S.C. at 631, 788 S.E.2d at 688. Notably, the SLED report contained the names of two other House members, who were allegedly implicated in unethical conduct. *Id.* These two names were redacted in the SLED report prior to its public release and became known as the “redacted legislators.” *Id.*

² See S.C. Code Ann. § 14-7-1650(D).

On January 13, 2014, a State Grand Jury was impaneled for the investigation of Harrell. *Ex parte Harrell*, 409 S.C. at 62–63, 760 S.E.2d at 809. Before indictment, Harrell moved to disqualify the Attorney General. The Attorney General decided to recuse himself before the presiding judge decided the motion to disqualify.

On July 24, 2014, the Attorney General's Office designated Solicitor Pascoe to oversee the investigation and prosecution of Harrell. Harrell ultimately was indicted and eventually pled guilty in late October 2014. *Id.*, 416 S.C. at 631, 788 S.E.2d at 688. In early October 2014, Solicitor Pascoe asked the Attorney General's Office about investigating the redacted legislators from the SLED report. *Id.* at 631–32, 788 S.E.2d at 688. The Attorney General expressed concerns of his personal conflict with an investigation of the redacted legislators and requested his Chief Deputy, John McIntosh, oversee the investigation into the redacted legislators. *Id.*; see also **Exhibit 1**, October 2, 2014 Email from Attorney General to John McIntosh. The Attorney General explained “there might be inherent conflicts between myself and *members of the house* Because certain conflicts might exist I want you to take over as supervising prosecutor. . . .” *Id.* (emphasis added).

In July 2015, the Attorney General's Office designated Solicitor Pascoe to make a “prosecutive decision” in the investigation of the redacted legislators. *Id.* at 632, 788 S.E.2d at 689; see also **Exhibit 2**, July 24, 2015 Letter from Creighton Waters to Solicitor Pascoe. This decision by the Attorney General's Office was shared with Chief Keel in a letter from McIntosh explaining: “the

Attorney General recused this office from the legislative members in the redacted portions of the SLED report *but has not recused this office from any other matters.*" **Exhibit 3**, July 17, 2015 Letter from McIntosh to Chief Keel (emphasis added).

In March 2016, Solicitor Pascoe attempted to initiate a State Grand Jury investigation of the redacted legislators. The Attorney General objected to Solicitor Pascoe's initiation of the State Grand Jury and tried to remove him from the investigation. In response, Solicitor Pascoe filed an action in the original jurisdiction of the Supreme Court. *Pascoe*, 416 S.C. at 639, 788 S.E.2d at 692; *see also Exhibit 4, Pascoe v. Wilson*, Petition for Original Jurisdiction and Declaratory Relief. The Supreme Court declared Solicitor Pascoe was acting within his authority designated by the Attorney General's Office to investigate the redacted legislators and that, as part of that designation, he had the authority to initiate a State Grand Jury investigation. *Pascoe*, 416 S.C. at 639, 788 S.E.2d at 692.

II. ARGUMENT AND LAW

This Court lacks subject matter jurisdiction because the State Grand Jury Act's provisions and standards establishing jurisdiction have not been satisfied for any investigation or prosecution of Harrison.³ Solicitor Pascoe's authority within the State Grand Jury is limited to the redacted legislators in the SLED report by the designation from the Attorney General's Office. There are only two

³ In any event, Solicitor Pascoe has not been granted authority to prosecute Harrison (or the redacted legislators) because he was only granted the authority to investigate, as acknowledged in *Pascoe v. Wilson*. 416 S.C. 628, 631, 788 S.E.2d 686, 688 (2016).

redacted legislators, neither of whom is Harrison. Solicitor Pascoe has never been given the constitutional authority for investigating Harrison. Only the Attorney General or his designee is entitled to investigate and indict using the State Grand Jury without an express recusal and designation or a finding by the presiding judge of an actual conflict with actual prejudice requiring disqualification. *Pascoe*, 416 S.C. at 650-41, 788 S.E.2d at 693; S.C. Code Ann. § 14-7-1650(D). Neither of which has occurred for an investigation of Harrison. Accordingly, this Court does not have subject matter jurisdiction, and the indictments should be dismissed.

Subject matter jurisdiction is the power of a court to hear and determine a certain class of cases. *Ex parte Harrell*, 409 S.C. 60, 70–71, 760 S.E.2d 808, 813 (2014). While South Carolina circuit courts are generally vested with original jurisdiction in criminal cases, the General Assembly has set forth specific conditions for jurisdiction. *See generally* S.C. Const. art. V, § 11; *see also Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (explaining a specific statute controls over a general statute).

The State Grand Jury Act expressly provides limited jurisdiction in sections 14-7-1650 and 14-7-1630 of the South Carolina Code. S.C. Code Ann. § 14-7-1730 (stating the presiding judge of the State Grand Jury's jurisdiction is "subject to the provisions in [s]ections 14-7-1630 and 14-7-1650"). Section 14-7-1650 states that the Attorney General or his designee "shall serve as its legal advisor" unless the Attorney General is recused or disqualified. S.C. Code Ann. § 14-7-1650(A)-(C). The statute provides the procedure for recusal as well

as the disqualification of the Attorney General only upon a showing of actual conflict and actual prejudice before the Court. S.C. Code Ann. § 14-7-1650(B)-(C). Section 14-7-1630 outlines the procedural mechanism of the State Grand Jury and the requirements of those involved, including the Attorney General, the Chief of SLED, and the presiding judge. S.C. Code Ann. § 14-7-1630(A), (B), (D) & (F). Practically, the Court has jurisdiction when the State Grand Jury is valid and sections 14-7-1650 and 14-7-1630 are satisfied.

With respect to Harrison, neither the Attorney General nor his designee has taken any action. Solicitor Pascoe has not been designated to act in the place of the Attorney General as to Harrison. Beyond the redacted legislators, the office of the Attorney General has not been recused, and no motion to disqualify has been made in public or ruled on.

In *Pascoe v. Wilson*, the Supreme Court held that "the Attorney General's Office in its entirety was recused *from the redacted legislators' investigation*, and Solicitor Pascoe was vested with the full authority to act as the Attorney General for the purpose of the investigation." 416 S.C. at 644, 788 S.E.2d at 695 (emphasis added). In reaching this decision, the Court relied on a series of correspondence in which Solicitor Pascoe and the Attorney General's Office discussed the decision to recuse the Attorney General's Office for the limited purpose of the investigation of the redacted legislators and designate Solicitor Pascoe for that limited purpose. See, e.g., **Exhibit 2** ("As you are aware, several months ago the Attorney General firewalled himself from any involvement into the investigation of certain individuals covered in the still-redacted portion of the

SLED report. *This recusal was limited only to those named individuals.* (emphasis added)); **Exhibit 3**, (“As you are aware, the Attorney General recused this office from the legislative members in the redacted portions of the SLED report but has not recused this office from any other matters.” (emphasis added)).

Solicitor Pascoe acknowledged and accepted his limited authority in his petition for original jurisdiction in *Pascoe v. Wilson*. He specifically pled that he had been designated by the Attorney General’s Office to oversee the State Grand Jury for the “statutory transfer of authority concerning the limited matters contained in the redacted portion of the SLED report.” **Exhibit 4**, at 6, ¶ 30; *id.* at 6, ¶ 27; *id.* at 7, ¶ 36. This is further demonstrated in Solicitor Pascoe’s filings in *Pascoe v. Parks*, in which he claimed to be “the Attorney General, exercising the powers of that Office over the matters delegated to him as a result of the conflict of interest forcing the recusal of Attorney General Wilson and his Office.” **Exhibit 5**, Petitioner’s Reply in *Pascoe v. Parks* at 3; *id.* at 12 (“Upon designation by the Attorney General, Solicitor Pascoe was vested with the authority of that office for the purpose of the matters referred to him” (emphasis added)); see also **Exhibit 6**, Petition for Writ of Mandamus in *Pascoe v. Parks* at 2- 3 (explaining Solicitor Pascoe’s “inquiry would only concern the legislators identified in the redacted portion of the SLED report, which is the matter delegated to Petitioner by the Attorney General” (emphasis added)).

Solicitor Pascoe’s limited authority to act is further demonstrated in Chief Keel’s affidavit, which was also relied on by the Supreme Court. *Pascoe*, 416

S.C. at 643, 788 S.E.2d at 694; see **Exhibit 7**, Chief Keel's Affidavit. The Court explained it found "of critical importance the fact that Chief Keel, a neutral witness, expressed in his affidavit his understanding was that since July 2015, the entire Attorney General's Office was recused from any further involvement *in the investigation of the redacted legislators*. Chief Keel states that he had no contact or communication with the Attorney General's Office *regarding the redacted legislators* matter after July 17, 2015. *Id.* (emphasis added). Chief Keel specifically stated in his affidavit, "I understood [the July 17, 2015] letter to indicate that the entire Attorney General's Office was recused from any further involvement in the investigation of any *members of the [General Assembly] who were mentioned in the redacted portions of [SLED report]*." **Exhibit 7**, at 3 (emphasis added).

In sum, it is undisputed that Solicitor Pascoe's designation and authority in the State Grand Jury is limited to the investigation of the redacted legislators. Thus, the Attorney General and his Office retain full constitutional authority over all other matters, which must include any investigation or prosecution of Harrison. See S.C. Const. art. V, § 24 ("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.”).⁴

At no time, with respect to Harrison, has there been any recusal or a finding of disqualification pursuant to section 14-7-1650. Thus, Solicitor Pascoe is not authorized to investigate or prosecute Harrison outside the First Judicial Circuit. Without such authority, the standards and provisions for jurisdiction of sections 14-7-1650 and 14-7-1630 cannot be satisfied; the indictments are not valid; and this Court does not have jurisdiction.

Notably, if Solicitor Pascoe believed action was needed against Harrison he had the following prosecutorial options to address his concerns: (1) He could have presented any evidence to the Attorney General's Office, as set forth in 14-7-1630(B); (2) He could have moved to disqualify the Attorney General; (3) He could have sought clarification on whether the Attorney General was recused. See S.C. Code Ann. § 14-7-1650(C)(2) (“Any doubt regarding disqualification [of the Attorney General] shall be resolved by the presiding judge of the state grand jury.”); or (4) He could have referred the matter to then Fifth Circuit Solicitor Dan Johnson who had exclusive jurisdiction over all matters in Richland County.

⁴ See also S.C. Code Ann. § 1-7-320 (“Solicitors shall perform the duty of the Attorney General . . . whenever they shall be . . . required to do so; and they shall assist the Attorney General . . . in all suits of prosecution in behalf of this State *when . . . called upon by the Attorney General.*”) (emphasis added); S.C. Code Ann. § 1-7-350 (“The several solicitors of the State shall, . . . as assigned by the Attorney General, represent in all matters, . . . [and] . . . they shall be subject to the call of the Attorney General, who shall have the exclusive right, in his discretion, to so assign them in case of the incapacity of the local solicitor or otherwise.”).

Instead of pursuing any of these options, he proceeded without following the law and without constitutional authority.

Solicitor Pascoe disregarded the Constitution and the power vested in the people of South Carolina to determine who serves as the Attorney General. See, e.g., *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 643, 528 S.E. 2d 647, 651 (1999) ("All power is derived from the people, and all magistrates and officers of government are their agents, and at all times accountable to them." (quoting *State ex rel. Pearson v. Hayes*, 61 N.H. 264, 329 (1881) (premised on John Locke's theory of democracy))). While Solicitor Pascoe may suggest that determining whether there was a recusal or an actual conflict and actual prejudice would be reckless given the prior conflict with the redacted legislators, the South Carolina Constitution and the State Grand Jury Act require explicit authority and jurisdiction. The Constitution provides the fundamental structures and powers that are the cornerstone of our democracy and ensure protections for every citizen.

The statutory provisions in section 14-7-1650 were put in place to ensure the transfer of power with transparency and in accordance with the checks and balances of our government. By acting without the established procedures to transfer this power, Solicitor Pascoe ignored the Constitution and the expressed requirements of the General Assembly for recusal and disqualification when a transfer is needed of the police power of the State to investigate and prosecute. S.C. Code Ann. § 14-7-1650; cf. Black's Law Dictionary 1276 (9th ed. 2009) (defining "police power" as "the inherent and plenary power of a sovereign to

make all law necessary and properly to preserve public security, order, health, morality, and justice”); *see also Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (“It is well-established that ‘[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].’” (internal citation omitted)).

Moreover, to adopt Solicitor Pascoe’s position that he was entitled to usurp constitutional authority would mean that an allegation against any member of the General Assembly would allow him to act with the cloak of the Attorney General’s Office without a decision on recusal or a determination of actual conflict and actual prejudice. Where, one is entitled to ask, would that arrogation of power end? What persons or offenses, if any, would Solicitor Pascoe not have had the authority to pursue? At what point would Solicitor Pascoe have felt obliged to return the investigation to the Attorney General? It seems that Solicitor Pascoe believes himself to have had unfettered and unlimited authority to pursue any matter he wished, so long as it bore some relationship, however attenuated, to the original investigation. That is not supported by the Constitution and the Supreme Court’s decision in *Pascoe v. Wilson*, and it is in direct contradiction to the authority discussed *supra*. Further, it ignores the expressed intent of the General Assembly to provide procedural mechanisms to address this issue and raises serious concerns regarding the separation of powers. *State v. Langford*, 400 S.C. 421, 434, 735 S.E.2d 471, 478 (2012) (“[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a

significant interference by one branch of government with the operations of another branch." (internal citation omitted)).⁵

For these reasons, this Court cannot have jurisdiction over criminal charges against Harrison because Solicitor Pascoe was never designated to investigate or prosecute⁶ Harrison.

III. CONCLUSION

"The Grand Jury exists not merely to investigate and accuse, but acts as a

⁵ In addition to the timing and immediate targeting of Harrison and for acts that are not even alleged to have occurred within the last four years (demonstrating no exigency), this raises serious questions of prosecutorial abuse based on the decisions to proceed without constitutional authority, and without any designation for investigating anyone other than the redacted legislators. See *State v. Capps*, 276 S.C. 59, 61, 275 S.E.2d 872, 873 (1981) ("A grand jury is not a prosecutor's plaything and the awesome power of the State should not be abused but should be used deliberately, not in haste.").

⁶ If the Court finds there is subject matter jurisdiction, Solicitor Pascoe still does not have the authority to prosecute Harrison. A plain reading of *Pascoe v. Wilson* demonstrates Solicitor Pascoe was only given the authority to investigate and was never given the power to prosecute Harrison. The Supreme Court held, "Pascoe was vested with the full authority to act as the Attorney General for the purpose of the investigation," not to prosecute. 416 S.C. at 644, 788 S.E.2d at 695. The majority explicitly referenced Solicitor Pascoe's authority to investigate nine times. However, there was no suggestion that his authority to investigate the redacted legislators extend to prosecution, especially of Harrison. In fact, there is no mention of "prosecute" or "prosecution" by the majority in *Pascoe v. Wilson*.

This plain reading of the opinion is supported by the correspondence relied on by the Supreme Court, as well as Chief Keel's affidavit. See, e.g., Exhibits 3, 4, 5, 7. The limitation in authority is further highlighted by the fact that Solicitor Pascoe in his declaratory judgment filings requested the Court declare that the Attorney General had "recused himself and his office from the investigation *and prosecution* of the redacted legislators matter." *Pascoe*, 416 S.C. at 639, 788 S.E.2d at 692 (emphasis added); see also Exhibit 6. As discussed, the Court did not make such a finding. For these reasons, while Solicitor Pascoe may be permitted to investigate the redacted legislators, he does not have the authority to investigate or prosecute Harrison. Instead, any potential wrongdoing, discovered during his investigation of the redacted legislators, by Harrison should have been referred to the Attorney General's Office or the Senate Ethics Committee.

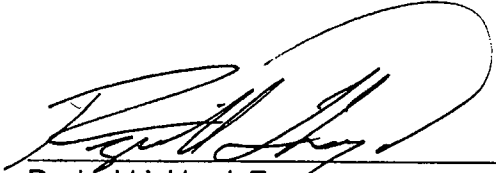
curb on the unbridled power of the sovereign.”⁷ The South Carolina Supreme Court has recognized the Attorney General designated Solicitor Pascoe in July 2015 only to investigate two House members who were the “redacted legislators” in the SLED Report. There are definite limits to that authority, including that the Attorney General’s Office was “not recused . . . from any other matters.” The limits must be recognized in this case to ensure legality of any on-going investigation and to provide certainty for the State actors—including the courts, law enforcement, prosecutors, members of the General Assembly, the Governor, and the general public.

The designated solicitor should not be allowed to operate with unfettered discretion and unchecked powers in investigating all other potential targets, like Harrison, outside the First Judicial Circuit. Without the courts enforcing the limits of the designation in July 2015 by the Attorney General, the constitutional rights and responsibilities of the Attorney General under Article V, section 24 of the South Carolina Constitution, as well as separation of powers, would be undermined; and the democratic power of the people could be subverted. It is the statewide elections of constitutional officers (like the Attorney General) and their constitutional obligations which ensure accountability by the electors for all State actors (including the designated solicitor) upholding the constitutional guarantees and complying with the law. These indictments should be dismissed because Solicitor Pascoe was not designated to investigate anyone other than the redacted legislators and cannot otherwise be held accountable for unilateral

⁷ *State v. Gentry*, 363 S.C. 93, 109 n.14, 610 S.E.2d 494, 503 n.14 (2005).

assumption of overly broad statewide investigatory powers. This court has no jurisdiction over the person of Harrison because no process or indictment issued by the grand jury is valid or lawful and any such process or indictment should be considered a nullity. For these reasons, all indictments against Harrison should be dismissed with prejudice.

BY:


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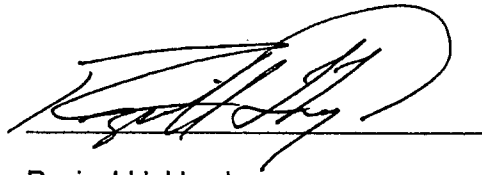
ATTORNEYS FOR THE DEFENDANT.

Camden, South Carolina

17th day of October 2018.

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2018, I served a copy of the foregoing Motion to Dismiss Indictments and First Motion in Limine on Solicitor David Pascoe by email and United States Mail.

A handwritten signature in black ink, appearing to read 'Reginald I. Lloyd', is written over a horizontal line.

Reginald I. Lloyd

Camden, South Carolina

October 17, 2018.

Exhibit 1

(October 2, 2014 Email from
Attorney General to John McIntosh)

From: John McIntosh
Sent: Thursday, October 02, 2014 5:56 PM
To: Alan Wilson
Cc: Bob Cook
Subject: RE: [REDACTED]

Atty. General, this is to acknowledge receipt of your E-Mail requesting that I take over as supervising prosecutor the allegations in the SLED report from December 5, 2013 forwarded to you from Solicitor Pascoe [REDACTED]. This request from Solicitor Pascoe will be handled as similar matters have been handled by this office in the past. I will request SLED to look into these allegations. I will ensure that you are firewalled from any further involvement in this matter.

From: Alan Wilson
Sent: Thursday, October 02, 2014 3:22 PM
To: John McIntosh
Cc: Bob Cook
Subject: FW: [REDACTED]

John,
I received the email below from Solicitor Pascoe. As this office moves forward with this investigation there might be inherent conflicts between myself and members of the house referenced in the email. Because certain conflicts might exist I want you to take over as supervising prosecutor. I would have no further involvement in a case involving these specific members where such a conflict may arise. Please ensure that I am firewalled from any involvement in that specific instance. I have consulted with Bob and he concurs that this is the appropriate course to take.

Thank you,
Alan

From: David M. Pascoe [mailto:dpascoe@scsolicitor1.org]
Sent: Wednesday, October 01, 2014 1:03 PM
To: Alan Wilson
Cc: kbaker@sled.sc.gov
Subject: [REDACTED]

Alan,

It was good talking with you last night. I agree that it might be a good idea for me, you, and Bill to sit down sometime next week. My schedule is pretty open so just let me know of a date and time.

I went back and reviewed the SLED Report from December 5, 2013 [REDACTED]

[REDACTED] I definitely think this is something that should be looked into with regards to any corruption probe on the legislature. [REDACTED] Take a look at pages 34-42 of Lt. Kevin Baker's report and let me know what you think.

Take care,

dp



David M. Pascoe, Jr.
First Circuit Solicitor
P.O. Box 1525
Orangeburg, S.C. 29116
(803) 533-6252
(800) 776-3009
dmpascoe@scsolicitor1.org

Exhibit 2

(July 24, 2015 Letter from
Creighton Waters to Solicitor Pascoe)

David M. Pascoe

From: Creighton Waters [CWaters@scag.gov]
Sent: Friday, July 24, 2015 2:07 PM
To: David M. Pascoe (dpascoe@scsolicitor1.org)
Subject: Redacted portions of SLED report
Attachments: Letter.Pascoe, David.2015-07-24 (00706430xD2C7B).pdf

Solicitor,

Hope things are well. Attached please find a scanned copy of a letter going out to you today addressing the redacted portions of the SLED report that is going out to you today. It advises that Chief Deputy John McIntosh sent a letter to SLED asking that any final results be sent to you on that portion of the case.

Additionally, I have been advised that this office is receiving media requests regarding the release of the remaining portions of the SLED report. As a heads up, we wanted you to know that this Office believes that any decision to release the redacted portion of the report should be made by you and SLED upon final review.

As always I am available to assist you if you need anything, and do not hesitate to call or email.

Regards,

Creighton



S. Creighton Waters
Assistant Deputy Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
cwaters@scag.gov
(803) 734-3693



ALAN WILSON
ATTORNEY GENERAL

July 24, 2015

Honorable David M. Pascoe, Jr.
Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, SC 29116

Re: SLED Investigation 32-13-0019

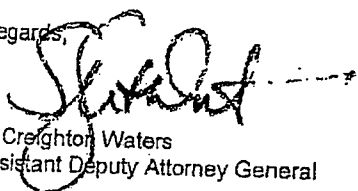
Dear Solicitor Pascoe,

I hope you have been well. As you are aware, several months ago the Attorney General firewalled himself from any involvement into the investigation of certain individuals covered in the still-redacted portion of the SLED report. This recusal was limited only to those named individuals. That portion of the investigation still remains open.

I am writing to let you know that out of an abundance of caution, Chief Deputy AG John McIntosh sent SLED Chief Mark Keel a letter dated July 17, 2015, asking that agency to forward to you the results of any further investigation into the matters covered in the redacted portions of the SLED report. A copy of that letter is attached.

Thank you for your attention to this matter. Please do not hesitate to contact me at any time if you need anything.

Regards,


S. Creighton Waters
Assistant Deputy Attorney General

Enclosures

Exhibit 3

(July 17, 2015 Letter from McIntosh to Chief Keel)



ALAN WILSON
ATTORNEY GENERAL

July 17, 2015

Chief Mark Keel
SC Law Enforcement Division
Post Office Box 21398
Columbia, SC 29221

RE: SLED Investigation - Robert Harrell

Dear Chief:

SLED conducted an investigation into the above matter and compiled an investigative report. Portions of this report were redacted that involved members of the General Assembly. This is to request that, upon completion of the investigation of those persons, the report be forwarded to Solicitor David Pascoe for a prosecutive decision.

As you are aware, the Attorney General recused this office from the legislative matters in the redacted portions of the SLED report but has not recused this office from any other matters.

Yours very truly,

John W. McIntosh

John W. McIntosh
Chief Deputy Attorney General

JWM/dm

Exhibit 4

**(*Pascoe v. Wilson*, Petition for Original
Jurisdiction and Declaratory Relief)**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Original

David M. Pascoe, Solicitor of the First Judicial Circuit,

v.

Alan M. Wilson, South Carolina Attorney General,

Respondent.

PETITION FOR ORIGINAL JURISDICTION IN AND EXPEDITED
DECLARATORY RELIEF FROM THE SUPREME COURT

RECEIVED

MAR 30 2016

S.C. SUPREME COURT

David M. Pascoe (#66523)
Solicitor, First Judicial Circuit
dpascoe@scsolicitor1.org
151 Docket Street
Post Office Box 1525
Orangeburg, SC 29116
Telephone: (803) 533-6252
Facsimile: (803) 533-6004

PETITIONER

March 30, 2016
Orangeburg, South Carolina.

INTRODUCTION

Petitioner David M. Pascoe, Solicitor of the First Judicial Circuit, respectfully petitions this Honorable Court for leave to file the complaint (attached to this petition as Exhibit 1) in the original jurisdiction of the Court in order to obtain declaratory relief concerning a matter of great public importance concerning the legal authority of Respondent South Carolina Attorney General Alan M. Wilson to remove and appoint solicitors in a public corruption inquiry after the Attorney General and his Office are recused from the matter on account of a conflict of interest.

The Attorney General purports to have removed Solicitor Pascoe from such an inquiry and has directed the Honorable Daniel F. Johnson, Solicitor of the Fifth Judicial Circuit, to act in his place. The Attorney General lacks legal authority to un-recuse himself from the public corruption inquiry he designated Solicitor Pascoe to pursue on behalf of his Office. For the purpose of the inquiry delegated to him, Solicitor Pascoe *is* the acting attorney general and exercises the statutory and constitutional authority of the Office of the Attorney General, including the power to use the state grand jury.

On March 25, 2016, in a case captioned *Pascoe v. Parks*, Solicitor Pascoe petitioned this Court to issue a writ of mandamus to the Clerk of the State Grand Jury. The Attorney General has since confirmed the Clerk's refusal to perform ministerial duties was the result of direction by the Attorney General's Office. Now, citing legitimate questions concerning the Attorney General's ability to exercise legal authority once recused from a case, Solicitor Johnson has prudently declined to act on the Attorney General's re-assignment of the case until this Court rules. Thus, the Attorney General's

actions in this matter have left the underlying investigation obstructed. The Court's guidance is urgently needed in this matter.

The Court has jurisdiction pursuant to Article V, § 5 of the South Carolina Constitution and Rule 245 of the South Carolina Appellate Court Rules.

The Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 *et seq.*, allows the Court to grant the relief sought here.

FACTS¹

On February 14, 2013, the Attorney General received an ethics complaint alleging possible violations of the South Carolina Ethics, Government Accountability, and Campaign Reform Act, S.C. Code Ann. §§ 8-13-100 *et seq.* by then-Speaker of the House, Robert W. Harrell. That same day, the Attorney General forwarded the complaint to the South Carolina Law Enforcement Division (SLED). SLED conducted a 10-month criminal investigation into the matter.

On December 5, 2013, SLED issued an Investigative Report that has since been released to the public in redacted form. (Exhibit A). While the bulk of the report discusses then-Speaker Harrell, redacted portions of the report discuss evidence SLED developed evidence concerning possible wrongdoing by other legislators that may have engaged in financial crimes and ethical violations.

On January 13, 2014, SLED Chief Mark Keel and the Attorney General then petitioned the presiding judge of the state grand jury to impanel the state grand jury. The presiding judge, the Honorable L. Casey Manning, Circuit Court Judge, impaneled the

¹ These facts are also set forth with supporting exhibits in Petitioner's complaint attached as Exhibit 1 and are cited here accordingly.

state grand jury. On February 24, 2014, Speaker Harrell filed a motion to disqualify the Attorney General from the state grand jury investigation.

By letter dated July 24, 2014, the Attorney General transferred prosecutorial authority over the investigation to Solicitor Pascoe. Attorney General Wilson's letter states, in part,

In summary, the investigation, based upon a ten month SLED inquiry, conducted by some of SLED's best investigators, cannot be adequately carried on if it proceeds on its present path. Therefore, pursuant to the Attorney General's authority as chief prosecutor pursuant to Art. V. § 24 of the State Constitution, and in an effort to move this investigation forward without further disruption, I am requesting that your Office agree to serve as the designated prosecutor in this matter. It is critical that this investigation continue to its appropriate conclusion, and based upon your credibility, professionalism and integrity, I know you will do just that.

(Exhibit B). In a letter dated July 17, 2015, the Attorney General's Office wrote to Chief Keel in reference to the Harrell matter and stated,

SLED conducted an investigation into the above matter and compiled an investigative report. Portions of this report were redacted that involve members of the General Assembly. This is to request that, upon completion of the investigation of those persons, the report be forwarded to Solicitor David Pascoe for a prosecutive decision.

As you are aware the Attorney General recused this office from the legislative members in the redacted portions of the SLED report but has not recused this office from any other matters.

(Exhibit C). On July 24, 2015, the Attorney General's Office e-mailed a letter to Solicitor Pascoe and stated,

As you are aware, several months ago the Attorney General firewalled himself from any involvement into the investigation of certain individuals covered in the still-redacted portion of the SLED report. This recusal was limited only to those named individuals. That portion of the investigation still remains open.

(Exhibit D).

On March 18, 2016, Solicitor Pascoe, along with Chief Keel, made application pursuant to S.C. Code §§ 14-7-1630 & -1690 to the circuit court judge presiding over the state grand jury that the grand jury's area of inquiry would expand to investigate the public corruption allegations concerning the legislators identified in the redacted portion of the SLED report.

On March 24, 2016, James R. Parks, Clerk of Court for the State Grand Jury, informed Solicitor Pascoe he would not administer the oath to Solicitor Pascoe's deputies or issue subpoenas. Mr. Parks informed the presiding circuit court judge, the Honorable Clifton Newman, Chief Administrative Judge, of his decision. Upon information and belief, the Attorney General or the Attorney General's Office directed Mr. Parks not to swear Solicitor Pascoe's deputies or issue subpoenas.

On March 25, 2016, Solicitor Pascoe filed a petition in an action captioned *Pascoe v. Parks* asking the Court to exercise original jurisdiction and issue a writ of mandamus directing Mr. Parks to perform ministerial duties of the clerk for the state grand jury. The Attorney General was served with a copy of the *Parks* petition.

On March 28, 2016, the Attorney General's Office wrote to Solicitor Pascoe on behalf of the Attorney General and stated that Solicitor Pascoe "unlawfully attempted to initiate a State Grand Jury investigation." (Exhibit E). The Attorney General's Office also stated, "I am now compelled to terminate all authority delegated to you on July 17 and July 24, 2015. Your handling of this matter now makes it necessary to reassign the investigation to another solicitor or solicitors." (Exhibit E). That same day, Solicitor Pascoe responded and urged the Attorney General to reconsider his position in view of the fact that the Attorney General and his Office are recused from the matter and thus

lacked authority to remove Solicitor Pascoe from the case, and informing the Attorney General he intended to go forward. (Exhibit F).

On March 29, 2016, Attorney General Wilson notified the Honorable Daniel E. Johnson, Solicitor of the Fifth Judicial Circuit, that he was appointing Solicitor Johnson to replace Solicitor Pascoe. That notification was followed by a letter from Chief Deputy Attorney General John McIntosh to Solicitor Johnson stating that the Attorney General revoked Solicitor Pascoe's authority in the matter concerning the redacted portion of the SLED report and that, "[w]hile the Attorney General recused himself from this case, he cannot abdicate his duties to supervise the State Grand Jury or his constitutional authority as the state's chief prosecutor." (Exhibit G).

On March 29, 2016, Solicitor Pascoe received a courtesy copy of a letter from Solicitor Johnson to the Attorney General's Chief Deputy stating,

I am in receipt of your letter dated March 29, 2016, in which you, acting on behalf of Attorney General Alan Wilson, designated me to replace Solicitor David Pascoe regarding the redacted portion of the SLED report regarding the Bobby Harrell case.

... However, based on the recusal of the Attorney General's Office from this matter on July 24, 2014, and the subsequent appointment of Solicitor David Pascoe, I believe that a justiciable controversy exists as to whether your office has the ability to remove Solicitor Pascoe and appoint me.

As a result, substantive question have been raised regarding whether your office has the authority to grant me jurisdiction to prosecute this matter. Therefore, I will defer any action regarding this matter until it is resolved before the Supreme Court.

(Exhibit H). This petition followed.

ARGUMENT

This case asks whether, when the Attorney General recuses himself and his office from a legislative corruption probe on account of a conflict of interest, he can un-recuse

himself for the purpose of blocking the special prosecutor's use of the state grand jury, removing that prosecutor from the case, and appointing a new prosecutor in his place.

This petition should be granted and the complaint considered in the Court's original jurisdiction, Respondent should be ordered to answer Petitioner's complaint, and the Court should order expedited pleading, briefing, and argument in furtherance of a decision granting declaratory relief. Specifically, the Court should declare that (i) the Attorney General recused himself and his Office from the investigation and prosecution of the matters contained in the redacted portion of the SLED report; (ii) this recusal was full, final, and irrevocable, leaving no role for the Attorney General or his Office in the matter; (iii) in doing so, the Attorney General exercised his statutory authority to vest Solicitor Pascoe with the legal authority to act as the designee of the Attorney General incumbent with the powers of that office; (iv) the Attorney General's attempt to direct the Clerk of the State Grand Jury in this matter was an *ultra vires* act; (v) the Attorney General's attempt to revoke Solicitor Pascoe's designation in this matter was an *ultra vires* act; (vi) the Attorney General's attempt to designate Solicitor Johnson to investigate and prosecute this matter was an *ultra vires* act; and (vii) the Attorney General and his Office must cease and desist from any further involvement in this matter and act in strict accordance with the Court's judgment concerning the law of recusal.²

The Attorney General recused himself and his Office from the investigation and prosecution of the redacted portion of the SLED report because of a conflict of interest. The procedure for doing so is clear and unambiguous:

² Due to the urgency of this matter, Solicitor Pascoe respectfully submits the following authority while respectfully reserving the right to supplement these arguments with additional authority at a time the Court may deem appropriate.

When the Attorney General determines that he should recuse himself from participation in a state grand jury investigation and prosecution, the Attorney General may either refer the matter to a solicitor for investigation and prosecution, or remove himself entirely from any involvement in the case and designate a prosecutor to assume his functions and duties pursuant to this article. When a solicitor determines that he should recuse himself from participation in a state grand jury matter, the Attorney General shall conduct such investigation and prosecution but the Attorney General, in his discretion, may designate another solicitor or appoint a special prosecutor not subject to a conflict to handle or assist him in the state grand jury investigation as the Attorney General deems appropriate.

S.C. Code Ann. § 14-7-1650(C); *see also id.* § 14-7-1720 (authorizing the Attorney General's designee to utilize the state grand jury). Upon designation by the Attorney General, Solicitor Pascoe was vested with the authority of that office for the purpose of the matters referred to him. *See* S.C. Code Ann. § 1-7-320 (authorizing the Attorney General to call upon solicitors to perform the duty of the Attorney General). This leaves no role for the Attorney General in this matter.

Recusal is a one-way street, the effect of which is full, final, and unambiguous. Recusal means "[r]emoval of oneself as judge or policy-maker in a particular matter, esp. because of a conflict of interest." RECUSAL, Black's Law Dictionary (10th ed. 2014) (*cf.* disqualification (2)). Likewise, disqualification" is defined as either something that "makes one ineligible; esp., a bias or conflict of interest that prevents a judge or juror from impartially hearing a case, or that prevents a lawyer from representing a party[.]" or "[t]he act of making ineligible[.]" DISQUALIFICATION (1), (2), Black's Law Dictionary (10th ed. 2014) (*cf.* recusal). The South Carolina Rules of Professional Conduct likewise contemplate complete exclusion from a matter when a lawyer has an un-waivable conflict of interest. *See, e.g.*, Rule 1.11 (concerning conflicts for former and current government employees), Rule 1.7 (concerning conflicts with current clients), and

Rule 1.8 (establishing additional conflict rules), RPC, Rule 407, SCACR. Petitioner knows of no precedent, statute, or rule that that defines or construes these terms as anything other than an absolute bar to a prosecutor acting on a case once recused.

This conclusion is supported not only by the common-sense, plain meaning of the term recusal, but by the heightened ethical duties imposed on a prosecutor "to do justice and is held to the highest standards of professional ethics." *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). "Prosecutors are ministers of justice and not merely advocates." *Id.* (citing Rule 3.8, cmt., RPC, Rule 407, SCACR). Accordingly, when a prosecutor's objectivity is tainted, or may be perceived as tainted, as a result of knowledge or relationships touching on the subject of the prosecution, recusal is warranted. *See, e.g., United States v. Dyess*, 231 F. Supp. 2d 493, 496 (S.D.W. Va. 2002) (recusing U.S. Attorney's office because of impropriety of government agent).

While the nature of the Attorney General's conflict here is not known, what is known is that *he believed* it to be of such significance that it warranted recusal, a decision his Office reiterated both to Petitioner and Chief Keel as recently as July 24, 2015. That decision was laudable, but he cannot, for whatever reason, revisit that decision. To the extent the Attorney General disagrees with Petitioner's decision to utilize the state grand jury, oversight of that decision is left to the presiding judge in the first instance and this Court on appeal.

This Court will consider a dispute in its original jurisdiction when there is a question of significant public interest. Rule 245(a), SCACR; *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991); *see also Porter v. Jedziniak*, 334 S.C. 16, 17, 512 S.E.2d 497, 497 (1999) (issuing a writ of mandamus in the Court's original jurisdiction).

Disputes concerning the legal operation of public institutions routinely fall within the scope of matters warranting original jurisdiction. *See, e.g., Charleston County Parents for Public Schools, Inc. v. Mosley*, 343 S.C. 509, 541 S.E.2d 533 (2001), *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), *In re: Lexington County Transfer Court*, 334 S.C. 47, 512 S.E.2d 791 (1999). Solicitor Pascoe has urged the Court to exercise original jurisdiction in the *Parks* matter because the Clerk's refusal to perform ministerial duties threatens to terminate a public corruption inquiry. This case is of greater concern.

Finally, the Uniform Declaratory Judgments Act authorizes "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20. To state a cause of action under the Act, a party must demonstrate a justiciable controversy, meaning a "real and substantial controversy which is which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423-24, 593 S.E.2d 462, 466 (2004) (quoting *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970) and collecting cases). That Act is designed to ensure the speedy and inexpensive resolution of settling legal rights and relationships without awaiting a violation of the right or disturbance of the relationship. *Id.*

The critical ingredient to any declaratory judgment action is a real controversy. The parties' competing claims of authority, and Solicitor Johnson's recognition of that dispute as grounds to defer to the Court, render this claim justiciable now. *Compare, Power*, 255 S.C. at 154-55, 177 S.E.2d at 553 (declining to consider effect of dual office holding statute on hypothetical, discretionary appointment), *with Sunset Cay*, 357 S.C. at

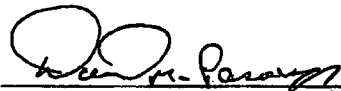
424, 593 S.E.2d at 467 (development plan affected by ordinance sufficient to render challenge justiciable without application being denied). Solicitor Pascoe has legal authority to act and the Attorney General has taken affirmative action to prevent him from doing so. This case is ripe for decision.

CONCLUSION

Petitioner respectfully requests that this petition be granted and that the Court:

- (1) Exercise original jurisdiction;
- (2) Enter an expedited schedule for pleading, briefing, and argument;
- (3) Issue declaratory relief in Petitioner's favor as set forth more fully in the complaint; and
- (4) Order any such further relief the Court deems just and proper.

Respectfully Submitted,



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March 30, 2016
Orangeburg, South Carolina.

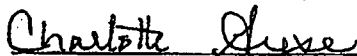
VERIFICATION

Pursuant to Rule 245(a) of the South Carolina Appellate Court Rules, I have read the above petition in its entirety and hereby verify that the facts alleged in it and the attached complaint are true to the best of my knowledge and that the accompanying exhibits are true and accurate copies.




Petitioner David M. Pascoe (#66523)
Solicitor, First Judicial Circuit

Sworn before me on March 30, 2016.
Notary Public for South Carolina



My commission expires 1/24/2021

Exhibit 5

(Petitioner's Reply in *Pascoe v. Parks*)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Requesting Original Jurisdiction
Case No. 2016-000630

RECEIVED

APR 13 2018

David M. Pascoe, Solicitor of the First Judicial Circuit,

S.C. SUPREME COURT,
Petitioner

v.

James R. Parks, Clerk of Court for the State Grand Jury,

Respondent

PETITIONER'S REPLY

Petitioner David M. Pascoe, Solicitor of the First Judicial Circuit, petitioned the Court for original jurisdiction and issuance of a writ of mandamus commanding Respondent James R. Parks, Clerk of Court for the State Grand Jury to perform ministerial tasks. Attorney General Alan Wilson filed a return joining Petitioner's request for original jurisdiction and raising arguments in opposition to the writ. Those arguments are considered in turn.

At the outset, however, Petitioner urges the Court to reject the Attorney General's invitation to "ratify" a so-called authorization memorandum *nunc pro tunc*. See Ret., 42 & Ex. 11. Notably, while the Attorney General credits the undersigned's "substantive review and belief that a state grand jury is needed[,]," he attempts to condition his authorization, and this Court's approval, on Petitioner's removal. See Ret., Ex. 11. This dispute raises a question of statutory construction governing a judicial office that plays an essential role in some of our State's most sensitive and high profile criminal

investigations. Petitioner has made an earnest effort to present this matter with the thoughtful seriousness it deserves and holds a sincere belief in the merits of the factual and legal arguments he has submitted to this Court. In light of the extraordinary action taken to frustrate the underlying investigation, Petitioner is troubled by the Attorney General's apparent lack of conviction in the firmness of his own position and by what appears to be a cynical ploy to extract some concession while avoiding a decision on the merits. Respectfully, the Court should reject this invitation and resolve the merits in Petitioner's favor.

ARGUMENT IN REPLY

I. South Carolina Code § 1-7-380 poses no bar to this action.

South Carolina Code § 1-7-380 provides that, "[t]he several solicitors of the State shall not engage in litigation against the State or any of its departments." S.C. Code Ann. § 1-7-380 (1986). The Attorney General argues the statute prohibits this action because the Clerk is sued in his official capacity and "[a]uthorities are universal that suit against a state officer in his official capacity is one against the State or its agency." *Ret.*, 1-2 (citing *Anders v. South Carolina Parole and Community Corrections Bd.*, 279 S.C. 206, 305 S.E.2d 229 (1983)). The Attorney General is mistaken in two respects.

In *Anders*, a solicitor and assistant solicitor sued the state parole board and corrections commissioner to enjoin the release of prisoners. *Anders*, 279 S.C. at 207-08, 305 S.E.2d at 229-30. In reasoning that the statute barred suit, the Court looked to other statutes governing the allocation of responsibilities between the Attorney General and several solicitors—duties that for solicitors included acting as Attorney General, representing the state in civil and criminal matters, defending the rights of the State, and

appointing assistants to aid in these tasks. *See id.* at 210, 305 S.E.2d at 231 (citing S.C. Code Ann. §§ 1-7-320, -350, -710 & -460, respectively). The Court reasoned that since solicitors serve under the Attorney General, and the Attorney General is obligated to defend the State from suit, suit by a solicitor “creates a situation of the Attorney General in his official capacity defending an action brought by the Solicitor in his official capacity.” *Anders*, 279 S.C. at 210-11, 305 S.E.2d at 231. This action is distinguishable in two ways.

First, for the purpose of this action, Solicitor Pascoe is the Attorney General, exercising the powers of that Office over the matters delegated to him as a result of the conflict of interest forcing the recusal of Attorney General Wilson and his Office. *See* § II, *infra*. To the extent § 1-7-380 operates to avoid conflicts between solicitors and the Attorney General, that concern is not present here as there is no further role for the Attorney General in this matter. Put differently, *Anders* prohibits solicitors from bringing litigation *antagonistic* to the State’s interest—an interest the Attorney General is bound to defend. But here, Solicitor Pascoe is not antagonistic to the State, but has been tasked with representing its interest in investigating and punishing criminal violations.

Second, this is not an action against a department of the State. The Clerk of the State Grand Jury is an officer of the court, not an instrumentality of the State. As used in Title 14 of the South Carolina Code, the term “clerk” always denotes an officer attached to the court and tasked with filing papers, issuing process, and maintaining the court’s records. *See* S.C. Code Ann. §§ 14-1-40 & -170; *see also id.* §§ 14-3-130 (Supreme Court clerk), 14-7-30 (circuit court clerk); CLERK, Black’s Law Dictionary (10th ed. 2014). The clerk of the state grand jury is no different.

The Attorney General appears to both concede that Mr. Parks' employment by his office is immaterial to his responsibilities as clerk of the state grand jury, while also insisting he is an officer of the State.¹ Compare *Ret.*, 2 n.1, with *id.* at 11 (claiming he is "obviously an officer of the court[,]") but also "clearly an officer of the State..."). The Attorney General is confused. Mr. Parks was appointed as clerk by the circuit court judge presiding over the state grand jury, not by the Attorney General. Statutory procedure provides that after a list of potential grand jurors is compiled, "the clerk of [the circuit] court shall forward the list to the person designated as the clerk of the state grand jury by the presiding judge." S.C. Code Ann. § 14-7-1660(A). While Mr. Parks may have been appointed as a matter of convenience given the Attorney General's typical role in a state grand jury proceeding, Mr. Parks' owes his appointment and allegiance to the court, and is bound to perform the ministerial tasks defined by statute. This petition is not a suit against the State, but an effort to compel an independent judicial officer to perform statutory duties necessary to conduct the State's business.

Finally, the Attorney General contends the Court's involvement in this matter violates the separation of powers doctrine. See *Ret.*, 5. The Attorney General misapprehends the doctrine's role. Article I, § 8 of the South Carolina Constitution provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the

¹ The Attorney General also incorrectly concludes that "Petitioner readily acknowledges that, for the purposes of § 1-7-380, his suit is against the Attorney General." *Ret.*, 2. This petition seeks a writ directed to Mr. Parks, the Clerk of the State Grand Jury. The Attorney General's Return appears to confuse this matter with the matter captioned *Pascoe v. Wilson*, Case No. 2016-000671, which asks the Court to decide whether Attorney General Wilson's recusal divests him of authority over the underlying investigation.

functions of one of said departments shall assume or discharge the duties of any other.” The doctrine prohibits one branch of government from appropriating the function of another. This dispute turns on the Clerk’s statutory duty—a question squarely within this Court’s province. *See S. Carolina Pub. Interest Found. v. S. Carolina Transp. Infrastructure Bank*, 403 S.C. 640, 649, 744 S.E.2d 521, 526 (2013) (“The legislative department makes the laws[,] the executive department carries the laws into effect, and the judicial department interprets and declares the laws.” (quoting *State ex rel. McLeod v. Yonce*, 274 S.C. 84, 84, 261 S.E.2d 303, 305 (1979))). The fact that the laws in dispute touch on or concern the power of the Office of the Attorney General, does not render this dispute non-justiciable. *See, e.g., Langford v. McLeod*, 269 S.C. 466, 238 S.E.2d 161 (1977) (declaring the responsibility of the Attorney General to represent municipal employees in civil actions arising out of official business); *State ex rel. McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976) (declaring Attorney General could use appointment powers to designate prosecutors and defense counsel for public official).

II. A writ of mandamus is the appropriate relief to compel Respondent to perform statutory duties.

The Attorney General cites *Sanford v. S.C. Ethics Commission*, 385 S.C. 483, 685 S.E.2d 600 (2009) and *Charleston School District v. Charleston County Election Commission*, 336 S.C. 174, 519 S.E.2d 567 (1999) for the proposition that a writ of mandamus should only issue where the duty to perform an act is established and defined. *See* Ret., 6-7. Petitioner agrees. Mr. Parks’ duties are ministerial and without discretion. *See* Pet. § II (discussing S.C. Code Ann. §§ 14-7-1660(A)-(B), -1680 & -1720(E)). Mr. Parks’ return to the petition offers no alternative construction of these statutory

obligations or legal argument as to why he was not duty bound by statute, but instead repeats a narrative outlined by Attorney General Wilson during a March 30, 2016 press conference. *See Ret.*, 15-23. These claims have little to do with the legal question concerning Mr. Parks.

Instead, the Attorney General attempts to establish that suit against an agency official is tantamount to suit against the state by citing sovereign immunity cases, all of which concern executive agencies, not clerks of court. *See Ret.*, 8-9 (discussing sovereign immunity cases). These cases offer little assistance here. For instance, the Attorney General attempts to analogize *Argent Lumber Co. v. Query*, 178 S.C. 1, 182 S.E. 93 (1935), overruled by *McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), with South Carolina Code § 1-7-380's prohibition, when the far better analogy is *Miller v. State*, 377 S.C. 99, 659 S.E.2d 492 (2008).

In *Miller*, a prisoner sought a writ of mandamus to compel the State (represented by the Attorney General) and the Richland County Clerk of Court to respond to a petition and motion. *Id.* at 100, 659 S.E.2d at 492. Unlike this action, "[t]he Attorney General's Office and the Richland County Clerk of Court [] filed separate returns." *Id.* The Court explained the clerk's responsibility was to review the inmate's petition to ensure its proper form and then forward it to the Attorney General's Office. *Id.* at 101-02, 659 S.E.2d at 493 (citing S.C. Clerk of Court Manual § 6.24). Mandamus was denied, because the inmate "failed to name the Clerk of Court as a party or serve his petition for a writ of mandamus on her" and failed to show "the Clerk failed to perform any duty[.]" *Id.* But for these defects, there was no question mandamus was the proper relief as the Court took the opportunity to emphasize:

The Clerk of Court's duty is not discretionary. The Clerk of Court should not construe a petition for a writ of habeas corpus as a PCR application. In addition, although a habeas corpus petition may be flawed on a number of procedural and substantive grounds, *it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely.* 21 C.J.S. Courts § 338 (2006) ("[A] clerk of court cannot ordinarily determine questions of law [or] render judgments.").

Id. at 102, 659 S.E.2d at 493 (emphasis added). This is precisely what Mr. Parks did here.

Petitioner seeks a writ ordering Mr. Parks to issue subpoenas and swear Solicitor Pascoe's designees. These statutory duties are ministerial and mandatory (*see* S.C. Code Ann. § 14-7-1680 & -1720(E)), no different than the clerk's duty in *Miller* to review the form of a filing and forward it to the Attorney General. According to the return filed on Mr. Parks' behalf,

Mr. Parks himself made the decision, after consulting with Judge Newman, the Presiding Judge, that "due to the myriad of legal and procedural issues which have surfaced since last week concerning this matter, I would not be administering the oath to anyone involved in this case. Furthermore, I advised Judge Newman that I will not issue any more State Grand Jury subpoenas until these legal questions have been resolved." Petitioner's Exhibit B. As Mr. Parks attests, "[n]o one from the Attorney General's Office asked me to take this action." Respondent's Exhibit 6.

Ret., 20 (brackets and underline original). Accepting Mr. Parks' claims as true, he took it upon himself to weigh the merits of the underlying matter rather than perform the narrow function with which he is tasked. This is improper for the reasons explained in *Miller* and cause for the writ to issue.

III. Additional considerations raise questions as to whether Respondent was, in fact, acting of his own volition.

While not essential for Petitioner to prevail, facts strongly suggest that, contrary to his suggestion, Mr. Parks' decision not to administer the oath to Solicitor Pascoe's designees may have been as a result of direction by the Attorney General or his Office. Based on the following timeline of events, the Attorney General's office instructed Respondent not to administer the oath to Petitioner's staff and to cease issuing subpoenas.

On Monday, March 14, 2016, Petitioner signed a State Grand Jury case initiation. Two days later, Chief Mark Keel signed the case initiation and it was delivered to Respondent. Respondent assured Petitioner and SLED agents that the case initiation would be kept confidential, even from the Attorney General's Office.

On Friday, March 18, 2016, after meeting with both Petitioner and Respondent, Judge Clifton Newman signed the case initiation. Respondent then administered the Oath of Secrecy to Petitioner and agreed to come to Orangeburg to administer the oath to selected members of Petitioner's staff the following week. Respondent also issued some initial subpoenas for this investigation.

On Sunday, March 20, 2016, Petitioner emailed Respondent concerning a specific day and time for Respondent to administer the oath to Petitioner's staff. Respondent replied, "I can come tomorrow at 10:00 or 3:00 pm. If that doesn't work, we can do something perhaps Tuesday." (Exhibit A).

On Monday, March 21, 2016 at 1:16 p.m., Respondent emailed Petitioner and agreed to travel to Orangeburg to administer the oath to Petitioner's staff at 2:00 p.m. on Tuesday, March 22, 2016. (Exhibit B).

On Tuesday, March 22, 2016, Respondent did not appear at Solicitor Pascoe's office to administer the oath to his staff as previously arranged. Instead, Respondent and Chief Deputy Attorney General John McIntosh traveled to Charleston to meet with Judge Clifton Newman. Later in the afternoon, Respondent told Petitioner in a telephone conversation that he is "in an uncomfortable position" after meeting with Chief Deputy McIntosh because Respondent reports to the Attorney General.

Also on March 22, 2016, according to SLED Chief Mark Keel, he met with Mr. McIntosh who informed Chief Keel that no further oaths would be administered. Around that same time, Chief Keel spoke with Respondent who indicated the same. (Exhibit C)

On Wednesday, March 23, 2016, Petitioner emailed Respondent attempting to reschedule Respondent's missed appointment to administer the oath. (Exhibit D).

On the evening of Wednesday, March 23, 2016, Petitioner received information concerning some of the details of Judge Newman's Tuesday meeting with both Mr. McIntosh and Mr. Parks. Judge Newman denied the Attorney General's request to review the case initiation. Mr. Parks informed the Judge that he answers to the Attorney General and they have told him not to administer the oath to anyone else. As a result, Petitioner was compelled to prepare a Petition for a Writ of Mandamus.

On Thursday, March 24, 2016, Respondent emailed Petitioner that he would not be administering the oath to Petitioner's staff or issuing any more subpoenas. (Exhibit D).

While the undersigned is reluctant to second-guess Mr. Parks' representations to the Court, it appears the actions of the Attorney General and his staff weighed heavily on Mr. Parks decision to repudiate his statutory duties.

IV. Solicitor Pascoe is authorized to initiate a state grand jury inquiry as the Attorney General's designee in the underlying matter.

While not necessary to decide the exceedingly narrow legal issue presented by this petition, the Attorney General attempts to justify Mr. Parks' actions by arguing, even if he is recused, only he—Alan Wilson—has authority to initiate a state grand jury investigation. See Ret., 23-30. South Carolina Code § 14-7-1630 provides,

When the Attorney General and the Chief of the South Carolina Law Enforcement Division consider a state grand jury necessary to enhance the effectiveness of investigative or prosecutorial procedures, the Attorney General may notify in writing to the chief administrative judge for general sessions in the judicial circuit in which he seeks to impanel a state grand jury that a state grand jury investigation is being initiated.

S.C. Code Ann. § 14-7-1630(B). The Attorney General argues "[t]he duty given to the Attorney General and Chief of SLED is non-delegable[.]" and specific to him alone. Ret., 23. This reasoning and conclusion is flawed.

First, the claim that the Attorney General's initiation authority is non-delegable, is without support. While legislative duties have been held non-delegable, executive power is routinely delegated in order to carry out the law. See *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 643-44, 528 S.E.2d 647, 652 (1999).

The distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter, no valid objection can be made.

Id. (brackets removed) (quoting *State ex rel. Richards v. Moorner*, 152 S.C. 455, 479, 150 S.E. 269, 297 (1929)). The Attorney General cites two treatises for the proposition that "[u]nless, constitutional or statutory provisions so permit" administrative officers cannot delegate discretionary or quasi-judicial functions. Ret., 26 (quoting 73 C.J.S. Public

Administrative Law and Procedure §§ 159-60). But the Attorney General fails to reconcile these general hornbook principles with South Carolina Code § 1-7-320, requiring solicitors to assist in all suits of prosecution when directed by the Governor or called by the Attorney General, or § 14-7-1650, providing for referral to a solicitor upon recusal of the Attorney General. In other words, statutes authorize the very exercise of power the Attorney General claims is non-delegable.

Precedent also supports this conclusion. For instance, in *State v. Smalls*, 98 S.C. 297, 82 S.E. 421, 421 (1914), this Court declined to hold an indictment void *ab initio* simply because it was executed by an acting prosecutor rather than the elected official charged with the statutory duty. In *State ex rel. McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976), the Court declined to read a statutory mandate that "the Attorney General" defend public officials as confined to the individual holding the office, explaining:

When we examine the directions of Section 1-234, we find that the Attorney General is not required to *personally* appear and defend, but his duty under the statute may be satisfied through the appearance by 'any member of his staff or by any solicitor or assistant solicitor' to defend the public official.

Id. at 420, 223 S.E.2d at 855 (emphasis added). In other words, this Court has already construed statutory duties of the Attorney General to be delegable without express permission by the General Assembly in each instance.

Second, the Attorney General disputes his recusal from this matter, but offers a tortured explanation in service of that conclusion. For instance, while he concedes he has a conflict of interest, he also maintains it "was not meant to mean he was legally disqualified[,]" or prohibited from being personally involved. *See* Ret., 16. While he

concedes his deputy told SLED Chief Keel "the Attorney General recused this Office from the legislative members in the redacted portions of the SLED report[.]" he now claims his deputy "misspoke" when he wrote these words. *See Ret.*, 17. The Attorney General also acknowledges a *second* letter to Solicitor Pascoe from another deputy also confirming his Office's "recusal was limited only to those named individuals" in the SLED report, but claims that letter merely "clarified that the Attorney General firewalled 'himself,' not the Office, as Mr. McIntosh had mistakenly written." *See Ret.*, 18. Both letters use the term "recusal."

In a related matter captioned *Pascoe v. Wilson* seeking declaratory relief, Petitioner has provided detailed factual background supported by verified complaint and extensive argument explaining why the Attorney General's recusal is full, final, and unambiguous. The procedure for recusal in a state grand jury matter is clear:

When the Attorney General determines that he should recuse himself from participation in a state grand jury investigation and prosecution, the Attorney General may either refer the matter to a solicitor for investigation and prosecution, or remove himself entirely from any involvement in the case and designate a prosecutor to assume his functions and duties pursuant to this article. When a solicitor determines that he should recuse himself from participation in a state grand jury matter, the Attorney General shall conduct such investigation and prosecution but the Attorney General, in his discretion, may designate another solicitor or appoint a special prosecutor not subject to a conflict to handle or assist him in the state grand jury investigation as the Attorney General deems appropriate.

S.C. Code Ann. § 14-7-1650(C); *see also id.* § 14-7-1720 (authorizing the Attorney General's designee to utilize the state grand jury). Upon designation by the Attorney General, Solicitor Pascoe was vested with the authority of that office for the purpose of the matters referred to him (*see* S.C. Code Ann. § 1-7-320), thus leaving no role for the Attorney General in this matter. This conclusion is also supported by the unambiguous

meaning of the term recusal (*see* RECUSAL, Black's Law Dictionary (10th ed. 2014), ethical rules governing conflicts (*see, e.g.*, Rule 1.11, 1.7 & 1.8, RPC, Rule 407, SCACR), and the heightened duties imposed on prosecutors as ministers of justice held to the highest standards of professional ethics. *See State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000).

Third, the Attorney General offers a narrative of the legislative history of the state grand jury with assertions concerning what the legislature was and was not willing to approve and what assurances were made by its proponents. *See Ret.*, 23-24. These claims are without citation or support. Nor are they useful to this Court's effort to discern what the General Assembly intended, because testimony from members of the executive and legislative branches is inadmissible as evidence of legislative intent even where there is some ambiguity as to what was intended. *Kennedy v. S. Carolina Ret. Sys.*, 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001) (citing *Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 371, 20 S.E.2d 813, 817 (1942)).

Fourth, the Attorney General cites a newspaper article and indictment for the proposition that a former attorney general signed the statewide grand jury initiation for another solicitor who investigated a public corruption case. *Ret.*, 25-26. This is completely irrelevant to the issues before the Court. The question here, as posed by the Attorney General himself, is whether the Attorney General himself was required to sign the initiation "even if the McIntosh letter may be reasonably relied upon as expressing the view that the entire Attorney General's Office had been recused." *Ret.*, 23.

Fifth, in the Attorney General's view, "[t]he State Grand Jury investigation must be ongoing when the Attorney General recuses himself for § 14-7-1650(C) to apply."

Ret., 28. But like his argument concerning the state grand jury's history, it turns on the Court crediting his view of the legislative history and intent (*see* Ret., 27-28), something this Court's rules of construction do not allow. *See Kennedy, supra*. Moreover, the Attorney General's preferred reading presumes the General Assembly provided a recusal procedure for post-initiation conflicts, but left the Attorney General no mechanism for recusal due to pre-initiation conflicts. Such a conclusion forces a conflicted Attorney General to either initiate in order to recuse or take no action at all. When this Court can read a statute in a manner that gives its words their ordinary meaning, without leading to an unintended or absurd result, that reading will control. *See Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 582 (2000). The more sensible reading allows a solicitor to stand in the recused Attorney General's shoes and that construction should control.

V. The facts demonstrate there is an absolute right to mandamus because the Attorney General's actions are impeding the SLED investigation.

Petitioner was granted authority by the Attorney General's office to make all prosecutorial decisions in this matter which would include the authority to empanel a State Grand Jury. Petitioner represents the State in this matter. Unfortunately, the Attorney General has continued to interject himself into this investigation despite his conflict of interest and recusal.

A. Harrell Matter

To give the Court an accurate timeline of the events surrounding this investigation and the Attorney General's blatant attempt to interfere with this investigation, one must also look to the underlying case in this investigation referenced in Respondent's Return, the Bobby Harrell investigations. The Attorney General refers to the "Harrell problem"

and erroneously implies that the Presiding Judge created problems during that investigation. The Attorney General's assertions that the Presiding Judge was at fault for any alleged "Harrell problem" by refusing to sign a transfer order continuing the investigation is a misrepresentation of the facts regarding those legal proceedings. To insinuate that Presiding Judge was at fault is reckless and without merit. On page 27 of his Return, Respondent argues that the actions of the Judge "forced [the Attorney General] to designate Solicitor Pascoe to handle the matter at the County Grand Jury level." This allegation is absolutely false. It was solely Solicitor Pascoe's decision to take the Harrell matter to the county grand jury and it had nothing to do with the Presiding Judge's actions; rather, it was due to the Attorney General's conduct in the case².

- B. No further investigation was conducted into those named in the redacted report despite the Attorney General having the report since December 5, 2013 and the matter being brought to his attention by Solicitor Pascoe.

Prior to Mr. Harrell entering a guilty plea to various criminal indictments, Petitioner contacted the Attorney General on October 1, 2014, with his concerns regarding potential ethics violations and possible criminal activity of other legislators named in the SLED investigative report. No one from the Attorney General's office ever seriously looked into this matter. As detailed in the Attorney General's response to

² In a letter dated July 24, 2014, the Attorney General's office assigned the investigation of the Harrell matter to the Petitioner. This was due in large part to the extrajudicial statements made by the Attorney General himself regarding the ongoing State Grand Jury investigation into the Harrell case. (Exhibit E). The Attorney General sent out a press release concerning the Harrell investigation and gave numerous interviews to blogs, newspapers, and radio programs during the investigation. On June 24, 2014, Chief Justice Toal stated that she had never heard of an Attorney General making comments to the press regarding matters being submitted to the grand jury, stating "the whole behavior here has been very strange to me." (Exhibit F).

Petitioner's concerns, on October 2, 2014, Attorney General Wilson wrote in an e-mail to Chief Deputy John McIntosh that there might be "inherent conflicts" between himself and legislators referenced in the report and that he would have "no further involvement" in a case involving these specific members. The Attorney General further stated "please ensure that I am firewalled from any involvement in that specific instance." After this exchange of e-mails, Petitioner is unaware of any further investigation conducted by the Attorney General's office. This is confirmed in Chief Keel's affidavit. (See exhibit C).

C. Despite the Attorney General's recusal his office has continued to interfere with this investigation.

The claim that Petitioner had reservations about whether he has authority to initiate an investigation based on a quote in the Post and Courier is unfounded.³ The Attorney General does make one assertion that is absolutely true: at no time has Petitioner inquired of anyone in the Attorney General's office about "what investigative tools" he gets to use. This is because the Attorney General's office is recused. Moreover, the Attorney General's assertion that Petitioner did not believe his office is recused based on Petitioner's request for a legal opinion is a misguided interpretation of the facts. Last September, Petitioner learned that the Attorney General's office had reached out to a defense attorney regarding his client's involvement in the investigation and discussed the fact that the Attorney General's office may not believe that his client's actions were in violation of the law. Petitioner sent a letter to Chief Deputy McIntosh on September 25,

³ Indeed, Petitioner has always refrained from giving statements to the press regarding this matter out of respect for the integrity of the investigation. Unfortunately, the Attorney General's office, without permission from Petitioner, released e-mails exchanged between the Attorney General and Petitioner to the Post and Courier and the Petitioner was compelled to issue a vague response because of this media leak by the Attorney General's office.

2015, sharing his concern that the Attorney General's office was attempting to interfere with Petitioner's investigation. Petitioner stated that he was quite troubled by the Attorney General office's conversation with this defense attorney and the appearance that his office was working behind the scenes in an investigation for which they have a conflict of interest. (See Exhibit G). After meeting with Chief Deputy McIntosh and Solicitor General Bob Cook regarding these concerns, Petitioner did request an opinion be drafted based on Petitioner's concern that the Attorney General was interfering with the investigation and advising defense attorneys regarding their opinion on the investigation. Petitioner used this opinion as a way of gaining insight to the defense attorney's argument in potential litigation.

Early this year, Petitioner reached out to former Chief of the State Grand Jury, Robert E. Bogan, because Mr. Bogan is well-versed in State Grand Jury proceedings and does not have a conflict in this matter. On February 12, 2016, Mr. Bogan requested a sample case initiation report from a SLED agent assigned to the State Grand Jury Division in the Attorney General's office. The agent who is not assigned to this investigation informed Mr. Bogan the Attorney General doesn't think it's an appropriate State Grand Jury case. (Exhibit H). This further illustrates the Attorney General's continued interference into this matter despite his recusal. It is also in stark contrast with the Attorney General's current, public stance which, in turn begs the question of why a State Grand Jury investigation was not pursued if the Attorney General in fact believes it appropriate now.

D. Attorney General Wilson's March 30, 2016, press conference and his employee's subsequent e-mails attempting to discredit Petitioner illustrate the Attorney General's obvious conflict in this matter.

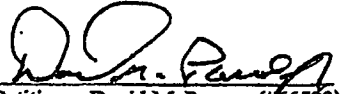
On March 30, 2016, the Attorney General held a press conference in which he continued to violate the integrity of this investigation by attacking the Petitioner both personally and professionally. (Exhibit I). He also called into question the integrity of the State's other solicitors, a circuit court judge, and SLED. During his press conference, the Attorney General stood before multiple news outlets on live television for over thirty minutes and made extrajudicial comments on a case he knew was filed and pending before the South Carolina Supreme Court. In addition to the Attorney General's inappropriate press conference, his office has continued to jeopardize the integrity of this investigation by attempting to turn a criminal investigation into a political game. This is further evidenced by e-mails disseminated by the Attorney General's Deputy Chief of Staff with talking points on how to discredit Petitioner, the Special Prosecutor in a criminal investigation. (Exhibit J). The fact that the Attorney General now has the audacity to make the disingenuous assertion to this Court that it is "unfortunate" this case has garnered so many political headlines further demonstrates the reason he is and should be recused from this investigation.

In fact, any "awkward situation" alleged by Respondent in his Return has been created by the Attorney General. His attempt to interject himself into a matter his office is recused from is woefully improper. More importantly, his use of press conferences, press releases, and legal filings to discredit and impugn Solicitors, law enforcement, and the Courts should have no place in our legal system.

CONCLUSION

For the reasons previously stated and those set forth above, the petition should be granted, this matter should be heard in the Court's original jurisdiction, a writ of mandamus should issue commanding Respondent to perform all duties necessary to his office, and the Court should order any such further relief the Court deems just and proper.

Respectfully Submitted,



Petitioner David M. Pascoe (#66523)
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Facsimile: (803) 533-6004

April 15, 2016
Orangeburg, South Carolina.

Exhibit 6

(Petition for Writ of Mandamus in *Pascoe v. Parks*)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 25 2016

S.C. SUPREME COURT
Petitioner

David M. Pascoe, Solicitor of the First Judicial Circuit,

v.

James R. Parks, Clerk of Court for the State Grand Jury,

Respondent

PETITION FOR WRIT OF MANDAMUS

Petitioner David M. Pascoe, Solicitor of the First Judicial Circuit, respectfully petitions that this Honorable Court issue a Writ of Mandamus requiring the Clerk of Court of the State Grand Jury, James R. Parks, to give the state grand jury oath of secrecy to Petitioner and such members of his staff as he shall designate for work on a state grand jury investigation pursuant to S.C. Code § 14-7-1720(E). Respondent is the only person authorized to administer the oath, has been asked to administer the oath (Exhibit A) and is refusing to do so. (Exhibit B). Respondent is also refusing to administer the ministerial duty of issuing subpoenas. (Exhibit B). Said refusals have the effect of preventing a state grand jury investigation into public corruption in a matter delegated to Petitioner by the Attorney General. Respondent's duty is ministerial and Petitioner has no other remedy available. The Court has jurisdiction over this matter pursuant to Article V, § 5 of the South Carolina Constitution and Rule 245 of the South Carolina Appellate Court Rules.

FACTS

On February 14, 2013, the South Carolina Law Enforcement Division (SLED) commenced an investigation at the request of the South Carolina Attorney General into

possible financial crimes committed by the Speaker of the House, Robert W. Harrell. Subsequently, the Attorney General, by a letter dated July 24, 2014 (Exhibit C), transferred prosecutorial authority over the investigation to Petitioner. During the continued investigation of Speaker Harrell, SLED developed evidence that other legislators may have engaged in alleged financial crimes and ethical violations. SLED subsequently released a redacted version of its December 5, 2013 report detailing activity by Harrell (Exhibit D). The redacted portion of the report detailed the evidence of possible wrongdoing by other members of the General Assembly.

In a letter dated July 17, 2015, the Attorney General's Office made a request to SLED that upon completion of their investigation into these specific legislators, "the report be forwarded to Solicitor David Pascoe for a *prosecutive decision*." (Exhibit E, emphasis added). The letter further stated "[a]s you are aware, *the Attorney General recused this office from the legislative members in the redacted portions of the SLED report...*" (Exhibit E, emphasis added). On July 24, 2015, the Attorney General's office also e-mailed a letter to Solicitor Pascoe, again confirming the recusal of the Attorney General's office in regards to the still open investigation of the individuals in the redacted portion of the SLED report and requested that any further investigation by SLED into those individuals be forwarded to Solicitor Pascoe. (Exhibit F).

After months of investigation, Petitioner and SLED Chief Mark Keel determined it necessary to utilize the state grand jury's investigative authority to adequately investigate this matter in accordance with the Attorney General's request. There being a state grand jury already empaneled and meeting monthly, Petitioner, acting as the Attorney General's designee, gave written notice on March 18, 2016 to the presiding

judge, pursuant to S.C. Code § 14-7-1690, that the grand jury's area of inquiry would expand to include the investigation of the aforementioned public corruption allegations. This notice specifically stated that the inquiry would only concern the legislators identified in the redacted portion of the SLED report, which is the matter delegated to Petitioner by the Attorney General.

On March 24, 2016, Respondent informed Petitioner via email correspondence he will not administer the oath and would no longer issue subpoenas. (Exhibit B). Respondent stated he informed the Honorable Clifton Newman, Chief Administrative Judge of his decision. (Exhibit B). Upon information and belief, Respondent also contends he works for and reports to the Attorney General and that the Attorney General's office has instructed Respondent not to administer the oath or issue subpoenas. As evidenced by the attached exhibits, the Attorney General has recused himself and his office from all parts of this investigation dealing with the redacted portion of the SLED report and designated Petitioner as the prosecutor.

ARGUMENT

L. The Court should exercise original jurisdiction over this dispute.

The Court should consider this petition in its original jurisdiction as a matter of grave public interest in need of expedited review. *Cf. Porter v. Jedziniak*, 334 S.C. 16, 17, 512 S.E.2d 497, 497 (1999) (issuing writ in the Court's original jurisdiction). In its most recent legislative amendment to the State Grand Jury Act, the General Assembly expressly found that a state grand jury "should be allowed to investigate crimes involving public corruption, election laws, and environmental offenses." Act No. 7, 2015 S.C. Acts __ (codified at S.C. Code Ann. § 14-7-1610(H)). Disputes concerning the legal operation

of public institutions have routinely fallen within the scope of matters warranting this Court's original jurisdiction. *See, e.g., Charleston County Parents for Public Schools, Inc. v. Mosley*, 343 S.C. 509, 541 S.E.2d 533 (2001), *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), *In re: Lexington County Transfer Court*, 334 S.C. 47, 512 S.E.2d 791 (1999). Respondent's refusal to perform his ministerial duties threatens to terminate an inquiry into public corruption, and thus merits the Court's expedited review.

II. The writ should issue to compel Respondent to perform ministerial duties over which he has no discretion.

The Court should issue a writ of mandamus to compel the state grand jury clerk to administer the oath, issue subpoenas, and perform all other necessary and proper duties required by his office. "The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law." *Porter*, 334 S.C. at 18, 512 S.E.2d at 497. For a writ to issue, a petitioner must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. *Id.* at 18, 512 S.E.2d at 498. "The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Wilson v. Preston*, 378 S.C. 348, 354, 662 S.E.2d 580, 583 (2008). Respondent's duties are ministerial as the State Grand Jury Act vests him with no discretion to refuse to perform.

The State Grand Jury Act grants the state grand jury the powers and duties of a county grand jury, powers that include the ability to issue subpoenas and examine witnesses under oath, in secret. S.C. Code Ann. §§ 14-7-1640, -1680 & -1720. The state

grand jury clerk's role in the grand jury's inquiry is merely ministerial. With respect to the oath of secrecy,

State grand jurors, the Attorney General or his designee, the court reporter, any interpreter used, and the clerk of the state grand jury must be sworn to secrecy and also may be punished for criminal contempt for violations of this section. Once he is sworn to secrecy, the clerk of the state grand jury is authorized, *only if requested by the Attorney General or his designee*, to give the oath of secrecy to members of the Attorney General's staff; experts or other individuals contracted by the Attorney General or law enforcement for assistance in a state grand jury investigation; federal, state, or local prosecutors and their staff; and federal, state, or local law enforcement officers and their staff. Once he is sworn, the clerk of the state grand jury is authorized at any time to give the oath of secrecy to members of his own staff or to the court reporter.

S.C. Code Ann. § 14-7-1720 (E) (emphasis added). In other words, the clerk's administration of the oath merely facilitates the swearing of assistant prosecutors and law enforcement necessary to the prosecutor's presentation to the state grand jury. With respect to the issuance of compulsory process, the clerk is likewise constrained in his discretion and performs a purely ministerial role.

The clerk of the state grand jury, upon the request of the Attorney General or his designee, *shall* issue subpoenas or subpoenas duces tecum to compel individuals, documents, or other materials to be brought from anywhere in this State to a state grand jury.

S.C. Code Ann. § 14-7-1680 (emphasis added).

This conclusion is also supported by other statutory duties that leave no room for the exercise of discretion. For example, in choosing jurors, "the clerk of the state grand jury *shall* draw therefrom at random a list of seven hundred eligible state grand jurors," to create a master list. S.C. Code Ann. § 14-7-1660(A) (emphasis added). "The clerk of the state grand jury *shall* mail to every person whose name is drawn a juror qualification form," and he "*shall* prepare annually a jury list of persons qualified to serve as state

grand jurors[.]” *Id.* (emphasis added). Upon order of the presiding judge, the clerk “*shall* summon” the jurors to attend for the purpose of empaneling a state grand jury. *Id.* § 14-7-1660(B) (emphasis added).

The General Assembly’s decision to use the permissive term “may” elsewhere, further bolsters the conclusion that Respondent lacks discretion here. For example, once empaneled, “the Attorney General or solicitor, in the appropriate case, *may* notify the presiding judge in writing as often as is necessary and appropriate that the state grand jury’s areas of inquiry have been expanded or additional areas of inquiry have been added thereto.” S.C. Code Ann. § 14-7-1690 (emphasis added). When the target of a subpoena fails to respond, “the Attorney General or his designee may petition the presiding judge to compel compliance by the person alleged to have committed the violation or who has failed to answer.” S.C. Code Ann. § 14-7-1680. Similarly, once the grand jury has issued an indictment, the clerk of the state grand jury “may” issue subpoenas and subpoenas duces tecum to compel individuals, documents, or other materials “to be brought from anywhere in this State to the trial of any indictment returned by a state grand jury[.]” *Id.* In other words, the State Grand Jury Act vests the prosecutor with discretion. The only place in the Act where the clerk is entitled to any discretion, is in the issuance of subpoenas to facilitate the transfer of evidence to a trial court *after* an indictment is returned. Here, Respondent lacks discretion to refuse to perform the duties requested.

Respondent’s refusal to perform his statutory duties appears predicated on two misapprehensions. To the extent he believes he works for or reports to the Attorney General, he is mistaken. Respondent is an officer of the court, not the prosecution. The clerk of the state grand jury is designated by the presiding judge. *See* S.C. Code Ann. §

14-7-1660(A) ("the clerk of court shall forward the list to the person designated as the clerk of the state grand jury by the presiding judge."). Accordingly, Respondent's statutory duties cannot be suspended by direction of the Attorney General's office.

Second, even assuming Respondent worked for the Attorney General, he would still be required to perform his duties as Petitioner has requested because, in this case, Petitioner is exercising the authority of the Attorney General's office. The Attorney General or his designee is tasked with examining witnesses, presenting evidence, and drafting indictments and reports upon the direction of the state grand jury. *Id.* § 14-7-1650. When the Attorney General has a conflict of interest, a prosecutor is designated to stand in his shoes.

When the Attorney General determines that he should recuse himself from participation in a state grand jury investigation and prosecution, the Attorney General may either refer the matter to a solicitor for investigation and prosecution, or remove himself entirely from any involvement in the case and designate a prosecutor to assume his functions and duties pursuant to this article.

Id. § 14-7-1650(C). The Attorney General invoked this procedure here such that Petitioner exercises the Attorney General's authority for the purpose of *this* investigation.

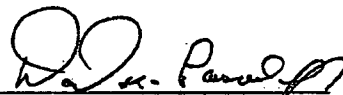
The Attorney General has recused himself from this case and designated Petitioner in his place. This recusal precludes his involvement in the entirety of the matter, including those persons potentially implicated by the redacted portions of the SLED report. Therefore, for purposes of this matter, Petitioner and his staff stand in the Attorney General's shoes. Since Respondent has no authority to refuse Petitioner's request for administration of the oath or issuance of subpoenas, the writ sought here should be issued.

CONCLUSION

Petitioner respectfully requests that this petition be granted and that the Court:

- (1) hear this matter in its original jurisdiction;
- (2) expedite the briefing and argument scheduled in this matter;
- (3) issue a writ of mandamus commanding Respondent to issue the oath of secrecy to Petitioner's staff involved in state grand jury investigation, issue subpoenas as may be required, and perform all other duties necessary to his office; and
- (4) order any such further relief the Court deems just and proper.

Respectfully Submitted,



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March 25, 2016
Orangeburg, South Carolina.

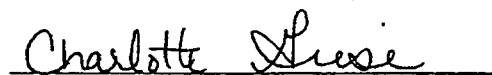
VERIFICATION

Pursuant to Rule 245(a) of the South Carolina Appellate Court Rules, I have read the above petition in its entirety and hereby verify that the facts alleged are true to the best of my knowledge and that the accompanying exhibits are true and accurate copies.



Petitioner David M. Pascoe (#66523)
Solicitor, First Judicial Circuit

Sworn before me on March 25, 2016.
Notary Public for South Carolina



My commission expires 1/24/2021

CHARLOTTE GIESE
Notary Public, State of South Carolina
My Commission Expires 1/24/2021

Exhibit 7

(Chief Keel's Affidavit)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY APPEARED before me, Chief Mark A. Keel, who being duly sworn,
attests to the following:

1. I am the Chief of the South Carolina Law Enforcement Division (SLED).
2. The primary mission of the State Law Enforcement Division is to provide quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state as directed by the Governor and Attorney General.
3. To that end, S.C. Code Ann. § 23-3-15 of the South Carolina Code of Laws vests SLED with "jurisdiction and authority, on behalf of the State" over all statewide law enforcement matters, including, but not limited to, "all general criminal investigations" in the State of South Carolina and all other activities of any kind not inconsistent with the mission of SLED or otherwise proscribed by law. S.C. Code Ann. § 23-3-15.
4. In addition, S.C. Code Ann. § 23-3-25 provides that the "Chief of the South Carolina Law Enforcement Division may assign personnel of the division to particular areas of enforcement as appropriate for the enforcement of the laws and regulations of this State which the South Carolina Law Enforcement Division is charged with enforcing." S.C. Code Ann. § 23-3-25.
5. As such, SLED has jurisdiction to investigate any and all statewide criminal investigations and the Chief of SLED can assign personnel to accomplish this mandate.
6. Pursuant to S.C. Code Ann. § 14-7-1780, SLED is also required to "provide service as the state grand juries require." In that regard, SLED provides law enforcement personnel to

investigate matters that fall within the jurisdiction of the state grand jury as set forth in S.C. Code Ann. § 14-7-1630.

7. The entirety of SLED's involvement in this matter has been to conduct an independent and objective investigation into allegations of violations of South Carolina law, and SLED desires to continue the same.

8. However, I would like to submit the following timeline of events surrounding this matter for the benefit of the Court:

- a. On February 14, 2013, SLED received a letter from the South Carolina Attorney General's Office regarding complaints of alleged ethics violations by the Speaker of the South Carolina House of Representatives, Robert W. Harrell, Jr. The Attorney General's Office requested that SLED investigate these allegations and SLED complied with such request and opened an investigation into this matter.
- b. On or about December 5, 2013, SLED completed the preliminary investigation into the above-referenced allegations and documented the same in an Investigative Report (the "Harrell Report").
- c. During the course of this investigation, the names of other South Carolina legislators arose and the allegations regarding such are set forth in the Harrell Report.
- d. SLED provided the Harrell Report to the Attorney General's Office for review, and subsequent to such review, a state grand jury was initiated into the matter.
- e. To that end, on January 13, 2014, the Attorney General's Office released a press release indicating that the "Speaker Bobby Harrell matter" had been "referred to the State Grand Jury."
- f. Despite the other names in the Harrell Report, this state grand jury proceeded as to Speaker Harrell only, and there was no action initially pursued against any of the other legislators mentioned in the Harrell Report.
- g. After several legal issues arose, on July 24, 2014, the Attorney General assigned 1st Circuit Solicitor David Pascoe to handle the Harrell case. Subsequent to such, SLED continued its work on this matter with Solicitor Pascoe and his office.

- h. On October 1, 2014, I was copied on an email from Solicitor Pascoe to Attorney General Wilson wherein Solicitor Pascoe raised concerns regarding the legality of the actions of several of the other legislators mentioned in the Harrell Report.
- i. On October 23, 2014, Speaker Harrell pled guilty and resigned from office.
- j. Subsequent to this guilty plea, SLED released the Harrell Report with certain portions redacted.
- k. These redacted portions mentioned other individuals, including other legislators, and were redacted to preserve the integrity of the ongoing investigation in this regard.
- l. Subsequent to the October 23, 2014 plea, SLED received no specific direction regarding the redacted portions of the Harrell Report for several months.
- m. However, on July 17, 2015, I received a letter from Chief Deputy Attorney General John W. McIntosh. This letter indicated that, upon the completion of the investigation into the redacted portions of the Harrell Report, this matter should be "forwarded to Solicitor David Pascoe for a prosecutive decision."
- n. This letter further stated, "[a]s you are aware, the Attorney General has recused this office from the legislative members in the redacted portions of the SLED report but has not recused this office from any other matters."
- o. I understood this letter to indicate that the entire Attorney General's Office was recused from any further involvement in the investigation of any members of the legislature who were mentioned in the redacted portions of the Harrell Report.
- p. As such, SLED continued working with Solicitor Pascoe on this investigation and did not discuss the same with any member of the Attorney General's Office.
- q. As this investigation continued, the need for a state grand jury became apparent.
- r. I discussed this with Solicitor Pascoe and we analyzed the previous letters and correspondence on this case and we each agreed that this was a "prosecutive decision" as authorized by the July 17, 2015 letter.
- s. In that regard, I sent a SLED agent to the Attorney General's Office to obtain templates for state grand jury case initiations from SLED Lt. Pete Logan whose office is physically located inside the Attorney General's Office. This was approximately three weeks prior to the actual case initiation in this matter.

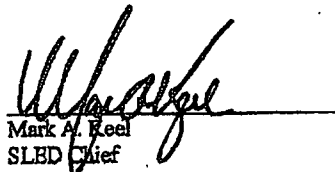
- t. Thereafter, on or about March 16, 2016, having thoroughly reviewed the matter with the SLED investigators assigned on this case, I signed the state grand jury case initiation into this matter as provided in S.C. Code Ann. § 14-7-1630(B).
- u. I did not discuss this matter directly with any member of the Attorney General's Office prior to signing this initiation because I believed that the entire Attorney General's Office had been recused on this matter in accordance with the July 17, 2015 letter.
- v. Afterward, the state grand jury investigation proceeded and Solicitor Pascoe was sworn accordingly.
- w. In addition, the Clerk of the State Grand Jury, Jim Parks, issued subpoenas and SLED proceeded with its investigation.
- x. However, on March 21, 2016, I learned that the Clerk had informed Solicitor Pascoe that the Clerk would not administer the oath of the state grand jury to any other member of Solicitor Pascoe's office, and that there would be no further subpoenas issued in this case.
- y. I spoke with the Mr. Parks about this matter on March 21, 2016 and again on March 22, 2016.
- z. During these conversations, Mr. Parks confirmed that he would not be administering any further oaths or issuing any further subpoenas in this matter. However, Mr. Parks would not confirm which individuals he had met with regarding this matter. Mr. Parks also confirmed his belief that he is an employee of the Attorney General's Office.
- aa. On March 22, 2016, Chief Deputy Attorney General McIntosh and Solicitor General Bob Cook came to my office to discuss the initiation of a state grand jury in this matter. Both expressed concern as to Solicitor Pascoe's authority to initiate a state grand jury and were troubled that I had not notified them of this initiation.
- bb. I explained that I did not consult with or notify the Attorney General's Office because I believed them to be recused in this matter.
- cc. During that meeting, I asked Chief Deputy McIntosh why he had not contacted either Solicitor Pascoe or me to discuss his concerns with the Solicitor's authority to initiate a state grand jury, particularly after I had sent a SLED agent to obtain the case initiation templates approximately three weeks prior to such.
- dd. Chief Deputy McIntosh responded that he didn't respond to rumors and didn't know why he should call Solicitor Pascoe.

ee. At that March 22, 2016 meeting, Chief Deputy Attorney General McIntosh also asserted his belief that it was wrong for the Clerk of the State Grand Jury to have given the grand jury oath to Solicitor Pascoe and stated that there would be no further oaths administered in this matter.

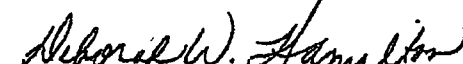
ff. Thereafter, I did not communicate with the Attorney General's Office again until phone calls on March 28, 2016 and March 29, 2016. During the March 29 call, the Attorney General informed me that he was going to assign another prosecutor to handle this matter.

gg. In addition, on March 30, 2016 I spoke with Chief Deputy McIntosh who informed me that the Attorney General was willing to sign a case initiation for a state grand jury investigation into this matter.

9. I believe that the administration of justice should prevail in this matter and that the citizens of the State of South Carolina deserve the same. In that regard, I ask only that SLED and the state grand jury be allowed to continue the investigation into this matter.


Mark A. Reel
SLED Chief

SWORN TO before me this 14th day of April, 2016


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/6/16

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

vs.

JAMES H. HARRISON,

DEFENDANT.

)
) Case No.: 2018-GS-47-35, 36, 37 and 49
)

) **DEFENDANT HARRISON'S MOTION**
) **IN LIMINE TO EXCLUDE**
) **EVIDENCE**
)
)
)

Comes Now, the Defendant James H. Harrison (also referred to herein as "Harrison" or "Defendant Harrison"), by and through the undersigned counsel, who respectfully moves this Court to Order the State and all of the State's witnesses to refrain from arguing or introducing during voir dire of the jury, opening statements, closing arguments, direct examination, cross-examination, statements, objections, and to otherwise exclude from evidence any of the following matters stated herein below.

I.

The State should be prohibited from presenting or introducing any evidence regarding legislation introduced, sponsored, co-sponsored, voted on, or otherwise legislatively acted upon by Harrison, except legislation specifically presented or mentioned to the grand jury. See, *State v. Baker*, 411 S.C. 583, 769 S.E.2d 860 (2015) ("[W]e believe that notice and preparation are inextricably linked concepts as '[f]airness and due process require that a criminal defendant receive sufficient notice of the charges against him to enable him to prepare a defense'")(reversing a conviction because the indictments were non-specific, covered an unconstitutionally overbroad six-year time period, and lacked specificity as to when the alleged acts occurred). The

indictments in this case cover a period of time from, at least, September 1, 2006 through November 9, 2012. Legislation acted on by Harrison, during the aforementioned period, that was not specifically identified to the grand jury, could amount to thousands of matters.

II.

The State should be prohibited from presenting or introducing any alleged co-conspirator statements unless and until the State has presented independent and prima facie evidence of the existence of a conspiracy involving Harrison. *See e.g., State v. Sullivan*, 277 S.C. 35, 282 S.E.2d 838 (1981); *United States v. Asibor*, 109 F.3d 1023 (5th Cir. 1997); *U.S. v. Urbanik*, 801 F.2d 692 (4th Cir. 1986).

III.

The State should be prohibited from presenting or introducing any demonstrative evidence that does not comply with Rule 1006 of the South Carolina Rules of Evidence and that has not been provided to the defense at least ten (10) days before the trial of this case.

IV.

The State's lay witnesses should be prohibited from offering opinion testimony beyond the scope of Rule 701 of the South Carolina Rules of Evidence and the State should be prohibited from offering any expert witness, as they have not identified any expert.

V.

The State should be prohibited from presenting or introducing any expert witness testimony that offers a legal opinion or conclusion of law.

VI.

The State should be prohibited from presenting or introducing any email or electronic mail evidence as a business record or that is otherwise not properly authenticated. *See, United States v. Cone*, 714 F.3d 201 (4th Cir. 2013).

VII.

The State should be prohibited from presenting or introducing any evidence or testimony alleging that Harrison "conspired" with any person in this case, other than Richard Quinn. The State has failed to disclose the identity of any alleged co-conspirators other than the alleged conspiracy, contained in the indictment, between Harrison and Richard Quinn.

VIII.

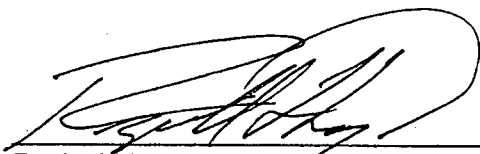
The State should be prohibited from presenting or introducing any evidence or testimony relating to the alleged misconduct or alleged criminal acts of Robert Harrell, Richard "Rick" Quinn, Jr., James "Jimmy" Merrill, and John Courson. Further, the Court should prohibit the State from presenting or introducing any evidence or testimony relating to the alleged misconduct or alleged criminal acts of First Impressions/Richard Quinn & Associates, Palmetto Health, the South Carolina Association for Justice/the Trial Lawyers Association, AT&T, SCANA Corporation, the University of South Carolina, or the InfiLaw System, unless the alleged misconduct or alleged criminal acts relate directly to action or knowledge on the part of Defendant Harrison. Evidence and testimony relating to the above described alleged misconduct or alleged criminal acts should be excluded pursuant to Rules 401, 402, and 403 of the South Carolina Rules of Evidence.

CONCLUSION

For the reasons stated herein, the Defendant moves this Court for Orders excluding or limiting the evidence or testimony stated hereinabove.

Respectfully submitted,

BY:


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ATTORNEYS FOR THE DEFENDANT.

Camden, South Carolina

17th day of October 2018.

FILED

STATE GRAND JURY OF SOUTH CAROLINA

NOV 05 2018

**JAMES R. PARKS
CLERK, STATE GRAND JURY**

STATE OF SOUTH CAROLINA

Case No.: 2018-GS-47-35, 36, 37,
and 49

vs.

JAMES H. HARRISON,

**DEFENDANT HARRISON'S
POST TRIAL MOTIONS**

DEFENDANT.

Defendant James H. Harrison ("Harrison"), by and through his undersigned attorneys, respectfully moves this Honorable Court, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure, for a new trial and for a verdict in arrest of judgment.

This Court presided over the trial of Harrison beginning on October 22, 2018. On October 26, 2018, a jury returned verdicts in this matter finding Harrison guilty on the charges of statutory and common law misconduct in office and perjury, but not guilty on the charge of criminal conspiracy. The Court sentenced Harrison on October 22, 2018 and allowed the Defendant until November 5, 2018 to file post-trial motions. As grounds for these motions, the Defendant restates and incorporates each and every motion and objection made prior to and during the trial of this case, as if restated fully herein.

"In a criminal case, '[t]he only post verdict fact-based remedy available . . . is a motion for a new trial.'" *State v. Miller*, 287 S.C. 280, 337 S.E.2d 883, 886 (1985), appeal after remand 298 S.C. 426, 346 S.E.2d 705 (1985). "It is well settled that the

grant or refusal of a new trial is within the sound discretion of the trial judge." *State v. Simmons*, 279 S.C. 165, 303 S.E.2d 857 (1983). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." *State v. Smith*, 316 S.C. 53, 447 S.E.2d 175, 176 (1993). South Carolina recognizes that a trial court may grant a verdict in arrest of judgment in order to prevent entry of judgment where there is an insufficiency of the indictment or some other fatal defect appearing on the face of the record. *Miller, Id.* at 886; *State v. Brown*, 201 S.C. 417, 23 S.E.2d 381 (1942) (holding that motion for arrest of judgment should have been granted where trial court did not have jurisdiction to impose sentence); *State v. Jeter*, 47 S.C. 2, 24 S.E. 889 (1896).

The Defendant asserts that all motions made prior to and during the trial of this case, including Defendant's motions for a directed verdict on the individual charges, are grounds for, and support this Court granting, a new trial in this case. In addition to the legal issues raised by Defendant's motion for a new trial, the Defendant asserts that there was insufficient evidence supporting the jury's guilty verdicts in this case. The insufficiency of evidence supporting these guilty verdicts, in this matter, rise to the level of errors of law and warrant the granting of a new trial.

Additionally, the Court should grant Defendant's motion for a verdict in arrest of judgment on the grounds previously raised in this case, including, but not limited to, the fact that the state grand jury lacked subject matter jurisdiction, this prosecution exceeded the authority granted by the South Carolina Attorney General's recusal/referral, and the jury verdicts on the charges of statutory and common law misconduct violated the prohibition against double jeopardy. For purposes of these motions, the

Defendant restates and incorporates all motions, arguments and memoranda made prior to and at the trial of this case. However, the Defendant specifically moves for a verdict in arrest of judgment because the guilty verdicts on the statutory and common law indictments constitute double jeopardy.

"The Double Jeopardy Clauses of the United States and South Carolina Constitutions operate to protect citizens from being twice placed in jeopardy of life or liberty for the same offense." *State v. Jolly*, Op. No. 5128 (May 8, 2013), *citing State v. Brandt*, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011). "The United States Constitution, which is applicable to South Carolina via the Fourteenth Amendment provides: '[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb.'" *Id.* (*quoting* U.S. Const. amend V)(alterations by court). *Id.* "Additionally, the South Carolina Constitution states: 'No person shall be subject for the same offense to be twice put in jeopardy for life or liberty.'" *Id.* (*quoting* S.C. Const. art. I, § 12) (alteration by court). The Jolly Court succinctly described the double jeopardy prohibition by noting that "[t]he Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense." *Stevenson v. State*, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999); *see also, Brown v. Ohio*, 431 U.S. 161 (1977).

The South Carolina Supreme Court has specifically noted that the prohibition is against double jeopardy for the same offense and not for the same act. *State v. Corbett*, 117 S.C. 356, 109 S.E. 133 (1921). In cases where two or more violations arise from the same transaction or events, courts have used "the same evidence," or "*Blockburger*," test to determine if the offenses are identical for purposes of double

jeopardy's prohibition. See, *State v. Lawrence*, 266 S.C. 433, 223 S.E.2d 856 (1976), citing *Blockburger v. U.S.*, 284 U.S. 299 (1932). The *Blockburger* "same elements" test states that two offenses are distinct, and not barred by double jeopardy, if one requires proof which the other does not. *Id.* Thus, under the *Blockburger* test, two separate and distinct offenses may arise out of the same transaction or events. *State v. Grueling*, 257 S.C. 515, 186 S.E.2d 706 (1972). In *Blockburger*, the United States Supreme Court set forth the "same elements" test as follows"

The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.

Blockburger, 284 U.S. at 304.

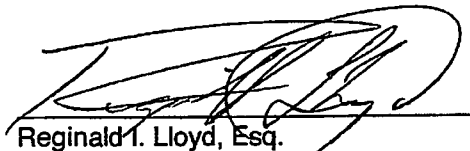
The guilty verdicts for statutory and common law misconduct in office violate the principle of double jeopardy.¹ In this case, the Court charged the jury, in part, that common law misconduct requires proof "that the Defendant willfully and dishonestly failed to properly and faithfully discharge duties imposed by law (The State Ethics Act) while a public official." Further, the Court charged that a "public officer's failure to comply with a statutory duty (The State Ethics Act) is misfeasance in office. The State may prove the Defendant's guilt by proving violations of statutory duties while a public official. Misfeasance means performance of a lawful action in an illegal or improper manner." Thus, the Defendant's conduct must be willful, rather than negligent or reckless, in order to be found guilty of common law misconduct.

¹ The State did not elect which conduct, or which Ethics Act statutes, applied to separately to the charges of statutory and common law misconduct.

As to statutory misconduct, although the Court properly defined a higher standard of mens rea for "habitual negligence," the Court nevertheless charged that the Defendant may be found guilty if the State proves that he is guilty of "official misconduct," "corruption," or "fraud." Although Section 8-1-80, the statutory misconduct statute, does not define the three terms charged by the Court, the only viable definition for those terms necessitates that they are defined exactly as common law misconduct.² There is no reasonable way to discern if the jury applied the lower "habitual negligence" standard of proof, or element of offense, to the alleged ethics violations or if it applied the same willful conduct standard to both common law and statutory misconduct. Because both statutory "misconduct," "corruption," and "fraud" have the same elements as common law misconduct, the verdict violates the constitutional prohibition on double jeopardy.

For the reasons set forth herein, as well as the motions and objections raised prior to and during the trial of this case, the Defendant respectfully moves this Court for a new trial and for a verdict in arrest of the judgment.

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² Any other definition for the terms "official misconduct," "corruption," and "fraud" makes those terms unconstitutionally vague and would not provide sufficient notice to the Defendant of the charges against him or the proof required to convict him.

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5th day of November 2018.

NOV 05 2018

STATE GRAND JURY OF SOUTH CAROLINA

Case No.: 2018-GS-47-35, 36, 37,
and 49

**DEFENDANT HARRISON'S
MOTIONS FOR AN APPEAL BOND
AND RECONSIDERATION OF COURT'S
SENTENCES**

DEFENDANT.

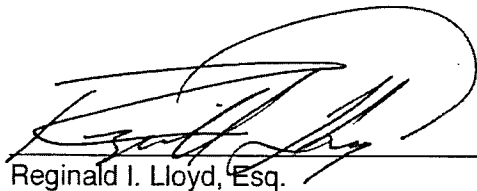
The Defendant was convicted after a jury trial, and sentenced by this Court, on October 26, 2018 for statutory and common law misconduct and perjury. Section 18-1-90 provides that this Court may grant bail, staying the sentence, in cases in which the Defendant's appeal is from the trial, conviction, or sentence for a criminal offense. This case involved complex questions of legal interpretation of the State Ethics Act, jurisdiction of the State Grand Jury, and other legal issues. Any appeal filed on behalf of the Defendant relates to the merits of these complex legal issues and is not for the purpose of unduly delaying imposition of the Court's judgment and sentences. The Defendant is not a flight risk and is no threat to the community. Based upon the

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Defendant's long public service, military record, lack of criminal record, ties to the community, and documented health problems, the Defendant respectfully requests that this Court grant a property or surety bond pending conclusion of his appeal in this matter.

Additionally, the Defendant respectfully moves this Court to reconsider the sentences imposed on October 26, 2018. The Defendant respectfully requests that the Court hold in abeyance any reconsideration of the sentences imposed until after the completion of the appeals of this case, in the event that one or more of the convictions are overturned.

BY:



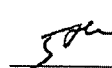
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Camden, South Carolina

 day of November 2018.

BEFORE THE SOUTH CAROLINA STATE GRAND JURY #28

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

INVESTIGATION NUMBER:)

SGJ2016-257)

ORIGINAL

TESTIMONY OF
JAMES H. HARRISON

Wednesday, March 15, 2017
12:29 p.m. - 1:35 p.m.

The testimony of JAMES H. HARRISON was taken before the State Grand Jury #28 at The Rembert C. Dennis Building, Columbia, South Carolina, on the 15th day of March, 2017, before Barbara J. Howell, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 000261

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EXHIBITS

(No Exhibits were marked during the testimony.)



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3

1 Wednesday, March 15, 2017 @ 12:29 p.m.

2 MR. PASCOE: Madam Forelady, do we have enough
3 jurors?

4 THE FORELADY: Yes, sir.

5 QUORUM OF JURORS

6 MR. PASCOE: All right. Bring him on in. James
7 Harrison.

8 (Witness enters at 12:29 p.m.)

9 MR. PASCOE: I told you it would be one second.
10 Over here.

11 THE FOREPERSON: All right. State your name for the
12 record, please.

13 MR. HARRISON: James H. Harrison.

14 JAMES H. HARRISON, being first duly sworn by the
15 Foreperson, testifies as follows:

16 MR. HARRISON - EXAMINATION BY MR. PASCOE:

17 Q: Good afternoon, Mr. Harrison.

18 A: Mr. Pascoe.

19 Q: Appreciate you being patient in coming here
20 today.

21 A: Glad to.

22 Q: Of course, you work in this building, so you
23 didn't have far to go, right?

24 A: I came down three floors. That's it.

25 Q: All right. I've got to go over some standard



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1 protocol questions with you -- or statement
2 with you. You are represented by Attorney
3 Reggie Lloyd?

4 A: Yes, sir.

5 Q: And he's here today, correct?

6 A: Yes, sir.

7 Q: Okay. Mr. Harrison, this is the South Carolina
8 State Grand Jury, a grand jury that is
9 investigating possible violations of South
10 Carolina Criminal Law involving public
11 corruption by, but not necessarily limited to,
12 members of the South Carolina Legislature. The
13 court reporters to my right and to your left,
14 they're the court reporters for the State Grand
15 Jury. They're going to take down the questions
16 put to you and your answers and generate a
17 transcript of these proceedings. You have been
18 placed under oath by the Forelady and you are
19 required to truthfully answer questions put to
20 you by myself or by members of the Grand Jury
21 unless a truthful answer is privileged or
22 otherwise protected by law. You do not have to
23 answer any questions if a truthful answer would
24 tend to incriminate you. Anything you say can
25 be used against you by the Grand Jury or in a



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1 subsequent legal proceeding. You are an
2 attorney, you know this, if you give false
3 testimony while under oath, you can be
4 prosecuted for perjury. You are represented by
5 Attorney Reggie Lloyd. He is here with you
6 today. Mr. Lloyd cannot be in the Grand Jury
7 Room with you, but can remain outside. Upon
8 request, you will be given a reasonable
9 opportunity to consult with Mr. Lloyd outside
10 the Grand Jury Room. So, if you need to
11 consult with him, you just let me know and I'll
12 let you go outside. Also, if you ever don't
13 understand one of my questions, just let me
14 know and I'll try to rephrase it for you.

15 A: Sure.

16 Q: Okay.

17 A: Yes.

18 Q: All right. Again, thank you for coming, Mr.
19 Harrison.

20 A: Yes, sir.

21 Q: Where do you currently work?

22 A: I am the Director of Legislative Council and
23 the State Code Commissioner.

24 Q: Okay. And how long have you worked there?

25 A: Almost five years now.



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1 Q: What are your duties there and what's your
2 function?

3 A: Legislative Council is a state agency that does
4 all the research and drafting for the
5 Legislature. When a member of the House or
6 Senate has an idea about a bill that he'd like
7 to -- that he or she would like to introduce,
8 they come to us. We do the research and we
9 actually draft the legislation and then meet
10 with the legislator. They might want to make
11 changes. We might not have done what they
12 wanted us to do, but it's a give and take where
13 we actually draft the bill that they then
14 introduce to the House or the Senate.

15 Q: Okay.

16 A: As Code Commissioner, I'm responsible -- when
17 the General Assembly amends the law of South
18 Carolina, it has to be published both online
19 and in hard volume. And I'm the entity that
20 deals with the publisher to get it published so
21 that attorneys, judges and the public can see
22 what the current law of South Carolina is.

23 Q: Gotcha. Yes, sir. And you work in this
24 building?

25 A: Yes, sir.



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1 Q: All right. Do you have much contact with
2 Attorney General Wilson?
3 A: No. I see him from time to time in the
4 elevator, but that's about it.
5 Q: Okay. And you are actually an attorney?
6 A: Yes, sir.
7 Q: How long have you been an attorney?
8 A: Since 1976.
9 Q: Okay. And it's been your profession since 1976
10 and other jobs, but ---
11 A: Yes, sir.
12 Q: --- that's your main profession. When were you
13 elected to the House of Representatives?
14 A: 1989.
15 Q: And what district did you represent when you
16 were in the House of Representatives?
17 A: District 75. That's basically the east side of
18 Columbia.
19 Q: Okay. So right here in the Columbia area?
20 A: Yes, sir.
21 Q: Okay. And you served in the House of
22 Representatives until when?
23 A: 'Til 2012.
24 Q: And after that -- so you were in the
25 Legislature -- how many years is that -- my



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1 math ---

2 A: Twenty-three.

3 Q: Twenty-three years. And after that, that's
4 when you went to the Legislative Council?

5 A: Yes, sir.

6 Q: Okay. And what committees were you on when you
7 were in the House of Representatives?

8 A: My very first year, I was on the 3M Committee
9 -- Medical, Military and Municipal Affairs.
10 After that, I was moved to Judiciary and, in
11 1994, I became the Chairman of the Judiciary
12 Committee and remained chairman until I retired
13 in 2012.

14 Q: So you were chairman almost for 18 years?

15 A: For 18 years. Yes, sir.

16 Q: Pretty good experience to have before you went
17 to go work at Legislative Council, correct?

18 A: It was.

19 Q: All right. And chairman of the House
20 Judiciary, that's a fairly coveted and
21 important position in the house, isn't it? You
22 can brag for a second if you want to, but it's
23 ---

24 A: I don't like to, but it -- we took up --
25 probably 40 percent of the bills that went



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1 through the General Assembly would come through
2 the Judiciary Committee.

3 Q: 40 percent. What -- and so explain to the Jury
4 what all being on who -- House Judiciary
5 entailed and specifically being chairman of the
6 House Judiciary.

7 A: Most of the work that's done in the House of
8 Representatives and in the Senate is done in
9 the committee. I mean, you see film clips of
10 what goes on on the floor, where everybody's
11 sitting together and debating, but the real
12 hard work goes -- takes place in the
13 committees. Where a bill is introduced, it's
14 assigned to a committee. The committee then
15 studies that bill, takes input from the public
16 and eventually votes on the bill. And, if the
17 committee feels the bill is worthy of
18 discussion by the entire body, it passes the
19 bill out to the full -- to the full House.
20 Same thing happens in the Senate. In the
21 Senate, committee chairmanships are handled by
22 seniority. Whoever the senior member of the
23 majority party is on a committee, is the
24 chairman of that committee. And the House is
25 a little more democratic. The Speaker of the



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1 House appoints the committees and then the
2 committee members elect the person they choose
3 to be their chairman.

4 Q: Okay. And, as you just testified to something
5 I didn't even know, approximately 40 percent of
6 all your bills go through the Judiciary --
7 approximately. A large percentage ---

8 A: A large percentage of them do.

9 Q: Very important issues such as criminal laws?

10 A: Exactly. Criminal laws, election laws,
11 government restructuring, the courts, the
12 criminal justice system.

13 Q: Would tort reform?

14 A: Tort reform.

15 Q: Issues dealing with both prosecutors -- my wing
16 -- and defense attorneys?

17 A: Exactly.

18 Q: How many contested elections did you have
19 during the 23 years you were in the House -- 24
20 years?

21 A: The very first one. I was a long shot and won
22 my first race by 40 votes.

23 Q: A big spread.

24 A: After that, over a period of 22 more years
25 after that, because I was elected in a special



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1 election, probably four -- four or five during
2 that period of time. I didn't have an opponent
3 every time, but every two or three elections,
4 I'd have one.

5 Q: Who managed your campaigns?

6 A: Richard Quinn.

7 Q: All of the campaigns?

8 A: The very first one, he didn't. I didn't know
9 much about politics and I had heard good things
10 about Mr. Quinn and I tried to get in touch
11 with them to see if they would do it and they
12 never would return my calls. So I ended up
13 hiring a fellow by the name of Rod Shealy.

14 Q: Yeah.

15 A: And Rod represented me in that first campaign.
16 Once I got to the House -- two people sit at a
17 desk together. And Rick Quinn, Richard's son,
18 was elected to the House the year before me and
19 I ended up sitting on -- in the same desk with
20 Rick for the next 12 years, I think it was.
21 Rick then lost a race and was out of the House
22 for about six years and then he ran again and
23 came back in later. But, during that first 12,
24 14 years, Rick and I sat together.

25 Q: And that's how you met the Quinns really? Was



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1 by ---

2 A: Yes.

3 Q: --- sitting with Rick Quinn, Jr., when he was
4 in the House?

5 A: Yes, sir.

6 Q: And, from that point on, is that when Richard
7 Quinn and Associates would run your campaigns?

8 A: They ran my campaign from that point forward.

9 Q: Okay. And what is your current relationship
10 with Rick Quinn, Jr.?

11 A: I consider Rick to be a friend. We probably
12 now talk twice a year.

13 Q: So not often?

14 A: Not very often. I mean, when I do try to call
15 him -- the Quinns are people -- are hard people
16 to get in touch with. Rick's probably the
17 worst one, that's probably why he lost his
18 election while we were in the House together.
19 He doesn't return phone calls and, over the
20 last five years, if I've sent him a text saying
21 let's get together and have lunch or something,
22 I might not hear from him for a week. So you
23 find out who your friends are when you are no
24 longer around sometimes.

25 Q: And, of course, you're not in the House any



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13

1 more?

2 A: No. I've been gone for five years and loving
3 private life.

4 Q: I assume Richard Quinn would be more inclined
5 to return your calls when you were in the House
6 than when you were running that first time?

7 A: I think Richard was probably worse than Rick.
8 The whole family has -- doesn't seem to have a
9 biological clock in their head and ---

10 Q: What ---

11 A: I was just telling my attorney out -- Rick got
12 married 20 years ago or so and I was in his
13 wedding. And Rick was an hour and a half late
14 to his wedding reception. Most of the people
15 at the reception had already left by the time
16 he got there 'cause they wanted to take
17 pictures at the State House.

18 Q: So, back by the '90s, 2000s, you were close
19 friends with Rick Quinn, Jr.?

20 A: Yes.

21 Q: Were you ever close friends with Richard Quinn,
22 Sr.?

23 A: Never was close to Richard at all. No.

24 Q: Who would you deal with the most when, like,
25 for example, you're running your campaigns or



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1 having to deal with Rick Quinn and Associates,
2 who would you deal with the most -- Richard or
3 Rick?

4 A: I dealt with them both during a campaign.
5 Richard -- Richard is more of a strategy guy
6 and an issues guy. Rick's got a separate
7 business that is a mail house business, I guess
8 that's how you describe it. So, during the
9 campaign, if you wanted -- you -- if Richard
10 and I decided we needed to have a mail piece
11 that went out to the public dealing with some
12 issue that was important in the General
13 Assembly at that time, Richard and I would --
14 would strategize about it, but then you'd go to
15 Rick and he would actually print it and mail
16 it.

17 Q: Uh-huh.

18 A: So it was a team. Even though both of them
19 were separate, they still worked as a team on
20 a campaign.

21 Q: Uh-huh. And do you have any firsthand
22 knowledge about the organizational structure of
23 First Impressions, Richard Quinn and
24 Associates, Mail Marketing Strategies, the Copy
25 Shop?



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- 1 A: I mean, I've got knowledge. Probably not as
2 much as you would think I would have.
- 3 Q: I mean, do you have ---
- 4 A: During the time -- during the time that I was
5 there, I was -- I believe my paychecks were
6 issued by First Impressions. Which First
7 Impressions was, at least my understanding,
8 kind of came under an umbrella of Richard Quinn
9 and Associates. But it appeared to me all
10 those entities operated independently of each
11 other even though they -- the Copy Shop would
12 handle the printing when -- when Rick Quinn was
13 doing the mailing. So there was always some
14 involvement of all three, but, whether they
15 were tied together under a corporation, I'm not
16 aware of it.
- 17 Q: So I'm saying, you don't have firsthand
18 knowledge ---
- 19 A: I don't have firsthand knowledge of how they --
20 how the business was organized.
- 21 Q: But they certainly functioned together and as
22 a family business, correct?
- 23 A: They functioned together in the respect that
24 they did different things and a campaign has
25 different things that need to be done during



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1 the course of the campaign. That's probably
2 one reason why they were so effective. That,
3 if your opponent put out a piece of mail
4 criticizing you for something that you did and
5 -- and had a misleading impression or
6 interpreted what you did incorrectly, with --
7 with the Quinn organization, you could draft a
8 response, get it in the mail and it might hit
9 into people's post office boxes the next day or
10 no later than two days later.

11 Q: That's right.

12 A: So they ---

13 Q: Because they're all working together?

14 A: --- they were all working together in the sense
15 that a campaign has several moving parts.

16 Q: And you spent a lot of time at the offices of
17 Richard Quinn and Associates at one point in
18 time?

19 A: Early on, I probably spent more, but I was
20 still an attorney. I still had a law practice.
21 And between my law practice and what was going
22 on in the General Assembly plus I was in the
23 Army Reserves for 30 years, it -- it got to the
24 point where I had less and less time that I
25 could spend working on campaigns with Richard



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- 1 Quinn.
- 2 Q: Uh-huh. And we're going to get into that in a
- 3 second, okay?
- 4 A: Sure.
- 5 Q: When you worked there. But, if you could now
- 6 -- but you did just, yes, say that there was
- 7 one point in time you would spend a lot of time
- 8 there early on. Correct?
- 9 A: When I was employed there?
- 10 Q: Yes.
- 11 A: Yes.
- 12 Q: Okay. So give us -- so where is Mail Marketing
- 13 Strategies located back when you worked there?
- 14 A: It's in the same building.
- 15 Q: Okay. That's my point. Where is Rick Quinn's
- 16 office in relation to Richard Quinn and
- 17 Associates?
- 18 A: It's in the same building.
- 19 Q: Okay. Where is Richard Quinn, Sr.'s office in
- 20 relation to Mail Marketing Strategy and Rick
- 21 Quinn's office?
- 22 A: They're all in the same building.
- 23 Q: Okay. And other Quinn relatives worked at
- 24 Richard Quinn and Associates as well, correct?
- 25 A: Yes, they did.



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1 Q: Rebecca Mustian?

2 A: Rebecca is Richard's daughter that worked there
3 and Reagan, the youngest daughter, was there in
4 some capacity.

5 Q: Uh-huh.

6 A: There's an organization, Friends of the Hunley,
7 that I believe she worked for. The Hunley was
8 the baby of Senator Glenn McConnell at that
9 time and Richard handled Senator McConnell's
10 campaign. So I think Senator McConnell agreed
11 to hire Reagan kind of to head up that
12 nonprofit, Friends of the Hunley.

13 Q: And the Quinns have made a lot of money on the
14 Friends of the Hunley. Are you aware of that?

15 A: I never was involved in any of the Hunley
16 activity, so I'm not sure.

17 Q: Okay. And Richard Quinn and Associates, they
18 didn't have a printer, but Mail Marketing
19 Strategies had the printing -- had the printer
20 to do the printing. Correct?

21 A: To put out a mass mailing printer, yes. Mail
22 Marketing Strategies had that.

23 Q: Okay. And did you have a lot of interaction
24 with the Quinns at their offices early on when
25 you were a legislator -- a member of the House?



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1 A: Not a lot. Mr. Quinn kind of kept a strange
2 schedule. He's not a day person. He would
3 come in maybe 2:00 o'clock in the afternoon and
4 then work till midnight. When I agreed to help
5 them with campaigns, they knew that I had a law
6 practice and I couldn't do business that way.
7 So, early on, I would go over there in the
8 morning and spend a couple of hours, do what I
9 needed to do. Then, if they needed me for
10 anything special, I would always be available
11 to them, but, over the years, I probably spent
12 less and less time there.

13 Q: And let's go into that now. When did you start
14 working and getting money from Richard Quinn
15 and Associates and why? Explain that to the
16 Jury. About when and why did you start working
17 there and ---

18 A: Sure.

19 Q: --- what did you get paid for?

20 A: Around 2000 -- and I hadn't gone back and
21 pulled my tax records, but I think it was 2000
22 -- Richard asked me if I would consider -- and
23 he might have started asking me before if I'd
24 consider coming to work for them. I think he
25 enjoyed the way I seemed to handle my campaign



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1 and could help him on other campaigns.
2 Initially, I discouraged that because I thought
3 it would hurt my law practice too much, but,
4 eventually, once I was satisfied that they knew
5 I was an attorney primarily, but I would enjoy
6 helping them with some of the campaigns they
7 did, they made me an offer and I said I would
8 do it. But I made sure they understood that
9 that was not my primary job ---

10 Q: Uh-huh.

11 A: --- but that it was something I thought I would
12 enjoy doing.

13 Q: And what were you working on in 2000 when they
14 hired you?

15 A: You mean what -- my private -- my other job or
16 ---

17 Q: No, with the Quinns. I'm interested -- we're
18 interested in what you did with Quinns.

19 A: You know, over the years ---

20 Q: What did you get a paycheck from Richard Quinn
21 and Associates or First Impressions for?

22 A: The Grand Jury probably doesn't know, I'm sure
23 you know about running campaigns. I mean, part
24 of a campaign, you're developing issues to --
25 that a candidate should run on. You conduct



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1 polling in the district to see what are the
2 issues that are important in a district. You
3 work on mail pieces to send out to the district
4 letting them know what your position is on
5 various issues. I mean, those kind of things
6 that go with a typical campaign.

7 Q: So you started working there around 2000.
8 Whose campaign was it that you were working on?
9 Was it John McCain? Was that the one ---

10 A: You know ---

11 Q: --- that brought you in?

12 A: --- over the years, I lose track of the order
13 they came in.

14 Q: Okay.

15 A: John McCain is one that ---

16 Q: I'm refreshing your ---

17 A: --- I believe we worked on in 2000. He was not
18 successful in getting the nomination that year.
19 Then, again, heavy in 2008, I think. We worked
20 on Henry McMaster's campaigns for attorney
21 general. I mean ---

22 Q: Did you draw pay from Richard Quinn and
23 Associates in 2000, 2001, 2002 ---

24 A: Yes.

25 Q: --- 2003?



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- 1 A: Yes, I did.
- 2 Q: And 2004?
- 3 A: I drew pay all the way up to 2012.
- 4 Q: Okay. And did you have a work contract for
- 5 that pay you drew?
- 6 A: No. Not a written contract.
- 7 Q: No written contract?
- 8 A: No, sir.
- 9 Q: And so you were paid from 2000 all the way
- 10 until you left the House in 2012?
- 11 A: To the best of my recollection, it was during
- 12 that period of time. I don't think it started
- 13 before 2000 and I believe I continued to do it
- 14 up until I left the House. When I took the
- 15 position as the State Code Commissioner and
- 16 Director of Legislative Council, that's a full-
- 17 time position. I couldn't work for anyone
- 18 else, so ---
- 19 Q: But you didn't have enough on your plate as a
- 20 legislator, chairman of the Judiciary and an
- 21 attorney with a private practice? That wasn't
- 22 a full slate and you were able to work and draw
- 23 a paycheck from Richard Quinn and Associates,
- 24 as well?
- 25 A: Yes, sir.



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1 Q: Okay. You didn't have any misgivings about
2 being in the Legislature, sitting Legislature
3 and being paid by Richard Quinn and Associates?

4 A: None at all. Because I saw nothing
5 inappropriate with my representing various
6 candidates for local, state and national
7 office.

8 Q: Were you paid by the job or were you paid a
9 monthly retainer fee?

10 A: I was paid a salary for most of that period.
11 It was a set salary. Toward the end -- and I
12 can't tell you what year that would have been
13 without going back through my tax records --
14 but the Quinn -- Mr. Quinn asked me if I would
15 consider going off-payroll and become a
16 contract consultant. And I did that. And we
17 discussed, because I was not available as much
18 as maybe I had been early, that my salary was
19 significantly reduced because I acknowledged to
20 them I didn't think I could put the time into
21 it that we initially had agreed that I would
22 do.

23 Q: So, early on, you had a private law practice,
24 you were a legislator, chairman of the House
25 Judiciary and were on the payroll of First



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- 1 Impressions?
- 2 A: Yes, sir.
- 3 Q: And then, later, you became a contract employee
- 4 of First Impressions?
- 5 A: Yes, sir.
- 6 Q: For a consulting fee?
- 7 A: Yes. It was a set fee per month.
- 8 Q: Every single month you got the same amount of
- 9 money?
- 10 A: Yes.
- 11 Q: Whether you were consulted with or not?
- 12 A: Yes, sir.
- 13 Q: Which is basically a retainer?
- 14 A: Yes, sir.
- 15 Q: Okay. Because, you know, campaigns aren't
- 16 year-round.
- 17 A: There's always work to do year-round. The
- 18 majority of it is crammed into that six-month's
- 19 period, but you've always got newsletters,
- 20 fundraisers ...
- 21 Q: Do you recall when you started becoming the
- 22 contract employee and got that same salary
- 23 every single month or that same money every
- 24 single month?
- 25 A: If I had to guess, I would probably say around



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1 2008. It might have been 2010, but it was --
2 I mean, it was toward the end of the time that
3 I was affiliated with them.

4 Q: Okay. And how would you go about getting your
5 money? Would it be a wire transfer or a
6 paycheck?

7 A: Payroll deposit.

8 Q: Okay. You were aware at the time that Richard
9 Quinn and Associates, of course, represented --
10 or were -- had a lot of clients that were
11 lobbyist principals?

12 A: I was aware that Mr. Quinn did some work for
13 some lobbyist principals. Yes, sir.

14 Q: Such as the Trial Lawyers Association?

15 A: He did some work for them. Yes, sir.

16 Q: And, of course, the Trial Lawyers Association
17 has a lot of interest in the House Judiciary?

18 A: Yes, they do.

19 Q: South Carolina Ports, he represents them?

20 A: After I left, I think, he may have started
21 representing them. I don't believe he had any
22 involvement with the Ports prior to me leaving,
23 but then I wasn't involved in that part of the
24 business.

25 Q: And, if they did, you're not trying to mislead



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1 this Jury. You're just not aware of ---
2 A: I'm not aware that he represented the Ports
3 while I was there.
4 Q: It doesn't mean he wasn't, you're just ---
5 A: No. Exactly.
6 Q: Okay. That's what I wanted to make sure of.
7 A: Yes, sir.
8 Q: SCANA?
9 A: I was aware that he did some work for SCANA.
10 Q: Blue Cross Blue Shields (sic)?
11 A: Blue Cro- -- no, I'm not aware of any work for
12 Blue Cross, Blue Shield. The one's I'm aware
13 of, SCANA, BellSouth, AT&T -- and I don't
14 remember when those mergers occurred ---
15 Q: Uh-huh.
16 A: --- and when they went from being Bell South to
17 AT&T. But it was basically the -- that
18 telephone group. I believe Palmetto ---
19 Q: Palmetto Health?
20 A: --- Hospital.
21 Q: Uh-huh.
22 A: And I believe all of those he was already
23 representing before I went to work for RQA.
24 They didn't come later. They were entities
25 that he had been doing public relations work



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1 with for -- for years.

2 Q: Tell the Grand Jury about when and whether
3 Richard Quinn ever approached you concerning
4 one of his clients.

5 A: Never approached me about one of his clients --
6 never talked to me about pending issues that
7 his clients might have in the General Assembly.
8 I mean never. He kept -- Richard was -- he's
9 a very bright guy and he can write extremely
10 well. And the work that he did for those
11 entities was -- it was pretty much a one-man
12 operation. Richard did it himself.

13 Q: So there was no time that he ever ---

14 A: No.

15 Q: --- approached you and made you feel
16 uncomfortable concerning legislation or someone
17 he represented?

18 A: No. The only time I ever felt uncomfortable
19 and felt like I was asked to do something that
20 would be a conflict of interest -- at one
21 point, he asked me -- and I don't remember the
22 exact words -- but it was to the effect that,
23 can you help us recruit business. And I kind
24 of -- just kind of -- I didn't really answer
25 the question, but I was uncomfortable because



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1 I thought using my position to try to recruit
2 business for him that might have business
3 before the General Assembly would have been a
4 conflict of interest. And, as a result, I
5 never recruited or attempted to recruit anybody
6 to use his public relations business while I
7 was there.

8 Q: And -- but, obviously, in all those years that
9 you would see Richard or Rick at RQA and you're
10 an RQA employee ---

11 A: Right.

12 Q: --- you discussed legislative issues with them?

13 A: Never discussed it as part of RQA. Now Rick
14 and I would sit in a desk, so we're talking
15 about legislative issues every day -- not about
16 issues that affect their clients. But, I mean,
17 every time you pushed the button to vote on a
18 bill that -- you're talking about this is why
19 I'm voting, this is way, why are you voting
20 that way kind of a deal.

21 Q: But you would have discussions with Rick Quinn
22 concerning legislation? You're both
23 legislators, correct?

24 A: Yes.

25 Q: And so how do you know, during the many



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1 probably hundreds if not thousands of times
2 that you discussed legislation with Rick Quinn,
3 that it wasn't going to be legislation that
4 affected Richard Quinn and Associates?

5 A: Well, as I said, those were pretty much the
6 only clients that I knew that Richard handled
7 public relations for and honestly don't
8 remember any bills that directly affected them
9 in the sense that it -- this is a bill that --
10 that SCANA needs so SCANA can do something.
11 But, at the same point, I mean Rick's a smart
12 guy, I'm a smart guy. I think that -- I mean,
13 you would -- you'd have the normal discussions
14 you would have with the guy sitting next to
15 you, but, I mean, we wouldn't discuss -- Rick
16 would say, for example, he wouldn't say you
17 know this is a client of my father's and they
18 need this kind of a conversation. Those
19 weren't the kind of conversations we had.

20 Q: And you're really making my point. How do you
21 know that when you did have conversations, that
22 those conversations still weren't in the best
23 interests of their clients? They could still
24 be in the best interest of the client of RQ&A,
25 correct?



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- 1 A: I'm not following you.
- 2 Q: Who was paying you back when you were Chairman
3 of the House Judiciary? Richard Quinn and
4 Associates, right?
- 5 A: My salary was paid by Richard Quinn and
6 Associates. Yes, sir.
- 7 Q: That's right. And then you were a contract
8 employee of RQA from 2010 ---
- 9 A: Yes, sir.
- 10 Q: --- through 2012?
- 11 A: Yes, sir.
- 12 Q: You are Chairman of the House Judiciary?
- 13 A: Yes, sir.
- 14 Q: Bills involving the trial lawyers go before the
15 House Judiciary?
- 16 A: Yes, they do.
- 17 Q: The Trial Lawyers pays hundreds of thousands of
18 dollars to RQ&A.
- 19 A: I don't know that because I don't know what an
20 agreement was between Richard and RQA. In
21 fact, when you mention that, what I did as
22 Judiciary was totally against what the Trial
23 Lawyers wanted. I mean, Trial Lawyers tried to
24 block tort reform and I was the primary oppo-
25 -- primary proponent for tort reform.



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1 Q: There are a lot of things Trial Lawyers make
2 sure to get up there. Do I -- do prosecutors
3 have equal strikes when they pick a jury? No.
4 Is that a lot of that because of the Trial
5 Lawyers? There are a lot of things prosecutors
6 don't get from the House Judiciary either,
7 isn't that correct? That Trial Lawyers are
8 against?

9 A: That's true, yes. I see where you're going.

10 Q: Okay.

11 A: Yeah, but ---

12 Q: They don't lose as much up at the State House
13 as we like people to think, do they, the Trial
14 Lawyers?

15 A: Trial Lawyers and the prosecutors -- I'd say
16 the prosecutors probably get more than the
17 Trial Lawyers today than they did maybe 25
18 years ago. I'd say under a Republican House,
19 the Trial Lawyers didn't get near as much as
20 maybe they got in the years before because the
21 Republicans, generally, are not friendly to
22 Trial Lawyers -- generally. I mean, the -- I
23 say that ---

24 Q: I agree.

25 A: --- in a very broad sense.



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1 Q: And, of course, the Trial Lawyers paid a
2 consultant who has the Chairman of the House
3 Judiciary on their payroll. You don't see any
4 kind of a conflict with that or a problem?

5 A: Not -- one, I don't know how Mr. Quinn handled
6 his businesses, whether the campaign side of
7 the business and the consulting side were even
8 under the same corporation. I don't know how
9 he was set up. But I knew that, as long as I
10 worked on campaigns and nothing more, that I
11 didn't feel I had a conflict of interest.

12 Q: When you were paid by Richard Quinn and
13 Associates, I guess you didn't have an -- you
14 didn't provide them any invoices. There was no
15 need to?

16 A: No.

17 Q: Okay. What is Rebecca Mustian's job at Richard
18 Quinn and Associates or First Impressions or
19 Mail Marketing Strategies? What's her job?

20 A: To the best of my knowledge, she is kind of
21 like the business manager. I think she handles
22 invoicing, payroll, those type things.

23 Q: Pretty important person there?

24 A: Just like the chief financial officer for any
25 business. I'd say that would be her role.



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1 Q: Did you have a key to the office at Richard
2 Quinn and Associates?

3 A: I'm trying -- I, you know ---

4 Q: That's all right.

5 A: I would think I probably did, but I -- I don't
6 remember ever going over there when I had to
7 unlock the business, to tell you the truth.

8 Q: How did you get your current job, Mr. Harrison?

9 A: The position is -- there is a South Carolina
10 Legislative Council made up of the Speaker of
11 the House, the Chairman of the House Judiciary
12 Committee, the Lieutenant Governor, who was, at
13 least at the present time, is still the
14 president of the Senate;, the chairman of the
15 Senate Judiciary Committee and the Secretary of
16 State.

17 Q: Okay.

18 A: And they appointed me.

19 Q: Okay. The Lieutenant Governor at the time was?

20 A: When I went over there ---

21 Q: Was it General -- was it McMaster, Governor
22 McMaster?

23 A: Not -- who was the Lieutenant Governor in --
24 oh, yeah. When I took the job?

25 Q: Yes, sir.



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1 A: Yes. He would have been the Lieutenant
2 Governor in 2010, I believe.
3 Q: Okay. Well, you took the job, I guess, in 2000
4 and ---
5 A: In '12.
6 Q: '12 or '13?
7 A: '12.
8 Q: Right.
9 A: Well, appointed in November right after my term
10 ---
11 Q: Okay.
12 A: --- ended in 2 -- November of 2012.
13 Q: So that's when the term would end, at the end
14 of November of 2012?
15 A: My legislative term ended in November 2012. I
16 did not file for re-election in March of 2012.
17 Q: And you said -- so Lieutenant Governor McMaster
18 was on that Committee. Was Loftis on it?
19 A: No. Loftis -- the -- he's the Treasurer. The
20 Treasurer is not on that Committee.
21 Q: And that -- in November of 2012 when you left
22 the House, that's when your payments from RQ&A
23 stopped?
24 A: I told them that it was a full-time job -- that
25 I couldn't have part-time employment.



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- 1 Q: And starting on October the 1st, 2010, you
2 started getting \$2,000 a month from Richard
3 Quinn and Associates?
- 4 A: That sounds right. That's when I say I went
5 from an employee to a consultant. And if your
6 records show that was '10, then I wouldn't
7 dispute that.
- 8 Q: And it went all the way until November 2012?
- 9 A: That sounds right to me.
- 10 Q: 25 payments for approximately \$50,000?
- 11 A: That sounds right to me.
- 12 Q: Is what the -- Richard Quinn and Associates
13 paid you. And once you're out of the House,
14 you're no longer getting \$2,000 a month?
- 15 A: Yes. I mean, I think they would have been
16 happy to keep me doing campaign work, but I
17 made it clear -- I mean, the Director of
18 Legislative Council and the Code Commissioner
19 is a full-time job.
- 20 Q: Well what kind of campaign work were you doing
21 in 2010? Tell me about the campaigns you were
22 working on in 2010?
- 23 A: Seven years ago? I couldn't tell you.
- 24 Q: Uh-huh.
- 25 A: I mean, in 2000- -- I couldn't tell you exactly



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1 which -- there were so many over a long period
2 of time.

3 Q: Great. Give us a couple of names.

4 A: I mean, even if it wasn't a campaign at the
5 time, it was still newsletter work, going to
6 fundraisers with people.

7 Q: Tell us about the work you did in 2011, which
8 is not an election year and you made \$24,000
9 that year.

10 A: Same -- I couldn't tell you right now without
11 going back and looking at clients and who had
12 an election at this time on any specific year,
13 who the candidates were on that particular
14 year. I mean, it was seven years ago.

15 Q: So the Quinns gave you \$50,000 in your last 25
16 months as a legislator and you can't tell us
17 one of the campaigns you worked on? Tell us
18 about a newsletter you wrote during that two
19 years. Tell us about an OpEd that you wrote.
20 Were there any OpEds that you wrote?

21 A: I'm sure there were, but they wouldn't have
22 been for RQA, it probably would have been in my
23 legislative capacity.

24 Q: What -- was RQ&A -- you said that you're sure
25 they would loved to have kept you on to work on



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1 campaigns, but you can't remember any campaigns
2 you worked on. Is it possible they were paying
3 you \$2,000 a month when you were a legislator
4 because you had a vote at the South Carolina
5 House of Representatives?

6 A: Absolutely not.

7 Q: And it has nothing to do with the fact that you
8 were Chairman of the House Ways and Means
9 Committee?

10 A: Judiciary.

11 Q: Judiciary Committee -- I'm sorry. House
12 Judiciary.

13 A: No.

14 Q: But the payments stopped when your legisla- --
15 when you stopped being a legislator?

16 A: Yes. Because I took a position that I could no
17 longer have outside employment.

18 Q: What other legislators from the House and
19 Senate, other than you, also worked at RQ&A
20 that you know of?

21 A: I don't know if they had a similar arrangement
22 with me, if they were a full-time employee or
23 a consultant. Tracy Edge ---

24 Q: Yes, sir.

25 A: --- did some work for RQA during that period of



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1 time.

2 Q: Uh-huh.

3 A: At one point early -- and I couldn't tell you
4 what year it was -- Representative Merrill ---

5 Q: Uh-huh.

6 A: --- was beginning to do campaign work. And a
7 lot of times, the way the campaign consultants
8 work is, if they have more work than they can
9 handle in a particular election, they bring in
10 people and assign them to work for a given
11 campaign.

12 Q: Uh-huh.

13 A: And I think early on before Mr. Merrill had
14 many clients, I think Mr. Quinn would -- would
15 assign some of those campaigns to him.

16 Q: Okay.

17 A: Trey Walker. I mean there were a number of
18 people over that period of time who kind of
19 came and went with elections ---

20 Q: Uh-huh.

21 A: --- but I can't tell you exactly what their
22 arrangement was.

23 Q: But you -- but you're aware that Tracy Edge had
24 some arrangement there? And he called you
25 recently ---



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- 1 A: Or at least I would remember Mr. Edge saying
2 that Mr. Quinn had sent him something to
3 review, to write, to draft. I mean, yes. I
4 knew enough to know that he had done some work
5 for Mr. Quinn.
- 6 Q: But you don't know what his arrangement was?
- 7 A: No, I don't.
- 8 Q: Was in the RQA headquarters as much as you or
9 the offices as much as you?
- 10 A: No.
- 11 Q: So, to your knowledge, he probably didn't do
12 quite as much work at RQ&A as you did? To your
13 knowledge?
- 14 A: To my knowledge. But I don't know how much
15 work -- I -- it's unfair of me to say -- I
16 mean, I don't have any knowledge as to how much
17 work he did do is probably the best way to put
18 it.
- 19 Q: And you're aware of some arrangement with Jim
20 Merrill, but you're not familiar with what that
21 arrangement was?
- 22 A: I know they worked on some campaigns together.
- 23 Q: Okay.
- 24 A: And I believe it was when Mr. Quinn would kind
25 of assign a candidate to him to do the day-to-



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- 1 day ---
- 2 Q: Uh-huh.
- 3 A: --- running of a campaign.
- 4 Q: Thad Viers, do you know Representative Thad
- 5 Viers, former Representative?
- 6 A: I know him. Whether he did any work for RQA,
- 7 I'm not aware as much as I am of Mr. Edge's
- 8 work.
- 9 Q: Okay. And, of course, Rick Quinn, but he's ---
- 10 A: Yeah.
- 11 Q: --- got Mail Marketing Strategies and he's his
- 12 son. Do you know of anyone else that you can
- 13 think of that was paid by Richard Quinn and
- 14 Associates that worked in the General Assembly
- 15 or that was an elected ---
- 16 A: Official?
- 17 Q: --- official in the General Assembly?
- 18 A: No..
- 19 Q: McConnell? Was he paid money ---
- 20 A: You know, I may -- Mr. Quinn handled all his
- 21 campaigns. I'm not aware that he was actually
- 22 an employee or a consultant for Mr. Quinn.
- 23 Q: Same with Leatherman?
- 24 A: Same there.
- 25 Q: Same with Courson?



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1 A: Same with Courson.
2 Q: Rankin?
3 A: Same.
4 Q: McMaster?
5 A: Oh. Same there.
6 Q: I mean, you're not aware of them doing any work
7 to be paid for by the Quinns?
8 A: No.
9 Q: Okay. Kenny Bingham? There was one I forgot.
10 Did the Quinns rent space from Representative
11 Kenny Bingham?
12 A: Yes. And I'm -- I'm trying to remember when
13 that occurred, whether I was still in the
14 House. But Mr. Bingham had an office over in
15 West Columbia and, at some point, Mr. Quinn
16 moved his office over there. I think they were
17 made an offer for their downtown Columbia
18 property that they couldn't turn down. And, as
19 a result, they looked for other office space
20 and I think Mr. Bingham ---
21 Q: Did -- did you go to the Cayce property much?
22 A: I probably -- over whatever period of time I
23 was still there with Mr. Quinn, a handful of
24 times. You -- you'd probably count them on one
25 hand.



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ROA 000301

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- 1 Q: Do you remember approximately when they moved?
2 A: No.
3 Q: Weren't they over there by 2011?
4 A: I couldn't tell you when they went over there.
5 Q: Okay. If -- so they're paying you \$2,000 a
6 month and you didn't have to go hang out at the
7 Quinn office that often?
8 A: As I told you, the amount of work that I
9 actually did over that period of time decreased
10 considerably. And therefore, toward the end,
11 I wasn't there as much as I was at the Quinn
12 office on Gervais Street early in my
13 employment.
14 Q: Okay. And so after they moved to Cayce -- and
15 I'll get that date -- you didn't really have --
16 you didn't go over there too often?
17 A: Not too often, no.
18 Q: A handful of times is what you testified to, I
19 believe.
20 A: I would -- I would say yes.
21 Q: What is the South Carolina Conservative Action
22 Alliance?
23 A: That is a nonprofit organization set up to --
24 the by-laws of the charter, I believe, says to
25 promote energy independence, but it generally



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1 supported conservative causes. When those
2 issues came up that -- that the group felt
3 needed public information, the -- it would
4 conduct public campaigns, television, radio, to
5 promote a conservative cause probably.

6 Q: Yes, sir. And when we say non-profit, the
7 entity is not supposed to make any money.
8 Correct?

9 A: Exactly.

10 Q: But others will make money that -- that the
11 entity sends business out to?

12 A: Yes. Television ads ---

13 Q: That's right.

14 A: --- so ---

15 Q: TV stations make money, correct?

16 A: Right. TV stations make money.

17 Q: Radio stations make money?

18 A: Radios stations make money.

19 Q: And the consultants make money?

20 A: That's correct.

21 Q: Whose idea was it to start the SCAA, the
22 Conservative Action Alliance?

23 A: I'm not sure. I received a call from Speaker
24 David Wilkins, who -- I'm trying to remember
25 when that group was formed. He was no longer



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ROA 000303

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1 Speaker. I think he was Ambassador or had just
2 left the Ambassadorship at that time and asked
3 me if I would be involved with that group.

4 Q: And you were actually, at one point, the
5 president of the group?

6 A: I think the organization's by-laws say
7 president, but I was never president.

8 Q: Okay.

9 A: Ambassador Wilkins was the president.

10 Q: To your knowledge, is it still in existence
11 today, the SCAA?

12 A: Yes, it is.

13 Q: Okay. And you're still on that board?

14 A: Yes, sir.

15 Q: Okay. Kevin Hall is also on it?

16 A: Kevin Hall is on that.

17 Q: Wes Jones?

18 A: Wes Jone- -- the organization probably hasn't
19 had a formal meeting, I think, in the last year
20 -- maybe two years. At one point, Wes was on
21 that board.

22 Q: Okay. What involvement does Richard Quinn have
23 in it?

24 A: Richard was hired as a consultant for that
25 group to arrange for the TV, the radio, to



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ROA 000304

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1 develop a strategy, to -- to write the
2 commercials. Those things that involve a
3 public relations campaign.

4 Q: And the board would make the decision on which
5 consultant to hire?

6 A: Yes.

7 Q: Okay. And you were a member of that board?

8 A: Yes.

9 Q: Okay. Being paid by Richard Quinn and
10 Associates at the time?

11 A: Yes, sir.

12 Q: Okay. Can you think of -- other than Bob
13 McAlister and Richard Quinn, were any other
14 consultants hired by the board that you can
15 recall?

16 A: Those are the only two that I know.

17 Q: Do you know why Rebecca Mustian appears on the
18 tax forms as the person who keeps the books?

19 A: Why she appears on ---

20 Q: On the IRS -- because as a 501(c)(3) or (c)(4),
21 you have to file taxes ---

22 A: Right.

23 Q: --- with the IRS, correct?

24 A: Right.

25 Q: Rebecca is obviously not on the board?



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ROA 000305

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- 1 A: No.
- 2 Q: Richard Quinn, you say, was just hired by the
- 3 board to do consulting?
- 4 A: Right.
- 5 Q: Why is Rebecca Mustian listed on the IRS forms
- 6 as the bookkeeper for the ---
- 7 A: I'm ---
- 8 Q: --- South Carolina ---
- 9 A: I'm sure ---
- 10 Q: --- Conservative Action Alliance?
- 11 A: I'm sure she offered her services ---
- 12 Q: Uh-huh.
- 13 A: --- to do that or Mr. Quinn offered her
- 14 services to do that.
- 15 Q: And Richard Quinn and Associates, as you know,
- 16 has made money off of the SCCAA. Yes?
- 17 A: They were one of his clients, yes. I mean, I
- 18 don't know how much he made, but I would -- he
- 19 would have charged a fee for doing the work he
- 20 did for that organization.
- 21 Q: Have you made any money off of the South
- 22 Carolina Conservative Action Alliance?
- 23 A: No, sir.
- 24 Q: And do the Conservative Action Alliance -- they
- 25 do ads with Senator Lindsey Graham in them?



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ROA 000306

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- 1 A: Yes.
- 2 Q: Okay. Any other politicians that the Action
- 3 Alliance did ads for -- or not -- when I say
- 4 for, with public figures in the ads? Was Tim
- 5 Scott part of any of the ads, that you recall?
- 6 A: I don't remember any that involved Tim Scott.
- 7 Several years ago, when the -- when the port
- 8 needed help getting dredged, the group did a
- 9 public relations campaign in the State letting
- 10 the State know how important the Charleston
- 11 Port was our -- to our economy. And then --
- 12 and it -- and it had a big campaign to educate
- 13 the public about the Port.
- 14 Q: Uh-huh.
- 15 A: I think Mr. Scott and Senator Graham both might
- 16 have been featured in -- in that particular ad.
- 17 Q: Did you solicit funds for the Conservative
- 18 Action Alliance?
- 19 A: No.
- 20 Q: Did Richard Quinn solicit funds for the
- 21 Conservative Action Alliance?
- 22 A: None that I'm aware of. I think Ambassador
- 23 Wilkins was the primary fundraiser for that
- 24 group. I think Senator Graham helped, too, but
- 25 I think, at that point, Ambassador Wilkins was



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ROA 000307

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- 1 the ---
- 2 Q: Did Senator Graham ---
- 3 A: --- president.
- 4 Q: I'm sorry. I didn't mean to -- you go ahead.
- 5 Was the what?
- 6 A: Was the president of the organization. And I
- 7 think when he left, Mr. Hall became president.
- 8 But somehow along the way I think my name was
- 9 put on the tax return as the president, but
- 10 I've never been the president.
- 11 Q: So the information, if it's on this tax return
- 12 filed with the IRS that you were the president,
- 13 that would be misinformation, it's inaccurate?
- 14 You were never ---
- 15 A: That's in- -- that's inaccurate.
- 16 Q: You were never president of the South Carolina
- 17 Conservative Action Alliance?
- 18 A: No, sir.
- 19 Q: You -- were the -- did the board review the tax
- 20 filings prior to them being filed?
- 21 A: No. I think the CPA prepared them. I -- I
- 22 don't remember the board actually sitting as a
- 23 board and reviewing them.
- 24 Q: And you testified that Senator Lindsey Graham
- 25 solicited funds for the Action Alliance?



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ROA 000308

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- 1 A: I believe he did.
- 2 Q: Okay. And I'm almost finished with you. We'll
- 3 get you out of here.
- 4 A: That's all right.
- 5 Q: And I really appreciate you coming because
- 6 you've got to go out of State soon -- tomorrow,
- 7 I think?
- 8 A: I'm heading to Ohio tomorrow morning for my
- 9 father-in-law's 85th birthday. So, I'll be
- 10 hitting the snow probably about West Virginia.
- 11 Q: You driving? I guess ---
- 12 A: Yes.
- 13 Q: --- so. All right. What, if any, other
- 14 entities and 501(c)(3) or (c)(4)s do you know
- 15 that the Quinns are involved in?
- 16 A: I would -- I don't know this for a fact.
- 17 There's got to be some involvement with the
- 18 Friends of the Hunley.
- 19 Q: Uh-huh.
- 20 A: What that involvement would be, I don't know
- 21 because of Mr. Quinn's relationship with Glenn
- 22 McConnell and the fact that Reagan -- I can't
- 23 think of Reagan's last name now, she was Reagan
- 24 Quinn.
- 25 Q: Richard Quinn's daughter?



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ROA 000309

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- 1 A: Richard Quinn's daughter kind of did the day-
2 to-day work for the Friends of the Hunley.
3 Q: And you don't know how the Quinns got that
4 contract with the Friends of the Hunley?
5 A: No.
6 Q: You don't know any of the details of how much
7 money they make a month?
8 A: No.
9 Q: Okay. You've already testified about the
10 \$50,000 you got in your last 25 months in
11 office from RQ&A doing consulting work. Did
12 they send you a 1099?
13 A: Yes.
14 Q: Okay. And you paid taxes on that money?
15 A: Absolutely.
16 Q: Good. Good. All right. Just give me one --
17 in fact, do me a huge favor.
18 A: Sure.
19 Q: If you could just step outside -- you're not
20 excused yet. I need to ask the Grand Jurors if
21 there's anything we need to go over. And give
22 me a couple of minutes and I'll let you know
23 whether you can be excused. Thank you so much,
24 Mr. Harrison.
25 A: Yes, sir.



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ROA 000310

SGJ2016-257

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1 (Witness enters at 1:30 p.m.)

2 MR. HARRISON - CONTINUATION OF EXAMINATION BY MR.

3 PASCOE:

4 Q: Thank you, Mr. Harrison.

5 A: Yes, sir.

6 Q: A few more. I was done with you, but they've
7 got more questions. Okay?

8 A: I'm here to answer any they have.

9 Q: Thank you so much. First, was there any
10 requirement of how much time you had to
11 physically spend at RQ&A to be paid or could
12 you just come in when you felt you needed to
13 come in?

14 A: There was never where they said you're expected
15 to be here six hours a day, four hours a day.

16 Q: Uh-huh.

17 A: It was more that, if there's something that
18 needs to be done at -- with a campaign, we need
19 you to be able to be here. Early on, I was --
20 I was probably spending -- I'd go over in the
21 morning and spend half a day and then head to
22 my law practice. But it made no sense to be
23 there except when something needed to be done.

24 Q: Uh-huh.

25 A: So it was never a set hourly time you need to



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ROA 000311

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1 be here. You need to be available to help us
2 when things need to be done on these campaigns
3 or to help these people that we helped elect in
4 a prior campaign.

5 Q: Uh-huh. And correct me if I'm wrong, but did
6 you testify earlier that you spent more time
7 there early on -- like in the early 2000s --
8 than you did later in your career?

9 A: Yes. Yes.

10 Q: Where ---

11 A: Actually physically in the offices.

12 Q: Where is or was your law practice located?

13 A: When all this started, I was physically located
14 with Ken Suggs and Mike Kelly starting --
15 probably about that same time. We built an
16 office building over on Hampton and Taylor
17 Street in maybe '98. So I think the whole time
18 that I worked with Mr. Quinn, I had an office
19 at the corner of Hampton and Taylor and Huger
20 Street.

21 Q: Which was originally Suggs & Kelly?

22 A: It was -- yes.

23 Q: Okay.

24 A: Then Suggs & Kelly split. I was never part of
25 their firm, but I shared space with them



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ROA 000312

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1 because my practice was administrative related
2 instead of typical litigation related.

3 Q: Gotcha. And you don't have that practice any
4 more?

5 A: No. I had to give that up when I took the
6 full-time job.

7 Q: Okay. What email address would you communicate
8 with the Quinns? Would you ever communicate
9 with Rick or Richard Quinn or the -- anybody at
10 the Quinn office via email?

11 A: I won't say I never did, but most of the
12 communications were verbal.

13 Q: Are there ---

14 A: But, if I did, it would been the law office
15 email.

16 Q: And what was that back then?

17 A: jim@jharrisonlaw.com.

18 Q: And do you still have that email address?

19 A: Yes. Because people had that email address
20 and, even though the law firm is closed, it's
21 just the address all my friends have. So I
22 kept that.

23 Q: And what is that email address again?

24 A: jim@jharrisonlaw.com.

25 Q: Okay. Who is the service provider for that?

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ROA 000313

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1 A: I'm not a technology person. It's the same
2 that it's been for 20 ---

3 Q: You don't remember?

4 A: --- 30 years.

5 Q: Okay.

6 A: I mean, it's a Webmail account. I think that's
7 ---

8 Q: Webmail? Okay. And do you have any emails or
9 communications saved from just ---

10 A: No.

11 Q: --- the 2000s -- 2012, 2014?

12 A: No.

13 Q: Any documentation or records that could -- you
14 could produce that consist on what campaigns
15 you worked on in 2010, '11, '12, '13, '14?

16 A: No. Anything that I had remained there when I
17 left.

18 Q: Okay. And Rebecca Mustian might be the person
19 who can provide those documents, correct?

20 A: I would say she would be the logical person to
21 check with.

22 Q: You had testified earlier that Richard Quinn
23 did once approach you to ask you about
24 recruiting business to RQ&A?

25 A: Yes.



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ROA 000314

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- 1 Q: Are you aware of any other legislators that
2 Richard or Rick Quinn or anyone at RQ&A
3 approached to try to recruit business?
- 4 A: No. I mean, it was -- it was a casual comment
5 when we happened to be together one time that,
6 hey ---
- 7 Q: Uh-huh.
- 8 A: --- we'd like you to try to recruit some
9 business. And ---
- 10 Q: Uh-huh. And that's how he said it? We'd like
11 you to help recruit business?
- 12 A: I mean, I don't remember the exact words. But
13 it was to the effect that I think they would
14 appreciate if I tried to recruit some business
15 to them. Yes.
- 16 Q: Where was that conversation?
- 17 A: Oh, this would have been 10, 12 years ago.
- 18 Q: Uh-huh.
- 19 A: I mean, I don't know.
- 20 Q: But while you were on the payroll at RQ&A?
- 21 A: Yes.
- 22 Q: Okay. Did you recruit any business for RQ&A?
- 23 A: No. Never talked, never asked anybody to use
24 them in anything other than campaign capacity.
25 I mean, I would get calls from people who



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1 wanted to run for office and asked me, you
2 know, do I need a campaign consultant? If so,
3 why? Who would you recommend? And, no, I had
4 no problem recommending Mr. Quinn to do that.
5 That was all I was affiliated with.

6 MR. PASCOE: Okay. Thank you, sir.

7 A: Yes, sir.

8 MR. PASCOE: Have a safe trip, okay?

9 A: Thank you.

10 MR. PASCOE: Thank you.

11 (Witness exits at 1:35 p.m.)

12 MR. PASCOE: 2:45? Is 2:45 okay, Madam Forelady?
13 We're going to have -- yeah, we're going to
14 take up the whole day now and might even go a
15 little late. Is that okay?

16 (Multiple responses heard.)

17 MR. PASCOE: 2:45? Great. Thank you.

18 (There being no further questions, the testimony
19 concluded at 1:36 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript of the testimony/dialogue of **JAMES H. HARRISON**, consisting of sixty two (62) pages, is a true, accurate and complete record to the best of my ability of the testimony given.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on March 30, 2017.



Barbara J. Howell
Court Reporter

Notary Public for South Carolina
My Commission Expires: May 24, 2026



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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 JAMES HARRISON,) 2017-GS-47-35 - 37
8 DEFENDANT.)

9
10 August 15th, 2018
11 Columbia, South Carolina
12

13 B E F O R E:

14 THE HONORABLE CARMEN T. MULLEN, Judge.

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

16 DAVID M. PASCOE and W. BAKER ALLEN
17 SOLICITOR and ASSISTANT SOLICITOR
18 Attorneys for the State

19 REGINALD LLOYD and L. HUNTER LIMBAUGH
20 ESQ.
21 Attorneys for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: All right. All right. Well, I think we
4 all know what we're here for.

5 Mr. Lloyd, unless there's anything else you want to
6 start with, sir, I'm happy to hear from you.

7 MR. LLOYD: I don't think so, Your Honor.

8 THE COURT: Okay.

9 MR. LLOYD: If I can rearrange the furniture for just a
10 moment.

11 THE COURT: Thank you.

12 MR. LLOYD: And, Your Honor, with me, for the record,
13 is Hunter Limbaugh, who will be addressing the Court as
14 well.

15 THE COURT: Good to see you, sir.

16 MR. LIMBAUGH: Thank you.

17 MR. LLOYD: Your Honor, and I'll start out by asking
18 your preference on how we proceed on this.

19 Obviously our Motion to Dismiss is, is sort of two
20 parts. One is on the statutory misconduct issue, and I
21 thought, if we could, address that on both sides, and then
22 address the issue of the preliminary hearing --

23 THE COURT: That's fine.

24 MR. LLOYD: -- on the probable cause issue on subject
25 matter jurisdiction.

1 Your Honor, I don't want to repeat anything that's in
2 our motion that was filed as it relates to the Motion to
3 Dismiss for Statutory Misconduct. So, I'll, I'll leave it
4 to just --

5 THE COURT: Okay.

6 MR. LLOYD: -- once again, as Your Honor's well
7 familiar with in this case, Mr. Harrison was indicted on one
8 count of statutory misconduct, which is 8-1-80, and our
9 contention, Your Honor, is that that statute, in and of
10 itself, cannot and does not apply to Mr. Harrison, who was,
11 at the time, a member of the General Assembly.

12 Now, Your Honor, if you read through the sections
13 following that or preceding that, it's actually pretty clear
14 that the General Assembly, in passing 8-1-80 did not intend
15 for public official to include a member of the General
16 Assembly.

17 Now, 8-1-10 defines public official or public officers
18 rather, and it says the term public officer shall be
19 construed to mean all officers of the State that have
20 heretofore been commissioned, and trustees of the various
21 colleges of the state, members of various state boards, and
22 other persons whose duties are defined by law.

23 That, for a number of reasons, obviously does not apply
24 to Mr. Harrison. He clearly is not a member of a board of
25 trustees. Likewise, he's not a member of a state board.

1 Your Honor, nor is Mr. Harrison, as a member of the
2 General Assembly, commissioned by the State of South
3 Carolina, and that term, by common law, had a specific
4 meaning in that literally be granted authority, as, as Your
5 Honor's well familiar with, by the, by the Governor
6 traditionally.

7 THE COURT: Yes, sir.

8 MR. LLOYD: And, and I'll get into a moment some
9 commonance and, and well established cannons of statutory
10 construction, which, which, as Your Honor's well familiar
11 with, say, look, the General Assembly's presumed to know
12 common law definitions of terms. So, the only issue is, is
13 does Mr. Harrison fall within that.

14 Now, if you go beyond 8-1-10, Your Honor, we get to
15 certain other sections that carry out penalties for
16 violations. And, as we cited in our brief, those penalties
17 require both Your Honor to do certain things, and the
18 Governor to do certain things if Mr. -- if a state public
19 officer is indicted and/or convicted. In 8-1-70,
20 officers -- the title of that is officers reported by
21 Circuit solicitor for neglect of duty or indictment. It
22 says if any clerk of the Court of Common Pleas and General
23 Sessions, sheriff, judge, probate, or register of deeds in
24 this State shall not -- shall be reported by the Circuit
25 solicitor as having willfully failed or neglected to

1 discharge any of the duties or to perform any of the
2 services appertaining to his office which are required of
3 him by law, the Court shall order a Bill of Indictment to be
4 preferred against such delinquent officer.

5 Again, no mention of members of the General Assembly.

6 THE COURT: Let me ask you, Mr. Lloyd.

7 Has any other member of the House or the Senate been
8 prosecuted under this statutory misconduct other than
9 Richard Quinn, Junior --

10 MR. LLOYD: Your Honor, I haven't been---

11 THE COURT: -- that you know of?

12 MR. LLOYD: I haven't been able to find anything
13 reported --

14 THE COURT: Okay.

15 MR. LLOYD: -- where a member of the General Assembly
16 has been prosecuted under this particular section.

17 THE COURT: Okay.

18 MR. LLOYD: Now, again, whether they, they were
19 indicted, I haven't seen it. There have been somebody who,
20 who, at some point in the history of -- been indicted under
21 that section.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: I, I would even suggest to you they may of
24 even pled under that section, which does not negate the fact
25 that that statute, in and of itself, if, is---

1 THE COURT: Okay.

2 MR. LLOYD: ---inapplicable to Mr. Harrison.

3 THE COURT: Okay.

4 MR. LLOYD: Your Honor, going again further into that
5 section, 8-1-100 requires an officer indicted under 8-1-80
6 to be suspended, and, Your Honor, this is, again, a
7 requirement that the General Assembly has put in place as a
8 penalty here, and it says except as otherwise provided in
9 8-1-110, any state or county officer who is indicted in any
10 Court for any crime may, in the discretion of the Governor,
11 be suspended by the Governor, who, in event of suspension,
12 shall appoint another in his stead until he shall be
13 acquitted. In case of conviction, the officer -- the office
14 shall be declared vacate by the Governor, and the vacancy
15 filled as provided by law.

16 Then the 8-1-110, which talks about embezzlement or
17 misappropriation of funds, and removal upon conviction, and,
18 again, Your Honor, we all know, and this is been well, well
19 established, and this goes even back to, to Rose v. Beasley,
20 the, the Governor has no ability to, to suspend or remove
21 anyone from office except as constitutionally enumerated or
22 statutorily provided to him.

23 One of the other things we attached, I believe,
24 Attorney General's opinion as well as cited cases, and
25 constitutional sections, for the proposition that there's

1 absolutely no authority on the part of the Governor to
2 suspend, vacate a legislative seat or to replace somebody
3 in, in a legislative seat once it is vacated.

4 So, one of the things we, we start with, Your Honor,
5 again, going back to just general rules of statutory
6 construction is this notion that you read statutes together.
7 They, they are to be construed so that one doesn't suggest
8 some nullity on the part of the General Assembly, and, in
9 this particular case, you cannot have penalties associated
10 with 8-1-80 apply to everyone except Mr. Harrison or a
11 member of the General Assembly where the, where the
12 Legislature didn't specifically make that separation. If
13 you buy the State's position that 8-1-80 applies to a
14 Legislator, then they're asking Your Honor to read into that
15 statute an exception that's not expressly in there. And I
16 don't know of authority that would suggest that that -- that
17 would be a proper interpretation of this statute or any
18 other statute.

19 Your Honor, just cite just on some general principles
20 of statutory construction, City of Rock Hill versus Harris,
21 which is found at 705 S.E.2d 52. Two -- it's a 2001 case,
22 and it says, at the same time when determining the affect of
23 statutory language, the cannons of construction holds that
24 express or include one thing implies exclusion of another or
25 the attentive. And, Your Honor, I know you're well familiar

1 with all these principles. I just cite these for the
2 record.

3 In 16 Jade Street, LLC versus R. Design Construction
4 Company, LLC, 728 S.E.2d 448, 2012 case, the statute must --
5 a statute must be read as a whole and in harmony with its
6 purpose. Davis versus School District of Greenville County.
7 647 S.E.2d 219, 2007 case. The goal of statutory
8 construction is to harmonize conflicting statutes whenever
9 possible, and prevent an interpretation that would lead to a
10 result that is plainly absurd. And in Denman versus City of
11 Columbia, 691 S.E.2d 465, 2010 case, where there's one
12 statute addressing an issue in general terms, and another
13 statute dealing with the identical issue of a more specific
14 and definite matter -- manner, the more specific statute be
15 considered an exception tool or a qualifier of the general
16 statute and given such effect.

17 And I cite that for Your Honor in particular because,
18 in a moment, I want to address the fact that the misconduct
19 that, that we're talking about here is, is premised on an
20 alleged violation of the Ethics Act. There's a specific
21 statute in the Ethics Act that punishes misconduct of the
22 type that's alleged here. In fact, it's the exact same
23 penalty. One year's a misdemeanor, and, and it's a very
24 specific statute.

25 More importantly, that statute, like the Ethics Act,

1 specifically and expressly applies to members of the General
2 Assembly. So, they weren't mistaken in leaving out the
3 General Assembly here because they expressly include the
4 General Assembly in the Ethics Act, and, in particular, in
5 the specific punishment statute that, that carries the exact
6 same penalty.

7 Your Honor, so, I, I, I know of no interpretation or
8 rule of construction that would suggest that, when you read
9 8-1-80, would include a member of the General Assembly where
10 it's been expressly not included, and where penalties for
11 violation of that section include penalties that Your Honor
12 and the Governor expressly cannot do as it relates to
13 Mr. Harrison.

14 THE COURT: Okay.

15 MR. LLOYD: Thank you.

16 THE COURT: All right. State go ahead and address
17 that.

18 SOLICITOR ALLEN: Yes, ma'am.

19 THE COURT: Thank you.

20 SOLICITOR ALLEN: I'm gonna start out by saying, you
21 know, the motion we're here on today is not whether or not
22 8-1-80 applies. We're here to determine, one, whether or
23 not we should have a hearing on whether or not the Grand
24 Jury had probable cause. And, secondly, you know -- well,
25 first we need to address if we have a, a hearing on the

1 matter. And then, secondly, then we can get to whether or
2 not the statute applies, and whether or not eight dash or
3 whether the State provided enough evidence that 8-1-80
4 applies.

5 All right. The state's contention would be that
6 there's no reason that we would explain to the Grand Jury
7 the application of a statute, right. They're finders of
8 fact. And so their probable cause determination has nothing
9 to do with whether or not they believe that 8-1-80 applies.

10 Having said that, you know, we disagree with the
11 defense's interpretation of 8-1-80. It is a general
12 misconduct statute, and while there are other specific
13 statutes for criminal charges within the Ethics Act, and we
14 haven't charged the Defendant under those statutes. We just
15 charged him with the general misconduct statute.

16 It carries its own penalty provision, and, if we had
17 charged him say for a FIA violation or something like that,
18 then those penalties and provisions under the Ethics Act
19 would apply. But that's not what we did. What we did, we
20 charged him under statutory misconduct.

21 Now, to the Court's question of whether other
22 legislators have been charged under this statute, I believe
23 Mr. Merrill pled to that.

24 THE COURT: Okay.

25 SOLICITOR ALLEN: And we certainly charged all the

1 defendants in this case with that, and believe that Mr.
2 Robert Ford may have also been charged under that statute as
3 well. I'm not---

4 THE COURT: Did he plead guilty to it---

5 SOLICITOR ALLEN: I'm not---

6 THE COURT: ---or was he tried and convicted?

7 SOLICITOR ALLEN: ---sure about that. I'm not.

8 THE COURT: Okay. Okay.

9 SOLICITOR ALLEN: Nevertheless, Section, Section
10 five -- 8-13-560 the Defendant cites in his brief for the
11 proposition that it is a specific penalty statute, that
12 statute applies separately from the penalty provisions
13 dash -- 8-1-80. And 8-1-80. Excuse me.

14 THE COURT: Well, how do you account for that,
15 according to his argument, I don't have the power to carry
16 out nor does the Governor have the power to carry out and
17 remove, number one, them from office?

18 It's the power of the Speaker of the House to be able
19 to do that?

20 How do you account for the way the penalty unfolds in
21 here?

22 SOLICITOR ALLEN: Right. Well, so, the statute
23 provides for the Speaker to --.

24 THE COURT: To remove any House member---

25 SOLICITOR ALLEN: To remove any House member.

1 THE COURT: ---obviously if they're convicted.

2 SOLICITOR ALLEN: Suspend House members.

3 THE COURT: Right.

4 SOLICITOR ALLEN: You know, they're allowed to conduct
5 their own business within house, and I think some of those
6 are maybe actually similar means.

7 But I mean the Legislature could certainly grant the
8 Governor that power to do that within Section 8-1-80. I
9 mean the statute says that, if he's, if he's convicted, then
10 the Legislator should be removed. So, we will say that the
11 statute itself gives the, gives the Governor the power to do
12 that.

13 THE COURT: Okay. I think I saw the argument that you
14 had in your brief was that you said it was a ministerial
15 function that the Governor, the Governor would undertake if
16 that were to be what was needed, and if he was found guilty
17 of that statute.

18 SOLICITOR ALLEN: Well, that's correct. It would be
19 just a ministerial act.

20 THE COURT: Okay.

21 SOLICITOR ALLEN: Now, as to whether a legislator is a
22 public officer within the meaning of Section 8-1-80, I'd
23 just like to address that. I think there's ample evidence
24 or that that statute does apply.

25 Under 8-1-10, a public officer is defined as someone

1 whose are persons -- whose duties are defined by law.
2 THE COURT: Right, and---
3 SOLICITOR ALLEN: Public duties are defined by law.
4 THE COURT: I think you argued that, in the State
5 Constitution and in the U.S. Constitution---
6 SOLICITOR ALLEN: Yes, ma'am.
7 THE COURT: ---they are---
8 SOLICITOR ALLEN: And---
9 THE COURT: ---defined. Their duties are defined by
10 law is what I read.
11 SOLICITOR ALLEN: Yes, ma'am.
12 THE COURT: Okay.
13 SOLICITOR ALLEN: Yes, ma'am.
14 And so, so we would submit that 8-1-8 certainly does
15 apply to a legislator. You know, a -- legislators aren't
16 above the law. They're not, they're not held to a different
17 standard of law than a typical public officer, you know.
18 THE COURT: well, I think they can -- I think we all
19 agree that they could be, obviously, charged criminally as
20 well under separate statutes.
21 SOLICITOR ALLEN: Sure.
22 THE COURT: I think we've certainly heard Mr. Pascoe
23 argue that, and I think I've ruled on that a couple of
24 times. So---
25 SOLICITOR ALLEN: Yes, ma'am.

1 THE COURT: ---I don't think that's an issue.
2 Okay. Is there anything else you want to, you want to
3 respond to that?
4 SOLICITOR ALLEN: No, ma'am, there isn't.
5 THE COURT: Okay.
6 MR. LLOYD: Your Honor, if I can just---
7 THE COURT: Sure.
8 MR. LLOYD: ---respond?
9 THE COURT: If you want to respond, absolutely.
10 MR. LLOYD: Yes, ma'am.
11 It if pleases the Court.
12 Your Honor, first of all, our motion clearly indicated
13 that we are challenging 8-1-80, that indictment, on the
14 principle that the statute did not apply, and, and that's
15 just a basic---
16 THE COURT: Right.
17 MR. LLOYD: ---sufficiency of the indictment, and, and
18 Your Honor's well familiar with that.
19 THE COURT: On this, this motion, I, I agree.
20 MR. LLOYD: Your Honor, and we attached to our motion
21 an A.G.'s opinion, which I think clearly and cogently lays
22 out the law as it's been well established in this state on
23 the Governor's inability to remove. Whether that's suspend
24 or remove a member of the General Assembly or replace
25 them -- a member of the General Assembly, and whether it's

1 ministerial, I think, characterizes it, which I may take
2 some exception to, is, is beyond the point.

3 The Governor has no ability. There's no expressed
4 grant of authority in that statute for the Governor to be
5 able to do that because the Constitution doesn't allow him
6 to do that. The, the Governor's authority to affect a
7 separate branch, equal branch, of the government has to
8 emanate from the Constitution. Not a statute, Your Honor.

9 Now, the General Assembly can grant him all kinds of
10 authority to affect clerks of court, sheriffs, chiefs of
11 police, you name it, county council members. A statute can
12 not allow him to take authority against a separate branch of
13 government, in this case, a member of the General Assembly,
14 unless the Constitution grants him that.

15 And, in this case, I think an, an opinion that really
16 Your Honor's familiar with because it, it emanates from the
17 issue involving Mr. Bobby Harrell, who was the Speaker,
18 clearly the Governor could not suspend him. The Governor
19 did not suspend him. It was, it was recommended, and I
20 believe it did eventually occur, that the Speaker Pro Tem
21 actually executed that power. And the reason why he did
22 that is because, constitutionally, he was the only presiding
23 officer who could exercise that authority.

24 So, there -- there's no way that the Governor, unless
25 constitutionally granted that authority, can execute any of

1 the penalties in 8-1-80.

2 THE COURT: Thank you, Mr. Lloyd.

3 MR. LLOYD: Thank you, Your Honor.

4 THE COURT: All right. Well, you want to go ahead and
5 maybe and just now let's just do address the next issue then
6 as to your request for a probable cause hearing or a
7 preliminary hearing---

8 MR. LLOYD: Yes, Your Honor.

9 THE COURT: ---in this matter for this indictment.

10 MR. LLOYD: If it pleases the Court?

11 THE COURT: Yes, sir.

12 MR. LLOYD: And, Your Honor, I believe there's some
13 confusion from, from the State's response of our motion on
14 this particular point. Probably 80 percent of their, of
15 their response I don't, respectfully submit, doesn't even
16 apply to us. There's one part that I think there's an
17 agreement on our position, and I'll address that in a
18 moment.

19 But, just to be clear, what our motion is asking for,
20 and, and we cite both the State v. Davis and State v. Green
21 case, and I know Your Honor's familiar with those. We stand
22 for in the Court -- in both of those cases, the Court of
23 Appeals and Supreme Court said look, you have the ability,
24 in, in the case of the State Grand Jury, because of its
25 limited jurisdiction, to test the sufficiency of a subject

1 matter jurisdiction. The Court, in both of those cases,
2 both the Court of Appeals and the Supreme Court, probably,
3 there's some confusion, uses the term preliminary hearing.
4 If we were in Federal Court, I think, you know, this would
5 probably be motions under Rule 12, Rule 7, testing the
6 sufficiency of, of the indictment, and even allowing the
7 Court to look at Grand Jury transcripts.

8 Because of the policy of case law addressing the State
9 Grand Jury, I think they use that term preliminary hearing
10 as a way to say that's the procedure that you, you should
11 use in this particular case to test whether or not, as they
12 said, there was sufficient evidence establishing subject
13 matter jurisdiction on the part of the Grand Jury.

14 THE COURT: Well, Mr. Lloyd, let me just ask.

15 How do the -- how does Rule 2 of the Rules of Criminal
16 Procedure allow me to go behind the State Grand Jury to
17 determine---

18 MR. LLOYD: I don't think that Rule 2 -- I'm sorry.

19 THE COURT: Go ahead.

20 MR. LLOYD: I don't think Rule 2 -- Rule 2 is guidance
21 in terms of how the hearing should be conducted. But we're
22 not asking you to go behind the Grand Jury in terms of the
23 indictments issued.

24 We're asking you, as the Court in both Davis and Green
25 and evidence to actually look to see whether there was

1 sufficient evidence presented to the Grand Jury establishing
2 subject matter jurisdiction. I don't want to talk about
3 what---

4 THE COURT: Right.

5 MR. LLOYD: ---what the difference is there if I can
6 before I get to the specifics of---

7 THE COURT: Sure.

8 MR. LLOYD: ---our case.

9 One of the things that I think got confused by the
10 State's response to that is the notion of proper -- of Your
11 Honor finding probable cause.

12 The -- both of those cases, Green and, and Evans, talk
13 about the Court, you, determining was there sufficient
14 evidence presented to the Grand Jury that would establish
15 subject matter jurisdiction to issue the indictments.

16 Now, Your Honor, in looking at that, for a number of
17 reasons we, we pose to the Court, that that standard that
18 you should employ in determining the sufficiency of the
19 evidence presented to the State Grand Jury is probable
20 cause. That's the standard that the Grand Jury would employ
21 itself.

22 And, Your Honor, I, I, quite honestly, couldn't think
23 of a lower standard, to be, be quite frank with you, a lower
24 standard which we would concede to the State if I could
25 think of one. I, at one point, thought, you know, we'll,

1 we'll just even take employing a standard employed in a
2 summary judgment motion. But if you take that out to its
3 natural conclusion, the, the burden of proof here on the
4 part of the State is higher. So, we couldn't even use a
5 scintilla of evidence.

6 But the standard that I think is, is fair and which
7 complies with what the Grand Jury is trying to determine,
8 and, quite frankly, is the very lowest standard, unless the
9 State could come up with another one that Your Honor could
10 employ here, is was there probable cause establishing
11 subject matter jurisdiction. In our Grand Juries, Your
12 Honor's familiar with is a very limited jurisdiction. It's
13 not, it's not like a Federal Grand Jury. So, it -- the
14 issue of subject matter jurisdiction is very important.

15 We're not talking about the elements of the charges
16 that the Grand Jury handed out. We're talking about how did
17 they first establish that they had subject matter
18 jurisdiction over these particular cases that they were
19 considering, Your Honor. Now -- and, and that only relates
20 to Mr. Harrison. I don't -- for the purposes of this
21 hearing, don't know and don't care about whether there was
22 subject matter jurisdiction as to codefendants that were
23 indicted in this particular instance.

24 So, Your Honor, if we start with the proposition that
25 both Evans and, and Green would say Your Honor, on a motion

1 to test subject matter jurisdiction, is, is entitled to look
2 and see whether there was sufficient evidence presented to
3 the Grand Jury establishing that, then we have to conduct a
4 hearing in that. There's some factual presentation to Your
5 Honor to do that because the probable cause determination or
6 I would submit even whatever standard you could employ to
7 test the sufficiency of the evidence requires some
8 evidentiary presentation to Your Honor.

9 Now, there, there's some old, as you know, mathematical
10 axioms that say certain things are self-proven. Certain
11 things are, are so obvious we have to take them as they're
12 given. A plus B equals B plus A for all numbers that are A
13 plus B.

14 That's not the case with these indictments, Your Honor.
15 These three indictments cannot be self-proven. They can't
16 hand the indictments up to you and say this establishes
17 probable cause for subject matter jurisdiction. And, in
18 Green, and in, in Evans, the Court -- both the Court of
19 Appeals and the Supreme Court talked about the very notion
20 that, in that case, both drug cases, the Grand Jury's
21 subject matter jurisdiction stems from, as Your Honor's
22 familiar with, multi-county, some---

23 THE COURT: Jurisdiction.

24 MR. LLOYD: ---over -- multi-county jurisdiction.

25 So, whether that was included in the indictment or not

1 or alleged in that indictment, what the Court, in both those
2 cases said, is you're entitled to test, on a proper motion,
3 to test the sufficiency of the evidence that was presented
4 to the Grand Jury on that particular issue.

5 You don't have to get into whether the elements of this
6 statutory misconduct are met, common law misconduct, or
7 conspiracy. That's, that's not what we asked for in our
8 motion, and, quite frankly, I think that's what the State
9 addresses in their response, but that's not what we contend
10 the evidence in Green or, or, or -- allowed in the Court to
11 do in this particular case.

12 So, if we, if we start with that premise, Your Honor,
13 what we're looking at is for all three indictments in this
14 particular case, all three of them, are premised on one
15 allegation. That allegation being that Mr. Harrison
16 committed statutory misconduct by violating the State Ethics
17 Act, that he committed common law misconduct by violating
18 the State Ethics Act, and that he conspired with Mr. Quinn
19 and others, both known and unknown to the Grand Jury, to
20 violate the State Ethics Act.

21 Now, Your Honor, one of the things that is, is
22 problematic is, is the drafting of these indictments here.
23 I think, very recently, I think it's a 2015 case, the
24 Supreme Court, even cautioned that, once again, we, we've
25 got to stop just citing the statute or citing, citing the,

1 the, the language and mimicking the language of statutes or
2 common law charges, and saying that that's sufficient.
3 Because, Your Honor, as you sit here right now, we don't
4 know what part of the -- at least if you refer just to the
5 indictment, we don't know what part of the Ethics Act we're
6 talking about. The Ethics Act is a, is a, as you know, very
7 broad act. Your Honor has to, has to fulfill certain
8 requirements in that as, as an appointed official in this
9 State.

10 They're many sections of that, and, and Your Honor
11 can't sit here today and look at the indictments, even if
12 the State wanted to say that these are self-proving in terms
13 of subject matter jurisdiction, they can't point to you what
14 part of the State -- of the Ethics Act these indictments are
15 referring to, and, therefore, what parts of the statute --
16 of the Ethics Act, what statutes within it, specifically
17 were presented to the Grand Jury, and it's not just to --
18 for them to cite the statute within the Ethics Act.

19 They had to match up facts with particular statutes in
20 the, in the Ethics Act because the issue of probable cause,
21 both for regular Grand Juries and for the State Grand
22 Juries, is always a factual determination. It's a factual
23 issue.

24 We submit the same thing applies when you're trying to
25 determine the sufficiency of the evidence establishing

1 subject matter jurisdiction.

2 What were the facts and what facts do they match up
3 with specific statutes in the Ethics Act?

4 THE COURT: Mr. Lloyd, let me ask you.

5 So, you've been provided with the evidence and the
6 transcripts that were considered by the Stand Grand Jury?

7 Am I correct on that?

8 I know that was originally---

9 MR. LLOYD: Yes, Your Honor.

10 THE COURT: ---part of your motion, but you should have
11 that by now.

12 MR. LLOYD: Yes, Your Honor.

13 THE COURT: Is that correct?

14 MR. LLOYD: Yes, Your Honor.

15 THE COURT: And is it -- you're stating that the State
16 needs to definitively tell you what specific parts of the
17 transcript and the evidence that were produced are
18 violations or caused the misconduct?

19 Is that what you're -- is that what you're looking for?

20 And not just should of been given all this evidence,
21 and you're suppose to figure out---

22 MR. LLOYD: Right.

23 THE COURT: ---while you're looking at it?

24 MR. LLOYD: And now, when we get to the issue of our,
25 our discovery motion, that, that poses a number of issues --

1 THE COURT: Okay.

2 MR. LLOYD: -- that, that we want to address later on
3 today.

4 But beyond them telling us, our, our contention is, is
5 that if you look at what the State did in front of the State
6 Grand Jury, that does not establish sufficiently subject
7 matter jurisdiction at this particular case.

8 THE COURT: Okay.

9 MR. LLOYD: Those, those allegations of specific acts
10 by Mr. or omissions by Mr. Harrison amounted to enough
11 evidence to suggest that there was a violation of a statute
12 in the Ethics Act that would grant them subject matter
13 jurisdiction, and that -- that's -- it's not conclusionary.
14 They can't stand up here and say well, we just think,
15 because he worked for Mr. Quinn, and we've pled Mr. Quinn's
16 company to something, that that alone gets us over that,
17 that hump.

18 We can't say that the indictments themselves prove
19 subject matter jurisdiction because, in and of themselves,
20 whether they turn over discovery or not, the indictments are
21 fatally defective if they do not allege that. And I know
22 Your Honor's addressed this issue of the vagueness of, of
23 these indictments in another case, particularly Mr.
24 Courson's, and, and we would revisit that depending on the
25 outcome of this hearing prior to any trial on this matter

1 because we would have to deal with that in terms of motions
2 to dismiss. Just put that on the record.

3 THE COURT: Of course.

4 MR. LLOYD: Then motions in limine so that this is not
5 some 20 year old fishing expedition that would take weeks.
6 I know Mr. Pascoe said it would take them two weeks. I
7 can't imagine if we can't try this case in a few days, but
8 so be it on that front.

9 But in order for us to be able to try the case, in
10 order for Your Honor to even know what to charge the jury
11 on, at some point the State's got to come forward and say
12 these specific acts or these specific omissions violated
13 these particular specific sections of the Ethics Act.

14 And, and I would point to Your Honor to establish
15 subject matter jurisdiction, and we think about it like
16 this. And I know Your Honor's familiar with the, the
17 section of the Grand Jury statute that confers jurisdiction
18 for public corruption, and you're familiar with the
19 definition of public corruption there. Not to make light of
20 a situation, but a murder case could be a public corruption
21 case. You can be indicted for murder. You killed your
22 opponent. I mean---

23 THE COURT: Right.

24 MR. LLOYD: ---we can think of a number of different
25 scenarios.

1 The, the murder indictment itself, on its face,
2 couldn't tell you what the subject matter jurisdiction will
3 be unless there was some factual presentation, both to the
4 State Grand Jury and to you, showing that the motive was
5 carried -- the, the act was carried out, and the, the motive
6 for the act was carried out by a public official under the
7 color of his office. I mean that's, that's one of the
8 requirements, and that that is why -- what led to that
9 particular murder. That would confer subject matter
10 jurisdiction.

11 In this case, we don't have that in these indictments.
12 You can't tell, from the face of these indictments, what
13 sections the, the State argued to the Grand Jury were
14 violated, and what acts or omissions were violated in the,
15 the statutes.

16 So, it's our contention that it's clear that both Green
17 and Evans allow my motion for definitive -- to force the
18 State to prove to Your Honor that there is, in fact, subject
19 matter jurisdiction. And we submit that the proper
20 standards for Your Honor to determine subject matter
21 jurisdiction, the sufficiency of the evidence that avails to
22 that, is probable cause. I mean we're, we're happy to
23 entertain any other theory of a standard that Your Honor
24 should employ from the State, but that's the lowest standard
25 we could come up with, and one that we think is most

1 appropriate to, to what the Grand Jury normally would be
2 looking at.

3 Thank you.

4 THE COURT: I appreciate it, Mr. Lloyd.

5 SOLICITOR ALLEN: Good afternoon. I think we've gotten
6 pretty far afield now of what this motion originally started
7 as.

8 To be, to be clear, it's not a motion about
9 jurisdiction. He made mention of jurisdiction in a few
10 spots, but, you know, just to read this headnote, there's no
11 probable cause showing that Harrison criminally violated any
12 disclosure requirement of the State Ethics Act, Act and
13 should be dismissed. That -- I mean that's -- it's not
14 jurisdiction. That is asking to dismiss because there's
15 insufficient evidence presented to the Grand Jury.

16 Now, I'll start my remarks by drawing some very clear
17 lines between the State's position as to these hearings,
18 and, and I think Mr. Lloyd conceded this fact, but I think
19 this motion is really an attempt to sort of borderline
20 between a permissible hearing, and an impermissible hearing,
21 and to sort of bootstrap an impermissible challenge to the
22 State Grand Jury's independent decision making authority on
23 the back for an otherwise an admissible jurisdictional
24 challenge.

25 THE COURT: I guess my question to you is then, you

1 tell me, based on your indictments, how the subject matter
2 jurisdiction is confirmed.

3 SOLICITOR ALLEN: Sure. Well, it's---

4 THE COURT: He's saying it's missing, and we all know
5 that it's under the public corruption portion of the State
6 Grand Jury Act. I need you to then go ahead and then---

7 SOLICITOR ALLEN: Absolutely.

8 THE COURT: ---state it.

9 SOLICITOR ALLEN: Absolutely.

10 The -- under State v. Gunn, and Evans says it as well,
11 and Green says it as well, when it comes to determining
12 whether or not subject matter jurisdiction existed before
13 the State Grand Jury, let me look at the transcripts.

14 THE COURT: Uh-huh. (Affirmative).

15 SOLICITOR ALLEN: If you look at these transcripts,
16 there's plenty of evidence in here where the State indicates
17 that Mr. Harrison was a public official, that he violated
18 crimes of the Ethics Act, and I can just pull the exact
19 definition of -- well, let me see if I can find the exact
20 definition of -- I don't have it right in front of me.

21 But the point is the State Grand Jury heard plenty of
22 evidence and testimony establishing that this case is about
23 public corruption. Correct. And we also charged the jury
24 on, on the law.

25 You know, the Defendant says, you know, assuming he's

1 read the transcripts, then I'm a little confused cause I've
2 read those transcripts, and I was at the Grand Jury, and, if
3 you read all of these -- there's a -- thousands of pages of
4 transcripts. If you read those transcripts, you'll know
5 exactly what the State's case is about.

6 THE COURT: Well, why don't you tell me because, of
7 course, I come into this blind because I'm the only one here
8 that hasn't read any of it.

9 SOLICITOR ALLEN: Sure.

10 THE COURT: So, I don't know specifically. I, I guess
11 I just need you to give me what your example is of
12 conferring subject matter jurisdiction on the indictments.

13 SOLICITOR ALLEN: Sure.

14 Okay. Under the State Grand Jury Act, and I'm reading
15 from Section 14-7-1615, public corruption is defined as
16 unlawful activity under color of or in connection with
17 public cor -- public office or employing a public official.
18 So, in other words, Your Honor, to confer jurisdiction, the
19 Grand Jury has to have heard sufficient allegations of, of
20 unlawful activity in connection with a public office or
21 employment of a public official.

22 So, to give specific examples, let me see if I can find
23 one here. So, the Grand Jury heard specific evidence,
24 testimony from Lieutenant Jerry Smith, SLED officer. They
25 heard testimony that Mr. Harrison violated provisions of the

1 State Ethics Act including, but not limited to, let's see,
2 8-13-700(B), 700(A) and so on. The Grand Jury heard
3 testimony that Mr. Harrison, while a member of the House of
4 Representatives, was a public officer whose authority is
5 limited to a single election or judicial district. Yes, he
6 was.

7 And so, in other words, does it fit within the
8 definition of statutory misconduct in office?

9 That he was a representative from '89 to 2012. So,
10 during the entire time within the indictment, he was a
11 public official. That he voted on legislation that the --
12 Richard Quinn & Associates had things to do with thus
13 violating Section 700(B), that he didn't---

14 THE COURT: So, I can say that you presented specific,
15 and I know I shouldn't assume anything, but you said
16 specific legislation that wasn't of general nature of --
17 that was---

18 SOLICITOR ALLEN: Correct.

19 THE COURT: ---specific to benefiting, you know, a
20 lobbyist principle that was employed by Rick Quinn &
21 Associates?

22 I mean if---

23 SOLICITOR ALLEN: Correct.

24 THE COURT: I guess that's my -- what I need to know
25 because, again, I don't have the benefit of---

1 SOLICITOR ALLEN: Sure. Sure. Absolutely.
2 THE COURT: ---having been there or have read it.
3 SOLICITOR ALLEN: Absolutely. And, and---
4 THE COURT: So, I don't get the discovery.
5 SOLICITOR ALLEN: And I can---
6 THE COURT: Okay.
7 SOLICITOR ALLEN: Happy to provide you some citations
8 for you to read. It's just too much to sit here and read.
9 THE COURT: Okay.
10 SOLICITOR ALLEN: I think---
11 THE COURT: But just give me an example.
12 SOLICITOR ALLEN: Okay. So, for example, they heard
13 that Mr. Harrison voted on the School Choice Tax Credit,
14 H---
15 THE COURT: Okay.
16 SOLICITOR ALLEN: ---4894 in 2007.
17 THE COURT: Okay.
18 SOLICITOR ALLEN: At the time, they were a client of
19 Richard Quinn & Associates. Failed to recuse himself and
20 thus violated 8-13-700. So, that is a specific allegation
21 of conduct connected with his public office violating---
22 THE COURT: Of a specific law---
23 SOLICITOR ALLEN: Correct.
24 THE COURT: ---that was being passed, correct?
25 SOLICITOR ALLEN: Correct.

1 THE COURT: That voted on that.

2 SOLICITOR ALLEN: Cosponsored, in fact.

3 THE COURT: Cosponsored, in fact.

4 okay. And that the people that were the proponents of
5 school choice, whatever that organization, had hired Richard
6 Quinn & Associates.

7 Is that---

8 SOLICITOR ALLEN: Correct. That is one example.

9 THE COURT: ---what I understand?

10 okay.

11 SOLICITOR ALLEN: There's also the Base Load Review
12 Act, of course --

13 THE COURT: Right.

14 SOLICITOR ALLEN: -- which SCANA was a longtime client
15 of Richard Quinn & Associates.

16 THE COURT: Okay.

17 SOLICITOR ALLEN: And, of course, you know, failure to
18 report was obviously a big part of this. So, for 12 years
19 he didn't report, you know, you know, a dime of income paid
20 to Richard Quinn & Associates, his employer, for services
21 that he should have very clearly reported under 8-13-1130,
22 and that's, that's a very specific one that we talk about a
23 lot.

24 THE COURT: Uh-huh. (Affirmative).

25 SOLICITOR ALLEN: And, of course, I, I, you know, I

1 could give a lot more examples, but I think those two are---

2 THE COURT: Okay.

3 SOLICITOR ALLEN: -- would suffice.

4 THE COURT: So, in your failure to report, it's my
5 understanding, just from reading their position, is that he
6 was paid for campaign consulting purposes, and not for any
7 work done on behalf of any of these lobbyist principles.
8 So, as a result of that, he didn't have to disclose it. I
9 mean that's what I'm hearing his argument is.

10 SOLICITOR ALLEN: That is their position. We disagree.

11 THE COURT: Okay. Okay.

12 SOLICITOR ALLEN: Well, he -- you know, and he also
13 testified on the record. I mean he told the FBI. He said
14 it a number of times. In fact, they attached their motion,
15 a letter that he wrote to the House Ethics Committee that
16 says I am about to be the chief operating officer -- an
17 officer of Richard Quinn & Associates. I am aware that this
18 company, not First Impressions, you know --

19 THE COURT: Uh-huh. (Affirmative).

20 SOLICITOR ALLEN: -- this notion that he didn't know
21 the difference between First Impressions and Richard Quinn &
22 Associates. I remember when they first told me. I pulled
23 out one of his pay checks---

24 THE COURT: Uh-huh. (Affirmative).

25 SOLICITOR ALLEN: -- that says First Impressions d/b/a

1 Richard Quinn & Associates. He's a lawyer. If he doesn't
2 know what d/b/a/ means, that's hard to swallow.

3 So, so --.

4 THE COURT: Okay. You're referring to that Ethics
5 opinion that was requested back on July 12th of 1999?

6 Is that the one we're talking about?

7 Is there other---

8 SOLICITOR ALLEN: Correct. Yes, that's from 1999.

9 THE COURT: ---ones than that?

10 Okay.

11 SOLICITOR ALLEN: There's also one in 2016---

12 THE COURT: Okay.

13 SOLICITOR ALLEN: ---where it basically says the same
14 thing.

15 THE COURT: Okay.

16 SOLICITOR ALLEN: Yeah, you know -- so, Your Honor --
17 right. I mean I have, I have a lot of this addressing the
18 probable cause. So, if we're abandoning the whole
19 preliminary hearing to establish probable cause thing, and
20 we're just sticking with jurisdiction now, you know, I would
21 argue that that confers plenty of jurisdiction, and we can
22 offer plenty more examples if the Court, Court desires.

23 THE COURT: Okay. Mr. Lloyd, yes.

24 MR. LLOYD: Your Honor, first of all, we're not
25 abandoning. We're making arguments.

1 As, as counsel just said, we're -- we've never raised
2 the issue of just general probable cause.

3 THE COURT: Okay.

4 MR. LLOYD: We said as this, this motion, and what we
5 contend we're entitled to is a hearing on whether or not
6 there was subject matter jurisdiction. That's a factual
7 inquiry.

8 We're not asking for a probable cause hearing on
9 misconduct, statutory or common law, or a probable cause
10 hearing on conspiracy. We're asking for a probable cause
11 hearing to determine whether there was sufficient evidence
12 establishing subject matter jurisdiction.

13 Now, in their response, they seem to agree that we're
14 entitled to that, but that's what -- that's the proposition
15 that Green and Evans stand for. So, so, I say we're not
16 abandoning anything cause we never made that argument nor do
17 we believe that's what either of those cases stand for.

18 Your Honor, they -- just to address a couple of things
19 that they raise. One of the problems I think you're having
20 here, and, and we're all having, they're having trouble
21 telling Your Honor exactly what it is they believe
22 Mr., Mr. Harrison did wrong. They -- they're having trouble
23 standing up here and telling you that now. Not putting
24 anybody on the stand, not introducing exhibits, not
25 introducing transcripts, or anything else evidentiary wise,

1 they're struggling to tell you.

2 8-13-1130, as, as counsel just cited to you, is one
3 example. He didn't -- Mr. Harrison didn't report income
4 received from RQA under 1130. 1130 doesn't require you to
5 report the income, Your Honor. It's all in expressed terms
6 do not require him to do that.

7 So, if that's what they're telling Your Honor they told
8 the Grand Jury, we have a big problem here cause they
9 misinstructed the Grand Jury. 1130 has no requirement on
10 that.

11 Now, let's talk about Base Load Review Act, and I think
12 we, we intimated in our, our motion, in our discussions,
13 because it's hard to tell from what they did present to the
14 Grand Jury, exactly what their theory is, and I, I would
15 point out to Your Honor, this isn't a bribery case.

16 THE COURT: I understand.

17 MR. LLOYD: They didn't, they didn't charge anybody
18 with bribery in this particular case. None of the
19 codefendants. They're statutes specifically on that.

20 The Base Load Review Act and School Choice, they keep
21 bringing those, those things up. Your Honor, as -- and, and
22 part of this is, as Your Honor knows because we attached it
23 to our motion, was that Harrison did write a letter to, to
24 House Ethics at the very beginning before starting over
25 there saying hey, this is what I'm thinking about doing, is

1 this legal. I want this -- I want to do this legally.

2 House Ethics writes him an opinion saying, first of
3 all, it is legal. It's legal for him to go work for RQA.

4 RQA wasn't a lobbying firm. Mr. Harrison wasn't going
5 over there and doing any lobbying. He wasn't going over
6 there to be involved in legislation, and it's, it's
7 interesting to note, Your Honor, in that Ethics opinion that
8 was written to Mr. Harrison, 1130 isn't even mentioned, and,
9 and we'll get to this at some point, Your Honor, but one of
10 the reasons why it is a violation of 1130, in and of itself,
11 the failure to report, what is required by 1130, is to
12 report the names of lobbyist principles that were clients of
13 RQ&A.

14 THE COURT: Right.

15 MR. LLOYD: The failure to do that is not even a crime.
16 This is a problem we've had with the State. At some point,
17 we're just asking they go back and read the Ethics Act.
18 They've charged all these folks under this. They've brought
19 these cases. At least read the act.

20 1130 doesn't require reporting of income. It requires
21 reporting of names. The failure to report those names is
22 not, in and of itself, a crime.

23 What is a crime, Your Honor, under that section that's
24 separate and apart from the general criminal provision of
25 the Ethics Act is that Mr. Harrison had gotten a notice from

1 the Ethics Committee saying you should of reported this, and
2 we're gonna fine you, and Mr. Harrison blew them off. And I
3 don't mean to---

4 THE COURT: I understand.

5 MR. LLOYD: ---to use that kind of---

6 THE COURT: I understand.

7 MR. LLOYD: ---coat with -- tone with Your Honor.

8 THE COURT: I understand.

9 MR. LLOYD: If he blew them off, not once, but twice,
10 then they can refer it for, for prosecution. So, the
11 report -- failure to report isn't even a crime. This is a
12 failure to obey or to heed a notice from House Ethics.

13 Again, if the State would just read the Ethics Act.
14 Voting on a cosponsored -- Your Honor's familiar with this,
15 first of all, how bills are cosponsored. I mean most of the
16 time those things are passed around on the floor---

17 THE COURT: Sign off.

18 MR. LLOYD: ---or in conference, and you just sign your
19 name.

20 The interest that RQA might of had in the Base Load
21 Review Act or School Choice is from the standpoint that, for
22 example, SCE&G might of been a client of, of RQ&A. They did
23 PR work for SCE&G or SCANA.

24 Again, Your Honor, if you read back through, and we
25 pointed this out in our, our brief, read the definition of

1 economic interest. For it to be a crime, for them to have
2 subject matter jurisdiction to allege that there's a
3 violation of the law by Mr. Harrison that then leads to the,
4 the Grand Jury having the subject matter jurisdiction to
5 issue the misconduct indictment, or the common law
6 misconduct indictment, or conspiracy indictment, is that he
7 had to have an economic interest.

8 That's not alleged. They're no facts sufficient to
9 establish that. He was an employee, a salaried employee,
10 and, by his expressed terms, the Act excludes him. He could
11 of voted on those acts all day long.

12 So, again, either the State didn't read through the
13 entire Ethics Act or they misled the Grand Jury. They've
14 got to pick one or the other. That's what we've been asking
15 for all long. Pick one or the other. You either misled the
16 Grand Jury in terms of what you were charging them was a
17 violation of the law or you find something that Mr. Harrison
18 either did as an act or an omission that violates a specific
19 statute in the Ethics Act.

20 SOLICITOR PASCOE: May I address that, Your Honor?

21 THE COURT: Of course, Mr. Pascoe.

22 SOLICITOR PASCOE: Thank you, Your Honor.

23 First, I would ask that the defense please read the
24 transcripts cause all of the questions he just asked this
25 Court are answered in those transcripts including the jury

1 charges that went to the jury, the Grand Jury, about the
2 subject matter jurisdiction.

3 As far as reading the Ethics Act, Your Honor, I would
4 implore and beg the defense please read the Ethics Act.
5 Please read the House Ethics Committee opinions which
6 dictate, beyond any doubt, that he has got to report that
7 money unless -- and, under Section 1130, and that Mr. Lloyd
8 is unintentionally, and I believe this, he is
9 unintentionally misstating the law of 1130 to this Court.

10 Read it. You can borrow my book. They can borrow my
11 book, and they can interview the same witnesses I've
12 interviewed over at The State House to, to find out how
13 badly Mr. Harrison violated the law in South Carolina. And
14 I'm gonna do something else that I really don't think I
15 should do, but I'm gonna point out what some of the things
16 the State is gonna prove so they can look for it in the
17 transcript.

18 And, again, just like -- remember I did this with Mr.
19 Harrell?

20 I did this with the Quinn's. If they want to come and
21 go through a Power Point with us of all the evidence we
22 intend on producing at trial, we will do it. Love to do it
23 the next couple of weeks if they want to.

24 Okay. They're -- so, that's my offer to them. Every
25 piece of evidence that we're gonna put in at trial.

1 On or about April of 1999, the Defendant, Jim Harrison,
2 and Richard Quinn & Associates had discussions where the
3 Defendant, who is a full-time attorney, and the Chairman of
4 the Judiciary, whereby his own admission, 40 percent of all
5 legislation when through this Committee, they had an
6 agreement or began an agreement where the Defendant would
7 become the chief operating officer, and partner at Richard
8 Quinn & Associates.

9 We are gonna show how they came up with the Defendant's
10 salary, Your Honor. That the Defendant's salary of
11 approximately over \$80,000 a year was based on retainers
12 that Richard Quinn & Associates got from companies such as
13 SCANA, which happens to be a, a lobbyist principal, and
14 other companies. They came up to his salary to the penny
15 based on, I think, it was four or five lobbyist's
16 principals.

17 On or about June the 15th, 1999, Richard Quinn &
18 Associates hired the Defendant as that chief operating
19 officer and parter. That was his first day where he became
20 a salaried employee for over \$80,000 a year.

21 He received that salary, Your Honor, we are gonna
22 prove, the State, until the Fall of 2010 at which time he
23 became a contract employee making \$2,000 a month until, low
24 and behold we will prove, his last month in office. That's
25 when the payments stop. Once he's out of the Legislature,

1 we will prove he's no more any use to RQ&A.

2 We are also gonna prove that, during that time, from
3 1999 to two -- November of 2012, the Defendant voted on
4 legislation for lobbyist principles of his employer. He
5 sponsored legislation for clients of Richard Quinn &
6 Associates, his employer, and that, at no time during that
7 period from 1999 through 2012, did the Defendant ever report
8 any of the lobbyist principle income that Richard Quinn &
9 Associates made while he was there.

10 And, again, unintentionally, I think Mr. Lloyd is
11 misstating the law about 1130. The Defendant does,
12 according to the House -- in fact, they issued an opinion,
13 Your Honor, two months before the Defendant requested his
14 opinion from House Ethics about his employment at RQ&A---

15 THE COURT: Uh-huh. (Affirmative).

16 SOLICITOR PASCOE: ---where they said you haven't even
17 put the amount of money that the lobbyist's principal gave
18 to your employer. And I'll give them a copy of that
19 opinion.

20 Again, we'll prove that he sponsored legislation for
21 RQA clients. We're gonna prove that he did recuse himself
22 from certain legislation, but it was never for RQ&A clients.
23 It was for other matters. But he never would recuse himself
24 when it came to his employer's clients.

25 Now, that's just some of the evidence that we intend to

1 prove, and everything that I talked about, I believe, is,
2 without a doubt, subject matter jurisdiction of criminal
3 public corruption. And I'll put them on notice of some of
4 the things we're gonna prove. When they meet with us, I
5 will put them on notice of just about everything we intend
6 to prove.

7 MR. LIMBAUGH: If I could just briefly?

8 THE COURT: Please.

9 MR. LIMBAUGH: There's really not much point, I don't
10 think, in us going back and forth, you know, about, about
11 these things. The Court is perfectly capable of reading
12 these statutes on her own.

13 I would point out that I, I have it open in front of
14 me, and 8-13-1130 only requires reporting of identities of
15 lobbyist principles. It does not require reporting of
16 income.

17 Now, if the State told the Grand Jury that that's what
18 it said, I don't know what to say about that, but that's not
19 what that statute says. 8-13-700, they're -- for lack of a
20 better description, the recusal statute, only requires
21 members of the General Assembly to recuse themselves from
22 matters that are going to -- when, when a bill uniquely
23 enures to the economic interest of the legislator, or a
24 family member, or -- well, I think that's about it. It --
25 they're -- the statute does not require Mr. Harrison or any

1 other member of the General Assembly to recuse him or
2 herself under any of the circumstances that the State's
3 alleging existed. Even if you accept that the most damning
4 set of facts that they've come up with exists, even in those
5 circumstances, the law did not and does not require a member
6 of the General Assembly to recuse him or herself from voting
7 on bills of that nature. It just doesn't, and the statute's
8 very clear when recusal is required, and when it is not.
9 And it was not in any of the circumstances the State's
10 alleging exist.

11 So, I would just simply encourage Your Honor to take an
12 independent look at these statutes. Don't take our word for
13 it. Certainly don't take the State's word for it. And come
14 to, to Your Honor's own conclusion about whether, even if
15 they presented facts to the Grand Jury proving what they say
16 they proved, whether a crime was committed because,
17 ultimately, they have to have probable cause to show that
18 there was a crime committed under the Ethics Act in order
19 for the---

20 THE COURT: To be subject matter jurisdiction.

21 MR. LIMBAUGH: ---for there to have been subject matter
22 jurisdiction---

23 THE COURT: Okay.

24 MR. LIMBAUGH: ---and there just wasn't.

25 THE COURT: Okay. Yes, sir.

1 SOLICITOR ALLEN: Two things.

2 One, I think he forgot the last bit of 700(B) where it
3 says business with which you're associated, which would
4 include your employer. That's significant here. And, and
5 also, 1130, whether or not it requires the name or the
6 number, he didn't report either one of them.

7 THE COURT: So, just so I understand, Mr. Lloyd, what
8 you're requesting of me is, obviously, to look at the
9 statutes, look at what was presented to the Grand Jury, and
10 determine whether or not the factual basis given confers
11 subject matter jurisdiction in this case.

12 Is that -- am I correct on this?

13 MR. LLOYD: Exactly, Your Honor. That's exactly what
14 we've asked for. And, and one of the things that I think
15 we've just pointed out to Your Honor is this is pretty black
16 and white.

17 The State's position is they've, they've alleged
18 certain things here today to Your Honor. Just like they may
19 of alleged, in a conclusionary fashion, certain things to
20 the Grand, to the Grand Jury, and they've said those things
21 violate these statutes.

22 Now, as Mr. Limbaugh pointed out, it's either or.
23 Either 1130 requires Mr. Harrison to report income or it
24 doesn't, and that's the plain text of the statute. This,
25 this -- that part isn't hard, and, and they're representing

1 to you that what they were presenting to the Grand Jury
2 required, under 1130, is just one example for Mr. Harrison
3 to report income. 1130 doesn't deal with that, Your Honor.

4 So, once again, we have a problem. Either there's no
5 crimes under the Ethics Act that would establish subject
6 matter jurisdiction to, to issue these three indictments, or
7 they have intentionally misled, and I wouldn't say
8 intentionally, maybe they just, you know, maybe -- I'll call
9 it negligently. I don't know if they bothered to read the
10 entire act, as Mr. Limbaugh pointed out, the definitions
11 that accompany all of this.

12 They misled the Grand Jury as to what, in fact, what
13 they did present meaning in terms of statutory violations.

14 SOLICITOR PASCOE: Judge, Your Honor, this motion's
15 changed dramatically. It is not your job -- you should not
16 have to pour through hundreds of thousands of pages worth of
17 transcripts to determine if there's subject matter
18 jurisdiction. They need to point it out, but they can't
19 because there's tons of subject matter jurisdiction.

20 He is a public official. There's probable cause to
21 believe he committed misconduct in office, that he committed
22 public corruption. There you go. End of story.

23 But if they want you to go back and read, you can do it
24 if you want obviously, but that's just -- that's unfair to
25 have a judge go through hundreds of thousands of pages of

1 transcripts to determine if there's probable cause to
2 subject matter jurisdiction.

3 That's crazy. Have them point it out, you know, where
4 there's not.

5 MR. LIMBAUGH: I, I---

6 SOLICITOR PASCOE: They can't cite a case even on the
7 law.

8 MR. LLOYD: Your Honor?

9 SOLICITOR PASCOE: You're gonna make determinations
10 during the trial about whether---

11 THE COURT: Certainly have directed verdict motion --

12 SOLICITOR PASCOE: Exactly.

13 THE COURT: -- whether or not there's anything.

14 MR. LLOYD: Exactly.

15 SOLICITOR PASCOE: Yes, ma'am.

16 MR. LLOYD: Your Honor---

17 SOLICITOR PASCOE: Directed verdict, J -- and
18 everything else. So -- but they're wanting to get all that
19 now. They don't get it now. They get it at trial. They
20 can make those motions at trial.

21 MR. LLOYD: With all due respect to my client, and, and
22 my friend, I mean we're battling right now, but he is my
23 friend, we aren't asking you to go through hundreds of
24 thousands of pages of transcript. They can point you to it.
25 They can point to Your Honor right now, and say here are the

1 transcript pages that make factual allegations, and point to
2 Ethics Act statutes that those would violate. That would
3 establish subject matter jurisdiction.

4 That's all we've asked for in our motion. That's what
5 we asked for to begin with, and that's what we're asking for
6 today, but they can solve that.

7 They don't have to hand over, like they did with
8 discovery, just hand over disk after disk of hundreds of
9 thousands of pages, and say go leaf through it. They can
10 pull those pages out, and hand them up. Evidence in Green,
11 in fact, allow that.

12 Your Honor, remember in those cases, the Court
13 specifically says, Supreme Court specifically said hey, or
14 the Court of Appeals, I'm sorry, said you should consider
15 not just the testimony that was presented by the Court
16 before Your Honor---

17 THE COURT: It was presented to the Grand Jury.

18 MR. LLOYD: ---but they can present transcripts,
19 that -- proffer for Your Honor to take into consideration.

20 In that particular case, the State was able to present
21 to the Court specific transcript pages that established
22 subject matter jurisdiction on the basis of multi-county
23 jurisdiction.

24 THE COURT: Okay.

25 SOLICITOR PASCOE: I can point it out to you. Just

1 look at the indictments. There is subject matter
2 jurisdiction. There's a presumption of it right there. I
3 don't understand why this is even an issue.

4 Was he a public official?

5 Yes, he was a legislator.

6 Did he do that, by their own admission, did he fail,
7 for 13 or 12 years, to file on his Ethics to report -- said
8 he didn't -- that they received lobbyist's principal money?

9 Yes, they did.

10 There you go. That's misconduct in office, and that's
11 criminal conspiracy of Richard Quinn & Associates by their
12 own admission. It's, it's very easy.

13 MR. LLOYD: Your Honor, the only thing I can say to
14 that is just as both Green and Evans point out, the
15 indictments are not self-proving in terms of subject matter
16 jurisdiction.

17 SOLICITOR PASCOE: They, they just proved it though,
18 Your Honor. He admits that he failed to file money for 13
19 years.

20 Now, let me tell you the importance. Again, I'm gonna
21 try the case for you. Because he failed to report that
22 income, public companies, lobbyist's principals were
23 violating the law every single year. They are not allowed
24 to put Richard Quinn, and he knows this, they are not
25 allowed to put Richard Quinn & Associates on a retainer if

1 one of their employees is receiving a salary, which is why,
2 in September of 2006, when Jim Harrison, the Chairman of the
3 Judiciary, and a lawyer, an officer of the Court, was asked
4 by the press, are you an employee of Richard Quinn &
5 Associates, his exact quote was I am not a salaried employee
6 of Richard Quinn & Associates. I do work for which I'm
7 compensated. Thirty percent of which is legal work.

8 He lied, cause if he had told the truth, then
9 Palmetto-Health, SCANA, AT&T, none of those companies were
10 gonna be allowed to put RQ&A on retainer, and they would of
11 lost millions of dollars. He got paid over \$80,000 a year
12 to lie.

13 MR. LLOYD: Your, Your Honor, again, I don't know what
14 article his argument is referring to, and I don't want to
15 belabor this point.

16 SOLICITOR PASCOE: You want to see it?

17 MR. LLOYD: Here's, here's, here's one -- it would be
18 illegal for Mr. Harrison to be on a retainer, but what RQA
19 took is their business. He wasn't paid a retainer. He had
20 a salary just like any other employee. That -- that's -- by
21 their own admission at the very beginning of their argument
22 to you, he was a salaried employee. He didn't receive a
23 retainer.

24 So, again, I don't know what they're actually pointing
25 to factually to show a violation of a specific Ethics Act

1 statute.

2 SOLICITOR PASCOE: well, again, Your Honor, they have
3 to read the statute. I'll point it out to them. If he'll
4 come over here, I'll show it to him where it says a lobbyist
5 principal is not allowed to employ a corporation that has a
6 legislator that receives any economic interest. Much less
7 an \$85,000 a year salary. It's under 100(g).

8 Come see me. Read the Ethics Act.

9 MR. LLOYD: Your Honor, we can---

10 SOLICITOR PASCOE: And that's what makes this case so
11 bad, and now it's gonna be public. That's what makes it so
12 egregious and why Mr. Harrison was so corrupt that he was
13 getting paid \$80,000 a year. He didn't work on any
14 campaigns of Richard Quinn & Associates, and I can't wait to
15 try this case and show you that.

16 When we asked RQ&A employees did he work on any of the
17 campaigns, no.

18 what did he do there?

19 I don't know.

20 Getting paid \$85,000 a year to be Chairman of the
21 Judiciary. That's what we're gonna prove.

22 MR. LLOYD: You know, and I don't want to go back over
23 anything that we've already argued, but, again, nobody
24 stands up here on their side and shows you a specific --
25 they keep saying he violated the Ethics Act. They, they

1 even miscite what the Ethics Act says. Any statutes that,
2 that might be applicable, they miscite to you what it says.

3 SOLICITOR PASCOE: Can I ask what he's saying though---

4 MR. LLOYD: They don't even cite---

5 SOLICITOR PASCOE: I don't mean to interrupt, but what
6 is he saying I miscited cause I think that needs to be
7 straightened---

8 MR. LIMBAUGH: 1130.

9 MR. LLOYD: 1130.

10 SOLICITOR PASCOE: Come see me. It's right here. It
11 says---

12 MR. LLOYD: David, we've, we've been in -- we did that
13 a handful of times, and we've gone over this over and over
14 again, and we've asked you to read the Ethics Act.

15 And, I'm sorry, Your Honor, I don't mean to address
16 counsel directly, but, again, the, the Act speaks for
17 itself. The language of the Act is there.

18 So, again, the State can easily solve this. They can
19 go back to their transcript. They can pull out the specific
20 pages where they allege that Mr. Harrison engaged in any act
21 or omission, pull those pages out. It ain't gonna take that
22 long. It ain't gonna be a whole lot of pages. Just
23 relating to Mr. Harrison. Hand those up to Your Honor.
24 File those under seal. And point to Your Honor specifically
25 what statutes they claim that conduct violates.

1 THE COURT: Mr. Pascoe, do you think it's that easy as
2 far as to go through the transcript, and to pull out
3 specific facts that show violations of that exact statute?

4 SOLICITOR PASCOE: It should be. Yeah, I think that
5 would be pretty easy for us -- and that would be your
6 probably cause, which is all we have to have. Obviously not
7 everything I said in Court today would be.

8 THE COURT: That would -- we're looking for the subject
9 matter---

10 SOLICITOR PASCOE: Yeah.

11 THE COURT: ---matter jurisdiction that a crime has
12 been committed---

13 SOLICITOR PASCOE: Oh, yeah.

14 THE COURT: ---under the Act.

15 SOLICITOR PASCOE: I think we can do that, yes.

16 THE COURT: Can you do that?

17 SOLICITOR PASCOE: Yes, ma'am, I think we can.

18 THE COURT: And so what I'm suggesting then is you pull
19 the exact transcript portion of it, and then give me the
20 exact, either Statutory Code Section, Ethics Act, whatever
21 it is, put it underneath there, and say it violates exactly
22 this.

23 SOLICITOR PASCOE: Okay.

24 THE COURT: And then I guess I could invite you, if you
25 want to, to say why it doesn't other than I would think a

1 clear reading of the law would be able to help --.

2 MR. LLOYD: Exactly.

3 THE COURT: I should be able to determine whether or
4 not it factually meets it.

5 MR. LLOYD: I, I would think -- yeah, I would think
6 that would be fairly easy, Your Honor. I mean we would
7 certainly want a copy of what they file, but, you know,
8 unless, unless we would of notified the Court that we think
9 we needed to --

10 THE COURT: Okay.

11 MR. LLOYD: -- respond, I think the burden, first of
12 all, is on, on the State to show that subject matter
13 jurisdiction exists. But if they can do that, Your Honor,
14 we'd be very happy with that.

15 THE COURT: Well, I mean this is exactly what he's
16 gonna prove at trial.

17 Okay.

18 SOLICITOR PASCOE: We'll try to get you something.

19 THE COURT: How long, Mr. Pascoe?

20 I mean this case is set for October 22nd if I'm
21 correct.

22 Is that the right date, Julie?

23 MR. LLOYD: That's right, Your Honor.

24 THE COURT: And we're going forward.

25 SOLICITOR ALLEN: That can probably be done by the end

1 of the week, Your Honor.

2 THE COURT: Okay.

3 SOLICITOR ALLEN: Probably some time late next week.

4 THE COURT: And that's fine. And if, for some reason,
5 you need an extension or have a problem, just call my
6 office.

7 SOLICITOR ALLEN: Thank you.

8 THE COURT: We'll certainly accommodate you.
9 Okay. Okay.

10 MR. LLOYD: Thank you, Your Honor.

11 THE COURT: Do we need to talk about anything else as
12 far as -- do you have a motion---

13 MR. LLOYD: Your Honor, we, we raised, and, again, I
14 don't know how much of this we can -- we raised this with
15 the court. Obviously, our discovery motion that was filed
16 with the court is pretty extensive.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. LLOYD: As Your Honor knows, I think, in some of
19 the other cases, defense counsel raised these same issues of
20 the document dump that was done in this particular case.
21 It's not searchable, first of all.

22 THE COURT: Okay.

23 MR. LLOYD: It's just some disks. There's no index to
24 that as well.

25 So, one of the things, for example, under the rules

1 we're asking for, show us your documents that you intend to
2 use in your case in chief. We, we have no way of doing that
3 with, you know, ten computer disks. Literally hundreds of
4 thousands of pages on that.

5 So, we're asking the State to, to specifically respond
6 to, not just that, but to all of our, our issues raised in
7 our motion. I give you an example further than that, Your
8 Honor.

9 In terms of the Brady material, in terms of Giglio
10 material, we have no way of knowing, out of hundreds of
11 thousands of pages, what they contend is responsive to those
12 particular requests. And, in addition to that, Your Honor,
13 I, I would point out, we want on the record some
14 certification from the State that they've made that, that
15 Brady and Giglio search for -- with the federal agencies
16 that they work with. In this case, the FBI.

17 THE COURT: Okay.

18 MR. LLOYD: As Your Honor knows, we cited in our
19 discovery motion they work with them. I know for a fact
20 they have FBI 302's.

21 There -- it's incumbent upon the State to go back and
22 make sure that both Brady and Giglio are satisfied not just
23 from state law enforcement, but from federal law
24 enforcement, and we want -- we're obviously gonna want that
25 on the record.

1 THE COURT: Okay.

2 MR. LLOYD: So, as it relates to our motion for
3 discovery, those specific things that we asked for there,
4 we're asking for the, the Court to, to require the State to
5 respond in writing to us as to what they contend is
6 responsive, if, if anything, to those specific requests, and
7 where we can find those. Specifically, by page numbers in,
8 in the computer disks so that we're not just searching
9 through hundreds of thousands of pages trying to discern
10 well, maybe this is what they mean for their Brady material
11 or maybe these documents are what they want for their case
12 in chief.

13 So, that -- that's the gist of our request on
14 discovery.

15 THE COURT: Okay.

16 SOLICITOR ALLEN: And let me say this with respect
17 to discovery, our general submission with respect to
18 discovery.

19 THE COURT: Uh-huh. (Affirmative).

20 SOLICITOR ALLEN: This is a large case. There's a lot
21 of discovery. There's just no getting around it --

22 THE COURT: Right.

23 SOLICITOR ALLEN: -- you know, and, and, you know, at
24 some point, somebody's gonna have to do some doc review
25 around it, and when it comes to Brady material, a lot of

1 this is subtle. I mean as we've gone back and forth with
2 right here, you know, the violations are pretty clear. You
3 know, did you work for him. Did you get paid. Did you
4 report it. No. That's easy.

5 But, but the emails color that, and inform that a bit,
6 and, and, you know, our definition of what might be material
7 to their case is gonna be a little different then perhaps
8 what theirs might be.

9 So, instead of laboring over every email or say pick me
10 out a handful, and then they'll come back behind us later
11 and say well, look at what they were hiding from us, so, you
12 know, we will give you the entire case, you know, and we
13 gave it to them early enough that they could go through and
14 search it.

15 Now, I searched the whole thing. I know how long it
16 takes. But also that's possible to do. You know, search
17 ability, I put those CDs together in a way that I thought
18 would be helpful to say load it in a database or something
19 like that because the State of South Carolina has no ESI
20 protocol. There's no -- aside from Rule 5, you know,
21 there's nothing that says how to do that. In fact, Rule 5
22 just says I have to make it available. Obviously, we're
23 happy to do that.

24 THE COURT: Right. Yeah.

25 SOLICITOR ALLEN: But now I'm not trying to make their

1 life difficult by giving them a bunch of stuff, and, in
2 fact, I remember talking to counsel when I gave it also. If
3 you ever have any questions, just, you know, just give me a
4 call. But there, but there are limitations.

5 And so, you know, I mean I can respond to the things in
6 their motion, you know, about say, you know, verbal
7 statements and things like that. Well, there's none that
8 we're aware of.

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR ALLEN: But other statements, they've got all
11 of them otherwise. I can do that. But in terms of giving
12 them a list of everything that we think is Brady material, I
13 mean I just don't think that's practical to do.

14 Now---

15 THE COURT: What about everything that you're just
16 going to use at trial?

17 SOLICITOR ALLEN: Well, that's why---

18 THE COURT: Cause that's more manageable, and I am sure
19 right now, as Mr. Pascoe sits there, he knows what he's
20 gonna use.

21 SOLICITOR ALLEN: Yes, ma'am, that's correct.

22 THE COURT: Any trial attorney does.

23 SOLICITOR ALLEN: And, and---

24 THE COURT: So---

25 SOLICITOR ALLEN: ---as I think Mr. Pascoe's just

1 offered, you know, we, you know, are -- with the famous
2 Power Points. We put together a Power Point for this case.
3 And, and defense counsel had to come over and look at it. I
4 mean I suppose we could pull individual documents out of
5 that, and I can probably do that with Bates numbers or
6 something like that for them.

7 So, sure, we can do that, but in terms of just sitting
8 down and giving them a list of this is everything in this
9 case that we think is Brady material to them, I, I just
10 think that's a little beyond the rule, Your Honor.

11 THE COURT: Uh-huh. (Affirmative).

12 Mr. Lloyd.

13 MR. LLOYD: Your Honor, I would, I would first say that
14 they could at least narrow down what they intend to use at
15 trial with, with Bates numbers or anything like that. That
16 would be helpful. But I, I would remind, we've cited a
17 number of cases in our, in our brief. The burden on the
18 Brady and Giglio, and those fine -- case is on the
19 Government.

20 THE COURT: I understand.

21 MR. LLOYD: Not for us to, to figure out. The, the
22 obligation is on them.

23 THE COURT: Okay. And I think Mr. Pascoe knows that.

24 SOLICITOR PASCOE: I agree with that, yes, ma'am.

25 THE COURT: And I think he will need to go ahead and

1 talk. It sounds like you're concerned about any federal
2 agencies that investigated, and making sure that that, if
3 there's any supplemental material that hasn't been turned
4 over, it is turned over, and I, I would agree that Mr.
5 Pascoe is gonna have to make an assertion on the record that
6 he's completely complied with Brady---

7 MR. LLOYD: Yeah.

8 THE COURT: ---and Giglio and everything else he's
9 suppose to turn over.

10 SOLICITOR PASCOE: Absolutely.

11 THE COURT: So, I don't think that's a concern we have.
12 What else?

13 MR. LLOYD: I think that's it from our standpoint, Your
14 Honor.

15 THE COURT: Okay. All right. So, I'm gonna look to
16 you, to the State, roughly a week, ten days, whatever you
17 need, just let me know, but something in that amount of time
18 where they can look at it and understand what we're doing
19 realizing that the end is that we're gonna try this case the
20 week of October 22nd. So, we'll go from there.

21 Okay.

22 MR. LLOYD: And Your Honor---

23 THE COURT: Yes.

24 MR. LLOYD: ---as I understood from our telephone
25 conference call, that you would anticipate motions the week

1 before---

2 THE COURT: Right.

3 MR. LLOYD: ---so we could address those on that
4 Monday.

5 THE COURT: I will also tell you that I have an
6 administrative week the week of September 10th as well. I
7 knew there was an issue. Someone's gonna be in trial.

8 Mr. Pascoe, that was you.

9 That if we could work around that, and then---

10 MR. LLOYD: Are you sure you want to tell us that, Your
11 Honor?

12 THE COURT: I know. Listen not after what the Chief
13 Justice just said in our address this morning that, if you
14 don't have a term of court assigned and a court reporter,
15 don't ask for one cause you're not going to get one.

16 But with that said, my hope was -- is that, if I did
17 something like that, I would go to another already assigned
18 court reporter with a judge here in Columbia. That way
19 you-all can come here. We can do it here, and that would be
20 borrowing someone's court reporter.

21 MR. LLOYD: Thank you, Your Honor.

22 MR. LIMBAUGH: That would be perfect.

23 THE COURT: So just so we can make sure some of these
24 things are put on the record maybe as far as that all
25 discovery's been complied with, and other issues I need to

1 take up. What I don't want to do is have the Monday morning
2 on the 22nd be bogged down with issues that haven't been
3 addressed yet because, you know, we want -- don't want a
4 trial by ambush. We want everybody to know what they're
5 doing, and be able to come forward and be able to present
6 the case, you know, logically for the jury without too many
7 conferences with the lawyers. So, that would be helpful.

8 So, that, that is my anticipation, Mr. Lloyd, is that
9 we will -- I'm sure we will get together the week before,
10 but before that I think even some time in September, I'm
11 sure we will as well just to kind of narrow down the last
12 few things that we have to do.

13 And both sides are certainly welcome, any time you need
14 me or need a status conference in this case, just ask my
15 office. Happy to do it. As you-all know, everything needs
16 to be on the record, but, other than that, you know, I can
17 get a court reporter. We can do conference calls. As long
18 as it's on the record, we're fine.

19 Okay.

20 MR. LLOYD: And we thank you for---

21 THE COURT: Is that good?

22 MR. LLOYD: ---fitting us in today.

23 THE COURT: Absolutely.

24 All right, y'all.

25 SOLICITOR PASCOE: Thank you.

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THE COURT: Both sides, thank you.

MR. LIMBAUGH: Thank you.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 15th day of August, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 19th, 2019

PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 JAMES HARRISON,) 2017-GS-47-35 - 37
8 DEFENDANT.)

9
10 October 19th, 2018
11 Columbia, South Carolina
12

13 B E F O R E:

14 THE HONORABLE CARMEN T. MULLEN, Judge.

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

16 DAVID M. PASCOE, W. BAKER ALLEN and JAMES M. GRIFFIN
17 SOLICITOR, ASSISTANT SOLICITOR, and ESQUIRE
18 Attorneys for the State

19 REGINALD LLOYD and L. HUNTER LIMBAUGH
20 ESQ.
21 Attorneys for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Letter		32

1 P R O C E E D I N G S

2
3 THE COURT: Morning. Morning, gentlemen.

4 All right. Mr. Lloyd, these are all your motions.

5 How would you like to best begin?

6 MR. LLOYD: If we can, Your Honor, I think they're a
7 couple things we want to start with.

8 THE COURT: Sure.

9 MR. LLOYD: Probably there's a motion I believe Your
10 Honor heard in the course of the matter that we want to put
11 on the record, and deal with that Mr. Limbaugh's gonna deal
12 with. And then we wanted to come back to the -- we
13 addressed some issue of the motion on 8-1-80, that Motion to
14 Dismiss. I know Your Honor ruled on the subject matter
15 jurisdiction --

16 THE COURT: Right.

17 MR. LLOYD: -- but not that particular issue, and we
18 just briefly wanted to touch on that, and then get into the
19 Motions in Limine---

20 THE COURT: Okay.

21 MR. LLOYD: ---issues.

22 Your Honor, before we even begin on though that though,
23 and I think this dovetails on the motion that Mr. Limbaugh's
24 going to address in a moment, one of the things that we've
25 been trying to get, and Mr. Allen has given us a copy of the

1 impanelment documents in this particular case. I
2 appreciate, appreciate them sending those to us.

3 what we haven't gotten, Your Honor, though is the case
4 initiation forms or transfer form related to this case.
5 Quite honestly, don't know if they even exist. So, that's
6 one of the first matters we want to address.

7 THE COURT: So, when it transferred from when to when?
8 I know this started off with the 27th Grand Jury, and
9 that was when the case initiated, but nothing happened. And
10 then my understanding was then, when the 28th Grand Jury
11 was impaneled, they're the ones that did all the work, and
12 that was in June.

13 So, are we talking---

14 MR. LLOYD: Right.

15 THE COURT: So, are we talking now, currently, or --?

16 MR. LLOYD: Well, all of it, Your Honor.

17 THE COURT: All of it.

18 MR. LLOYD: And, and I say that because the only
19 initiation that we were aware of, we haven't seen the
20 initiation form or---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. LLOYD: ---is the initiation for the matter related
23 to Rick Quinn and Jimmy Merrill?

24 THE COURT: Okay.

25 MR. LLOYD: And, and I believe both the state and it

1 may have come up in -- also in the writ of Mandamus on
2 Mr. Parks that was brought by Mr. Pascoe's office. The
3 affidavit, at least in that case from the SLED sheet, Mark
4 Hill acknowledges that an initiation was done as to Rick
5 Quinn and Jimmy Merrill.

6 what we've not seen since then is, is any kind of
7 initiation form as to Mr. Courson, Mr. Harrison, Mr. Edge,
8 or anybody else.

9 Now, we're gonna get into the transfer issue, Your
10 Honor.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. LLOYD: That relates, from our standpoint, from the
13 matter of the original indictments against Mr. Harrison to
14 the perjury indictments.

15 THE COURT: Okay.

16 MR. LLOYD: I believe that went from the 28th Grand
17 Jury to the 30th Grand Jury.

18 THE COURT: Okay.

19 MR. LLOYD: And then none of those documents have we
20 seen.

21 THE COURT: Okay. Thank you.

22 (WHEREUPON, an off-the-record discussion was held at
23 this time with the clerk only.)

24 THE COURT: So, it's my understanding, Peggy tells me
25 that those documents are all under seal as to the case

1 transfers and the initiations.

2 Does that sound right, Mr. Allen, Mr. Pascoe, yes?

3 SOLICITOR ALLEN: I believe so, yeah.

4 THE COURT: Okay. So, it would, I guess, take you
5 asking me to unseal those so you can have them.

6 Is that correct?

7 MR. LLOYD: Yes, Your Honor. And I believe, if I, if I
8 can cite Evans v. State. That's a 2005 State Grand Jury
9 case. I believe Judge Hayes, John Hayes, heard that case.

10 THE COURT: Uh-huh. (Affirmative).

11 MR. LLOYD: And the Supreme Court said yes, the
12 Defendant, which were included in our original motion of the
13 impaneling documents, the Defendant is entitled to
14 impaneling documents, the initiations, and et cetera,
15 documents related to this State Grand Jury.

16 THE COURT: All right. Okay. Is that just like the
17 case initiation memorandum?

18 Is that what it is?

19 Is that --?

20 MR. LLOYD: Yes, Your Honor.

21 SOLICITOR ALLEN: Yeah. I'm sorry.

22 MR. LLOYD: Oh, I'm sorry.

23 SOLICITOR ALLEN: I was just gonna say yeah, there's a
24 case initiation memorandum that, that---

25 THE COURT: Okay. Okay.

1 MR. LLOYD: It's Section 1630, I believe, B requires
2 that initiation be done---

3 THE COURT: Okay.

4 MR. LLOYD: ---by the AG or, in this case, the
5 solicitor, and the SLED sheet, and that's -- those are the
6 documents we're looking for.

7 THE COURT: Okay. So, Peggy, you have those then or,
8 at least, they're probably under seal somewhere?

9 THE CLERK: Yes.

10 THE COURT: Okay. Okay. So, I, I, I think he's
11 entitled to them unless you-all disagree with that, and he
12 -- what I decide---

13 SOLICITOR ALLEN: No objection.

14 THE COURT: No objection.

15 Okay. So, let's go ahead and make sure -- we can take
16 this -- is there anything else in that group of documents
17 that's still under seal that needs to remain under seal?

18 I just don't know what else---

19 THE CLERK: I don't believe so.

20 THE COURT: ---is with it?

21 Okay. I think we can unseal the whole thing then.

22 THE CLERK: And that would include the case transfers
23 as well?

24 THE COURT: That would include the case transfers as
25 well.

1 THE CLERK: Okay.

2 THE COURT: Okay. All right. So, it's without
3 objection from the State.

4 All right. So, hopefully, that takes care of the first
5 thing, Mr. Lloyd.

6 MR. LLOYD: Thank you, Your Honor.

7 THE COURT: Okay. And, Peggy, can you get those to him
8 today?

9 THE CLERK: I can.

10 THE COURT: I mean everything -- obviously everything
11 we do today needs to be done fast---

12 THE CLERK: Yes.

13 THE COURT: ---cause we're starting trial Monday. So
14 --.

15 THE CLERK: I can do that.

16 THE COURT: Okay. All right.

17 MR. LLOYD: Your Honor, if I could first address the
18 issue of going back to 8-1-80. Our, our position in that
19 case, Your Honor, was that the statutory misconduct does not
20 apply to legislators. I know you heard arguments on that
21 before, and, again, citing those cases, Your Honor, it says
22 you look at the entire legislative scheme that attaches with
23 that particular statute to define, in this case, public
24 officers.

25 The, the definition in, in that case, Your Honor,

1 cannot include legislators. They're not, obviously,
2 commissioned by the State. Their duties aren't set forth by
3 statute, and, again, the statutory scheme there, Your Honor,
4 makes specific mention of, of both the mandatory times and
5 discretionary times when the Governor may suspend an
6 indicted public official, and appoint the temporary
7 replacement. And in no case can that, can that be done with
8 a legislator.

9 And so, for those reasons, as well as the ones we
10 argued before, 8-1-80 cannot apply to legislators.

11 THE COURT: Okay. You want to respond, Mr. Allen?

12 SOLICITOR ALLEN: Well, Your Honor, as we said in our
13 brief, and, and during the argument obviously, 8-1-80 does
14 apply to legislators. They can -- their duties are defined
15 by things like the Constitution I believe we cited in our
16 example and the brief.

17 THE COURT: That's right.

18 SOLICITOR ALLEN: And the Ethics Act as well imposes
19 duties upon them. I think it's very clear. And in terms of
20 the, the Governor's issue, you know, if they're suspended, I
21 believe, pursuant to the, to the separate statute suspended
22 for crimes occurring -- for crimes that carry two years or,
23 or more. I'm afraid I can't remember the cite off the top
24 of my head, but, then, you know, once they're convicted of
25 the crime, it's just the ministerial act of saying that they

1 can't be in office anymore.

2 And so, obviously, they disagree with that, that
3 position. 8-1-80 does apply.

4 THE COURT: All right.

5 MR. LLOYD: Well, Your Honor---

6 THE COURT: Yes.

7 MR. LLOYD: ---could I just address it real quick?

8 THE COURT: Please.

9 MR. LLOYD: The Ethics Act applies to legislators
10 because it specifically applies to them. I mean the
11 Legislature made it clear that it applied to them. Much
12 like Your Honor may be aware of, public officials, for
13 example, for, for purposes of somebody threatening a public
14 official, that statute defines what those public officials
15 are, and that includes legislators, Your Honor, and others.

16 In this particular case, what they're saying is 8-1-80
17 doesn't apply to legislators in terms of the suspension, but
18 the Ethics Act does.

19 well, the scheme that applies to how legislators are
20 suspended is, is set forth by constitutional requirements.
21 8-1-80, in this scheme, talks specifically about certain
22 things. If, if an indictment comes down, or if a conviction
23 comes down, whether the Governor has to suspend or whether
24 the Governor, in his discretion, may suspend, and appoint a
25 replacement.

1 In no case do either one of those things mention
2 legislator.

3 THE COURT: Okay. All right. Well, it certainly gave
4 me pause last time, and I think still it does have a -- some
5 concerning portions to it. But, again, I think, I think it
6 applies to legislators. So, respectfully, I'm gonna deny
7 that motion.

8 MR. LLOYD: And, Your Honor, at this point in time, I
9 think Mr. Limbaugh's gonna address the Motions to Dismiss
10 which were raised in this matter.

11 MR. LIMBAUGH: Thank you, Your Honor.

12 THE COURT: Good to see you, Mr. Limbaugh.

13 MR. LIMBAUGH: And you as well.

14 I'm not sure why Reggie thought that I should be the
15 one to argue a motion that Your Honor's already denied, but
16 I don't know if I should take that as a compliment or he's
17 mad at me, but I'm gonna do, I'm gonna do it.

18 I want to make -- I do want to make very clear that
19 this motion is, is been filed very seriously, and in good
20 faith with the understanding that Your Honor has considered
21 nearly identical, nearly identical motion in a -- in another
22 matter and denied it.

23 With that said, we firmly believe that Mr. Pascoe has
24 no authority to prosecute Mr. Harrison. He had no authority
25 to act as the legal adviser to the 28th Grand Jury on

1 these matters. He had no authority to draft indictments for
2 that Grand Jury, and the reasons are really fairly
3 straightforward and simple.

4 I don't need to recite the, the entire history of how,
5 how we all got here. Your Honor is well aware of it, but I
6 want to highlight parts of it.

7 The reason that Mr. Pascoe and his office are involved
8 in this case is because the Attorney General recused
9 himself, and, as the Supreme Court determined, and his
10 office from the matter of the redacted legislators that
11 appeared in the SLED report that was done in the Bobby
12 Harrell matter.

13 Okay. Every piece of correspondence, the opinion in
14 Pascoe v. Wilson, the Petition for Writ of Mandamus filed by
15 Mr. Pascoe, the Petition for Declaratory Judgment in Pascoe
16 v. Wilson, at every single point at which the nature of the
17 referral from the Attorney General to Mr. Pascoe is
18 mentioned, whether by Court, by Mr. Pascoe, by Chief Keel,
19 on down the list, it is abundantly, unambiguously clear that
20 the referral to Mr. Pascoe for handling was on the matter of
21 the redacted legislators. Those legislators, as we now
22 know, are Rick Quinn and Jimmy Merrill.

23 There is no authority, whether in the Constitution or
24 in the South Carolina Code, by which Mr. Pascoe can claim to
25 have authority to act beyond what he was referred by the

1 Attorney General. It's important, we believe, to keep in
2 mind that the reason for the referral, according to the
3 Attorney General, was a possible conflict with regard to the
4 legislators mentioned in the re -- SLED report.

5 THE COURT: Okay.

6 MR. LIMBAUGH: No where in any document, pleading,
7 decision by the Supreme Court does it say what the nature of
8 that conflict is. We have no way to know. More
9 importantly, Mr. Pascoe had and has no way to know what the
10 nature of that conflict with the Attorney General reference
11 might of been. So, all he knows, all he can possibly know
12 is that the Attorney General thought he had a conflict of
13 some description, and, therefore, referred the matter for
14 redacted legislators to Mr. Pascoe for handling.

15 So, there's no basis on which Mr. Pascoe could
16 rationally ever have concluded that whatever that conflict
17 may have been would necessarily attach to anything or anyone
18 beyond Rick Quinn and/or Jimmy Merrill.

19 Now, notwithstanding that, Mr. Pascoe has proceeded to
20 indict Richard Quinn, Jim Harrison, Tracy Edge, John
21 Courson, and it is absolutely mysterious to us by what
22 authority he's done that.

23 What he's done is, is arrogate to himself the power to
24 investigate and prosecute offenses far beyond and not
25 related to, in any legal way, the initial matter which was

1 referred to him by the Attorney General.

2 Now, that fact has serious legal implications,
3 constitutional implications. There are certain things that
4 have to be done, according to the, to the statutes, before a
5 prosecution can be made in the, in the State Grand Jury.

6 There has to be -- there has to be determinations made
7 that the State Grand Jury's necessary in the first place.
8 The matter cannot or should not be handled by a County Grand
9 Jury. There's suppose to be consultation with the local
10 solicitor to determine whether, and how the investigation
11 and/or prosecution should proceed. And then, of course,
12 there's the, the ultimate determination of whether it should
13 proceed at all, and, if so, what charges, et cetera, et
14 cetera.

15 Those are all powers that the Constitution gives the
16 Attorney General. It's within the constitutional authority
17 of the Attorney General to make those determinations, and
18 if, if, during the course of the investigation, prosecution,
19 Grand Jury proceedings as to the redacted legislators,
20 Mr. Quinn, Mr. Merrill, evidence was adduced that might have
21 led one to believe that there were other offenses and other
22 individuals who've committed crimes that fell within the
23 jurisdiction of the State Grand Jury, or even didn't, at
24 that point, the obligation that Mr. Pascoe had, the legal --
25 the statutory obligation and the constitutional obligation,

1 was to send that information to the Attorney General. Not
2 arrogate to himself the power to prosecute those cases, to
3 continue to investigate those cases.

4 He didn't have that authority, Your Honor. No one has
5 ever said he had that authority. Pascoe v. Wilson says
6 absolutely nothing on that subject. It talks entirely about
7 the referral of the redacted legislators matter.

8 THE COURT: But I can tell you, Mr. Limbaugh, that's
9 actually what I was looking at right here. I'm actually
10 reading. I'm looking specifically at what Justice
11 Pleicones' language was---

12 MR. LIMBAUGH: What?

13 I'm sorry.

14 THE COURT: ---and -- what Justice Pleicones' language
15 was---

16 MR. LIMBAUGH: Yes, ma'am.

17 THE COURT: ---in writing his opinion---

18 MR. LIMBAUGH: Yes, ma'am.

19 THE COURT: ---cause I do see he keeps going back and
20 talking about the redacted legislators, and everything keeps
21 going back to that. I do know and remember that there was
22 something about there being an absurd, an absurd result if
23 they couldn't go through with the investigation, and that
24 that's what I was looking for here.

25 MR. LIMBAUGH: I can.

1 THE COURT: Go ahead please.

2 MR. LLOYD: Yeah, I---

3 THE COURT: Please.

4 MR. LLOYD: And I, I, I don't want to mislead the
5 Court. So, I'm gonna -- I want to make clear that I'm not a
6 hundred percent certain that this is where Your Honor was,
7 was, was headed, and what you're looking for. But the
8 reference to an absurd result that I can recall from that
9 decision was when they were talking about if the Attorney
10 General, him or herself, happened to be the subject
11 potentially of an investigation, and the, the -- that he or
12 her would be the only one with the authority under the Code
13 and the Constitution to authorize that investigation.

14 I don't believe there was any concern about an absurd
15 result they might have obtained by virtue of the
16 investigation not being able to proceed under the auspices
17 of Mr. Pascoe's office.

18 THE COURT: Okay.

19 MR. LIMBAUGH: I don't think there was -- and, in fact,
20 the -- it's clear that the -- that that's not a genuine
21 concern because there are, there are clear mechanisms in the
22 Code for dealing with that issue. I mean if -- just by way
23 of example.

24 If Mr. Pascoe had done what we believe he should have
25 done at the time, which is to say, if he had discovered

1 evidence that he believed pointed to the commission of the
2 crimes by others in other matters, that should of been
3 referred to the Attorney General. If, if he thought that
4 there was a conflict that the Attorney General had, even
5 though that conclusion would of necessarily been without
6 evidence since no one knows what the conflict was, there are
7 mechanisms by which the supervising judge could of addressed
8 that, and disqualified the Attorney General.

9 THE COURT: Let me ask you.

10 The assignment letter from the Attorney General to Mr.
11 Pascoe, if there was such a thing, what -- did it talk
12 about -- I, I guess where the lines blur with me you're
13 talking about there's a SLED investigation. We knew there
14 was an ongoing SLED investigation, and SLED's gonna
15 investigate as much and as far as it's going to take them.

16 And what you're saying is that, at that point, when
17 they're leaded to -- led to people other than Harrell and
18 Jimmy Merrill, that it needed to then be referred back to
19 the Attorney General for whatever he thought would be the
20 right disposition, and if it needed to be referred out.

21 I guess I'm saying is what, what was the letter from,
22 from Wilson to Mr. Pascoe in regards to this investigation
23 or if it just had to do with just the redacted legislators?

24 MR. LIMBAUGH: As, as, as I said in my, and at the
25 beginning of my remarks, Your Honor, if -- I am not aware of

1 anywhere, whether it's correspondents from the Attorney
2 General himself, John McIntosh, Bob Cook, Craig Waters, any
3 place, Chief Keel, the South Carolina Supreme Court, nobody
4 ever makes reference to a referral to Mr. Pascoe, and his
5 office that goes beyond specifically the redacted
6 legislators, Rick Quinn and Jimmy Merrill.

7 THE COURT: Okay.

8 MR. LIMBAUGH: And, in fact, as I said, I think
9 perhaps, most importantly, in both petitions for writ of
10 Mandamus against Mr. Parks and Petition for, for the motion,
11 whatever it was, for declaratory judgment, Mr. Pascoe
12 himself specifically, pointedly says that the referral is on
13 the matter of the redacted legislators.

14 THE COURT: Right.

15 MR. LIMBAUGH: So, I don't think there can be any
16 serious argument that the Attorney General ever referred to
17 Mr. Pascoe anything broader than that.

18 THE COURT: Okay.

19 MR. LIMBAUGH: So, if Mr. Pascoe went beyond that,
20 there has to be some statutory or constitutional basis on
21 which he's done it. We can't find any. And, as a result,
22 it's our position that this Court does not have subject
23 matter jurisdiction over Mr. Quinn -- I'm sorry. Mr.
24 Harrison.

25 THE COURT: Harrison.

1 MR. LIMBAUGH: Probably didn't over Mr. Richard Quinn
2 either, but that's their problem, but over Mr. Harrison, and
3 because everything that this Grand Jury did, as to
4 Mr. Harrison, and that includes the 28th Grand Jury and
5 the 30th Grand Jury, is a nullity. He had no more legal
6 authority to have -- to do anything with those Grand Juries
7 than did my next door neighbor. Literally.

8 He had no authority to act, and the question, and I'll
9 be -- this is all -- finish with this. The question is
10 where does it -- where would it end.

11 I mean at what point does his authority stop?

12 I mean we know he, he, in addition, he negotiated what
13 they call Corporate Integrity Agreements---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LIMBAUGH: ---with South Carolina corporations in
16 which they agreed to pay money to the First Circuit
17 Solicitor's Office, in addition to a few other things, in
18 exchange for an agreement on behalf of the State of South
19 Carolina that these people would not be prosecuted. In
20 fact, are immune from prosecution as to matters that have
21 nothing whatsoever to do with Rick Quinn and Jimmy Merrill,
22 and the redacted legislators investigation.

23 So, I, I just don't know where it would end. I, I know
24 where it should end.

25 THE COURT: Well, my question is has it ended because I

1 don't know the answer.

2 MR. LIMBAUGH: Only Mr. Pascoe would know the answer---

3 THE COURT: But what I---

4 MR. LIMBAUGH: ---to that question.

5 THE COURT: Okay.

6 MR. LIMBAUGH: Our argument is that it should of ended
7 with the indictments --

8 THE COURT: Of the two redacted legislators.

9 MR. LIMBAUGH: ---of Rick Quinn and Jimmy Merrill and
10 anything beyond. There's a legal and constitutional
11 obligation to send the information to the Attorney General,
12 or if he had legitimate concerns, that the Attorney General
13 shouldn't see it for some reason because of a conflict, the
14 nature of which he has no way of knowing. It could of been
15 brought before the supervising judge. It wasn't. He just
16 continued on under no legal authority.

17 So, we would ask the Court to dismiss the case with
18 prejudice.

19 THE COURT: Okay.

20 SOLICITOR ALLEN: I mean I'll be brief as -- let me
21 just hit a couple high notes here.

22 First, first regarding passing of information, the, the
23 information of presiding judge, I presume they're referring
24 to Section 1650(c)(2) in their motion, which is, obviously,
25 also in the identical motion of Rosemary. That statute

1 doesn't exist. It, it was amended. We pointed that out in
2 our, our brief in response to Rosemary's motion. So -- but
3 I'll leave that at that.

4 Now, regarding the investigation, I think it's very
5 clear that all the indictments that have been issued have
6 been under the umbrella of this investigation. Of course,
7 they're related, you know, as we discussed, with Courson.
8 We were looking into two redacted legislators in the
9 investigation. We analyzed some bank records. We found
10 that their client was being paid. We found that Courson was
11 being paid. We found all this stuff related to the lobbyist
12 principals.

13 That is all within this investigation under the
14 umbrella.

15 You know, where does it end?

16 Well, if Senator A, B, C has no relation to any of all
17 this, and we just decide to subpoena his bank record, you
18 know---

19 THE COURT: I think the issue though -- what I'm
20 hearing them say is this. It's not that it doesn't involve,
21 involve RQ&A, and, and payments, or some kind of similar
22 actions. But, but whether or not the actual assignment from
23 the Attorney General was strictly for the reacted two
24 legislators because that's how it started in the first place
25 because that is where the conflict lies.

1 SOLICITOR ALLEN: Right. And---

2 THE COURT: And I guess the basic question, I, I would
3 never know if there was a conflict between say Harrison and
4 the Attorney General, or Courson and the Attorney General or
5 --.

6 SOLICITOR ALLEN: Right. I, I understand. So---

7 THE COURT: I wouldn't know that.

8 SOLICITOR ALLEN: Well, regarding the, you know, the
9 transfer of authority, I mean obviously this was well
10 covered in Pascoe v. Wilson.

11 I tell you what. Let me start with the letter. I
12 think the letter you were referring to---

13 THE COURT: I've already ruled, and I've already found
14 it within the order, the portion of it within the order.

15 SOLICITOR ALLEN: All right. And, and---

16 THE COURT: So, I got it.

17 SOLICITOR ALLEN: And it says further investigation
18 into the matters covered in the redacted portion of the SLED
19 report. I mean and thus is the full investigation. And, of
20 course, Pascoe v. Wilson, as we've said ad nauseam, "Pascoe
21 is vested with the full authority to act as the Attorney
22 General for the purpose of this investigation."

23 All of this is falling within this investigation. We
24 decided to use the State Grand Jury, and open a State Grand
25 Jury investigation.

1 THE COURT: Show me exactly where it says for the
2 investigation. It didn't say for the investigation of the
3 redacted legislator because I just read it. Tell me, in the
4 order, what page it is just so I can find it.
5 SOLICITOR ALLEN: It is Page 7 of my Westlaw thing.
6 THE COURT: Okay. So, somewhere. I'll find it.
7 SOLICITOR ALLEN: SC 644 it looks like if that's
8 helpful.
9 MR. LLOYD: Your Honor, just for our purposes?
10 THE COURT: Go ahead.
11 MR. LLOYD: When we talk about the July 17, 2015,
12 letter---
13 THE COURT: That's what I'm looking at right now, but I
14 don't know.
15 SOLICITOR ALLEN: No, we're talking about the
16 July 24th letter from Creighton Waters to David Pascoe.
17 THE COURT: Okay. Hang on a sec.
18 (Pause.)
19 THE COURT: Can you read to me?
20 SOLICITOR ALLEN: Yes, ma'am.
21 THE COURT: I'm just not sure I've got the---
22 SOLICITOR ALLEN: It's Exhibit 2 to their motion. So
23 ---.
24 THE COURT: Okay. Well---
25 SOLICITOR ALLEN: But I'll read. July 24, to Pascoe

1 from Creighton Waters. I'm writing to let you know that,
2 out of an abundance of caution, Chief Deputy John McIntosh,
3 sent SLED Chief Mark Keel a letter dated July 17, 2015,
4 asking the agency for the results of any further
5 investigation into the matters covered in the redacted,
6 redacted legislators -- excuse me. In the matters covered
7 in the redacted portions of the SLED report.

8 THE COURT: Redacted portions of the SLED report.

9 SOLICITOR ALLEN: Portions. Portions.

10 THE COURT: And, at that point, was there only the
11 investigation as to Harrell and Merrill?

12 SOLICITOR ALLEN: Quinn and Merrill. Well, at that---

13 THE COURT: Oh, I'm sorry.

14 SOLICITOR ALLEN: Okay.

15 THE COURT: I'm sorry. Quinn and Merrill.

16 SOLICITOR ALLEN: Well, of course, at that point, the
17 only people that were known for their criminal conduct was,
18 was Quinn and Merrill. As the investigation proceeded,
19 other criminal activity was discovered in the course of that
20 investigation.

21 THE COURT: Okay.

22 SOLICITOR ALLEN: And, you know, obviously we can't
23 turn a blind eye to criminal conduct when we find it in
24 investigation.

25 THE COURT: Okay. What else?

1 SOLICITOR ALLEN: You know, for the rest of it, I, I
2 rely on, you know, the same arguments we made last time, and
3 I'd ask the Court to, to hold, just as she, she did the last
4 time, that there's nothing different about Mr. Harrison's
5 case in terms of, you know, his indictments flowed from the
6 underlying investigation just like Courson's did. And so,
7 you know, the, the holding should be the same.

8 THE COURT: Yes, sir.

9 MR. LIMBAUGH: Yes, very, very briefly.
10 I just wanted to make sure that Your Honor in that --
11 with regard to the July 24th letter from Creighton
12 Waters---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. LIMBAUGH: ---Mr. Allen read, I believe, the second
15 paragraph of that letter, but the first paragraph says, and
16 I'm -- Dear, Solicitor Pascoe. I hope you've been well. As
17 you're aware, several months ago the Attorney General fired
18 Walton Sawyer for any involvement in the investigation of
19 certain individuals covered in the still redacted portion of
20 the SLED report. This recusal was limited only to those
21 named individuals.

22 So, I didn't want to -- it, it seemed as if they're
23 wanting to be an implication that the, that, that the matter
24 had been referred was broader in using the term the
25 investigation.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. LIMBAUGH: And the second paragraph is clearly a
3 reference back to the first paragraph, which makes it clear
4 that the investigation they're talking about is as to two
5 individuals.

6 Mr. Pascoe just doesn't have -- does not have the
7 constitutional authority to take the investigation as far
8 and wide as he wanted to take it. He was -- he just -- he
9 was authorized by the Attorney General very specifically.
10 Investigate Rick Quinn and Jimmy Merrill. That doesn't mean
11 that if, in course of that investigation, he found out that
12 Speaker Lucas was selling meth out of his block building
13 office that he could prosecute him too. It had -- it, it
14 was specific, and, by the way, Speaker Lucas does not do
15 that. I just want to make sure. That was just an example.

16 There was a limit to the referral, and it -- and that
17 is the limit, Rick Quinn and Jimmy Merrill. Beyond that,
18 his obligation was not to proceed further with prosecutions
19 and investigations. It was to return the matter to the
20 Attorney General for him to exercise his constitutional
21 authority to decide what to do.

22 MR. LLOYD: Your Honor?

23 SOLICITOR PASCOE: Can, can I---

24 MR. LLOYD: I don't want to get into their argument on
25 that issue, but can I just bring up---

1 THE COURT: Sure.

2 MR. LLOYD: This is sort of why I brought up the first
3 issue of we need to see, and we believe Your Honor needs to,
4 to see the initiation documents that went along with this.
5 I don't know if they have a copy of them here with them,
6 but, as Mr. Limbaugh said, a case that comes to the Grand
7 Jury that, subject matter wise, may touch on public
8 corruption, to, to just take that initiation, and then run
9 with any other allegation that shows up, and I believe Your
10 Honor was pointing to the documents that were attached to
11 the Supreme Court opinion in Pascoe v. Wilson in the
12 mandamus action, those, those initiations are very specific
13 about not only meeting the statutory requirements, but
14 giving the -- sort of the guidelines and the parameters---

15 THE COURT: Okay.

16 MR. LLOYD: ---of a Grand Jury investigation.
17 Otherwise, as Mr. Limbaugh just said, you end up with a
18 situation of the, the Grand Jury just getting a case that's
19 initiated saying we're gonna investigate a drug case.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. LLOYD: That's not the way it happens.

22 THE COURT: Right.

23 MR. LLOYD: If, if that were the way it happens, you
24 have no need for the rest of that statutory scheme.

25 So, we, we think that they have a copy of their

1 initiation documents, and beneficial for Your Honor to see
2 that in the context of these specific referrals.

3 THE COURT: Okay. Peggy?

4 THE CLERK: Yes.

5 THE COURT: How -- do you have those, Mr. Pascoe?

6 SOLICITOR PASCOE: No, ma'am.

7 Could I -- I was just gonna respond to what he had to
8 say.

9 THE COURT: Yeah, that's fine.

10 SOLICITOR ALLEN: We don't have a copy of the
11 initiation documents.

12 THE COURT: Pardon?

13 SOLICITOR ALLEN: We don't have a copy of the
14 initiation.

15 THE COURT: I was gonna ask Peggy how hard it is for
16 her. I don't know where they are.

17 THE CLERK: I have an extra copy.

18 THE COURT: You have them right now?

19 THE CLERK: I do.

20 THE COURT: Right here?

21 THE CLERK: Uh-huh. (Affirmative).

22 THE COURT: So, do we need to make a set for both sides
23 so you know what she's giving him---

24 SOLICITOR PASCOE: No.

25 THE COURT: ---or do you-all need them?

1 SOLICITOR PASCOE: It doesn't matter.
2 THE COURT: Okay.
3 SOLICITOR PASCOE: No, ma'am.
4 THE COURT: I, I understand it doesn't matter, but why
5 don't you, Peggy, can you go ahead and give them to them
6 now?
7 THE CLERK: I can.
8 THE COURT: So, let's just give them to him. So --.
9 MR. LLOYD: Thank you, Your Honor.
10 THE COURT: Let's just do this. Let's let Mr. Pascoe
11 respond, and then, at the break, give y'all just a minute.
12 You can look at them and see. And, again, if you need over
13 the weekend, I mean we can continue arguing this, you know,
14 first thing Monday morning if we have to, but let's let Mr.
15 Pascoe go ahead and respond if he needs to---
16 MR. LLOYD: Yes, ma'am.
17 THE COURT: ---in reference to what you said.
18 SOLICITOR PASCOE: A bunch of points, Your Honor.
19 Thank you.
20 First of all, they didn't take Alan Wilson off of the
21 case because of the State Grand Jury statute. They took him
22 off the matter completely because he had a conflict of
23 interest period, and the Court points that out. We find the
24 transfer of authority from McIntosh to Pascoe is not
25 governed by the tran -- the State Grand Jury Act. So, any

1 statutes they're citing, case initiation, or anything like
2 that is irrelevant.

3 Furthermore, all they're doing is re-litigating the
4 exact same issue that went before the Supreme Court.
5 Everybody's trying to interpret the Attorney General's
6 letters.

7 It doesn't matter. The Supreme Court has already said
8 that those letters took him off the case, completely took
9 him off the case, cause he has a conflict, and the Court
10 says, as Mr. Baker mentioned, Pascoe is vested with full
11 authority to act as the Attorney General for the purpose of
12 the investigation period.

13 Now we address the absurdity argument. Can you imagine
14 if -- out -- in March of 2017, when we gathered the evidence
15 of the other legislators, how absurd it would be for the
16 First Circuit Solicitor's Office to say hey, Mr. Wilson,
17 Attorney General Wilson, we now have evidence of a
18 conspiracy that Rick Quinn and Merrill are involved in with
19 Rick Quinn's father, who you have a real conflict with,
20 Richard Quinn, Senior, and John Courson, and Jim Harrison,
21 and Tracy Edge, calling up the very gotten -- the Grand Jury
22 report last week referred to as impeding the investigation.
23 That's where the absurdity comes in. It is absurd.

24 And, as we pointed out, the final point I want to make,
25 as we pointed out to you in -- when Courson brought this

1 motion up, this wasn't some rogue prosecution. Oh, we got
2 evidence, let's go after these people, and, and, and don't
3 abide by the statutes and laws. We submitted a letter to
4 Judge Knox McMahon on March the 13th, 2017, where we said --
5 I'll just -- and we can make it a part of the record.

6 Dear Judge McMahon, the above referenced Grand -- State
7 Grand Jury investigation was commenced to investigate
8 financial crimes alleged to have been committed by certain
9 South Carolina legislators. I am writing pursuant to South
10 Carolina Code Annotated Section 14-7-69 to notify you that
11 evidence of illegal activity by legislators and entities
12 other than the two original targets has been uncovered, and
13 that the State Grand Jury investigation is being expanded to
14 include the actions of these subjects.

15 So, when they say that the Court was unaware, the Court
16 was very aware. This was not only mailed to Judge McMahon,
17 but emailed, as you may recall, from the Courson motions, to
18 Judge McMahon.

19 THE COURT: Did he reference that in any of his orders
20 because I know there was a couple of orders that he signed
21 as the chief judge?

22 SOLICITOR PASCOE: I honestly don't know.

23 THE COURT: Okay.

24 SOLICITOR PASCOE: I don't think so, but I'm not a
25 hundred percent sure.

1 THE COURT: Okay.

2 SOLICITOR PASCOE: But, but he did receive it. I can
3 promise you that.

4 THE COURT: Okay.

5 SOLICITOR PASCOE: Do you want me to mark that, Your
6 Honor---

7 THE COURT: Sure.

8 SOLICITOR PASCOE: ---or---

9 THE COURT: Sure.

10 SOLICITOR PASCOE: Okay.

11 THE COURT: Do y'all have -- y'all should have a copy
12 of it in the Courson---

13 MR. LIMBAUGH: Absolutely.

14 THE COURT: Okay.

15 (WHEREUPON, the letter was marked as State's Exhibit
16 No. 1, and received into evidence at this time.)

17 SOLICITOR PASCOE: Here's the exhibit, Your Honor.
18 If I can approach?

19 THE COURT: I appreciate it. Thank you.

20 SOLICITOR PASCOE: Beg the Court's indulgence one
21 moment.

22 (Pause.)

23 SOLICITOR PASCOE: And then---

24 THE COURT: I'm sorry. Just one more minute.

25 SOLICITOR PASCOE: Go ahead.

1 (Pause.)

2 THE COURT: I'm sorry.

3 Go ahead, Mr. Pascoe.

4 SOLICITOR PASCOE: And then I'll just -- and if I could
5 read 14 -- Section 14-7-1690, Your Honor --

6 THE COURT: Uh-huh. (Affirmative).

7 SOLICITOR PASCOE: -- which is what I -- we did there
8 with that letter. Once the State Grand Jury is entered into
9 a term, the Attorney General or solicitor, in the
10 appropriate case, may notify the presiding judge in writing,
11 as often as necessary and appropriate, with the State Grand
12 Jury's areas of inquiry have been expanded or additional
13 areas of inquiry have been added thereto.

14 THE COURT: Okay.

15 SOLICITOR PASCOE: I, I was the designated -- and, in
16 fact, I was not the designated prosecutor by the Attorney
17 General, as the Supreme Court points out. The Grand Jury
18 Act didn't even apply to my application for the Grand Jury.
19 I was appointed by the Supreme Court, and, pursuant to that
20 1490 statute, with my authority, we expanded the, the areas
21 of the investigation.

22 THE COURT: Okay.

23 SOLICITOR PASCOE: Thank you, Your Honor.

24 THE COURT: Thank you.

25 okay. okay. Anything else in response---

1 MR. LIMBAUGH: I'm sorry.

2 THE COURT: ---Mr. Limbaugh?

3 MR. LIMBAUGH: Yes, I know. We could probably---

4 THE COURT: It's okay.

5 MR. LIMBAUGH: We could probably go back and forth all
6 day long.

7 THE COURT: Well I would---

8 MR. LIMBAUGH: But I'll try not to.

9 With all due respect, Your Honor, Mr. Pascoe still
10 doesn't get it. We aren't disputing what he did. We know
11 what he did. The question is whether or not he had the
12 legal authority to do what he did.

13 The Supreme Court did not appoint Mr. Pascoe as the
14 acting attorney general. Well, the record speaks for
15 itself---

16 THE COURT: Right.

17 MR. LIMBAUGH: ---as to exactly what happened there,
18 and why, and what the limits of that authority were.

19 The -- they let -- unless there is something that we
20 still haven't gotten, there is no case initiation as to Jim
21 Harrison. This is a case initiation as to Quinn and Merrill
22 --

23 THE COURT: Okay.

24 MR. LIMBAUGH: -- if I'm not mistaken. I don't believe
25 this is -- case initiation has anything to do with Jim

1 Harrison for whatever importance that may have to this.

2 But when it's all boiled down to its essence, the
3 question is for Your Honor by what authority, constitutional
4 or statutory, and, and, and it -- this, this motion that
5 we're -- I mean that -- the State Grand Jury Act does have
6 application once Mr. Pascoe is acting within the State Grand
7 Jury on the matter of the redacted legislators investigation
8 and prosecution. So, if information is uncovered through
9 the course of that that requires some action, determination,
10 or consideration of his continuing authority, that would, in
11 fact, be covered by the State Grand Jury Act.

12 But, in any event, we don't dispute what he did. We
13 would just like Your Honor to take a very, very hard look at
14 by what authority, constitutionally and statutorily, he did
15 what he did after the actions against the two redacted
16 legislators that were referred to him by the Attorney
17 General. The Supreme Court said yes, that referral was
18 legitimate. It's irreversible. It's done. But it didn't
19 say anything more than that. It didn't say you can do
20 anything you want to now in this Grand Jury having to do
21 with public corruption or anybody the Quinn's might have
22 known or associated with.

23 He went beyond his, his authority.

24 THE COURT: Does it -- let me ask you.

25 Does it matter that the one person in common to all

1 this, which was Alan Wilson's conflict, was Richard Quinn
2 because---

3 MR. LIMBAUGH: Your Honor?

4 THE COURT: ---does he -- yeah, tell me.

5 MR. LIMBAUGH: No. Yes.

6 THE COURT: Does that mean---

7 MR. LIMBAUGH: Well---

8 THE COURT: Does that---

9 MR. LIMBAUGH: ---no.

10 THE COURT: Does that matter?

11 MR. LIMBAUGH: The answer to that question matters.

12 THE COURT: Okay.

13 MR. LIMBAUGH: Okay. But, Your Honor, with all due
14 respect, has misstated the nature of the conflict.

15 THE COURT: Okay.

16 MR. LIMBAUGH: We don't know what the nature of the
17 conflict was. There is nothing in any record in this case
18 or the Courson case or the Richard Quinn case or any of
19 the---

20 THE COURT: Is it just the assumption---

21 MR. LIMBAUGH: Yes.

22 THE COURT: ---that Mr. Wilson used him as a political
23 consultant?

24 MR. LIMBAUGH: No.

25 THE COURT: Is that---

1 MR. LIMBAUGH: Some---

2 THE COURT: Is he even that?

3 MR. LIMBAUGH: I don't -- all I can tell Your Honor is
4 that the only time that the issue of a conflict is
5 referenced or, I'm sorry, every time it is referenced --

6 THE COURT: Uh-huh. (Affirmative).

7 MR. LIMBAUGH: -- it is referenced in a general
8 nonspecific way. The closest thing to a specific
9 identification by the Attorney General as to the nature of
10 the conflict that caused him to recuse himself is when he
11 says, I believe it's in an email to John McIntosh, that he
12 may have a conflict with the named legislators.

13 THE COURT: Okay. So, it's---

14 MR. LIMBAUGH: It doesn't say why.

15 THE COURT: Okay.

16 MR. LIMBAUGH: He doesn't even say whether it's with
17 Merrill or Rick Quinn.

18 THE COURT: Okay.

19 MR. LIMBAUGH: And he certainly never says that it has
20 anything to do with Richard Quinn---

21 THE COURT: Richard Quinn.

22 MR. LIMBAUGH: ---Richard Quinn & Associates---

23 THE COURT: Okay.

24 MR. LIMBAUGH: ---employees thereof. The only thing it
25 says is I may have a conflict with the named legislators.

1 Full stop. And any assumption of the nature of that
2 conflict is unsupported by any evidence.

3 THE COURT: It's just that, an assumption?

4 MR. LIMBAUGH: Yes, ma'am, and, and, and it's an
5 assumption I think is important to, to keep in mind that
6 it's made in retrospect. I mean what matters is what was
7 known at the time.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. LIMBAUGH: I mean we can, we can say now, oh, well
10 okay, Richard Quinn & Associates had this to do with that,
11 and the lobbyist's principals had this to do with that. And
12 Rick Quinn had this to do with that. You know, a lot of
13 stuff we know now was not known then.

14 So, assumptions about the nature of the conflict, they
15 might be closer to being accurate, but that's important.
16 That doesn't make any difference. That's still you don't --
17 you can't retroactively give Mr. Pascoe, you know, the, the
18 ability to assume, at the time, that this conflict, the
19 nature of which, at the time, he knew nothing about other
20 than that the Attorney General said he had one, gave him the
21 authority to assume an existing -- a continuing one.

22 If I'm making myself clear.

23 THE COURT: Like I see what you're saying. That's what
24 I know.

25 MR. LIMBAUGH: Yes.

1 THE COURT: I understand that's your argument.
2 MR. LIMBAUGH: Yes, ma'am.
3 THE COURT: I know I, I understand that.
4 MR. LIMBAUGH: Yes, ma'am, thank you. That's all I
5 have.
6 MR. GRIFFIN: Your Honor, I just---
7 THE COURT: Yes.
8 MR. GRIFFIN: ---add one small piece of information
9 that is in the record.
10 THE COURT: Okay.
11 MR. GRIFFIN: So, we have a Grand Jury report that has
12 been released. It was released after Attorney General
13 Wilson testified before the Grand Jury.
14 THE COURT: Okay.
15 MR. GRIFFIN: It addresses his conflict in the Grand
16 Jury report. Maybe we need to make it part of the record.
17 We also have Attorney General Wilson's testimony, it's under
18 seal, but we can make that part of the record, and he fully
19 vets out the conflict he had.
20 THE COURT: What, what did he -- what did the Grand
21 Jury report say about the conflict because, of course, I've
22 read it, but I don't recall that portion specifically.
23 MR. GRIFFIN: Yeah, I can't tell you off---
24 THE COURT: What does it say?
25 MR. GRIFFIN: ---the top of my head, but the,

1 initially---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. GRIFFIN: So, I'm not quoting from the report.

4 But---

5 THE COURT: Okay.

6 MR. GRIFFIN: ---I'm quoting from my knowledge of
7 the -- of what's -- what transpired.

8 Initially, Attorney General Wilson took himself off the
9 Harrell case because he was being publically attacked. He
10 didn't feel like he had to be taken off the Harrell case,
11 but he did it because of public perception, and he thought
12 that---

13 THE COURT: An appearance of conflict or something
14 along those lines?

15 MR. GRIFFIN: And he thought that Judge---

16 THE COURT: Okay.

17 MR. GRIFFIN: ---Manning was gonna take him off anyway.

18 THE COURT: Okay.

19 MR. GRIFFIN: And then, then Solicitor Pascoe takes
20 over, and then Solicitor Pascoe finishes his work with
21 Mr. Harrell --

22 THE COURT: Uh-huh. (Affirmative).

23 MR. GRIFFIN: -- and then he's done at that point in
24 time. That -- but Solicitor Pascoe sends the SLED report
25 with, with information about the redacted names, which would

1 be Rick Quinn, Junior and Mr. Merrill --

2 THE COURT: Merrill.

3 MR. GRIFFIN: -- and said you need to look into this
4 further. I, I recommend it. And, at that point in time,
5 what Attorney General Wilson says is I then recused myself,
6 firewalled myself is the language he used, because of my
7 relationship with the Quinn's, that Richard Quinn &
8 Associates, that's who I use as my consultants---

9 THE COURT: Does that -- did he say that in his
10 testimony before the Grand Jury?

11 MR. GRIFFIN: Yeah.

12 THE COURT: I mean cause obviously I haven't seen that.
13 And so---

14 MR. GRIFFIN: Yes.

15 THE COURT: ---he says it in front of the Grand Jury.

16 MR. GRIFFIN: Yeah.

17 THE COURT: Okay.

18 MR. GRIFFIN: No question about it.

19 THE COURT: Okay.

20 MR. GRIFFIN: No question about it.

21 THE COURT: Okay.

22 MR. GRIFFIN: Yes, ma'am.

23 And I would point out that this in -- one of the
24 indictments in, in this case is a conspiracy indictment,
25 and, and it, it involves -- and if you look at the

1 presentation of the conspiracy indictment before the Grand
2 Jury that explains a, a hub---

3 THE COURT: Right.

4 MR. GRIFFIN: ---and spoke indictment, and Rick Quinn,
5 Senior's in the middle.

6 THE COURT: Right.

7 MR. GRIFFIN: Rick Quinn, Junior is the one -- at the
8 end of one spoke.

9 THE COURT: Right.

10 MR. GRIFFIN: Tracy Edge is at the end of one spoke.
11 Senator Courson's at the end of one spoke, and Mr.
12 Harrison's at the end of one spoke. So, they're all
13 related.

14 Looking at what we had to do, I'll get the Grand Jury
15 testimony to you for purposes of this motion --

16 THE COURT: Okay.

17 MR. GRIFFIN: -- of Attorney General Wilson.

18 THE COURT: Okay. Also, just so we understand, I know
19 you say that it's a red herring, and that there doesn't need
20 to be a case initiation memo, but I just want to make sure
21 that it doesn't exist. I mean it's not something that's
22 under seal that they don't have.

23 SOLICITOR PASCOE: Yes, ma'am, I understand.

24 THE COURT: Okay.

25 SOLICITOR PASCOE: Yeah, and we need to get that.

1 That's why we don't object.

2 THE COURT: So, is there one?

3 MR. GRIFFIN: Oh, there is a case initiation, and we
4 just got it, yeah.

5 THE COURT: No, no, no. They're saying it's not as to
6 Mr. Harrison.

7 SOLICITOR PASCOE: It's not. It's gonna be---

8 THE COURT: Okay.

9 SOLICITOR PASCOE: ---to the original case initiation
10 way back in March of --.

11 THE COURT: So, that would be Quinn and Merrill?

12 SOLICITOR PASCOE: -- 2016.

13 SOLICITOR ALLEN: That's correct.

14 THE COURT: Is that what it says?

15 SOLICITOR ALLEN: That's correct.

16 THE COURT: Okay.

17 SOLICITOR PASCOE: And that's why, again, I go back to,
18 quickly --

19 THE COURT: Yeah.

20 SOLICITOR PASCOE: -- the Supreme Court saying Pascoe
21 vested with full authority to act as the attorney general.
22 So, he's wrong about Mr. -- with all due respect, he's wrong
23 when they say we don't have the Attorney General's
24 authority.

25 Second, again, take a look at 14-7-1690.

1 THE COURT: Uh-huh. (Affirmative.)

2 SOLICITOR PASCOE: Once you have a case in front of the
3 State Grand Jury, if you know you're gonna go beyond what
4 the case initiation says, all the -- the -- and what I like
5 about it, I didn't know this, but I forgot, this is attorney
6 general or solicitor. It even says solicitor. Not
7 designee. All they have to do is give the judge a letter
8 letting them know that hey, other targets are now under
9 investigation.

10 So, again, the other thing that Mr. Limbaugh was wrong
11 on, early on he kept saying no judges knew about this. You
12 know, the chief administrative judge didn't know where I
13 was -- they certainly did cause I sent a letter to Judge
14 McMahon. Emailed it and gave it to him in an abundance of
15 caution.

16 THE COURT: Okay.

17 SOLICITOR PASCOE: So, thank you.

18 MR. LIMBAUGH: Your Honor, can I?

19 THE COURT: Sure.

20 MR. LIMBAUGH: He didn't say what he was expanding it
21 to investigate. I mean sending a letter saying I'm
22 expanding the investigation doesn't---

23 SOLICITOR PASCOE: For other targets.

24 MR. LIMBAUGH: Oh, okay. Well, at any rate, that---

25 SOLICITOR PASCOE: Read the letter.

1 MR. LLOYD: Your Honor, could I just---

2 THE COURT: I mean what it says is I'm writing to
3 inform you that evidence of illegal activity by legislators
4 and entities other than the two original targets has been
5 uncovered, and that the State Grand Jury investigation is
6 being expanded. So, he didn't say other legislators and
7 other entities.

8 SOLICITOR PASCOE: Entities too, yes, ma'am.

9 MR. LLOYD: Your Honor, that's, that's one thing I'd
10 like to briefly address in that that's where we have a
11 really fundamental disagreement.

12 Expansion of an area of inquiry does not take the place
13 of the requirement of an initiation of the case. Had he
14 come back to the presiding judge and said, you know what,
15 we're investigating Mr. Quinn or we're investigating
16 Mr. Merrill for public corruption tied to the operation of
17 the House Majority Office. In the course of that
18 investigation, we found out that Rick Quinn or Jimmy Merrill
19 are going down to the Broad River, and dumping in violation
20 of the environmental laws. You can expand an area of
21 inquiry in, in that case.

22 If you take Mr. Pascoe's belief that all he's got to do
23 is send a letter, and that that obviates the need for
24 another initiation, then you would, you would always just
25 keep expanding the area, and never go back, and require

1 those requirements under the State Grand Jury Statute be met
2 for that case initiation.

3 You can just continue to expand, not only targets, but
4 subject areas. And, and I would remind everybody, RQA comes
5 up -- well, let me go back cause one of Your Honor's
6 questions was about how we get there, what the nature of the
7 conflict was.

8 You remember, at the time they send the, the letter
9 saying we need to expand this area of inquiry, it was
10 related to John Courson. And, and they said, as a reason
11 for that, was hey, we got these records from RQA, and they
12 showed something dealing with checks to RQA from Courson,
13 and checks back from RQA -- I mean to, to Courson.

14 Your Honor, that's -- RQA, at that point, is, is
15 literally in a position of we've got these records from the
16 phone company, and now we're trying to figure out what the
17 phone company may have been doing illegally unrelated to
18 Jimmy Merrill and Rick Quinn. And, and that's the road that
19 we continue to go down if you buy Mr. Pascoe's argument
20 that, once he initiates a matter in this case as to
21 Mr. Quinn and Mr. Merrill, there are no limits to that.
22 Everything that comes up the -- during the course of that
23 investigation just bootstraps itself into that particular
24 case, and he never ever has to go back for another
25 initiation.

1 SOLICITOR PASCOE: Two quick points.

2 THE COURT: Please.

3 SOLICITOR PASCOE: And it's like a ping pong table for
4 you. But, Judge, and I -- Mr. Lloyd and Mr. Limbaugh are
5 making up law during this whole hearing, and they're making
6 up facts. The first bit of law they're making up, there's
7 no law that says you have to do, once you're in the middle
8 of the investigation, ah, you got to do another case
9 initiation cause it involves another defendant. That's
10 totally made up. That's why you have Section 14-7-1690 of
11 the statute. So, they're making up law.

12 Facts they're making up, don't get up here and tell the
13 Court, and next week a jury, that that letter was about John
14 Courson. That is absolutely untrue.

15 That letter was about legislators and entities plural.
16 We already had a lot of evidence against Mr. Harrison on
17 March -- when I sent that letter.

18 Now, we didn't realize that he was gonna be the chief
19 operating officer of Richard Quinn & Associates, and a
20 partner of Richard Quinn & Associates on that day. But we
21 knew, by March, that he was receiving illegal payments from
22 Richard Quinn & Associates.

23 So, he is one of the main legislators I was thinking of
24 when I sent that letter to Judge McMahon. He was certainly
25 one of the targets in that.

1 MR. LLOYD: Your Honor, not to, again, belabor this
2 point, that is almost absurd because what they knew at that
3 time in March was that Mr. Harrison was an employee,
4 part-time employee of RQ&A, but the payments -- his salary
5 was not illegal. You could not have looked at the status of
6 Mr. Harrison being an employee of RQA, and, and discerned
7 that there was any illegality associated with that.

8 There's, there's -- and I would defy Mr. Pascoe to tell
9 me how looking at employment status of Mr. Harrison at RQA
10 suddenly told him that there was illegality going on there
11 because what we know is, what both sides have is, letters
12 from the, the House Ethics Committee, not only as to
13 Mr. Harrison but to other legislators, that said there was
14 nothing illegal about him working for RQA even though they
15 had lobbyist's principal clients.

16 So, there had to have been some additional
17 investigation, I would argue, requiring a new initiation to,
18 in fact, go expand this case to Mr. Harrison.

19 SOLICITOR PASCOE: Your Honor?

20 THE COURT: So just I'm -- let me ask you, Mr. Lloyd,
21 though, is there any requirement, by statute, to do another
22 or file another case initiation memo when it has to do with
23 another party --

24 MR. LLOYD: Your Honor?

25 THE COURT: -- or a new party?

1 MR. LLOYD: I would argue that that's the intent of
2 those -- of the initiation statute.

3 Let me give you an example. Mr., Mr. Pascoe is -- and,
4 and I don't want to besmirch anybody's names. So, I'm just
5 using these folks as examples. I'll use my friend.

6 Mr. Pascoe's investigating Jimmy Merrill and Rick
7 Quinn. They go in and interview -- I think interviewed
8 Mr. Cannon, who was an employee of the House Ethics -- House
9 Majority Office at the time. He's just a witness. During
10 the course of that, Mr. Cannon says hey, by the way, since
11 y'all are out investigating, I heard Sheriff Lott is taking
12 bribes from drug dealers.

13 Now, if you buy what Mr. Pascoe says that all he's got
14 to do is send him a letter, and say hey, I'm expanding this
15 because it's public corruption, and I got a witness that
16 says it's there, he doesn't do a new, a new initiation. It,
17 it has nothing to do with legislators. It has nothing to do
18 with these particular two legislators, but, under his
19 theory, he would be allowed to bring up that as a case in
20 front of the Grand Jury.

21 And what I, what I think we're getting a little caught
22 up on is, is Mr. Pascoe's role in all of this. I would
23 argue, Your Honor, Mr. Wilson couldn't do this. Mr. Wilson
24 stumbles across something that is unconnected to these --
25 this particular initiation, he can always expand the

1 initiation or do a new initiation. But he can't just
2 continue to bootstrap it. Otherwise you would do one
3 initiation on drugs, for example, at the very beginning of
4 the year, calendar year, and you would just continue to
5 investigate all drug activity in South Carolina.

6 THE COURT: Isn't the difference in this case though
7 that the person in common is Richard Quinn & Associates and
8 Richard Quinn?

9 MR. LLOYD: Your Honor, I, I would beg to differ on
10 that. I know, I know you-all had that discussion earlier.

11 Remember, in the initiation form itself, as well as the
12 letter from Mr. McIntosh and Mr. Warders, they're not
13 talking about RQA. RQA is, is no different than in my
14 example earlier of the phone company.

15 RQA wasn't a target or a subject of the investigation.
16 RQA gets brought into this when they subpoena records from
17 RQA related to Mr. Quinn and Mr. Merrill. They're just --
18 they were just the repository of some documents they wanted.
19 There was no mention, at that time, that there was an
20 investigation of RQA or Richard Quinn. It was only as to
21 the activities of, of Mr. Merrill and Mr. Rick Quinn --

22 THE COURT: Okay.

23 MR. LLOYD: -- and their operation of the House
24 Majority Office.

25 SOLICITOR PASCOE: Two --

1 THE COURT: Go ahead.

2 SOLICITOR PASCOE: Two points.

3 First, when Mr. Lloyd says that there was no evidence
4 that Mr. Harrison was guilty of a crime back in March of
5 2017, that's absolutely not true. The fact that he was
6 receiving monthly payments, when he was a legislator, from a
7 company that got money for lobbyist's principals, and the
8 Defendant didn't report that income, that was evidence right
9 there of a crime, which is exactly why you expand the
10 investigation to look into him.

11 The second point. He brings up that Sheriff Lott
12 example.

13 THE COURT: Uh-huh. (Affirmative).

14 SOLICITOR PASCOE: The answer's no. You don't have to
15 go and get a new case initiation to then investigate
16 something that, that was related to the initial
17 investigation. You don't have to get a new case initiation
18 to investigate Sheriff Smith in that case. I don't want to
19 use a real sheriff's name. For, for the record, I'm in
20 Richland County, and I like Leon Lott.

21 Okay. So, if anybody's -- no, you don't have to do
22 that. Absolutely not. But as you just pointed out in this
23 case, this isn't a, a public corruption case, and then it
24 turns into a drug bribery case of a sheriff. This is a
25 public corruption case. It stays a public corruption case

1 with all really the same people involved in it, and the same
2 conspiracy.

3 So, it's not that -- not a close call.

4 THE COURT: Okay.

5 MR. LIMBAUGH: One last thing. I swear.

6 THE COURT: Go ahead.

7 MR. LIMBAUGH: I promise you.

8 Mr. Pascoe never had the authority. No one ever gave
9 him the authority to investigate all public corruption
10 related to The State House. He was never given that
11 authority.

12 The Attorney General didn't give him that authority.
13 The Supreme Court of South Carolina didn't give him that
14 authority. He had the authority to investigate Rick Quinn
15 and Jimmy Merrill, the redacted legislators. All of the
16 investigation and prosecutions that came after that are
17 unlawful. He has had no constitutional authority to conduct
18 them.

19 Any information uncovered by him during the
20 investigation of Rick Quinn and Jimmy Merrill should of been
21 forwarded to the Attorney General's Office to make its own
22 independent determination of whether it wanted to pursue,
23 how it wanted to pursue, whether a conflict might have
24 existed as to whatever this other additional information may
25 have been. That's the constitutional authority and right of

1 the Attorney General to make. Those decisions were his to
2 make.

3 They were not Mr. Pascoe's, and that's the problem. He
4 arrogated to himself the right and the authority to make
5 decisions he did not have the right and authority to make,
6 and that's why this case, in our view, is a an -- is a
7 nullity.

8 THE COURT: Okay. All right. Well, as Mr. Lloyd asked
9 me to do, I will look further into it, and I'll let y'all
10 know something on this issue.

11 So, let's move on.

12 MR. LLOYD: Your Honor, if we could go to the Motions
13 in Limine. One of the---

14 THE COURT: Sure.

15 MR. LLOYD: ---first issues that we have is really the
16 sufficiency of the notice of what we have as far as what's
17 in the indictments, and what's been provided in the forms of
18 discovery. And I say that with the caveat with what we
19 received this past Saturday, I think Saturday and Sunday, in
20 terms of some documents.

21 Our first request, Your Honor, is that you limit and
22 exclude all testimony or evidence related to any legislation
23 or legislative acts done by Mr. Harrison that was not
24 specifically mentioned to the Grand Jury. And I give you
25 the example of what -- two things that were mentioned to the

1 Grand Jury was, one, a bill that would call -- well Your
2 Honor's very familiar with it, called the Base Load Review
3 Act.

4 THE COURT: Right.

5 MR. LLOYD: A second one was a specific bill, House
6 Bill, that was dealing with school choice.

7 THE COURT: School choice, right.

8 MR. LLOYD: And, Your Honor, the reason why---

9 THE COURT: Can I ask you a question just so I
10 understand?

11 MR. LLOYD: Yes.

12 THE COURT: So, do you have any discovery related to
13 those issues?

14 I mean have they turned over anything to you in their
15 Rule 5 that, that talks about what he did allegedly wrong as
16 to those or is it just his jumping assumption of he voted on
17 it, he shouldn't have, and that's why we want to talk about?

18 Tell, tell me what you have in relation to those.

19 MR. LLOYD: And, and I know -- I see Mr. Monk here, and
20 I call on him, but one of the things the media all focused
21 on in our motion regarding subject matter jurisdiction is
22 that we were trying to get you to dismiss the charge.

23 THE COURT: Okay.

24 MR. LLOYD: That's part of it.

25 THE COURT: Right.

1 MR. LLOYD: The first part, if Your Honor remembers,
2 was we were saying what is this case about. I mean we're
3 all over the map here---

4 THE COURT: Right.

5 MR. LLOYD: ---and Mr. Pascoe just brought up again
6 this mythical requirement that Mr. Harrison report income.
7 So, we weren't sure exactly what they're talking about. Our
8 understanding of his theory of the case, as, as he just
9 brought up, is that the mere voting on or being a sponsor or
10 cosponsor of this legislation violates the statute.

11 THE COURT: Okay.

12 MR. LLOYD: He didn't, he didn't recuse himself.

13 THE COURT: Okay. Mr. Harrison signed onto the bill,
14 and as a sponsor.

15 Is that what you're saying?

16 MR. LLOYD: That's, that's our understanding---

17 THE COURT: Okay.

18 MR. LLOYD: ---of, of what they're saying, and they,
19 they can explain a little bit more, Your Honor, because then
20 it gets into---

21 THE COURT: And this is about the school choice, right?

22 MR. LLOYD: School Choice Bill.

23 THE COURT: Okay.

24 MR. LLOYD: I believe it was a tax credit bill
25 actually---

1 THE COURT: Right.

2 MR. LLOYD: ---in that particular case.

3 THE COURT: Okay.

4 MR. LLOYD: And, and it, it dovetails into this issue
5 of economic interest, and all of that. But we're not quite
6 sure that they actually attached themselves to that as a
7 requirement of the illegality of what Mr. Harrison has done.

8 So, I won't go into that for right now, but, obviously,
9 those two bills we saw. We know about them. We have a
10 chance to go back and figure out okay, number one, if
11 they're trying to attach those two pieces of legislation to
12 a particular client of RQ&A, were they, in fact, a client.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. LLOYD: Now, the Base Load Review Act, although has
15 been talked about as a SCANA bill, was never a SCANA bill.
16 In fact -- the Base Load Review Act, Your Honor, and this
17 will all be a part of the discussion next week in trial,
18 wasn't even a South Carolina initiative. If Your Honor
19 remembers, there were a number of states---

20 THE COURT: Right.

21 MR. LLOYD: ---at the same time -- dealing with in
22 Florida, I think Kentucky, and a number of other states.
23 This was something that was being pushed nationally by the
24 utilities groups.

25 So, the Base Load Review Act, although they wish to

1 style it as a SCANA bill, was never a SCANA bill, but for
2 the sake of argument here, we'll take it as they're
3 attaching that to a piece of legislation with SCANA.

4 We know about it. We, we were able to research it,
5 when was SCANA a client, did Mr. Harrison have any contact
6 with them, did he have any dealings with them, did he play
7 any part in sponsoring the legislation, dealing with it in
8 committee, dealing with it on the floor, or did he just vote
9 at some point. I believe that bill passed a hundred to six.
10 So, we, we know the facts surrounding that.

11 The tax credit bill that was mentioned to the Grand
12 Jury, Your Honor, and I, I, I just pause for a moment, Your
13 Honor, because part of what -- although he -- nobody's
14 charged in this case of being bribed or paid to do stuff on,
15 on the Legislature. There's specific statutes that deal
16 with that. That's the gist of their argument.

17 The tax credit bill, we assumed they're trying to
18 attach to a group which was, at some point, a client of RQA
19 called South Carolina's -- South Carolinians for Responsible
20 Government, which was one of many groups pushing school
21 choice, and school reform at the time. I believe that
22 particular group, at the time, was, was initially created or
23 funded by Mr. Rich, Howard Rich. Sort of nationally known
24 individual in both Palmetto politics as well as other
25 states. At the time, there were a number of other

1 organizations obviously pushing this South Carolina policy
2 and others. But we're able to at least figure out well,
3 maybe that's who they're talking about in terms of attaching
4 that particular school choice bill to SCRG, which, at some
5 point, was a client of RQ&A.

6 Now, one of the things we're able to do, because we
7 have notice to some degree of what they're talking about in
8 that particular case, is figure out well, when SCRG is a
9 client. That, that particular bill, I believe, was passed
10 in 2012. RQ&A may not of been a -- SCRG may not of been a
11 client of, of RQA during that time. In fact, they're
12 periods of time where, in the early 2000s, SCRG is a client,
13 and then they're years when they're not, and then successive
14 years when they're not, when they then come back for a short
15 while, and then they go out again. There, there may be some
16 testimony, Your Honor, wherein this issue -- yeah, when
17 they're, when they're a client, they really conduct
18 pollings---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. LLOYD: ---for SCRG on the issue of school choice,
21 but we have notice as to that matter.

22 And, Your Honor, we cited State v. Baker, which is a
23 2015 case, because what the Court talked about there, the
24 majority, and it goes back all the way to citing really a
25 seminal case, Gentry, on the sufficiency of indictments.

1 And the Court said, look, Gentry, we're gonna discuss that.
2 It's good law. It's guiding principle for indictments in
3 South Carolina, but, in that particular case, and I'm sure
4 Your Honor's looked at that case --

5 THE COURT: I have.

6 MR. LLOYD: -- stating the elements of the crime is not
7 allowed. You're dealing with large periods of time.

8 THE COURT: Well, I think, at that specific case, it
9 talked about originally he was to answer for a criminal
10 sexual conduct charge as to two separate victims, and it was
11 first three separate summers. Then the investigation got
12 expanded to what was six years.

13 But what I found important enough in the State versus
14 Baker case, the concern was is that the only defense to that
15 is either it was someone else or it was an alibi defense. I
16 was somewhere else, and the question was how does he come up
17 with an alibi defense as I was somewhere else.

18 I think our case is completely different than that
19 because---

20 MR. LLOYD: Well---

21 THE COURT: ---this is not a I was somewhere else.
22 This is I didn't do that. I mean that -- and so that's why
23 I don't necessarily see Baker as being too terribly
24 instructive other than I agree that I think, and, and I
25 heard this from you repeatedly in this case, that we need to

1 know what we're answering for. We need to know what law he
2 violated, and that's what you said last time was---

3 MR. LLOYD: Right.

4 THE COURT: ---and, and what you believed constitutes
5 it. But you-all are still arguing here -- we are three days
6 before trial, and you both still disagree on what the law
7 actually is.

8 MR. LLOYD: Right.

9 THE COURT: So, I mean both of you are saying you're
10 both misstating law. And so here you and I understand that
11 I, and I understand continually, and I think what we're
12 trying to do, and I think the previous hearing was the same
13 thing. To the end was you want to narrow your issues. You
14 want to know what in the world you're trying. You want to
15 know what you have to answer to so you're not, you know,
16 sitting around here grasping at straws next week. And I get
17 that. So---

18 MR. LLOYD: Your Honor, I would just point out to
19 you---

20 THE COURT: Right.

21 MR. LLOYD: ---though, in that Baker case, Chief
22 Justice Beatty did make a point of saying the class of case
23 should not be determinative of, of whether there's an
24 exception to the constitutional and statutory principles of
25 law.

1 THE COURT: Yeah.

2 MR. LLOYD: Fairness, and due process, and notice.

3 THE COURT: Right.

4 MR. LLOYD: So, we agree with you that that was dealing
5 with a CSC case, and that long period of time they were in
6 there---

7 THE COURT: We're talking about fairness.

8 MR. LLOYD: In this particular case---

9 THE COURT: Due process.

10 MR. LLOYD: ---we're talking about years.

11 THE COURT: Right.

12 MR. LLOYD: I mean Harrison was an employee for over a
13 decade---

14 THE COURT: Right.

15 MR. LLOYD: ---with RQA. So, if, if they're allowed to
16 just bring in any case, any legislation he was a sponsor or
17 cosponsor on, we're talking about thousands of, of potential
18 pieces of legislation. We have no way of being able to go
19 back, and, and say okay, well, was RQ&A even -- were they
20 even a client of RQA at the time.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. LLOYD: Would -- because some of these clients do
23 come and go. Even some of the ones, for example, that are,
24 in fact, clients, such as SCANA, during that period of time
25 for PR work. Their attachment to a particular piece of

1 legislation is that that bill applies to SCANA, and,
2 therefore, is not a part of the large class exception, et
3 cetera.

4 well, that could apply to literally thousands of pieces
5 of legislation. We have no way of knowing, until we see
6 what they're putting up, or just dragged out of all of those
7 bills, and saying hey, he voted on this, and, in the middle
8 of trial, we have no way of being able to go back and look
9 at was that even a bill they were interested in, was that a
10 bill they wanted, didn't want, was that a bill that Mr.
11 Harrison participated in. Very few of these things, as we
12 understand it, actually came through---

13 THE COURT: Judiciary.

14 MR. LLOYD: ---judiciary. And, and that's also
15 problematic.

16 So, part of understanding what was going on with those
17 pieces of legislation, for example, the Base Load Review
18 Act, you have to go back and figure out okay, this bill was
19 filed, what else was going on. What was going on was this
20 was a -- sort of at least a southeastern, if not national,
21 wave of legislation that, that was being pushed.

22 What they've submitted to us, Your Honor, are just
23 countless bills over a long period of time that Mr. Harrison
24 was a sponsor or cosponsor of. I give you some examples.
25 One---

1 THE COURT: Let me ask you this.

2 Can we back up a second?

3 Can we, can we -- one of you tell me that what
4 specifically are we talking about?

5 And I hate to say this, but it almost begs the
6 question. I just asked Julie, my law clerk, whether or not
7 we even had witness lists from the State yet, and whether or
8 not we had voir dire, which I hate to say, but sometimes
9 kind of directs you to what exactly you're gonna be looking
10 at.

11 MR. LLOYD: Right.

12 THE COURT: So -- and apparently -- is no one requested
13 those from you?

14 Cause I apologize if we haven't. Obviously I need
15 those, and I need them before this weekend. So, I'm not
16 sure who's working on them or if that's doable, but,
17 normally, I would say, you know, I should of done this much
18 in advance, but, you know, is it something that, depending
19 on how late we could go, you could get those to me by five
20 o'clock today?

21 SOLICITOR PASCOE: I'll try---

22 THE COURT: Is that, is that doable for you?

23 SOLICITOR PASCOE: We'll get you something at five
24 o'clock.

25 THE COURT: Okay.

1 SOLICITOR PASCOE: Anything -- kind of like with
2 Courson---

3 THE COURT: Yeah.

4 SOLICITOR PASCOE: ---it might be kind of long, and
5 then maybe I'll trim it by Monday. But we'll get you
6 something. I'll, I'll text---

7 THE COURT: Okay.

8 SOLICITOR PASCOE: ---and tell them to get you
9 something right now if you want it.

10 THE COURT: I appreciate it.

11 SOLICITOR PASCOE: Okay.

12 THE COURT: Okay.

13 SOLICITOR PASCOE: And both sides. And everybody.

14 THE COURT: Okay. And that, that should be helpful.

15 So, I guess my question is, is only they can answer the
16 question that you have. I don't know exactly what it is. I
17 mean I can go through and I can kind of like, you know, what
18 you've been talking about all long that I know of which is
19 the whole Palmetto-Health, Association For Justice, AT&T,
20 SCANA that you're talking about, South Carolina -- give me
21 the Charleston School of Law buyout, whatever record that
22 was.

23 SOLICITOR PASCOE: Right.

24 MR. LLOYD: Which apparently has nothing to do with Mr.
25 Harrison. I'm, I'm assuming they're not gonna---

1 THE COURT: That makes it easier I guess then.
2 So, my question becomes---
3 SOLICITOR PASCOE: Let me strike that. I'll---
4 MR. LLOYD: But to give you an example of why this is
5 difficult. Their, their legislation -- for example---
6 THE COURT: Uh-huh. (Affirmative).
7 MR. LLOYD: ---one of the bills out of their just
8 countless that they sent us this past weekend had to do with
9 a bill that was sponsored by Mr. Harrison dealing with
10 liability issues for peer review committees with hospitals.
11 THE COURT: Right.
12 MR. LLOYD: For example.
13 THE COURT: Right.
14 MR. LLOYD: Your Honor may remember---
15 THE COURT: Yeah.
16 MR. LLOYD: ---at one period, there was a -- trial
17 lawyers across the country were going after peer review
18 material---
19 THE COURT: Right.
20 MR. LLOYD: ---to, to sue hospitals or---
21 THE COURT: Right.
22 MR. LLOYD: ---or healthcare providers. That bill was
23 actually a bill that was sponsored or, or sponsored by
24 Mr. Harrison, but, essentially, initiated at the behest of
25 the hospital association.

1 THE COURT: Right.

2 MR. LLOYD: I can only assume that their contention is
3 well, that applies to Palmetto-Health because they were a
4 client of RQA maybe during that period of time.

5 well, our indication is that bill, just on the
6 relevancy issue, has nothing to do with this particular
7 case, but there's no way -- if they're dragging in every
8 piece of legislation like that, that's far beyond what the
9 Grand Jury considered.

10 Give you another example. They produced to us a, a
11 copy of a bill of which Mr. Harrison was one of a number of
12 cosponsors on that had to do with life scholarship.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. LLOYD: I mean they're, they're just hundreds of
15 bills like that that they produced to us, and, and that's
16 why we say, either from a notice standpoint, and have an
17 opportunity to prepare standpoint under Baker, stick with
18 what's given us in, in the Grand Jury material because it's
19 not specified in the indictments or, you know, Your Honor,
20 we're just helpless in terms of being able to have any
21 limitation on what Baker said.

22 MR. LIMBAUGH: Two -- the final---

23 THE COURT: Yes.

24 MR. LLOYD: ---and just to, to help maybe illustrate
25 the problem that we would have, on the peer review bill, for

1 instance---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. LIMBAUGH: ---as Reggie said, it was promoted by
4 the hospital association, but was also, you know, of which I
5 guess Palmetto-Health's a member. So, I guess that's how
6 they want to drag us in, into that. But it was also opposed
7 as, as hard as you can oppose a bill by the Trial Lawyers,
8 which was also Richard Quinn & Associates.

9 okay. well, that's the kind of information, the kind
10 of investigation, the kind of considerations that we would
11 have to, in order to do our jobs, be able to undertake as to
12 every bill they want to try to pin on Mr. Harrison as having
13 been evidence of the commission of a crime.

14 THE COURT: Okay.

15 MR. LIMBAUGH: So, if we don't know which bills they're
16 gonna bring up, we have absolutely no way of, of defending
17 our client in any reasonable way.

18 THE COURT: I, I hear you and I understand.

19 Someone help me.

20 MR. GRIFFIN: Yes. Thank -- thank you, Your Honor.

21 First, with regard to what was presented to the Grand
22 Jury, the, the indictment presentation, October 18th, 2017,
23 almost a year or more than a year ago, a year ago
24 yesterday---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. GRIFFIN: ---where the indictment was returned, the
2 Grand Jury transcript from that proceeding has been
3 available to the Defendant for over a year. Well, not quite
4 a year, but certainly nine months or more. And, and there's
5 no surprise. And the in -- indictment, when it talks about
6 conspiracy and, frankly, the substantive charges of
7 misconduct---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. GRIFFIN: ---it references the various provisions
10 of the Ethics Act that, that there's probable cause to
11 believe were violated. And the ones that are pertinent
12 here, 8-13-700(A) which prohibits a public official from
13 using his office to obtain an economic, economic interest,
14 8-13-700(B) which prohibits a public official from
15 influencing a governmental decision which he or his employer
16 has an economic interest, 8-13-705(A) which prohibits any
17 person from giving anything of value to influence a public
18 official, and 13-705(B) which prohibits a public official
19 from accepting or seeking anything of value being
20 influenced. And then, lastly, 13-11-30, which requires a
21 public official to report any income paid to the official or
22 his employer by lobbyist's principals.

23 Then, then the presentation identifies who the
24 lobbyist's principals are, and Palmetto-Health, South
25 Carolina Ports Authority, Trial Lawyers, SCANA, University

1 of South Carolina, AT&T, BlueCross BlueShield, Citizens for
2 Responsible Government, that's the school choice folks.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. GRIFFIN: Greater Columbia Chamber of Commerce,
5 Wal-Mart, School Board Association, South Carolina Research
6 Authority, Farm Bureau, Coastal Carolina, Grand Strand, and,
7 and a payday lending organization.

8 And then when it talks about voting on legislation---

9 THE COURT: Just so I understand.

10 So, that was -- you mentioned all those.

11 So, as far as you're concerned, that's what you intend
12 on putting up is as to all of those?

13 MR. GRIFFIN: Well, those are the lobbyist's
14 principals, and then---

15 THE COURT: Okay.

16 MR. GRIFFIN: ---I'm not gonna say we're putting all
17 those up. But then, specifically as to Mr. Harrison, it was
18 the testimony before the Grand Jury is he did not recuse
19 himself from voting on any legislation that benefited RQ&A
20 corporate clients. Those are the lobbyist principals I just
21 went through. And Mr. Harrison testified that 40 percent of
22 legislation went through his, his committee, judicial
23 committee.

24 THE COURT: Right.

25 MR. GRIFFIN: And then it says examples. Examples of

1 things that he voted on again are the Base, Base Load Review
2 Act, which is the SCANA nuclear project. It says he voted
3 in favor of that on April 18th, 2007, and the school choice
4 tax credits.

5 And, and so those are two bills given as examples of
6 the whole universe of legislation that went either through
7 his committee or he cosponsored that. So, the -- if the
8 question is what, what was presented to the Grand Jury, it
9 was everything that went through he didn't recuse himself.
10 We're looking for recusals.

11 Now, we were in here, I don't know how many -- a month
12 or two ago, and, and David, Mr. Pascoe, was -- we, we had a
13 Power Point. In that Power Point, it had all the
14 legislation we intended to introduce in this trial. We
15 asked them please come over to the office. Look at it. I
16 have the Power Point here.

17 THE COURT: Is that different -- just so I understand.
18 Is that different from the Power Point you presented
19 previously?

20 It's, it's totally a different Power Point?

21 MR. GRIFFIN: It, it was the Power Point for this case.

22 THE COURT: For this case?

23 MR. GRIFFIN: Yes.

24 THE COURT: Okay. Okay.

25 MR. GRIFFIN: And, and, finally, Mr. Limbaugh came to

1 my office a couple weeks ago or longer. I can't remember
2 how long ago. It was Hunter. And we went through that
3 Power Point, and we went through the, the specific
4 legislation that was included in that Power Point. And, and
5 then the -- and then we -- it's a whole universe of
6 documents, and they were wanting us to narrow it down, and
7 identify the exhibit. We had a conference call.

8 We did that. We, we have produced those.

9 THE COURT: Okay.

10 MR. GRIFFIN: And, and so there's -- there shouldn't be
11 any surprise because over ten, eleven months, they've had
12 all legislation benefiting those clients. He didn't recuse
13 himself. We then identified, you know, opportunities to
14 come over.

15 THE COURT: So just so I know, are you narrowing what
16 you're presenting in Court down to what you showed Mr.
17 Limbaugh in that Power Point?

18 I -- and I mean by and large.

19 Yes or no?

20 SOLICITOR PASCOE: No.

21 THE COURT: Okay.

22 SOLICITOR PASCOE: There's, there's gonna be some more,
23 and I don't mind telling them over the weekend what it is.

24 THE COURT: Okay.

25 SOLICITOR PASCOE: And one of the reasons we gave them

1 so many bills, as you know better than I do, trials
2 fluctuate. They differ. And I don't know what the defense
3 is gonna testify to. And I might want to cross-examine him
4 about other bills that we didn't put in our case in chief.

5 THE COURT: Okay.

6 SOLICITOR PASCOE: what I'm gonna try to do, and I want
7 to let them know, pick out a handful, you know, five or six
8 companies---

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR PASCOE: ---that he voted on bills for as
11 opposed to however many hundred you got, and I'll let him
12 know over the weekend which ones.

13 Is that -- that might make it easier.

14 THE COURT: I, I guess the---

15 MR. LLOYD: You know, we're, we're still -- we're two
16 days away now from being -- from having to be here.

17 THE COURT: Right.

18 MR. LLOYD: And we're still like well, we'll narrow it
19 down. I think there's a fundamental disagreement about how
20 the legislative process works. Mr. Griffin, my good friend
21 Mr. Griffin reads off a list of "RQA clients." Wal-Mart.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: I have no idea, Your Honor, what Wal-Mart
24 might be interested in.

25 Is it a tax bill?

1 SOLICITOR PASCOE: It doesn't matter.

2 MR. LLOYD: Yes, it does.

3 SOLICITOR PASCOE: No, it doesn't.

4 MR. LLOYD: It is an education bill because that,
5 that's fundamentally narrowed argument to this Court is here
6 is, here is RQA clients.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. LLOYD: And Mr. Harrison is being paid, and, again,
9 I accept their argument for a moment, being paid to
10 influence and vote on and, and sponsor legislation that is
11 of interest to Wal-Mart.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. LLOYD: Now, Your Honor, if he can narrow down --
14 if he can stand up right now, and tell me what is of
15 interest to Wal-Mart in any given session, I will accept
16 what they're saying. Wal-Mart's interested in education
17 bills. Wal-Mart is interested in tax bills. Wal-Mart is
18 interested in bills that deal with labor and employment,
19 infrastructure.

20 I mean this, this is why we are stuck with this box
21 load of bills that they just pulled, and said well, these,
22 these might apply to this list of, of, at some point, RQ&A
23 clients. That is not notice, Your Honor, and that's what
24 we're getting back to on Baker.

25 That is fundamentally not due process notice to us,

1 and, and an opportunity to prepare to deal with those bills
2 because, Your Honor, one of the things Mr. Griffin and Mr.
3 Pascoe keep forgetting is that, when they cite those
4 statutes to you, 700(A) and (B), as Your Honor's aware of,
5 they talk about an economic interest or benefit to you---

6 THE COURT: Right.

7 MR. LLOYD: ---or your family or the business that
8 you're associated. You got to go back to the definition of
9 economic interest to figure that out. If you don't do that,
10 then what they're saying is, is that any bill that was of
11 interest to Mr. Harrison -- to, to RQ&A clients, Mr.
12 Harrison had to recuse himself from. You don't go into the
13 issue of figuring out whether there's an economic interest.
14 You don't go through any of that statutory requirement at
15 all because, under their interpretation, their client, they
16 might have an interest in a peer review bill. No, we're not
17 the ones pushing it. Mr. Harrison just recuses himself from
18 that vote.

19 That's not what's required by the statute, and that's
20 why we've been asking about giving us the specific
21 legislation that's mentioned to the Grand Jury or give us
22 some definition that better ties this to Mr. Harrison.

23 THE COURT: well, let's back up a second.

24 Do you not have the Grand Jury transcript?

25 MR. LLOYD: Of what Mr. Harrison -- the only mentions

1 about Mr. Harrison, although Mr. Griffin talks about a list
2 of clients of RQA---

3 THE COURT: Okay.

4 MR. LLOYD: ---the only mention about specific bill,
5 the "examples" are Base Load Review Act and this tax credit
6 bill. I, I can figure out whether or not our interpretation
7 of the statutes apply to those particular two bills.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. LLOYD: I can figure out whether or not there's a
10 general large class exemption there. I can figure out
11 whether or not, under economic interest, there's even any
12 benefit to Mr. Harrison or to RQA.

13 THE COURT: Whether or not it's a---

14 SOLICITOR PASCOE: And can we get---

15 THE COURT: Yes.

16 MR. LLOYD: That leaves---

17 SOLICITOR PASCOE: ---the answer to your question?

18 Can we get the answer to the question.

19 Do you -- do they have the transcripts?

20 MR. LLOYD: We have what they produced to us in -- as a
21 response to your motion.

22 SOLICITOR PASCOE: So, the answer's no, and I'm gonna
23 tell now. I now have serious concerns they're not ready to
24 go to trial. They, they have no idea what bills we're gonna
25 produce.

1 For example, the South Carolinians For Responsible
2 Government that they talk about, if they would look at the
3 discovery, and they would look at the transcript, this is
4 what they're gonna find. That, in 1999, their client was
5 hired as the chief operating officer and partner at Richard
6 Quinn & Associates making approximately \$80,000 a year.
7 Their clients knew, if they would look at the discovery,
8 without a doubt, that Richard Quinn & Associates had
9 lobbyist's principals as clients. Of course, he's the chief
10 operating officer. He should.

11 By law, his client knew, and he knew this without a
12 doubt, we would prove beyond any doubt, he knew that he was
13 suppose to put, on Line 18 of his SEI, Statement of Economic
14 Interest, the lobbyist principal, the services rendered, and
15 the amount. He knew that and he never did it. He failed to
16 do it for 13 straight years.

17 Going back to the SCRG. I skipped a little bit. South
18 Carolinians For Responsible Government. They have one major
19 agenda. It was either in 2007 or 2008 or both.

20 THE COURT: Uh-huh. (Affirmative).

21 SOLICITOR PASCOE: School choice. If they look at the
22 discovery, they can see that, while Jim Harrison was making
23 almost \$7,000 a month at Richard Quinn & Associates, he was
24 also listed as the legislative liaison for the South
25 Carolinians for Responsible Government.

1 That's not misconduct?

2 A legislator being a legislative liaison for a lobbyist
3 principal?

4 If they look at the discovery, they'll know that Jim
5 Harrison sponsored legislation for the SCRG for school
6 choice. I mean it's, it's not that difficult. And when I
7 hear Mr. Limbaugh say you don't have to report lobbyist's
8 principal money, not only do you have to report it, but
9 we're gonna prove the Defendant knew that he was suppose to
10 report it.

11 MR. LLOYD: Your Honor?

12 SOLICITOR PASCOE: It's not that difficult a case.

13 MR. LLOYD: Let me go back because what I'm asking them
14 to do, if, if they can do it, is cite me somewhere in that
15 transcript where, other than those two bills, there was a
16 mention of any other specific legislation tied to Mr.
17 Harrison.

18 SOLICITOR PASCOE: He doesn't even have that
19 transcript.

20 MR. LLOYD: No.

21 SOLICITOR PASCOE: What does it matter?

22 MR. LLOYD: I'm not asking you whether we have the
23 transcript, and I'm not asking whether or not there was a
24 list of lobbyist's principals in there. I'm asking, other
25 than those two specific pieces of legislation, cite me one

1 other mention of a specific piece of legislation.

2 SOLICITOR PASCOE: Two things.

3 Number one, he doesn't even have the transcript. So,
4 what's it matter?

5 And that's what gives me concern that they're not
6 ready.

7 And, number two, it doesn't matter if we didn't put any
8 legislation in there. You know this. The -- a Grand Jury
9 is probable cause. It's not going over all the evidence.
10 I'd been there for three days if we'd gone over every bill.
11 But, as I just said, I'm more than welcome to help them
12 prepare, tell them what bills I'm gonna put in in my case in
13 chief. Obviously, the SCRG, all that stuff I just
14 mentioned, is gonna be one. So, you got a, a head start
15 there.

16 And we have other bills that we're gonna put in your
17 client sponsored and voted for lobbyist's principals, and
18 I'll let you know that.

19 THE COURT: Can you tell me, Mr. Pascoe, roughly like
20 how many just roughly we're talking about?

21 SOLICITOR PASCOE: All right. Let me---

22 THE COURT: I mean are we talking about like ten?

23 SOLICITOR PASCOE: No.

24 THE COURT: Are we talking more, less?

25 What are we talking about?

1 SOLICITOR PASCOE: Fewer than ten, right?
2 SOLICITOR ALLEN: I have 26 journal days. Be around
3 15ish.
4 SOLICITOR PASCOE: About 15ish?
5 THE COURT: Okay.
6 SOLICITOR PASCOE: No more than 15.
7 SOLICITOR ALLEN: And we can probably---
8 SOLICITOR PASCOE: I really want to try to keep it
9 simple cause really, when you think about it---
10 THE COURT: You know what?
11 I wasn't just---
12 SOLICITOR PASCOE: One or two. That's right.
13 THE COURT: Yeah.
14 SOLICITOR PASCOE: And then, if he testifies, well,
15 then, you know, I got a bunch more, but I'm gonna try to
16 keep it simple. So my assistants are telling me 15. I'll
17 be stunned if I do more than six, five or six --
18 THE COURT: Okay.
19 SOLICITOR PASCOE: -- in my case in chief.
20 THE COURT: But you need to know what they are?
21 MR. LLOYD: I need to know what they are.
22 THE COURT: I think he just agreed to tell you what
23 they are.
24 So, my question to you is this. Again, it is one
25 o'clock. It is Friday. We are starting Monday morning for

1 trial.

2 So, can I go ahead right now and just take a quick ten
3 minute break---

4 SOLICITOR PASCOE: No.

5 THE COURT: ---and you two -- you sit down, whoever
6 knows. Looks like Mr. Allen knows what, what he's giving.

7 Can you sit down right now and tell him what those
8 bills are?

9 SOLICITOR PASCOE: Yes, ma'am.

10 THE COURT: Just the two of you, sit there, in there,
11 right now, or wherever you want to go, and, and quickly get
12 a list.

13 MR. LLOYD: Your Honor, Mr. Limbaugh's got to go out
14 there and smoke first, but---

15 THE COURT: Okay. You can do that first.

16 MR. LLOYD: while they're doing that -- while we're
17 doing that, they can come up with that list because what
18 they gave to us, Your Honor, we literally -- they couldn't
19 even email it. The file was so large.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. LLOYD: That's how large the number of, of bills it
22 was.

23 THE COURT: I think Mr. Allen, I don't know, I have a
24 lot of faith in you. I think you're gonna be able to sit
25 down and write exactly -- and he may not---

1 MR. LLOYD: Just give them to us.

2 THE COURT: He'll never -- but he's gonna be able to
3 give you what this subject is.

4 SOLICITOR ALLEN: I, I can come up with a list pretty
5 quick, Your Honor.

6 THE COURT: All right. I appreciate that.

7 All right. Let's go ahead. You can smoke first, and
8 we'll take 15, 20 minutes. Yes.

9 MR. LIMBAUGH: Fifteen?

10 MR. LLOYD: Fifteen?

11 THE COURT: Fifteen, twenty minutes. Just -- okay.
12 And so maybe y'all can have that discussion. I really want
13 to get something accomplished today. That was the whole
14 point of all of this.

15 MR. LLOYD: We, we would too, Your Honor.

16 MR. LIMBAUGH: Well, just dismiss the case.

17 THE COURT: All right. Let's take---

18 SOLICITOR PASCOE: Thank you. We'll do it right now.

19 THE COURT: ---fifteen or twenty minutes or so.

20 Okay.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Okay. Did y'all get anything accomplished,
23 Mr. Lloyd?

24 MR. LLOYD: Your Honor, we can proceed. Mr. Limbaugh
25 is on his way up.

1 (Pause.)
2 THE COURT: Do we need to wait on Mr. Limbaugh?
3 MR. LLOYD: No, Your Honor. No.
4 THE COURT: We don't?
5 We don't have to wait on him.
6 Okay. All right. So, did y'all get something
7 resolved?
8 Did you get a list of the legislation that you believe
9 they're gonna---
10 MR. LLOYD: We're not in agreement on the list. They
11 narrowed it down.
12 MR. GRIFFIN: Judge -- Your Honor?
13 THE COURT: How much -- how many are we talking about?
14 How many bills?
15 SOLICITOR ALLEN: Well, so, I have---
16 THE COURT: There can be multiple bills on the same
17 topic I guess.
18 Okay.
19 SOLICITOR ALLEN: Well, I tell you what I have here.
20 It's a list of 33 bills, but some of them -- I pulled the
21 legislative journal base. Some of them are duplicates --
22 THE COURT: Okay.
23 SOLICITOR ALLEN: -- in, in the way that I have this
24 list. And so, it's --.
25 THE COURT: Okay.

1 SOLICITOR ALLEN: -- twenty -- in the twenties
2 probably.

3 MR. LLOYD: And, Your Honor, that's why we, we needed
4 that to, to be able to do motions---

5 THE COURT: I understand.

6 MR. LLOYD: ---regarding relevance to this particular
7 case.

8 THE COURT: Okay.

9 MR. LLOYD: I understand Mr. Pascoe's -- well, as Your
10 Honor will become, I think, very clear next week, we, we
11 have fundamental disagreements about what the law states.

12 THE COURT: I see.

13 MR. LLOYD: I mean even him citing 1130 as requiring
14 disclosure of income, I can't figure out where that comes
15 from. I still haven't been able to in the entire year we've
16 been associated with this case. I tried to give them some
17 benefit of the doubt because of the amendment in 2015
18 regarding the definition of income. But as Mr. Limbaugh
19 pointed out to me, they don't even cite that section. They
20 cite 1130 again.

21 So, I don't know where that particular argument comes
22 from, but as it relates to specific pieces of legislation,
23 again, whatever they come up with, we, we still have an
24 issue with that in terms of relevance, and what Mr. Harrison
25 is being prosecuted for. Even if we go, for example, to

1 SCRG, and the tax credit bill, and, and, again, Your Honor,
2 I'm not -- I'm having to sort of argue this broadly because
3 I'm not sure what their theory is. So, I'm trying to give
4 them some credit for most expansive theory they could have.

5 1130 -- I mean SCRG was a group formed to push school
6 choice. The specific bill that was mentioned to the Grand
7 Jury had to do with tax credits to particular parents of
8 certain students. There is no benefit whatsoever, economic
9 or otherwise, to SCRG.

10 Let's not talk about RQA or Mr. Harrison yet.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. LLOYD: There's no economic benefit to SCRG with
13 the passage of that bill. So, once we get into the issue
14 of -- other than they're just interested in school choice --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. LLOYD: -- as an, as an issue. So, they're,
17 they're clearly an issue advocacy group during that
18 particular point in time. But without an economic benefit
19 to -- which we believe that the statute requires an economic
20 benefit to Mr. Harrison or to, to the business that he's
21 associated with that's unique and different from economic,
22 economic interest to everybody else. In this case, there's
23 not even an economic benefit to the lobbyist's principal.

24 So, that's where we get into this issue of give us the
25 specific pieces of legislation because our contention is

1 that's not even relevant here even under their theory. If,
2 if not, Your Honor, literally every piece of legislation
3 that -- and, and they don't -- as, as we started talking
4 about a little bit before the break, for example, Wal-Mart
5 might be interested in labor and employment bill.

6 There's no way for us to know whether Mr. Harrison was
7 suppose to recuse himself from that or not without him being
8 able to analyze whether there's an economic interest to
9 either, either the lobbyist's principals given -- due to
10 their argument---

11 THE COURT: Right.

12 MR. LLOYD: ---or to RQA or to Mr. Harrison himself.

13 THE COURT: Okay.

14 MR. LLOYD: So, that's why it be -- it's important for
15 us to have known specifically which pieces of legislation
16 are you talking about. It's not in the indictments, and
17 it's not in front of the Grand Jury. Our contention is it's
18 irrelevant, number one, and, two, obviously we, we have no
19 due process way of, of researching the history of that
20 legislation, who was the client, when were they the client,
21 whether there's an economic interest, what Mr. Harrison's
22 involvement was, what it may of involved in terms of other
23 committees or other witnesses that we might need to call.

24 So, that's why we needed to know specifically what
25 pieces of legislation we're talking about.

1 THE COURT: Okay. Okay.

2 SOLICITOR PASCOE: We'll, we'll, we'll get it to him,
3 Your Honor, as far as the bills, and I'll even try to tailor
4 it down from what Mr. Allen was telling you. But I don't
5 under -- I don't understand what his argument is, to be
6 honest with you.

7 Economic benefit is the economic benefit to Richard
8 Quinn & Associates. They're getting paid \$7,000 a month by
9 the SCRG to get school choice bills passed. So, it's real
10 simple. Same with the other lobbyist's principals that are
11 paying RQ&A six to thirteen thousand dollars every single
12 month on retainer, which, by itself, is illegal.

13 So, I, again, I, I don't understand their arguments.
14 It's real simple. The economic benefit doesn't -- hasn't
15 been -- it is Harrison's. He's being paid by RQ&A, but it's
16 to a business he works for, which is RQ&A, to get bills
17 passed.

18 MR. LLOYD: Your Honor, let's, let's take this from a
19 different example.

20 Let's say R, RQA is not a public relations firm dealing
21 with these issues in the sense of public relation work for
22 SCANA and anybody else. Let's say RQA hauls trash.

23 Okay. RQA gets a contract from SCANA to haul their
24 trash. Mr. Harrison works there. Under their theory, the
25 mere fact that, that SCANA employs, through a contract, RQA

1 to haul their trash, there's an economic interest to RQA,
2 and, therefore, Mr. Harrison.

3 That's no where in any statute under the Ethics Act.
4 No where at all. You analyze it based on the specific
5 legislative act, and, if Your Honor remembers, 700 and --
6 (a) and (b) talk about the, the official act of the
7 legislator.

8 what, what act did he take that created an economic
9 benefit for him, a family member, or a business with which
10 he's associated?

11 It's not the mere employment of RQ&A that can be
12 illegal. If that's the case, Your Honor, as we've discussed
13 with them over and over again, Todd Atwater is -- was an
14 employee of the hospital association.

15 MR. LIMBAUGH: Medical.

16 MR. LLOYD: Medical association. Anything that dealt
17 with healthcare bills or anything that was of interest to
18 Palmetto-Health, he would of been required to recuse himself
19 from. He never did and nobody's ever argued that it was
20 illegal. In fact, House Ethics says it was illegal.

21 why?

22 Because there's no benefit to him or to his employer by
23 him voting on or, or sponsoring any of those bills. Sunrise
24 Communications, owned by Senator Darrell Jackson, is also a
25 public relations firm. They do work for a lot of other --

1 did do work for a lot of lobbyist's principals.

2 Again, Mr. -- what -- if you go by their theory, votes
3 that Mr. -- Senator Jackson took are illegal. Senator
4 Scott, Senator McCloud had direct contracts with the City of
5 Columbia. City of Columbia's a lobbyist principal.

6 There are votes where they took, and bills that they
7 were cosponsors of matters pushed by the Municipal
8 Association, and bills that apply to all municipalities.
9 Not just City of Columbia. Under their theory, their
10 actions are illegal.

11 Nobody else has that interpretation. So, when Mr.
12 Pascoe says he doesn't understand, he doesn't understand
13 because their theory about what creates liability under
14 700(A) and 700(B) has always been wrong.

15 SOLICITOR PASCOE: No.

16 MR. LLOYD: You have to go back and read economic
17 interest. And giving him some benefit of the doubt, and
18 saying well, what's the economic interest or benefit to the
19 lobbyist principal?

20 Let's not -- let's exclude RQ&A and Mr. Harrison for a
21 moment. Well, there was no economic benefit to SCRG. None
22 at all. And, and he plays fast and loose with this
23 explanation that they were paying RQA to push this
24 legislation. That's not what they were paying RQA to do,
25 and it's nothing -- it's certainly no evidence that

1 Mr. Harrison was involved in anything like that at RQA.

2 But that's what the importance of them saying here's
3 the legislation cause not only are we talking about due
4 process notice issue, our contention is, is that some of
5 these, even under their theory of liability in this
6 particular case, are totally irrelevant.

7 THE COURT: Okay.

8 SOLICITOR PASCOE: Judge, he's completely misstating
9 my theory. I mean he's not even close to what my theory of
10 this case is, but everything he said will go in front of a
11 jury. And that's where my theory's gonna go in front of a
12 jury, but he's not even close to stating what our theory of
13 this case is.

14 I'm just gonna leave it at that, and the great thing
15 about the law is that's your job. You get to explain that
16 to the jury. Okay. Not Pascoe or Lloyd. I mean they're,
17 they're not even close to our theory.

18 MR. LLOYD: Your Honor, and -- if he goes to put up a
19 piece of legislation, and we move to exclude it on 403, when
20 are you suppose to know what their theory is in order to be
21 able to rule on it?

22 SOLICITOR PASCOE: Just the SCRG, for example.

23 How is that not incredibly probative that SCR&G pays
24 the Quinn's \$7,000 a month to get a school choice bill
25 passed that Chairman Jim Harrison is the legislative adviser

1 for SCR&G, and the chief operating officer of Richard Quinn
2 & Associates getting paid almost \$7,000 a month, and he goes
3 down the street and sponsors the bill?

4 You've got to be kidding me.

5 MR. LLOYD: Your Honor?

6 SOLICITOR PASCOE: The economic -- they, they are
7 torturing that definition. The great thing is you'll define
8 it to the jury.

9 MR. LLOYD: Your Honor, I can't allow---

10 SOLICITOR PASCOE: The other two---

11 MR. LLOYD: ---misstatements---

12 SOLICITOR PASCOE: I'm not done yet. I'm not---

13 MR. LLOYD: Your Honor?

14 SOLICITOR PASCOE: And also, just like when he talks
15 about not reporting the lobbyist's principal money, if they
16 would please look at the Ethics Act. If they would please
17 look at the opinions we've sent them. If they would talk to
18 a legislator. You absolutely 100 percent have to report
19 lobbyist's principal money that your company makes period,
20 and Jim Harrison can explain that to you.

21 MR. LLOYD: Under 1130?

22 SOLICITOR PASCOE: He can explain it to you.

23 MR. LIMBAUGH: Wrong.

24 MR. LLOYD: Under 1130?

25 SOLICITOR PASCOE: Under 1130 on Line 18. You have to,

1 and Jim Harrison can explain it to him. I promise y'all.

2 If they talk to Jim Harrison, he'll explain it to them
3 that you have to report that---

4 MR. LLOYD: Your Honor, I'm pulling---

5 SOLICITOR PASCOE: ---income---

6 MR. LLOYD: ---1130 right now. It's not in there.

7 SOLICITOR PASCOE: ---that your company looks at.

8 Okay. He can explain to them. And you know when Mr.
9 Lloyd mentioned the trash company business, if RQ&A wasn't a
10 consultant, well, if, if Harrison's not down the street
11 passing bills for them, then it's not against the law other
12 than one violation. He's still violating the failing to
13 report the lobbyist's principal money. He's still failing
14 to do that.

15 MR. LLOYD: Your Honor, if you'll bear with me one
16 moment I'll pull up 1130. I'll --.

17 SOLICITOR PASCOE: I've got, for example, which we've
18 turned over to the defense, the House Ethics Opinion 99-2
19 which tells the legislators, again, exactly where you're --
20 what you're suppose to do with lobbyist's principal money
21 that the company you work for makes. They even tell you
22 what line to put it on.

23 We also sent them House Opinion 92-38 where it says the
24 exact same thing. They've got those. We presented it to
25 them, and it's very clear, legislators, you know your

1 company that you work for makes lobbyist's principal money.
2 You got to report it, and you have to report it on Line 18,
3 and if they don't -- I promise you, if they talk to their
4 client, they'll explain it to them.

5 MR. LLOYD: Your Honor, let me read, if I may, 1130.
6 8-13-1130. Report on names of, and purchases by, lobbyist.
7 In addition to the Statement of Economic Interest required
8 pursuant to Section 8-13-1110, a person required to file a
9 statement shall further report the appropriate supervisory
10 office, in this case, House Ethics, the name of any persons
11 or person he knows to be a lobbyist as defined in Section
12 2-17-10(13), or a lobbyist principal as defined in
13 2-17-10(14), and knows that the lobbyist or lobbyist's
14 principal has, in previous calendar year, purchased from the
15 file a member of the filer's immediate family, an individual
16 with whom the filer is associated, or a business with which
17 the filer is associated, goods or services in an amount in
18 excess of \$200. You report the names.

19 Now, Mr. Pascoe said he was happy to come over and show
20 me that it requires a disclosure of income. I've just read
21 it to Your Honor. I've been reading it. Mr. Limbaugh's
22 been reading it. Mr. Harrison's been reading it. If he
23 would, for the moment, come over here and show me where that
24 is.

25 SOLICITOR PASCOE: I will if he wants me to.

1 will his client plead straight up to all the charges
2 once I prove it beyond any doubt that his client was suppose
3 to do that?

4 MR. LLOYD: Your Honor, he said it's in 1130. All I'm
5 asking him to do is flip over in whatever statute he has or
6 version of the South Carolina Code that he has to show me
7 that 1130 requires disclosure of income.

8 SOLICITOR PASCOE: And I apologize. I gave you 99.2.
9 House Advisory Opinion it's 98 point -- dash one.

10 THE COURT: Okay.

11 SOLICITOR PASCOE: Okay. That says, under Section
12 8-13-1130 of the Ethics Act, a member who works for a law
13 firm must report the relationship between the firm, and the
14 lobbyist principal that he knows to purchase goods or
15 services in excess of \$200 or more. And I -- my eyes are
16 getting so bad.

17 Is that the one that talks about Line 18?

18 MR. GRIFFIN: It also says, Your Honor, in compliance
19 with Instruction 18 of the Statement of Economic Interest
20 Form, a member should report the type of goods and services
21 purchased, the amount from whom the material was purchased,
22 and his relationship to that person or business. So, it --
23 so, it says -- the statute says you got to report from
24 lobbyist's principal---

25 THE COURT: The name.

1 MR. GRIFFIN: ---or it requires you to report the
2 amount. That's what the Ethics Opinion says. 98-1.

3 MR. LLOYD: Your Honor, back then the forms didn't even
4 have a place for lobbyist's principals.

5 SOLICITOR PASCOE: Once again, he's not telling the
6 truth. If you take a look at Line 18 of the discovery that
7 we guys have produced to y'all, please. That is untrue, and
8 we will prove it to you.

9 MR. LLOYD: There's a place for lobbyists, Your Honor.

10 THE COURT: And I understand what you're saying.
11 Correct.

12 MR. LLOYD: Exactly. For lobbyist's principals in
13 particular.

14 So, again, Your Honor, I'm waiting for somebody to show
15 me where, in 1130, there's a requirement for reporting of
16 income or, or any kind of money from that business. It's
17 not there. This is what we've been arguing about this
18 entire time, Your Honor.

19 Again, when you go back to 700(A) and (B), it's like
20 this mythical requirement in 1130. They believe that it
21 says something it doesn't. When you look at 700(A) and (B),
22 and it talks about the official act of the person covering,
23 it could be a legislator, it could be a County Council
24 member, it could be any, that official action has to create
25 an economic benefit or, or some kind of additional benefit

1 to that person who's taking the economic -- of, of -- who's
2 taking the legislative action in this particular case,
3 that's separate than, than what everybody else would enjoy,
4 or that, that creates any kind of benefit to that particular
5 person.

6 The only way you know that, the only way you go through
7 that analysis under 700 of notifying -- knowing to notify
8 the speaker in this case is to know that there's an economic
9 interest to that legislator. I mean it's not even vested in
10 the lobbyist principal. The, the definition of economic
11 interest focuses in on the legislator or the business or the
12 family member.

13 what he's saying is the mere fact that, that SCANA or
14 anybody else is a PR client of RQ&A creates an economic
15 interest that's distinct from, from that enjoyed by anybody
16 else. That's just not in the statute. It cannot be in the
17 statute because if that were the case, Your Honor, if that
18 mere association created that, that sort of economic
19 benefit, then you don't go through an analysis of is there
20 any benefit to me, the legislator. You automatically excuse
21 yourself and recuse yourself from any piece of legislation
22 that is, as they keep saying, "of interest" because, if you
23 notice, Your Honor, we stopped talking about economic
24 benefit. They slide into this murky area of is it of
25 interest to that lobbyist principal. That's the way you get

1 to their therapy.

2 In the case of SCRG, for example, our motion would be
3 to exclude the entire thing dealing with that particular tax
4 credit bill. There's no economic interest to SCRG.

5 Number one, they, they were not employed to pass
6 legislation at RQA's behalf for SCRG. SCRG, like policy
7 counsel and many others, launched a lot of campaigns geared
8 at the public to, in fact, push school choice, and that,
9 that was the whole Howard Rich, and that group coming from
10 out of state. They were here to change peoples' minds about
11 that whole issue.

12 But, Your Honor, again, where's the economic interest
13 or benefit to Mr. Harrison in that particular case?

14 SOLICITOR PASCOE: We're not even gonna respond.

15 THE COURT: Well, I guess that's for them to -- you
16 don't need to respond to that.

17 SOLICITOR PASCOE: Yes, ma'am.

18 THE COURT: Let's keep going through the motions in
19 limine, and --.

20 MR. LLOYD: Your Honor, I, I assume we, we would just
21 have to raise our motion to exclude---

22 THE COURT: I think you're gonna have to---

23 MR. LLOYD: ---33 pieces of legislation.

24 THE COURT: I mean I got to tell you, as it stands
25 right now, so, the jury is coming in at what time, Peggy?

1 Do you know?
2 10:00, 9:30?
3 THE CLERK: Probably 9:30.
4 THE COURT: And someone else was gonna qualify, wasn't
5 it?
6 Was I qualifying or not?
7 MR. LLOYD: I was told by Mr. Truett that Judge Newman,
8 Jocelyn Newman, would be qualifying.
9 THE COURT: That's what I thought too.
10 So, Jocelyn Newman's gonna qualify, and I'm assuming
11 they'll send me a panel.
12 Is that how they will probably do it here?
13 I'm just---
14 MR. LLOYD: Yes, ma'am.
15 THE COURT: It's been a while since I've been in
16 Richland, and I -- and we've summoned 350 people.
17 MR. LLOYD: Right.
18 THE COURT: So, there's a lot of people on this panel.
19 So, I don't even know what this courtroom holds.
20 MR. LLOYD: Right.
21 THE COURT: How many people we can put in it. Assuming
22 they're gonna send me a group, we'll pull the jury. You
23 know, it might be that we are still arguing Monday.
24 Let me ask you, Mr. Pascoe, you would best know this.
25 How long do you think the State's case is gonna take

1 once we start?

2 You're already looking -- once you get to -- you know,
3 once we get past opening argument, after you get that done,
4 when we -- what do you think?

5 SOLICITOR PASCOE: Don't make me do math, and, and
6 subtract, but I would say, you know, if we had started
7 Monday afternoon with the opening arguments---

8 THE COURT: Uh-huh. (Affirmative).

9 SOLICITOR PASCOE: ---and a couple of witnesses, the
10 latest maybe now we could rest would be Thursday morning.

11 THE COURT: Latest.

12 SOLICITOR PASCOE: Yeah, latest, and maybe I could
13 speed it up. I do have one witness that might not even be
14 available until Thursday morning, but I might bypass it.
15 Might not need him.

16 THE COURT: Okay.

17 SOLICITOR PASCOE: So --.

18 THE COURT: I'm just trying to figure out that -- I
19 mean I don't want a jury sitting around---

20 SOLICITOR PASCOE: Yeah.

21 THE COURT: ---doing nothing obviously.

22 SOLICITOR PASCOE: So, if we made them -- inasmuch as I
23 want to get started, I'm like you. I don't live here, but
24 as much -- if we start it Tuesday morning, I still think
25 I'll rest on Thursday.

1 THE COURT: Okay. So, we'll still finish up on Friday
2 then after 5:00 or I have no idea, you know, what you-all
3 are doing.

4 MR. LLOYD: Yeah, I'm gonna be shocked if we're here
5 more than a week.

6 THE COURT: Okay.

7 MR. LLOYD: I mean I really think---

8 THE COURT: That was my original inclination that, but,
9 you know, again, I don't know. I haven't seen the witness
10 list. So, I don't even know.

11 MR. LIMBAUGH: Neither have we.

12 MR. LLOYD: Well, we haven't either, Your Honor, but,
13 again---

14 SOLICITOR PASCOE: I just got an email. I got an---

15 THE COURT: Okay.

16 SOLICITOR PASCOE: ---email on that.

17 THE COURT: He emailed it to you.

18 Did you get it too?

19 THE CLERK: Uh-huh. (Affirmative).

20 THE COURT: Perfect.

21 MR. LLOYD: And we're, we're down to Wal-Mart people
22 and that kind of stuff, I don't know how long it will take,
23 but, you know---

24 THE COURT: Okay.

25 MR. LLOYD: ---we're, we're sort of at the mercy---

1 THE COURT: Okay.

2 MR. LLOYD: ---on who they're calling.

3 THE COURT: Well, I think we're gonna have to deal with
4 it. I think, at the point where maybe Mr. Pascoe could
5 narrow it down from less than the 15, which is what I'm
6 hearing him say, then maybe we can take those up, you know,
7 rather quickly unless it, you know, maybe someone seemed
8 obvious that they're relevant, and others not quite as
9 obvious potentially.

10 SOLICITOR PASCOE: Like you said I don't want to put in
11 a bunch, and then they get lost in translation. I'll put in
12 as few as I can.

13 Now, if they start arguing he just was involved in two
14 bills, I, I -- two bills is enough to convict I think, but
15 then I might try to put more in at that point. I don't
16 know, but like I'm not---

17 THE COURT: I, I just think, again, this is gonna be a
18 very confusing case for a jury, and --.

19 SOLICITOR PASCOE: Yes.

20 THE COURT: And so, you know --.

21 MR. LLOYD: We would agree, Your Honor.

22 THE COURT: Okay. All right. So, let's go back then
23 to -- let's go to your Number 2 for your Motion in Limine.
24 I think we've kind of addressed, I guess, somewhat what
25 evidence you're talking about, specifically what bills.

1 They're gonna get that to you, and if there's anything
2 outside of that, you just need to raise it to me and let me
3 know during trial, and we'll go from there.

4 MR. LLOYD: Your Honor, we, we, we do not contend that
5 the 15 that they give us are gonna be---

6 THE COURT: Oh, I agree.

7 MR. LLOYD: ---relevant at all.

8 THE COURT: I understand that.

9 MR. LLOYD: Okay.

10 THE COURT: I understand that.

11 Okay. So, let's go to number two where you talk about
12 from presenting or introducing any alleged coconspirator
13 statements.

14 MR. LLOYD: Right, Your Honor. We, we -- our
15 contention is they've alleged a conspiracy between
16 Mr. Harrison and Richard Quinn and, and others---

17 THE COURT: I remember.

18 MR. LLOYD: ---known and unknown. We've never known
19 who else -- they've never identified specifically any other
20 coconspirators other than Mr. Richard Quinn. Today I
21 understand that he was involved in, based on their argument,
22 a conspiracy with Jimmy Merrill and Rick Quinn, and I'm not
23 sure if they're any others. Tracy Edge. I'm sorry.

24 So, our, our motion goes to whether they can introduce
25 any coconspirator statements or attempt to without first

1 making a prima facie showing of some existence of that
2 conspiracy.

3 THE COURT: Okay.

4 MR. GRIFFIN: Judge, Your Honor, this is a -- basically
5 a correct statement of the law.

6 THE COURT: Right.

7 MR. GRIFFIN: I'm not sure what prima facie means in
8 it's still an element, but the coconspirators -- I mean we
9 would -- if we get to introduce these coconspirator
10 statements, it would be well after -- be toward the end of
11 the case, and we'll---

12 THE COURT: Right. Where you've already---

13 MR. GRIFFIN: And either we've met that burden---

14 THE COURT: You've already had sufficient evidence or
15 not---

16 MR. GRIFFIN: Right.

17 THE COURT: ---to establish the conspiracy. So,
18 obviously, just so I understand, when, when I was looking at
19 this, and, of course, I didn't think about Mr. Harrison
20 being a partner with Rick Quinn & Associates, but I, I can
21 see potentially Rick Quinn being involved just -- and I
22 don't know that.

23 MR. LLOYD: Your Honor, can I---

24 THE COURT: In the proceedings. That's what I---

25 MR. LLOYD: Right.

1 THE COURT: Right.

2 MR. LLOYD: Can I dispel this whole---

3 THE COURT: Sure.

4 MR. LLOYD: ---corporate thing?

5 THE COURT: Yeah.

6 MR. LLOYD: And the evidence will show this. Initially
7 there were discussions between Mr. Quinn and Mr. Harrison
8 about him coming onboard with RQ&A.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. LLOYD: To be as broad as possible in figuring out
11 whether it was okay for him to do that, they included
12 everything he might do, which was being a partner, being
13 COO, and I believe they talked about some other duties he
14 might have at RQA. Mr. Harrison takes that, writes to House
15 Ethics, and say hey, I'm thinking -- I'm gonna take a job
16 with RQA. Here's what I'm gonna be doing.

17 Is this legal?

18 THE COURT: Okay.

19 MR. LLOYD: Because they have some -- I know that they
20 have some lobbyist's principal clients. House Ethics writes
21 back and says yes, you can do that. It is legal for you to
22 do that. Mr. Harrison didn't then come on board, and never
23 operates as a partner or COO.

24 THE COURT: Okay.

25 MR. LLOYD: At all. Ever. From the moment he walks

1 through the door. Tax records will show he never was a
2 partner. Testimony from Ms. Rebecca Quinn, who basically
3 operated as the COO---

4 THE COURT: Uh-huh. (Affirmative).

5 MR. LLOYD: ---for RQA will show that. They're,
6 they're no documents anywhere that, that would support
7 Mr. Harrison's role as a partner or COO at anytime in
8 RQ&A---

9 THE COURT: Okay.

10 MR. LLOYD: ---other than that letter.

11 THE COURT: Okay.

12 MR. LLOYD: I know it's been said a lot by the
13 prosecution---

14 THE COURT: Right.

15 MR. LLOYD: ---but they as well that there was no
16 evidence showing that he -- he's a---

17 SOLICITOR PASCOE: Judge, they need to look at the
18 discovery. I'm sorry. I apologize. I'm sorry I stood.
19 They better look at the discovery. There's a lot more than
20 that.

21 THE COURT: Okay.

22 MR. LLOYD: Again, Your Honor, that's -- if they want
23 to put that he was a partner and COO, again, tax records
24 show otherwise---

25 THE COURT: Okay.

1 MR. LLOYD: ---and, and the testimony shows otherwise.
2 THE COURT: Okay.
3 MR. LLOYD: But, again, that's why we, we raised this
4 issue of conspirators, and the only one named in the
5 indictment was Mr. Richard Quinn---
6 THE COURT: And others.
7 MR. LLOYD: ---and others known and unknown. We've
8 never been told, other than today, who those others are.
9 Apparently it's Mr. Edge, and Mr. --.
10 THE COURT: Merrill.
11 MR. LLOYD: -- Merrill, Mr. Rick Quinn.
12 And is that it?
13 MR. GRIFFIN: Edge and Courson.
14 MR. LLOYD: Oh, he was a conspirator?
15 MR. GRIFFIN: Courson too.
16 MR. LLOYD: Didn't know that. Didn't know that.
17 THE COURT: Okay.
18 MR. LLOYD: Okay. So, now, I think, I think we know
19 who the coconspirators are.
20 Is that it?
21 Any other coconspirators?
22 MR. GRIFFIN: Well, you'd certainly include Rebecca
23 Mustian and, and Raegan, Raegan---
24 MR. LLOYD: So, he conspired with everything.
25 MR. GRIFFIN: I mean, you know, the internal folks in

1 the Quinndom, as they like to call themselves.

2 MR. LLOYD: Okay. I think we have an idea obviously---

3 THE COURT: You should.

4 MR. LLOYD: ---as to this.

5 MR. GRIFFIN: It's the Quinndom.

6 MR. LLOYD: Anybody associated with RQ&A.

7 THE COURT: Okay.

8 MR. LLOYD: So, that was the basis of that motion, Your
9 Honor.

10 THE COURT: Okay. All right. Let's go to the third
11 one.

12 State should be prohibited from presenting or
13 introducing any demonstrative evidence that doesn't comply
14 with Rule 106.

15 I think -- what else do y'all have besides the Power
16 Point?

17 MR. GRIFFIN: Right. So, now we've not prepared any
18 summary documents underlying---

19 THE COURT: Okay. Information?

20 MR. GRIFFIN: ---voluminous records.

21 THE COURT: Okay.

22 MR. GRIFFIN: We, we have business records at RQ&A that
23 have summary charts of payments, and we plan to introduce
24 that. But that's not under 106. Just they were---

25 THE COURT: They were---

1 MR. GRIFFIN: ---records generated at the time.

2 THE COURT: Okay. It was generated by RQA, correct?

3 MR. GRIFFIN: Yes. Yes.

4 THE COURT: It's -- you're using it for evidence, not
5 as an exhibit.

6 Okay. Am I understanding you?

7 MR. GRIFFIN: Yeah.

8 THE COURT: Okay. Okay. Well, if something pops up on
9 Monday morning, obviously it doesn't comply with, you know,
10 106, let me know.

11 MR. LLOYD: Thank you, Your Honor.

12 THE COURT: Okay. Actually could I also get a copy --
13 did you ask them to email you a copy of the Power Point
14 that's pulled up?

15 Can you email me a copy of that?

16 Is that something you can email or is it a thumb drive?

17 I'm not gonna give it to anybody, obviously.

18 MR. GRIFFIN: Sure.

19 THE COURT: But just so I know what's coming. I mean
20 part of what, what -- we can go off-the-record.

21 No, let's stay on the record. Never mind.

22 Part of what I need to know is what to anticipate, and
23 I do need to be able to follow your theory because I have to
24 make rulings as it goes along. And if something gets pulled
25 in towards the end that, if I don't see the click at the

1 beginning, I don't want to end having a ruling that it's not
2 related. So, I kind of need to understand the whole thing
3 and where we're going.

4 So, again, I haven't read -- obviously, the only
5 portion of the Grand Jury transcript that I had was
6 Mr. Harrison's. That's it. And it was really short. I
7 mean I was surprised on how short it was.

8 So, that's the only thing I've read literally, you
9 know, that -- that's about it. So, I've seen the Grand Jury
10 Report because it was published in the newspaper. So, it
11 would be helpful to me to know what your whole theory is.
12 Like I said, I don't want to tie anybody's hands. I mean I
13 want you to put your case up.

14 MR. LLOYD: They're misstatements of fact and law in
15 the Grand Jury report, Your Honor.

16 THE COURT: Oh, I know that.

17 MR. LLOYD: In fact, the Grand Jury report says---

18 THE COURT: I---

19 MR. LLOYD: ---that Mr. Harrison was fired---

20 THE COURT: I---

21 MR. LLOYD: ---when he left the House. He was never
22 fired. Took a job as code commissioner, which requires him
23 to not only leave RQA, but close his law practice.

24 THE COURT: All right. I understand that, but I can
25 get one, and read it, and understand that. So --.

1 MR. LLOYD: Well, that's true, Your Honor.

2 THE COURT: Let's just -- okay. Number four. The lay
3 witnesses should be prohibited from offering opinion
4 testimony. I think that's just standard. Obviously it's
5 got to be based on perception.

6 MR. LLOYD: And four and five sort of dovetail in.

7 THE COURT: The same thing. And no, no one's gonna
8 actually instruct anybody on the law that I know you-all are
9 gonna be dying to do it, but I'm sure that will be in your
10 closing arguments, but I'm sure we're gonna have a lot of
11 argument, which brings me to two just quick housekeeping
12 points, y'all.

13 I really truly believe in letting lawyers try their
14 cases. I want you-all to put up what you need to put up,
15 and I don't want to have to be fussing at everyone. But I,
16 I know this is gonna be somewhat a battle next week. You
17 can just tell. And so if y'all would just do the best you
18 can---

19 MR. LLOYD: We'll be ready.

20 THE COURT: Everyone just be on your best---

21 MR. LLOYD: We'll behave.

22 THE COURT: ---behavior, and I'll tell you I can
23 already see one thing that's gonna happen is, is you both
24 are gonna stand at the same time. Both you, Mr. Pascoe, and
25 you, Mr. Lloyd, are both gonna be standing. So, if you see

1 me do something like this, and I know Mr. Pascoe's seen me
2 do this before, just sit down. I don't want to call you
3 out. I just -- you know, if you got the floor, use it, take
4 it, and the other person relax, and let each other finish.

5 And then the other thing I would just say to you, and I
6 don't know if it's something that y'all do, but it seems to
7 be a problem that we have just, repeatedly, it's just
8 running objections. You know, don't argue your objection to
9 the jury. You know why you want something not in or in
10 cause we know why. I mean it's obvious. It's either
11 prejudicial to your client or it's helpful to you.

12 So, just try your best just to raise the issue for me,
13 make sure I understand, obviously, cause I'm gonna say
14 basis, if I don't know where you're coming from, I'm gonna
15 say basis. Give, give me something.

16 Is it hearsay?

17 What is it?

18 Relevance, whatever it is, and then I can make a,
19 hopefully, intelligent ruling.

20 Okay. All right. With that said, let's go to Number
21 5.

22 Oh, that was the same thing.

23 MR. LLOYD: Yeah, they dovetail in.

24 THE COURT: We're good.

25 MR. LLOYD: They both are sort of related to an expert

1 opinion on the law---

2 THE COURT: Right.

3 MR. LLOYD: ---and this statute and things like that.

4 THE COURT: Okay.

5 MR. LLOYD: Your Honor, Number 6 is -- I know that
6 there's been a lot of emails produced in this particular
7 case and in discovery. We only request that emails have to
8 be properly authenticated---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. LLOYD: And not, by and of themselves, business
11 records.

12 THE COURT: Right.

13 MR. LLOYD: So, we're just, ahead of time, saying we've
14 seen a lot of emails in this particular case in terms of
15 discovery.

16 THE COURT: Right.

17 MR. LLOYD: We want the State to have to go through and
18 properly authenticate all of those.

19 THE COURT: Okay. Okay.

20 MR. GRIFFIN: Well, that's gonna add a little bit of
21 time. We, we do have a custodian witness from an email
22 server that will come down flying from Virginia at
23 significant expense to the State, and we're, we're prepared
24 to do that.

25 THE COURT: Are these mostly emails between Richard

1 Quinn & Associates or someone in the firm and someone else?

2 Is that what we're talking about, Mr. Lloyd, or are we
3 talking about others?

4 MR. LLOYD: They're, they're potentially RQ&A
5 employees.

6 THE COURT: Okay.

7 MR. LLOYD: And other employees or those outside of the
8 business.

9 THE COURT: Okay.

10 MR. LLOYD: And, generally, emails, in and of
11 themselves, are not -- unless there's a specific retention
12 policy---

13 THE COURT: Right.

14 MR. LLOYD: ---and all of that are not business
15 records---

16 THE COURT: Right.

17 MR. LLOYD: ---in and of themselves.

18 THE COURT: Okay.

19 MR. LLOYD: And, in this particular case, we want
20 them -- whatever emails are introduced, we want them
21 properly authenticated.

22 THE COURT: Okay. Okay.

23 MR. LLOYD: I think we've dealt with the, the---

24 THE COURT: The conspiracy.

25 MR. LLOYD: ---the conspiracy issue apparently with

1 everybody.

2 THE COURT: Okay.

3 MR. LLOYD: Again, and, Number 8 is, Your Honor, we're
4 asking to exclude any evidence or testimony relating to
5 alleged misconduct or criminal acts by Mr. Harrell, Mr. Rick
6 Quinn, Jimmy Merrill, Mr. Courson. If, if we've added in,
7 because of these settlement agreements, First Impressions,
8 Richard Quinn & Associates, Palmetto-Health, South Carolina
9 Association For Justice, the Trial Lawyers, S.C. Trial
10 Lawyers Association, AT&T or SCANA, or the University of
11 South Carolina, and InfiLaw System. And, again, we believe
12 that would just prejudice Mr. Harrison to bring in conduct
13 that these individuals, for example, have pled to. A lot of
14 what, as we understand it, had nothing to do with
15 Mr. Harrison whatsoever.

16 THE COURT: Just so I understand just to -- in, in
17 going back. So, help me.

18 Is Mr. Harrell, Bobby Harrell, related in any way with
19 Mr. Harrison's or is what he pled to -- I mean wasn't it
20 just misuse of campaign funds or something like that
21 about -- something like a plane. That was for him.

22 And then, and then, Senator Courson, was for monies
23 being paid that were campaign funds that he then sent
24 through to RQ&A, and then they cut him a check back,
25 correct?

1 SOLICITOR PASCOE: For the most part.
2 THE COURT: So---
3 SOLICITOR PASCOE: ---yes.
4 THE COURT: For the most part.
5 So, I don't see that having anything to do with it.
6 Now, I think it might be different. I don't know about
7 Rick Quinn. I mean he's obviously a member of the company.
8 I don't know if I'll call him a member, but he's -- so, what
9 else do we need to talk about as far as -- I mean the
10 obvious idea is we're not gonna dirty Harrison up because
11 these other people pled guilty to other things that were
12 unrelated to him understanding that.
13 So, what, what specifically are we gonna -- what are
14 you doing?
15 MR. GRIFFIN: Well, I mean---
16 THE COURT: Yeah.
17 MR. GRIFFIN: And so -- here's the -- Your Honor, we
18 have witnesses, cooperating witnesses, testifying who are
19 currently employed, formerly employed by a number of the
20 entities that entered the Corporate Integrity Agreements.
21 THE COURT: Okay.
22 MR. GRIFFIN: They are protected under that Corporate
23 Integrity Agreement.
24 THE COURT: Right.
25 MR. GRIFFIN: Normally, in a, in a criminal case, I'm a

1 prosecutor, I, I get out the fact that there's a deal --
2 THE COURT: Right.
3 MR. GRIFFIN: -- so that they don't bring it out like
4 we're trying to hide the deal.
5 THE COURT: Right.
6 MR. GRIFFIN: And that would really be the only time it
7 comes out.
8 THE COURT: Okay. I mean is it gonna be your typical
9 of, you know, obviously those Corporate Integrity Agreements
10 were there was no admission of any wrongdoing, you know,
11 typical, but we understand, in exchange for that, and
12 payment, that they wouldn't be prosecuted individually---
13 MR. GRIFFIN: Exactly.
14 THE COURT: ---per the corporation. I mean we -- other
15 than that.
16 MR. GRIFFIN: Yeah, that's it. That's it.
17 THE COURT: Okay. Okay.
18 MR. GRIFFIN: And there's some compliance issues in
19 those agreements, you know, that they were the point of
20 compliance officers. Some of them that didn't have one, and
21 they would go back and amend reports, and --.
22 THE COURT: Okay.
23 MR. GRIFFIN: -- those are all included in those
24 agreements.
25 THE COURT: Okay.

1 Yes.

2 MR. LLOYD: And we're not sure what that has to do --
3 any of the -- those corporate entities have to do with
4 Mr. Harrison. One of the things that's -- that we notice
5 that Mr. Griffin just said, they would want to bring out the
6 fact that these corporate clients signed these agreements
7 absolving them from criminal liability as well as civil and
8 administrative liability in this particular case. You
9 already heard arguments about the, the -- whether they
10 actually had the authority to do that.

11 One of the things that it's our understanding, for
12 example, if you were to allow all that in, we would want the
13 ability to question them about the deal that they made.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LLOYD: I'll give you an example, Your Honor.

16 One of the corporate clients paid, I think, \$100,000.
17 It's our understanding those payments went directly to the
18 First Circuit Solicitor's Office.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. LLOYD: And that they are to reimburse them for
21 costs, and that, at some point, some, some portion of this
22 \$100,000 will go to the State Ethics Commission.

23 Now, set aside for a moment what authority the
24 solicitor actually has to accept those funds cause the
25 state -- state agency can't just take money, and we're not

1 sure, from the agreement, how they're allowed to take the
2 money or how the Ethics Commission will be allowed to take
3 the money.

4 But when referenced to us having the ability to
5 cross-examine these folks about their reimbursement of the
6 solicitor's costs --

7 THE COURT: Uh-huh. (Affirmative).

8 MR. LLOYD: -- we have no idea what those costs are.
9 Ordinarily, this investigation, I believe the Grand Jury
10 costs should be paid out of the AG's office. So, I'm not
11 sure what other costs they are cause his attorneys --
12 assistant solicitors will be paid for by state money that's
13 already been appropriated. I -- you know, I assume maybe
14 Mr. Pascoe wants his mileage to come up here, but if that's
15 the costs, then we think we're entitled to know that. We
16 just don't know the full extent of what these entities were
17 paying for, and we, we believe we'd be entitled to that.

18 THE COURT: Do you think they're gonna know?

19 SOLICITOR PASCOE: I don't even know yet, Your Honor.

20 MR. LLOYD: Well, we don't---

21 SOLICITOR PASCOE: My office---

22 MR. LLOYD: ---know that he had that discussion, Your
23 Honor.

24 THE COURT: Right.

25 SOLICITOR PASCOE: Well, you know, he says assuming.