

THE STATE OF SOUTH CAROLINA
In the Supreme Court of South Carolina

APPEAL FROM THE STATE GRAND JURY
Richland County
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2018-494

The State

Appellant,

v.

Richard M. Quinn, Jr.

Respondent.

RESPONDENT'S REPLY TO
APPELLANT'S MEMORANDUM

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S.C. SUPREME COURT

INTRODUCTION

Respondent Richard M. Quinn, Jr. respectfully submits this memorandum in response to the Court's March 12, 2020 Order and filings by Appellant the State of South Carolina and by the South Carolina Attorney General's Office. Respondent joins in support of the Attorney General's filing and writes separately to address Solicitor Pascoe's prosecutorial authority in this investigation as the Attorney General's designee and the oversight limits on such power.

The fundamental issue in the Court's Order is one of authority. To address the issues raised, it's necessary for this Court to clarify the scope of Solicitor Pascoe's authority to investigate and prosecute under his designation. This Court previously held Solicitor Pascoe had authority to initiate a state grand jury investigation of the two redacted legislators as the designee of the Attorney General. *Pascoe v. Wilson*, 416 S.C. 628, 630, 788 S.E.2d 686, 688 (2016). Since that decision, Solicitor Pascoe has claimed, and operated under, a presumed cloak of invincibility and boundless power. But this Court has not ratified unlimited authority, and the South Carolina Constitution does not allow that.¹

Solicitor Pascoe has extended and expanded this investigation, which remains open after five years. His prosecutorial acts in Respondent's case—particularly resulting from the corporate integrity agreements and the money collected under the agreements—raise serious concerns about his ability to recognize and stay within his limited authority. Solicitor Pascoe had no authority or justification to settle all criminal, civil, and administrative claims that he wanted to investigate

¹ *Pascoe v. Wilson*, 416 S.C. at 644, 788 S.E.2d at 695; South Carolina Attorney General's Mem. in Response to Court's Order of March 12 ("S.C.A.G. Mem.") 11-14; Final Reply Br. of Appellant in *State v. Harrison*, Appellate Case No. 2018-002128, at 6-13.

with the state grand jury in exchange for cash from national and state entities that are not being prosecuted.²

As discussed herein, Solicitor Pascoe has exceeded his authority in other ways discussed below and will continue to do so until he is disqualified or terminated by this Court as the designated special prosecutor. This unusual need is highlighted by his strategy and actions in this case and the investigation, including: this direct appeal which is impermissible, meritless, and moot;³ (2) veiled threats to “try more cases” because of the fines he collected under the corporate integrity agreements and to void those agreements if this Court does not allow him unfettered discretion;⁴ and (3) the repeated push to expand and extend indefinitely the investigation without oversight until “the conclusion of all prosecutions arising from the Investigation”⁵ and “resolution of all cases from the Investigation.”⁶ Solicitor Pascoe used this last tactic in his most recent filing, warning “the Investigation has not yet concluded”⁷

² See generally *Pascoe v. Wilson*; S.C.A.G. Mem. 14; Final Reply Br. of Appellant in *State v. Harrison*, Appellate Case No. 2018-002128, at 6-13.

³ See Final Brief of Respondent 15-18, Respondent’s Motion to Certify and to Dismiss, and oral argument.

⁴ Appellant’s Mem. in Response n.3.

⁵ Id. at 4.

⁶ Id.

⁷ Id. at 7.

If the status quo of unchecked power to unilaterally expand and extend the investigation far beyond the limited purpose for designating Solicitor Pascoe is not ended, then there are no constitutional limits to a prosecutor designated with authority in an investigation in which the Attorney General and the Office of the Attorney General are recused. That cannot be. This absolute authority claimed by Solicitor Pascoe undermines the balance of separation of powers and the just and fair administration of justice. These corporate integrity agreements, and Solicitor Pascoe's actions with the money obtained from them, demand guidance and direction on his authority and, above all else, finality from this Court. For the reasons herein and in this appeal, this Court should uphold Respondent's plea and sentence, order the funds collected under the agreements be paid to the State's general fund, and also disqualify and terminate Solicitor Pascoe from this investigation or, in the alternative, clarify the limits of the designated solicitor's continued authority.

DISCUSSION

In Solicitor Pascoe's Response Memorandum, he doubled down on his claim that he has complete authority over the investigation without parameters or expiration. As it stands, he has firmly asserted unfettered discretion to investigate and prosecute and to decide the limits and end, if any, of the investigation. Such notions are not only wrong and troubling but also cause instability, injustice, and confusion in the administration of justice.

I. The Supreme Court has the Full Authority and the Responsibility to Ensure the Proper Administration of Justice.

Appellant filed an improper appeal ignoring basic appellate rules and well-settled law.⁸ Yet, Solicitor Pascoe’s strategy in the investigation and now on appeal raises broader concerns about his conflicts of interest, arbitrary actions, and serious abuses of law. Solicitor Pascoe amplified these concerns in his Response Memorandum by challenging this Court’s authority to question him or address his actions, threatening to void the corporate integrity agreements, and claiming complete authority and unfettered discretion for an investigation that is without parameters or expiration.

There is no question this Court is empowered to question and to act. “[A] court, once having obtained jurisdiction of a cause of action, has inherent power to do all things reasonably necessary to the administration of justice in the case before it” and to protect its proceedings. *Ex parte The State-Record Co., Inc.*, 332 S.C. 346, 349, 504 S.E.2d 592, 593 (1998) (citing *Degen v. U. S.*, 517 U.S. 820, 823 (1996) (courts invested with judicial power have inherent authority to protect their proceedings)); *see also, e.g., Prince v. Beaufort Mem. Hosp.*, 392 S.C. 599, 604, 709 S.E.2d 122, 125 (Ct. App. 2011) (“Following oral arguments . . . this court instructed the parties to brief the following issues. . . .”). Solicitor Pascoe’s attempts to circumvent this Court’s role and authority are misguided and highlight the constitutional imbalance of a designated prosecutor without supervision by an accountable chief prosecutor. Under these unique circumstances, this

⁸ See Final Brief of Respondent 15-18 and oral argument.

Court is the *only* body capable of addressing these questions and the issues surrounding Solicitor Pascoe's authority.⁹

II. This Court is the Only Remaining Oversight and Accountability for this Investigation.

“Absolute power corrupts absolutely.” Lord Acton, in a letter to Bishop Mandell Creighton (1887). Recognizing the need to avoid such corruption, the Founders framed the Constitution with separation of powers to ensure our leaders and democratic institutions do not slip into tyranny through concentrated and unchecked power. Inherent in such protections are the heightened needs to safeguard justice, the rights of all parties involved, and the judicial process where constitutional supervision is limited. *See* Final Reply Br. of Appellant in *State v. Harrison*, Appellate Case No. 2018-002128, at 6-13.

These safeguards are also in the state constitution and statutory provisions granting supervisory authority to the Attorney General. S.C. Const. Art. V, § 24; *see also* S.C. Const. Art. I, § 8. Despite these sound and articulated protections, the unique circumstances of this investigation gave Solicitor Pascoe authority without oversight or procedural safeguards. He has taken advantage of this gap, claiming unchecked power and causing grave constitutional concerns. His actions have also caused harm. This constitutional infirmity must be remedied by this Court—as the only remaining body capable to address the limits of Solicitor Pascoe's authority.

⁹ Appellant also made a Motion to Reconsider the March 12, 2020 Order. It is baseless and should be denied.

The Attorney General and the Office of Attorney General both recused in the redacted legislators' investigation, but not in any other matters. *Id.* at 644, 788 S.E.2d at 695. These recusals removed oversight of Solicitor Pascoe, other than the courts. Practically, Solicitor Pascoe, who has no constitutional or statewide authority other than the limited designation, has proceeded without the constitutional safeguards. This void leaves only this Court to provide oversight to determine the limits and end of his designation.

In the absence of constitutional safeguards, and since this Court's last involvement, Solicitor Pascoe has unilaterally expanded and extended the redacted legislators' investigation. He incorrectly bases his assertion of power on *Pascoe v. Wilson* and improperly claims to have the complete authority of the Attorney General and his Office, indefinitely, until he decides the end of his investigation. Neither the Court's prior decision nor the South Carolina Constitution give him such authority. He was granted limited authority and only for investigating the two redacted legislators, and that authority must be found to have concluded. (See R. p. 398 (showing the authority ceased with the conclusion of the investigation and prosecution of both redacted legislators and with the state grand jury having "concluded an investigation of possible political and financial crimes committed by members of the South Carolina General assembly almost two years ago.")).

This Court will have to decide when and how to end the designation, because Solicitor Pascoe has shown he will not and because he bases his assertion of complete authority on his misinterpretation of this Court's previous decision. This is best evidenced by his collection of

arbitrary and unauthorized “fines far greater than the penalties imposed by the Ethics Act” under the corporate integrity agreements. (First Suppl. R. p. 370). These collected funds are being used to justify a subsequent prosecution against Respondent, despite that Respondent entered a guilty plea in reliance on Solicitor Pascoe’s promises of finality from any further prosecution or investigation.¹⁰ (R. pp. 153-59). Not only was this intention expressed during oral argument, as part of the record upon which this Court may rely, but it was also reinforced on the courthouse steps to other potential defendants and the public. *See* S.C.A.G. Mem., Att. 1.

In sum, this Court should restore constitutional balance and certainty for prosecutions and state grand jury investigations handled without supervision of the Attorney General. As discussed below, the Court should disqualify Solicitor Pascoe and end his designation or, alternatively, clarifying the limits of the designated prosecutor’s authority to remedy the conflicts of interest and serious abuses. This Court is the only remaining oversight and accountability to provide finality.

III. This Court Should Disqualify and End the Designation of this Prosecutor.

While Respondent had been reluctant to raise many of these issues underlying and closely related to the Court’s questions because of the power Solicitor Pascoe has used and still wields over the liberty and property of Respondent and his family members, it is apparent in light of this Court’s questions at oral argument and in its March 12, 2020 Order, the Court needs to know what

¹⁰ Additionally, such action suggests a colorable claim of prosecutorial misconduct and conflict of interest. *See State v. Thrift*, 312 S.C. 282, 303, 440 S.E.2d 341, 353 (1994) (“Although we find no prosecutorial misconduct here, we nonetheless address the prejudice prong because of the colorable claim of prosecutorial misconduct and the unique procedural posture of this case.”). *See* S.C.A.G. Mem. 3, 20-22.

has been done during this investigation like his intention to use the funds collected under the corporate integrity agreements against Respondent. As discussed herein, Solicitor Pascoe should now be disqualified and his designation as prosecutor for the redacted legislators' investigation ended. Specifically, Solicitor Pascoe has violated: (1) his obligation to avoid conflicts of interest that prejudice Respondent; (2) constitutional limits on prosecutors; (3) state laws requiring funds obtained from the corporate integrity agreements to be paid to the general fund; and (4) his own plea agreement by continuing to investigate Respondent.

Because Solicitor Pascoe used the State Grand Jury Act to conduct the investigation and indict the two redacted legislators, he should now be held accountable under the same Act. Disqualifying and ending the designation is proper under two distinct grounds: conflict of interest and arbitrary actions or serious abuse of law. *See* S.C. Code Ann. §14-7-1650(D)(1) (providing for disqualification where there is “an actual conflict of interest resulting in actual prejudice against”); § 14-7-1630(G) (allowing this Court to limit or end a state grand jury investigation where there has been “arbitrary action, compelling circumstances, or serious abuses of law or procedure” in the state grand jury).

Where conflicts of interest and violations of law and procedure in an investigation prejudice the defendant, this Court does not require a finding of prosecutorial misconduct to order substantial relief. *See State v. Thrift*, 312 S.C. at 303, 440 S.E.2d at 353 (“Although we find no prosecutorial misconduct here, we nonetheless address the prejudice prong because of the colorable claim of prosecutorial misconduct and the unique procedural posture of this case.”)

(dismissing the indictment despite reversing a finding of misconduct because the defendant made a colorable claim of misconduct and was prejudiced). Thus, the motivation of the prosecutor is not necessary to take action to restore fairness and justice in a case. *See also State v. Inman*, 395 S.C. 539, 559, 720 S.E.2d 31, 42 (2011) (“Because a determination of prosecutorial misconduct is not necessarily dependent upon the intent of the prosecutor, such testimony was neither relevant nor material to the defense’s claim.” (citations omitted)).

Evidence in the record shows that Solicitor Pascoe has developed several conflicts of interest in this matter. During oral argument, he touted having obtained plenty of money now, which he was able to obtain only by using his designated powers to target national and state entities in the redacted legislators’ investigation.¹¹ He directed the money into an account he controls and says he intends to use it to try Respondent if he is allowed to void his plea agreement. This conflict of interest targeting Respondent after inducing him to plea could, alone, justify terminating the designation by disqualification.¹²

Additionally, turning fact finding into monetary gain along the way is a conflict of interest. *See S.C.A.G. Response Br. 20-22*. A clear conflict arises when the prosecution’s offer is non-prosecution, but the negotiation’s currency is cash to the prosecutor or his office. There, improper factors can and likely will become part of the prosecutive decision. Solicitor Pascoe’s comments

¹¹ For unknown reasons, Solicitor Pascoe engaged in what appears to be selective non-prosecution by giving corporate integrity agreements to some, but not all, entities that were investigated. (First Suppl. R. pp. 426-29; R. p. 273).

¹² Notably, the Attorney General recognized this conflict of interest in the prosecutive decisions being made. *See S.C.A.G. Mem. at 32*.

to both the trial court and this Court about how money factored into his prosecutive decisions—and then using the money collected publicly was like waving or carrying a “big stick,” which could be intended or misunderstood as a threat to witnesses and potential defendants. It could also signal to potential defendants that they might be able to buy their way out of prosecution if the prosecutor is willing to give them a non-prosecution agreement. But on the other hand, they may have to go to trial because others have folded in the prisoner’s dilemma, and the prosecutor already has enough money to pursue them and their family if he chooses. Solicitor Pascoe’s comments make this conflict of interest very real to Respondent under the circumstances and prejudicial because he agreed to Solicitor Pascoe’s “good deal” plea agreement over two years ago.

However, Solicitor Pascoe’s conflicts of interest in this case did not just start in 2018 when the corporate integrity agreements were used to obtain money for more prosecutions. Three years ago Solicitor Pascoe struck a “foul blow”¹³ by deliberately intruding on attorney-client communications relating to his investigation and causing what should have been an irrebuttable presumption of prejudice under *State v. Quattlebaum*, 338 S.C. 441, 446, 527 S.E.2d 105, 107 (2001), and irreparable harm to Respondent and others.¹⁴ Solicitor Pascoe directed his lead case

¹³ See *Berger v. United States*, 295 U.S. 78, 88 (1935) (“[W]hile [a prosecutor] 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.”), *overruled on other grounds by Stirone v. U.S.*, 361 U.S. 212 (1960).

¹⁴ See, e.g., Second Suppl R. pp. 644-720 (Partial filings made by Movants Richard Quinn & Associates (“RQA”), Richard Quinn, Sr., Mail Marketing Services, Respondent, and employees of RQA were included: (1) Motion to Stop All Review of Seized Materials Before the Outcome of the Pending Motions, filed March 24, 2017; (2) Supplemental Memorandum in Support of Motion to Disqualify the Prosecution Team and SLED and to Return all Seized Materials, filed

agents to make an unannounced search to seize all electronic communications and other files from Respondent's personal and business offices without preparation or protection against the intrusion by members of the prosecution team into privileged materials. This was not done until a year after the state grand jury Investigation had been initiated. For at least a week, Solicitor Pascoe kept possession and control of all seized materials in his office in Orangeburg without protections to prevent exposure of the prosecution team to privileged materials.

Case agents supervised by Solicitor Pascoe also possessed and controlled electronic communications and information seized. Solicitor Pascoe went to great lengths to avoid disclosure or transparency about protections for the constitutional rights of those affected. Notably, Solicitor Pascoe indicted Respondent on May 16, 2017, seven days before the evidentiary hearing on the Motion to Disqualify and then entered into the plea agreement with Respondent, RQA, and Respondent's father before this Court's review of the intrusion was concluded.¹⁵ These actions allowed him to avoid full scrutiny and consequences in pre-trial motions and at trial. The prosecution team's intrusion and exposure to Respondent's privileged materials still remains a

June 5, 2017; and (3) Motion to Alter, Amend or Reconsider and Request for Written Order, filed June 30, 2017).

¹⁵ Richard Quinn, Sr., owner of the premises, was not indicted until October 2017 and filed a Petition for Original Jurisdiction to review the clearly erroneous order denying the Motion to Disqualify by the then-presiding judge of the state grand jury, the Honorable Knox McMahan. *In re: Sealed Search Warrant Executed March 2, 2017: Richard Quinn, Sr. v. SLED and David Pascoe*, App. Case No. 2017-001789. The Petition was denied by this Court on December 14, 2017, the day after the trial court accepted the guilty plea of Respondent and RQA and ordered dismissal with prejudice of all charges against Richard Quinn, Sr.

conflict of interest with the investigation of Respondent continuing and because Solicitor Pascoe still wants to try the dismissed charges against Respondent.

Another conflict of interest developed in the first half of 2018 when Solicitor Pascoe hired a private attorney to work on this investigation as a part-time assistant solicitor for the First Judicial Circuit. The private attorney first notified defense counsel of his employment for this investigation on April 11, 2018, and he had already been sworn in to the state grand jury. (Second Suppl. R. p. 755). Although the private attorney was likely just trying to help, sometimes the wrong roads are paved with good intentions. At the same time he was working for Solicitor Pascoe in this investigation, he was private civil counsel of record in a shareholder derivative class action¹⁶ seeking more than \$20 million in civil damages against SCANA,¹⁷ one of the corporate clients of RQA and a party to one of the corporate integrity agreements. Within five months of the private attorney joining the prosecution team, Solicitor Pascoe was able to get SCANA to pay \$72,000 to the First Circuit Solicitor's Office in exchange for no criminal, civil, and administrative liability. (Second Suppl. R. pp. 755; First Suppl. R. p. 381).

¹⁶ Compare the Prosecution's email on April 11, 2018 to defense counsel (Second Suppl. R. p. 755) with the June 18, 2018 order from Richland County Court of Common Pleas granting the private attorney's motion to withdraw as counsel (Second Suppl. R. p. 761-62). The private attorney also still represented another SCANA shareholder seeking to intervene in the electric utility rate proceeding for abandonment costs of the new nuclear power plant in South Carolina. (Second Suppl. R. p. 757-760).

¹⁷ See John Monk, *New nuclear lawsuit goes after SCANA officials' bonuses*, The State (Columbia, SC) (Sept. 17, 2017) (found at <https://www.thestate.com/news/local/crime/article175696531.html>).

Importantly, this hiring made certain there could be no reasonable justification or authority for Solicitor Pascoe to assume recusal or disqualification of the Attorney General with respect to SCANA. Once this attorney was on his team, Solicitor Pascoe clearly should have known the Attorney General's Office had not recused or been disqualified from investigating SCANA because it was already publicly investigating SCANA in the same matter, the new nuclear plant abandonment of SCANA's new nuclear power plant project, that this part-time assistant solicitor on the prosecution team was also litigating a private suit against SCANA.¹⁸ The efforts to negotiate corporate integrity agreements by Solicitor Pascoe with the private counsel for SCANA shareholders on his team could be interpreted as providing SCANA a benefit of non-prosecution in exchange for the payment of money or as pressure and access in a civil matter to investigative materials obtained in a state grand jury investigation in violation of law.

Incredibly, this Court had already warned Solicitor Pascoe about this precise potential harm by citing *U.S. v. Sells Engr'g Inc.*, 463 U.S. 418 (1983), on the perils and temptation to violate grand jury secrecy and misuse materials obtained through the grand jury in other, including civil, matters by government lawyers. *Pascoe v. Wilson*, 416 S.C. at 646-47, 788 S.E.2d at 696. A part-time prosecutor representing a civil client and suing for damages from a target he was also investigating as part of Solicitor Pascoe's prosecution team could be a conflict of interest that may

¹⁸ See John Downey, *South Carolina opens criminal probe of failed V.C. Summer nuclear project*, Charlotte Business Journal (found at <https://www.bizjournals.com/charlotte/news/2017/09/26/south-carolina-opens-criminal-probe-of-failed-v-c.html>).

have affected the investigation, prosecutive decisions, and the corporate integrity agreements—and regardless of motive or intent. *See State v. Mattoon*, 287 S.C. 493, 339 S.E.2d 867, 869 (1986) (“Disqualification occurs when a special assistant solicitor . . . compromises his neutrality in the criminal proceeding.”).

In addition to these three conflicts of interest for Solicitor Pascoe, another potential conflict of interest has percolated since the beginning. Solicitor Pascoe was a candidate for Attorney General of South Carolina in 2010 and had a publicly reported campaign account for that cycle,¹⁹ even though he ultimately did not file to appear on the ballot for the election. Because of Solicitor Pascoe’s interest in running for Attorney General, Respondent and RQA conducted polling and opposition research involving Solicitor Pascoe that year and in subsequent election cycles as a potential challenger to the current Attorney General, who was a client of both Respondent’s mail business and his father’s separate political and public relations consulting business. This proprietary and sensitive political information about Solicitor Pascoe was in the materials seized in the March 2, 2017 raid. Past political opposition and campaign activities raise conflict issues that have been relevant and even decisive in other cases.²⁰

¹⁹ *See* S.C. Ethics Commission Public Reporting (which can be accessed at <https://apps.sc.gov/PublicReporting/IndividualCandidate/SearchCandidate.aspx>).

²⁰ *See, e.g., People v. Eubanks*, 927 P.2d 310 (Cal. 1996) (holding district attorney was disqualified from prosecuting case in light of fact that the alleged victim had contributed financially to support the district attorney’s investigation, which gave rise to an impermissible appearance of impropriety); *Dick v. Scroggy*, 882 F.2d 192, 196 (6th Cir. 1989) (“Politically ambitious and aggressive prosecutors are by no means uncommon, and the zeal of the prosecutor who covets higher office or who has a personal political axe to grind may well exceed the zeal of” a prosecutor who has more limited ambitions); *State v. Snyder*, 237 So. 2d 392 (La. 1970) (holding

The more concerning conflict of interest with this issue, however, occurred during the most recent statewide general election in 2018. For an “October Surprise,” Solicitor Pascoe took an unusual approach on releasing the State Grand Jury Report, which had very serious allegations of misconduct against the incumbent Attorney General without any indictment. Solicitor Pascoe released the Report with his own press release on October 9, 2018, just weeks before the election. (First Suppl. R. pp. 369-71). This public release by the First Circuit Solicitor’s Office was done after some but not all legal briefing required for the presiding judge’s final decision on potential redactions in the Report. Instead of allowing the issue to be resolved in the normal course, which may have resulted in the Report being released publicly after the 2018 statewide election. Solicitor Pascoe insisted on releasing the Report with proposed redactions that he believed were “not merited” but that he felt he had to “temporarily consent[] in the interest of eliminating any further delay in the public’s right to review it.” *Id.* These actions could have had an impact on the outcome of the election.²¹

Turning next to violations under Code section 14-7-1630(G), there are serious abuses of law based on violations of constitutional and statutory law, and also other arbitrary actions and

district attorney should be recused from prosecuting case because of his “strong personal animosity” stemming from his past political opposition and campaigning); Bennett L. Gershman, *Prosecutorial Ethics and Victims’ Rights: The Prosecutor’s Duty of Neutrality*, 9 LEWIS & CLARK L. REV. 559, 562–63 (2005) (“A prosecutor does not serve justice, however, when she undertakes her official functions for personal or political reasons, has an ‘ax to grind’ against the defendant, or has a special motivation.”).

21 *Cf.* S.C. Code § 8-13-1346(A) (“A person may not use or authorize the use of public funds, property, or time to influence the outcome of an election.”).

compelling circumstances of making material misrepresentations to this Court and in violating his plea agreement with Respondent. These actions further support disqualification and an order ending the investigation.

As to constitutional violations, these have already been discussed in Part II above. *See also* S.C.A.G. Response Br. 14-16; *see also* Final Reply Br. of Appellant in *State v. Harrison*, Appellate Case No. 2018-002128, at 6-13. Solicitor Pascoe violated separation of powers with the corporate integrity agreements by circumventing legislative authority to decide what penalties may be imposed for violations of the Ethics Act and to appropriate all state funds. S.C. Const. Art. I, § 8. He intentionally collected “fines far greater than the penalties imposed by the Ethics Act” under the corporate integrity agreements and this treads on the General Assembly’s policy choice for penalties to be imposed by prosecutors on violations of state law. *Id.* (First Suppl. R. p. 370).

While Solicitor Pascoe argues that the corporate integrity agreements fall within the three prongs of prosecutorial discretion—to try charges, plea bargain or not prosecute at all—the integrity agreements fall outside the discretion for any state prosecutor. Specifically, these integrity agreements are not plea agreements, in which a defendant admits and accepts responsibility for a crime, nor are they charges. Instead, the corporate integrity agreements require the potential defendants’ agreement without any admission of guilt or fault, payment of “fines greater than the penalties imposed by the Ethics Act,” and other bargained-for consideration from the defendant. This type of agreement exceeds prosecutorial discretion and would require specific statutory authorization. *See* S.C.A.G. Mem. 16-25. These are violations of constitutional

protections of separation of powers and also under Article V, Section 24 of the South Carolina Constitution, against a prosecutor's use of the police power of the state without supervision and consistent with the limits of their power, and are serious abuses of law in the state grand jury.

As to statutory violations: the corporate integrity agreements are not authorized by law and required payment of fines much higher than the penalties the General Assembly set for criminal violation of the lobbying part of the Ethics Act. S.C. Code Ann. § 2-17-130(A) (“... must be fined not more than \$2,500”). Further, by directing the funds collected under the agreements into an account he controlled, Solicitor Pascoe clearly violated the law on appropriations and to set specific controls on the collection, expenditure, and accounting of State funds, including fines collected by prosecutors in investigations and cases.²² *See* S.C. Code Ann. 1-7-150(B); *see also* S.C. Code § 1-7-360 (disallowing charges to the State or counties and that would result in taking fines collected from the general fund). The General Assembly must appropriate all State money, and all funds not awarded by a court for costs must be accounted for and paid into the State's general fund. S.C. Code § 1-7-150(B). Solicitor Pascoe has not done that for more than a full fiscal year. *See also* S.C.A.G. Mem. 25-31.

Solicitor Pascoe contends Code section 1-7-85 gives him authority to collect his own costs without oversight, (Appellant Response Br. at 8), but he omitted the important last sentence, which makes it clear “reimbursement of these costs may be obtained by the Office of the Attorney General from the budget of an agency or officer that it is representing or from funds generally

²² See S.C.A.G. Mem. 25.

appropriated for legal expenses” S.C. Code § 1-7-85 (emphasis added). No statute provides a self-help remedy for state funds or appropriations.

Solicitor Pascoe also says he has “generally sought approval from the presiding judge” of the state grand jury, but the State Grand Jury Investigation 2016-257 concluded in June 2018. (First Suppl. R. p. 398). In any event, he has not asked any court for any award of costs or expenses, except \$3,000 in restitution from RQA for the Sixteenth Solicitor’s Office without any receipts or specifics. And he has had plenty of opportunities with the six cases he has resolved at the trial court already: (1) the Merrill plea (he did not even seek a fine), (2) Respondent’s plea (he did not seek restitution), (3) RQA’s plea (he actually negotiated restitution of \$3,000 paid to the Sixteenth Solicitor’s Office but expressly waived any recovery for costs), (4) Richard Quinn Sr.’s dismissal with prejudice of all indictments (no fine), (5) Courson’s plea (required paying “the current balance of the Defendant’s campaign account to the First Circuit Solicitor’s Office for reimbursement of investigative costs to the taxpayers of the First Circuit and the remaining balance, if any, shall be paid to the South Carolina Ethics Commission” (First Suppl. R. p. 391)), and (6) after Jim Harrison’s verdict.

Solicitor Pascoe has simply chose not to seek court awards for costs in these cases.²³ He did not have court involvement in the corporate integrity agreements, (First Suppl. R. p. 370), and

²³ As opposed to the “transparency” claimed on page 4 of Appellant’s Memorandum in Response, grand jury proceedings, even ones involving presiding judges, lack transparency and openness of court proceedings. Oftentimes, notice and an opportunity to be heard by “interested parties” are not required or provided by legal advisors to the grand jury. For example, in this investigation and after Respondent was a defendant and pleaded guilty, Solicitor Pascoe failed to

provided or submitted to any court any “receipts and invoices” or “actual, substantiated expenses related to the Investigation and prosecution.” Appellant’s Mem. in Response to Court’s March 12, 2020, at 4, 8.²⁴ Solicitor Pascoe also has suggested he will decide whether and when and how he might seek approval or an award for unspecified unreimbursed expenses. These are not acceptable actions for State funds and do not involve prosecutorial discretion at all. Based on this record, Solicitor Pascoe acted arbitrarily and committed serious abuses of law in both in collecting fines greater than the statutory penalties, directing them to an account he controls without a court award of costs, and in failing to pay the funds to the general fund.

Another serious abuse of law is Solicitor Pascoe’s violation of his plea agreement by threatening to use funds collected from the corporate integrity agreements to continue the investigation and wanting a subsequent prosecution against Respondent. Despite promising Respondent that all investigation of him would cease if he pled, Solicitor Pascoe has continued to investigate in direct violation to plea the agreement.²⁵ See *State v. Thrift*, 312 S.C. at 304 n.15, 440

serve Respondent with his motion to the presiding judge of the state grand jury to release publicly the Report for State Grand Jury Investigation 2016-257 and also failed to serve others accused of serious wrongdoing in the Report. (Second Suppl. R. pp. 763-765). Respondent’s counsel learned of the motion and Solicitor Pascoe’s efforts through the public press and had to get a disclosure order from the prosecution and presiding judge to receive a copy of the Report and motion seeking its public release so he could decide whether to make an objection. *Id.*

24 Solicitor Pascoe says “[r]eceipts and invoices related to the Investigation are maintained to substantiate reimbursement of expenses” and that he “has always intended to seek approval from the presiding officer of the State grand jury for any disbursement at the conclusion of the investigation to ensure an itemized account of the disbursement,” but he has not requested any court award of costs and has not produced any receipts or invoices for any court’s review. *Id.*

25 *Custodio v. State*, 373 S.C. 4, 13. 644 S.E.2d 36, 40 (2007) (“The appropriate remedy is the specific performance of the plea agreement.” (citations omitted)).

S.E.2d at 353 n.15 (“The prosecutor should present the evidence and instruct on the law. The grand jury is more than a mere instrument of the prosecution.”). Instead of advising the state grand jury that he had limited the investigation and use of materials from the investigation in his plea bargain with Respondent, it appears he insulated them from the terms of the plea agreement in order to continue investigating Respondent’s past conduct with state grand jury. (First Suppl. R. p. 408)

Solicitor Pascoe’s indictment of Respondent’s father was based in part on his father’s grand jury testimony in April and May 2018 about Respondent’s past political and business conduct in violation of the plea agreement. In the indictment, Solicitor Pascoe named Respondent 52 times and included a background section labeled “Rick Quinn’s relationship to Quinn family businesses.” (Second Suppl. R. p. 730-36). Solicitor Pascoe had asked Respondent’s father about Respondent’s voting record, compensation, and legislative work (Second Suppl. R. 746-48 (§§ 76.a, 80.a, and 84.a)), and described his questions about Respondent as “material to the matters under investigation by the State Grand Jury ... because of Rick Quinn’s status as a member of the House of Representatives and his ethical obligations to report” (Second Suppl. R. 733). These questions and the continued investigation into Respondent clearly violated the terms of the plea agreement.²⁶

26 Between the time he was asking these questions in the state grand jury and when he indicted Respondent’s father, Solicitor Pascoe collected and was sitting on more than \$400,000 with the plan to try more cases and was asking this Court to unravel his plea agreement with Respondent to re-open and once again extend his investigation.

Yet another serious abuse of law occurred in the oral argument of this appeal. Solicitor Pascoe made a material false statement that also violates the plea agreement and question his candor with the Court. Solicitor Pascoe repeatedly claimed he was unaware of and did not consent to the limited factual basis for the plea. This misstatement of the record was made at least five times to this Court.²⁷ In fact, Solicitor Pascoe agreed on the record of the plea hearing to the limited factual basis without any objection. (R. pp. 159:17-19, 25 & 160:2). The trial court also had confirmed everyone was on the same page before the plea hearing too,²⁸ and that was literally true in this case because the two printed pages setting forth the limited factual bases and the terms and conditions of the plea agreement were made court's exhibits 1 and 2, (R. pp. 236-37), and had been handed to the trial court and to Solicitor Pascoe in chambers prior to the plea hearing. Solicitor Pascoe had previously conceded in writing²⁹ to the trial court on January 25, 2018, that he had no issue with the limited factual basis for the plea. By that time Respondent had addressed all Solicitor Pascoe's concerns about the limited factual basis that they raised for the first time on January 19, 2018 immediately after Respondent's Supplemental Sentencing Memorandum (R. p. 31-36).³⁰

27 See Oral Arg. 9:45 (“we were not aware of the non-payment ... and the defense came forward with it”), 13:24 (“The plea that the court allowed, to an allocution, which the State did not consent to, was not misconduct in office.”), 41:29 (“we were unaware and SLED was unaware of what his allocution was”), 41:34 (“I don’t believe it was in the SLED file”), 42:49 (“I did not know I was never asked about it ... that they were made part of the record like exhibits”), and 44:09 (“I had no idea I was blindsided. ... I had no idea ... failing to file”).

28 R. p. 312, lines 7-10 (“Again, my understanding was—and we talked about it back in chambers ahead of time, and you all agreed that this was exactly what he was admitting to. This was exactly what he was pleading to.”).

29 R. p. 90 (“The documents provided by the defense corroborate the factual allocution.”).

30 Compare R. pp. 41-42 with 76-78 and with 90.

Maybe most significantly, it was actually Solicitor Pascoe who had produced the evidence of the limited factual basis to Respondent in discovery, and that was proven to Solicitor Pascoe in front of the trial court on February 27, 2018, in Respondent's Response to the State's Motion to Reconsider. (R. p. 20 n.1 and Att. A.)

Despite this indisputable record, Solicitor Pascoe repeated the misleading statements to this Court about evidence material to the State's appeal and has refused to correct it. *See Riddle v. Ozmint*, 369 S.C. 28, 631 S.E.2d 70 (2006) ("A 'prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.' The failure to correct false evidence is as reprehensible as its presentation." (quoting *Giglio v. U.S.*, 405 U.S. 150, 153 (1972))).

The totality of the conflicts of interest, arbitrary action, and serious abuses of law and procedure discussed herein, along with those raised by the Attorney General in its response brief about the corporate integrity agreements and Solicitor Pascoe's own statements that the money collected under the corporate integrity agreements factored into his prosecutive decisions, are serious and pervade Solicitor Pascoe's investigation. Respondent respectfully submits that these conflicts of interest and the violations of the constitution, statutes, and plea agreement warrant the Court's disqualification of Solicitor Pascoe and an order ending his designation as special prosecutor for the investigation of the two redacted legislators.

CONCLUSION

The Court's Order raises questions about Solicitor Pascoe's authority in the case and presents a constitutional challenge to separation of powers. Separation of powers requires each branch of government to exercise its discretion and powers within its authority not only to remain faithful to the constitution but also to provide the only effective check when individual government actors exceed their authority. Thus, when a prosecutor cannot resist powers reserved to others, then the courts must restore the balance and separation. Only "[i]f angels were to govern men, neither external nor internal controls on government would be necessary." The Federalist Papers, No. 51.

As this Court considers the legal issues with the corporate integrity agreements and funds directed in the agreements to an account under Solicitor Pascoe's control, Respondent respectfully requests this Court also consider his other actions in the investigation and this appeal caused by the same unchecked power. Particularly concerning is the change in prosecutive decision he made based on the money he obtained from the agreements with national and state entities and his stated plan to use those funds to extend his investigation against Respondent and in further violation of the plea agreement. Finality and oversight are needed here and now.

For all these reasons, this Court should uphold Respondent's plea and sentence by affirming the trial court, order the money collected without a court award for costs be paid to the State's general fund, and also disqualify and end Solicitor Pascoe's designation for this investigation or, in the alternative, clarify the limits of his continued authority.

Respectfully submitted,

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