

The Supreme Court of South Carolina

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The State, Appellant,

Jun 03 2020

v.

S.C. SUPREME COURT

Richard M. Quinn, Jr., Respondent.

Appellate Case No. 2018-000494

ORDER

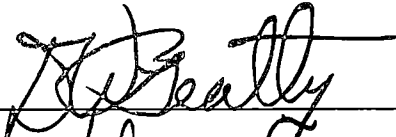
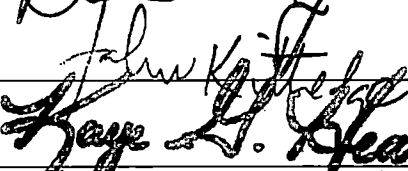
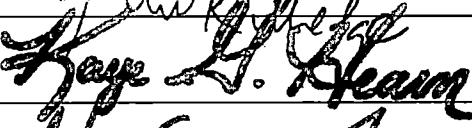
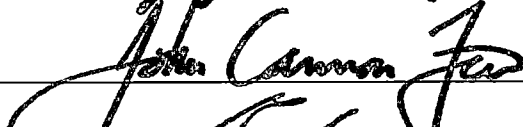

The Court held oral argument in this case on October 15, 2019 to consider the State's appeal of Respondent's guilty plea. In light of new information discovered at oral argument regarding the State's corporate integrity agreements providing funding for prosecutions stemming from the public corruption probe, we now order the appeal to be reargued on April 8, 2020 at 2:00 p.m. to address the propriety of these agreements. Accordingly, leave shall be granted to the parties to supplement the record.

By 5:00 p.m. on March 23, 2020, the State shall file with the Clerk of this Court a memorandum addressing the following:

1. What is the nature of the "corporate integrity agreements" referenced at oral argument?
2. What is the authority under South Carolina law of any representative of the State, including Solicitor Pascoe, to enter into a "corporate integrity agreement" in either a criminal or civil proceeding in exchange for a promise not to sue, and to demand or accept the payment of funds from a corporate or governmental entity or from an individual during the course of a criminal investigation?
3. Does Solicitor Pascoe have the authority to "direct" the expenditure of funds received pursuant to a "corporate integrity agreement" to the First Circuit Solicitor's Office, or must the funds be deposited in

the State's general fund? The State shall specifically address S.C. Code Ann. § 1-7-150(B) (2005); S.C. Code Ann. § 1-7-360 (2005); and S.C. Code Ann. § 39-3-180 (1976).

Immediately upon the filing of its memorandum, the State shall serve a copy upon opposing counsel and upon the Attorney General (or his designee). Within ten days of the filing of the State's memorandum, Respondent and the Attorney General (or his designee) may file a responsive memorandum.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina

March 12, 2020

cc: Alan McCrory Wilson
David Michael Pascoe Jr.
Matthew Terry Richardson

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

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MAR 24 2020

S.C. SUPREME COURT

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

Carmen T. Mullen, Circuit Court Judge

Case No. 2017-GS-47-12, -13, -32

The State,.....Appellant

v.

Richard M. Quinn, Jr.,.....Respondent

APPELLATE CASE NO. 2018-000494

APPELLANT'S MOTION TO RECONSIDER

DAVID M. PASCOE, JR.
First Circuit Solicitor
SC Bar No.: 66523

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ATTORNEYS FOR APPELLANT

The State of South Carolina, by and through the undersigned, respectfully requests the Court reconsider its March 12, 2020 Order requesting information regarding the Corporate Integrity Agreements (“CIAs”) entered between the State and five corporate entities. As discussed in the State’s contemporaneously filed memorandum addressing the Court’s inquiry, the appropriate judicial authority to review any potential question about the CIAs is the presiding judge of the state grand jury upon motion of an interested party or at the request of the presiding judge as the supervising judicial officer. There has been no challenge to the CIAs by any party in interest, nor has there been a lower court ruling for this Court to review. This Court’s request for briefing in conjunction with Mr. Quinn’s plea is not relevant to the issues properly before the Court and is highly irregular. The Court should reconsider and vacate its Order.

The CIAs arose in the course of investigating Respondent and his father, as well as their family business, Richard Quinn & Associates (“RQA”), when investigators determined that various corporate entities violated state criminal laws as a result of their relationships with RQA. Rather than engage in protracted litigation at great cost to the taxpayers of this State, Solicitor Pascoe began negotiations with those five entities to settle their criminal liability. Solicitor Pascoe utilized his prosecutorial discretion to enter into non-prosecution agreements with these entities in exchange for concessions on their part. State v. Thrift, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) (the South Carolina Constitution and jurisprudence of this State place “unfettered discretion to prosecute” in the hands of the prosecutor). All parties to the agreements have complied with the terms of the CIAs and no parties are alleging a breach of the contracts.

The funds paid to the State incident to the CIAs have been placed into an escrow account separate from budgetary accounts for the First Circuit Solicitor’s Office. The CIA funds have not been touched and of all funds recovered in State Grand Jury Investigation 2016-257 (the

“Investigation”) remain in escrow. At the conclusion of the Investigation, the State intends to present a request for disbursement to the presiding judge of the state grand jury for approval. Thus, in the absence of a complaint by a party in interest or an order by the presiding judge, review of the CIAs is premature at this stage.

In addition to the premature nature of the issue, the Court’s Order does not include the proper parties in interest to address the CIAs. The Order seeks a brief from Respondent—who is not a party to the CIAs. The Order does not seek input from the University of South Carolina, SCANA, Palmetto Health, SCAJ, or AT&T who are bound by these agreements and have a real interest in their disposition. Any ruling this Court makes would affect the rights and interests of these entities without affording them any due process to protect their positions. If the CIAs are to be subject to litigation in any court in this State, the action must at least include the parties to the agreements.

With respect to Respondent’s inclusion in this matter, this appeal asks whether the lower court improperly sentenced Respondent by cloaking him in the presumption of innocence to facts underlying the indictment to which he pleaded.¹ In addition, this appeal asks whether the plea is supported by a sufficient factual basis in light of the lower court’s rulings and whether the events

¹ The State contends the lower court erroneously concluded she could not consider facts presented by the State in fashioning Respondent’s sentence. While sentencing a defendant *within the statutory range*, a court “may conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which the information may come” State v. Thomason, 355 S.C. 278, 285, 584 S.E.2d 143, 147 (Ct. App. 2003); State v. Gulledge, 326 S.C. 220, 487 S.E.2d 590 (1997); State v. Cantrell, 250 S.C. 376, 158 S.E.2d 189 (1967); cf. Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005); Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362–63, 147 L. Ed. 2d 435 (2000) (where a court sentence is greater than the statutory maximum “any fact that increases the penalty for a crime *beyond the prescribed statutory maximum* must be submitted to a jury, and proved beyond a reasonable doubt.” (emphasis supplied)).

surrounding the plea require Judge Mullen’s recusal. None of these issues have any relevance to the agreements negotiated between the State and counsel for the five corporate entities, and Respondent is not a party to any of the agreements. This is particularly evident in light of the fact that the CIAs were negotiated well after Respondent pleaded guilty and this appeal was filed. By inviting Respondent to submit a memorandum in response to the Order, the Court is permitting a citizen who is not affiliated with the government to weigh in on the State’s prosecutorial discretion. Respondent has absolutely no standing to offer an argument on the matter, and the Court should not permit it.

The Order also invites the Attorney General to submit a memorandum addressing the issue. The Attorney General is recused from this investigation due to a conflict of interest he has with targets of the investigation. Pascoe v. Wilson, 416 S.C. 628, 644, 788 S.E.2d 686, 695 (2016) (“We find Pascoe has proven by a preponderance of the evidence that the Attorney General's Office in its entirety was recused from the redacted legislators investigation”). The expediency of the Attorney General’s decision to recuse himself became increasingly clear as the Investigation evolved. The nature of the Attorney General’s conflict is thoroughly treated in the Report of the 28th State Grand Jury. See R. pp. 437–451. To request the Attorney General submit a memorandum addressing a matter from which he is recused would be inappropriate under these circumstances, particularly in the posture of the instant appeal.

Conclusion

For the reasons discussed above, the State respectfully requests this Court reconsider and vacate its March 12, 2020 Order inviting briefs from Respondent and the Attorney General as well as seeking additional oral argument. The CIAs are not relevant to the instant appeal and should not be addressed as part of this appeal. Finally, because no party in interest has raised any issue with

the CIAs and no court has addressed disbursement of the funds, this matter is premature and should not be addressed at this time.

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MAR 24 2020


S.C. SUPREME COURT

Respectfully submitted,

DAVID M. PASCOE, JR.
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SC Bar No.: 66523

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By:


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Orangeburg, South Carolina.

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APPEAL FROM THE STATE GRAND JURY
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Case No. 2017-GS-47-12, -13, -32

The State,.....Appellant

v.

Richard M. Quinn, Jr.,.....Respondent

APPELLATE CASE NO. 2018-000494

APPELLANT’S MEMORANDUM IN RESPONSE
TO THE COURTS MARCH 12, 2020 INQUIRY

INTRODUCTION

The State of South Carolina, by and through the undersigned, respectfully submits the following memorandum responding to questions pertaining to “new information discovered at oral argument” concerning certain Corporate Integrity Agreements (hereinafter, “CIAs”). The agreements have been publicly available since October 9, 2018 and can be found on the First Circuit Solicitor’s Office website.¹ See R. pp. 369–371. The CIAs were not raised by either party to this appeal and they were not discussed at oral argument. Moreover, these CIAs were not entered into until well after Respondent’s plea and sentence. Thus, information about the CIAs is not

¹ Available at <http://scsolicitor1.org/wp-content/uploads/2018/10/28th-Grand-Jury-Report.pdf>

“new” and the CIAs are not relevant to the issues raised by the State’s appeal or Respondent’s plea and sentence.

The CIAs are non-prosecution agreements—contracts in which the Acting Attorney General exercised discretionary authority and agreed not to prosecute entities that retained Richard Quinn & Associates (“RQA”), who engaged in unregistered lobbying on their behalf. In exchange for leniency, the entities agree to implement remedial measures to ensure that they refrain from unlawful lobbying activities. In doing so, these entities agreed to pay a sum of money to the State to reimburse the citizens of the First Circuit for expenses incurred by the First Circuit Solicitor’s Office while performing the duties of the Attorney General, with the balance to be donated to the State Ethics Commission if judicially approved as explained below.

All money received from these entities is presently in an escrow account where it remains untouched. The escrow account was opened solely for this investigation following the guilty plea of John Courson, which required the defendant to repay funds he unlawfully converted from his campaign account. The State intends to petition the presiding judge of the state grand jury at the conclusion of the pending cases for permission to reimburse the First Circuit Solicitor’s Office² for the cost of this investigation and prosecution with the balance to be delivered to the State Ethics Commission.³

² The State is also interested in reimbursing other solicitor’s offices who have assisted with the Investigation, such as the Sixteenth Circuit Solicitor’s Office, if judicially approved.

³ Although Solicitor Pascoe welcomes guidance from the judiciary as to the appropriate use of the funds, review by this Court prior to a ruling by the presiding judge of the state grand jury is premature. In addition, if the presiding judge of the state grand jury and/or this Court were to conclude that the funds cannot be applied as agreed upon by the parties to the CIAs, Solicitor Pascoe might be contractually obligated to simply return the funds to these entities and void the agreements. Thus, the entities are necessary parties to any judicial review of the CIAs.

The South Carolina Constitution and jurisprudence of this State place “unfettered discretion to prosecute” in the hands of the prosecutor. State v. Thrift, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994). “Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” Id. This prosecutorial discretion is constitutionally mandated and may not be infringed upon by either the Legislature or the Judiciary. State v. Peake, 345 S.C. 72, 79, 545 S.E.2d 840, 844 (Ct. App. 2001), aff’d, 353 S.C. 499, 579 S.E.2d 297 (2003); Thrift, 312 S.C. at 292, 440 S.E.2d at 347; State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998). Just as prosecutors throughout the state routinely enter into immunity agreements, proffer agreements, and non-prosecution agreements in exchange for some concession or assistance by a criminal target, Solicitor Pascoe utilized his prosecutorial authority to enter into contractual agreements with corporate targets implicated by State Grand Jury Investigation 2016-257 (hereinafter, the “Investigation”). Those agreements impose punitive and remedial measures in settlement of anticipated criminal prosecution by the State for violations of State lobbying laws. See R. pp. 372–390. Each agreement includes the payment of funds as reimbursement of costs of the Investigation, with the balance to be transmitted to the South Carolina State Ethics Commission.

I. An escrow account was established to hold funds received in the course of the Investigation.

While the words “corporate integrity agreement” were not used during the October oral argument, the escrow account was mentioned. Without more clarification from the Court, the State assumes the Court’s inquiry concerns this escrow account. On June 4, 2016, former Senator John Courson entered a plea agreement approved by the lower court in which he agreed to pay the remainder of his campaign account. R. pp. 391–396. He then pleaded guilty to common law misconduct in office for unlawfully stealing funds from his campaign account by passing checks

through RQA. To hold the funds until resolution of all cases arising from the Investigation, the First Circuit Solicitor's Office established an escrow account separate from the First Circuit's operating accounts to ensure that no portion of the funds related to this Investigation are comingled.

R. p. 397.

No portion of the funds have been expended or disbursed and no portion of the funds are designated to be retained by the First Judicial Circuit for any purpose other than reimbursement for actual expenses related to the Investigation and prosecution of the resulting cases. These funds were not collected as a windfall to the First Circuit or as additional compensation to any member of the First Circuit—they were collected to reimburse the citizens of the First Circuit, who have been required to bear the costs incurred for actual, substantiated expenses related to the Investigation and prosecution. The balance of remaining funds is to be remitted to the State via the State Ethics Commission. The intention is to wait until the conclusion of all prosecutions arising from the Investigation to determine the proper allocation of reimbursement funds with the supervision of the presiding judge of the state grand jury to ensure transparency in the State's accounting of costs. The State has generally sought approval from the presiding judge in procedural matters relating to the state grand jury, even where the State Grand Jury Act does not specifically require approval. Examples include disclosure orders, protective orders, and the process of publishing the grand jury's Report. In the instant case, the State did inform the presiding judge, the Honorable Clifton Newman, that it was negotiating CIAs at the time the State sought partial disclosure orders permitting the State to show portions of the Report to the corporate entities prior to the Report's release as an aid to negotiation.

The Court's Order indicates that the CIAs constitute "new information discovered" during oral argument on October 15, 2019 prompting a request for briefs by the State; the Respondent,

Richard Quinn, Jr.; and the Attorney General's Office. After reviewing the October oral argument, the State has not found any discussion of the CIAs before the Court nor in the record of this matter. It follows that the record in this appeal contains no mention of the CIAs, as the notice of appeal in this case was filed on March 21, 2018 and the CIAs were executed between August and September 2018—well after the events forming the basis of this appeal. As will be addressed in a contemporaneously filed motion to reconsider, the State has concerns about the posture by which this issue is raised. The CIAs have absolutely no relevance to Respondent and the State disagrees with his right to submit a brief on this matter and make arguments regarding the manner in which the State conducts this investigation. Further, by seeking a brief from the Attorney General, the Court is asking for input on a matter from which the Attorney General has been recused. Pascoe v. Wilson, 416 S.C. 628, 644, 788 S.E.2d 686, 695 (2016) (“We find Pascoe has proven by a preponderance of the evidence that the Attorney General's Office in its entirety was recused from the redacted legislators investigation . . .”).

The State certainly has never made any effort to keep the CIAs a secret in any way. The agreements were published to the general public along with the Report of the 28th State Grand Jury (hereinafter, the “Report”) on October 9, 2018 pursuant to a partial disclosure order signed by the presiding judge of the state grand jury, the Honorable Clifton Newman.⁴ R. pp. 398–643. The CIAs and the Report have been publicly available on the First Circuit’s website since their publication and have been widely reported by media outlets.⁵

⁴ Judge Newman initially issued a partial disclosure order permitting release of a redacted version of the Report. He later issued another order permitting release of the full, unredacted Report. R. pp. 364–368.

⁵ See, e.g., “SC Judge: Release grand jury report on State House corruption to public” <https://www.thestate.com/news/local/crime/article219417110.html>; “SC Grand Jury Report Release” <https://www.fitsnews.com/2018/10/09/sc-grand-jury-report-released/>

II. The State’s authority to enter into the Corporate Integrity Agreements.

The CIAs are agreements by the State to forego prosecution for violations of state lobbying laws in exchange for penalties and measures agreed to by both parties. The State’s authority to enter into such an agreement is founded upon the broad authority vested in the Executive Branch of our state government to determine when and how to prosecute a case. Thrift, 312 S.C. at 291–92, 440 S.E.2d at 346–47. This prosecutorial authority is constitutionally granted and may not be infringed upon by either the Legislature or the Judiciary. State v. Peake, 345 S.C. 72, 79, 545 S.E.2d 840, 844 (Ct. App. 2001), aff’d, 353 S.C. 499, 579 S.E.2d 297 (2003); Thrift, 312 S.C. at 292, 440 S.E.2d at 347; Tootle, 330 SC at 515, 500 S.E.2d 481 (“A circuit court judge is a member of the judicial department and cannot constitutionally exercise the function of a member of the executive department. . . . The solicitors and the Attorney General are members of the executive branch of government.”).

Agreements controlling the manner of prosecution or non-prosecution are not uncommon at both the State and federal level and are a useful tool in a prosecutor’s arsenal. Prosecutors routinely enter into plea agreements that permit a defendant to plea to lesser charges or to plea to one charge in exchange for dismissal of another. Immunity agreements and proffer agreements are commonly used to gain access to the testimony of witnesses who might incriminate themselves. Prosecutors also have the authority to divert charges through programs such as Pretrial Intervention. Tootle, 330 S.C. 512, 500 S.E.2d 481 (decision to place defendant in the PTI program is an exclusively executive decision). The propriety of entering into such agreements can run the gambit from the strength of the State’s case to simply believing the consequences of the charged offenses are too harsh under the circumstances, but the decision to bind the State to such an agreement is entirely within the prosecutor’s discretion. Id.

The CIAs reached in this case represent a prosecutorial decision to agree to not pursue criminal charges if certain conditions are met. While those conditions vary between the different agreements, each agreement includes a provision requiring payment of funds representing reimbursement of costs to the First Circuit for the Investigation. As discussed in Thrift, the Legislature cannot infringe on a prosecutor's discretion to decline prosecution,⁶ but this does not preclude the Legislature's direction of how the proceeds from such an agreement are applied. To that end, S.C. Code Ann. Section 1-7-85 provides that "the Attorney General may obtain reimbursement for its costs in representing the State in criminal proceedings" Further, those funds are not required to be deposited into the State's general fund if they represent "investigative costs or costs of litigation awarded by court order or settlement" S.C. Code Ann. § 1-7-150.

Prosecutors for the First Circuit discovered evidence that various lobbyist's principals who retained RQA had, in the prosecution's opinion, violated provisions of the State Lobbying Act, S.C. Code Ann. Sections 2-17-5, *et seq.*, and were criminally liable for these violations. The State could have submitted indictments to the grand jury, and the grand jury did communicate its belief that probable cause existed to indict each entity. Prosecutors instead elected to negotiate agreements that would avoid protracted litigation and would ultimately benefit the State of South Carolina far greater than the imposition of three-year lobbying bans on some of the State's most important entities. While the Investigation has not yet concluded and the costs are not known, the excess funds will be given to State Ethics Commission to better equip that agency to prevent future

⁶ Thrift, 312 S.C. at 292, 440 S.E.2d at 347.

schemes similar to the one perpetrated by the Quinns if approved by the presiding judge of the state grand jury.⁷

III. Solicitor Pascoe's authority to "direct" the expenditure of funds to the First Circuit Solicitor's Office and where the funds are held.

With respect to the direction of funds received pursuant to the CIAs, it must first be restated that none of the funds have been expended or directed. Every penny of funds received under the CIAs has been placed into an escrow account separate from the First Circuit Solicitor's Office funds. R. p. 397. As expenses incident to this Investigation arise, they are paid out of the First Circuit's budget. Receipts and invoices related to the Investigation are maintained to substantiate reimbursement of expenses at the conclusion of the matter. Solicitor Pascoe 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 disbursements.

Specific authority to direct the expenditure of funds in this manner arises from Section 1-7-85, which provides that "the Attorney General may obtain reimbursement for its costs in representing the State in criminal proceedings" In reaffirming Solicitor Pascoe's authority to initiate this state grand jury investigation, the Court held that the transfer of authority to Solicitor Pascoe occurred outside of the State Grand Jury Act and that he was appointed to "act as the Attorney General vested with the Attorney General's power and authority for the purpose of that investigation" Pascoe, 416 S.C. at 642, 788 S.E.2d at 694. Solicitor Pascoe is thus vested with

⁷ Such an arrangement is not unprecedented within authority of the Attorney General. In 1999 the Attorney General's Office reached an agreement with a Texas personal injury lawyer, John O'Quinn to resolve charges for the unlicensed practice of law resulting from internet advertisements. As part of the plea agreement, the Attorney General directed the payment of approximately \$300,000 to fund unauthorized practice of law investigations and legal ethics programs. See Arthur Garwin, Way Over the Client Limit, ABA J., Oct. 1999, at 71.

the authority to obtain reimbursement under the statutory authority permitting the Attorney General to do so.

a. S.C. Code Ann. Section 1-7-150(B) (2005)

The Court inquires whether the funds must be deposited into the State's general fund, asking the State to specifically address Section 1-7-150(B). As the plain language of this statute provides, "[a]ll monies, *except investigative costs or costs of litigation awarded by court order or settlement . . .* must be deposited into the general fund of the State . . ." S.C. Code Ann. § 1-7-150. The funds collected under the CIAs represent reimbursement for the costs of the Investigation and litigation of the cases arising under the Investigation; therefore, they are not required to be deposited into the general fund.

b. S.C. Code Ann. Section 1-7-360 (2005)

The Court's reference to Section 1-7-360 is troubling in that it insinuates a belief by the Court that the funds collected under the CIAs are intended to be "additional compensation" paid to Solicitor Pascoe. This is absolutely not the case. The funds are collected as reimbursement for actual expenses of the Investigation supported by invoices and receipts. This might include the cost of state grand jury transcripts of testimony, travel expenses for trials or grand jury meetings in Columbia, expert witnesses, or other similar litigation expenses. Any excess over these costs will be remitted to the State via the State Ethics Commission. No portion of these funds is intended to pay the salary or personal expenses of Solicitor Pascoe and any insinuation to the contrary is unwarranted.

c. S.C. Code Ann. Section 39-3-180 (1976)

Finally, the Court asks the State to address Section 39-3-180. This code section is simply not applicable to the matter before the Court. This code section provides penalties for engaging in

unlawful monopolies, price fixing agreements, or boycott agreements by persons or entities. The alleged criminal conduct that gave rise to the CIAs is not related to any practice contemplated by this Title 39, Chapter 3, Article 3. The CIAs are based on illegal lobbying activities. This code section is irrelevant to the CIAs.

IV. The nature of the Corporate Integrity Agreements.

The CIAs are contractual agreements reached between the State and five corporate entities implicated by evidence uncovered in the course of State Grand Jury Investigation 2016-257. See R. pp. 378–390. They provide for remedial measures by the entities subject to the agreements in exchange for the State’s promise not to prosecute them on charges relating to the Investigation.

At the federal level, corporate integrity agreements are generally associated with health care fraud actions. The federal agreements typically impose remedial measures in exchange for the government’s promise to forgo exclusion from certain healthcare programs such as Medicaid or Medicare. This arrangement permits the target corporation to continue to operate while providing assurances to the federal government that they will operate within the rules.⁸

The agreements in the instant case borrow from this idea of ensuring corporate compliance by imposing punitive and remedial measures. The source of liability that gives rise to the State’s CIAs is criminal in nature. Specifically, the State alleged violations of the State Lobbying Act, S.C. Code Ann. Sections 2-17-5, *et seq.*, which gives rise to criminal liability pursuant to S.C. Code Ann. Section 2-17-130. Thus, the CIAs entered during the Investigation are essentially criminal non-prosecution agreements.

⁸ At the State level, the South Carolina Attorney General frequently enters into non-prosecution agreements similar to the CIAs relating to insurance fraud investigations. These agreements are described as Memorandum of Understanding (“MOU”).

a. Background

The record in this appeal does not address the allegations that gave rise to the CIAs. While the sentencing presentation given during Respondent's guilty plea (R. pp. 238–282) does contain some of the evidence forming the basis of criminal liability against the corporate entities, it does not provide a full picture of the State's concerns regarding the involvement of these entities with the Quinns and RQA. To adequately explain the impetus behind the settlement agreements, some background information regarding the involvement of these entities with RQA is necessary.

As discussed in the Final Brief of Appellant, this Investigation initially focused on Respondent's practice of referring business from an undisclosed Republican House Caucus Operating Account to RQA, his family business. See Final Br. of App. pp. 9–10. In the course of examining RQA bank records, investigators stumbled across a variety of suspicious payments. These payments included campaign funds laundered through RQA and paid directly to former Senator John Courson for which he has since pleaded guilty; undisclosed payments to former Representative Jim Harrison for which he was convicted at trial; and undisclosed payments to former Representative Tracy Edge whose case has not yet proceeded to trial. Among the suspect transactions were millions of dollars paid to RQA by various lobbyist's principals registered in this State. This naturally led investigators to question why lobbyist's principals would pay large retainers to a political consulting firm that, in turn, paid salaries to sitting legislators—particularly as neither the legislators nor the lobbyist's principals disclosed any such payments. The legislators paid by RQA included Jim Harrison, Tracy Edge, Rick Quinn, Thad Viers, Jim Merrill, and others.⁹

⁹ John Courson was not paid a salary by RQA, but he was paid funds from RQA that were unlawfully converted from his campaign account.

This information is discussed in the Report of the 28th State Grand Jury, which concluded that Richard Quinn, Sr. was in the business of selling political access and influence to corporations. See R. pp. 398–643. The Quinn family’s deep political connections presented a unique opportunity for some of the State’s largest businesses, for whom lobbying was key to accomplishing their goals, to maintain an insider’s connection to the General Assembly for only the cost of monthly retainer fees.

b. Specific Agreements

After the Respondent pleaded guilty to misconduct and Mr. Quinn, Sr. pleaded guilty on behalf of RQA for illegal lobbying, the State was left to decide how to proceed against the lobbyist’s principal clients of RQA who failed to report this unlawful lobbying activity. A lobbyist is defined by the South Carolina Code of Laws as one who is retained to influence public officials through direct communication. S.C. Code Ann. § 2-17-10(13). Those who engage in lobbying activities are required to register as a lobbyist with the State Ethics Commission and submit reports detailing their lobbying activity. Id. §§ 2-17-20; 2-17-30. Likewise, the lobbyist’s principal must register and disclose its activities. Id. §§ 2-17-25; 2-17-35. Just as Mr. Quinn never registered as a lobbyist, none of the corporate entities disclosed that Mr. Quinn lobbied on their behalf as required by law. Pursuant to Section 2-17-130(A), a lobbyist’s principal who fails to disclose lobbying activities in violation of Section 2-17-35 is guilty of a misdemeanor punishable by up to \$2,500, imprisonment for up to one year, or both. Additionally, the lobbyist’s principal convicted under this section is barred from lobbying for a period of three years. Id. § 2-17-130(A).

A corporation cannot be sent to prison and a \$2,500 fine is essentially meaningless to entities as large as SCANA, Palmetto Health, AT&T, South Carolinians for Responsible Government (“SCAJ”), and the University of South Carolina. A three-year ban on lobbying

activities, however, is a significant punishment for businesses in industries subject to a significant amount legislative oversight. Rather than engage in protracted litigation with entities that possess unlimited resources, prosecutors negotiated the Corporate Integrity Agreements with each entity to resolve the issues surrounding their dealings with RQA and the Quinns. Each agreement was separately negotiated on the basis of evidence relevant to the entity, and each entity was represented by able counsel throughout the negotiation process. The amounts paid to the State by each entity were negotiated largely on the basis of the retainer payments paid by each entity to RQA.

1. AT&T

The agreement entered by AT&T provides that the statewide president of the company will confer with the national organization's senior vice president for compliance affairs to ensure that the company accurately reports its lobbying activity to the South Carolina Ethics State Commission. The company is required to amend its prior disclosures to reflect the activities of Richard Quinn, Sr. ("Mr. Quinn") and to pay \$60,000 to the First Circuit Solicitor's Office. R. pp. 372-375. The funds have been received and placed into escrow where they remain untouched pending approval from the presiding judge of the state grand jury.

The CIA entered by AT&T is based in part upon testimony by the South Carolina President of AT&T, Pamela Lackey, who explained that the Quinns met with AT&T once per year to discuss the political climate and AT&T's priorities in the General Assembly for that year. Ms. Lackey added that Mr. Quinn would sometimes call to give some details about a poll he conducted for a candidate. For this, RQA was paid a \$4,000-\$5,000 retainer each month for more than two decades. As with the other corporate clients of RQA, this arrangement raises the question of what service RQA actually provided to merit a monthly retainer.

Common to other corporate clients, Ms. Lackey indicated that when she met with Mr. Quinn at RQA's offices, Representatives Rick Quinn and Kenny Bingham¹⁰ would often times sit in the meetings. While Ms. Lackey testified that, "by happenstance," Rick and Mr. Bingham were in the building, emails from Mr. Quinn to his son and Mr. Bingham show that Mr. Quinn coordinated with them to be certain the two legislators were present. As Mr. Quinn explained in rescheduling one meeting, "I don't need ya'll for the entire meeting . . . Sorry to be so vague on time, but I do have an agenda, then I'll be more specific." R. p. 537. Thus, while Ms. Lackey may not have expected Rick Quinn and Kenney Bingham to attend her legislative meetings with Mr. Quinn, they were certainly not there by happenstance.

Ms. Lackey testified that during the 2015–2016 session, AT&T was concerned with enacting a significant bill affecting the telecommunications industry. Specifically, the bill, designated S.277, addressed whether or not wireless providers would be required to pay into the Universal Service Fund which supports telecommunications access in rural communities. Representative Jim Merrill was very much opposed to the bill and had successfully blocked prior efforts to pass it. An email from Ed McMullen—who was also a consultant for AT&T at that time—to Ms. Lackey indicates that, "Rick [Quinn] just told me Merrill has been working the bill--he is a problem. Rick and I are talking at 1 on how to deal with him." R. p. 539. The bill did pass. In an email exchange between Ms. Lackey and another AT&T employee, Ms. Lackey indicates that Mr. Merrill was "a formidable opponent" but that "Quinn's had a talk with him prior. Told him to lose with dignity, but don't do any harm." R. pp. 541–542.

¹⁰ In fairness to Mr. Bingham, he was not paid by RQA with the exception of rental income he received as the owner of office space rented by RQA. Mr. Bingham has cooperated fully with the Investigation.

Jim Merrill was interviewed by SLED following his guilty plea and discussed his conversations with the Quinns regarding Bill S.277. Mr. Merrill told SLED that during the legislative session Rick Quinn asked him to call his father. Mr. Quinn asked Mr. Merrill to meet him at RQA's office, which he did once the House adjourned for the day. In that meeting, Mr. Quinn told him that it had been difficult to explain why someone on the "team" had been blocking the bill. Mr. Quinn asked him to change his vote, but Rick Quinn—who was 'in and out' of the meeting—pointed out to his father that it would appear unusual if Mr. Merrill abruptly flipped his vote. So instead, Mr. Quinn asked Mr. Merrill to not attend the vote or not work as hard against the bill to ensure its passage. Mr. Merrill explained that his 'working the floor' against the bill was very important in affecting the outcome of votes, and that he was confident he would have been successful had he continued to do so. Upon Mr. Quinn's request, however, he did not work the floor, and the bill was passed. In his interview, Mr. Merrill indicated that Mr. Quinn told him how important it was to be one big team and to support one another. Significantly, Mr. Merrill was paid a monthly retainer by RQA at this time, purportedly for marketing services. Further, Representative Rick Quinn—who was directly involved in dealing with Mr. Merrill's opposition for AT&T—did not recuse himself from voting on the legislation.¹¹

2. The University of South Carolina ("USC")

The agreement entered by the University of South Carolina provides that the school must appoint a compliance officer responsible for ensuring lobbying activities are accurately reported. The school is also required to amend its prior disclosures to report the lobbying activities of Richard Quinn and pay \$90,000 to the First Circuit Solicitor's Office. R. pp. 376–378. The funds

¹¹ Notably, this example and many others described in this memorandum were presented to the lower court as part of the State's recitation of the facts, which Judge Mullen declined consider. R. pp. 267–268; 181–185.

have been received and placed into escrow where they remain untouched pending approval from the presiding judge of the state grand jury.

An agreement was negotiated with USC based on the testimony of numerous witnesses before the state grand jury including the President of USC Dr. Harris Pastides and Trey Walker, a former lobbyist for the school. USC initially retained Richard Quinn and Associates in 2010. Dr. Pastides explained to the grand jury that Mr. Quinn was hired to assist USC's new Vice President of Communications, Luanne Lawrence, in familiarizing herself with South Carolina politics. Dr. Pastides described Mr. Quinn's role as someone who had "his finger on the pulse of community sentiment, how communities, people, business officials, elected officials thought about the university." R. pp. 563–564. In that capacity, his role was to provide data and feedback to Ms. Lawrence to assist her communications work because, as Dr. Pastides explained, Mr. Quinn's forte was providing feedback and advice regarding elected officials and legislation.

Dr. Pastides testified that it was not his intention to hire Mr. Quinn as a lobbyist or to utilize Mr. Quinn for access to legislators. However, various emails between Mr. Quinn and Trey Walker, a former RQA employee, discuss meetings in which Mr. Quinn brought together his "political family" or "team" to discuss USC business. Many of these emails, in which Mr. Walker utilized the Quinns to access and arrange meetings with legislators, are transmitted from Mr. Walker's personal email account, which would not be subject to subpoenas or FOIA requests served upon USC. While the grand jury did subpoena relevant emails from USC, the emails discussed below were not provided by the university because of Mr. Walker's selective use of his USC email address. The emails were instead gathered through search warrants.

As a first example, in 2012 Mr. Walker sent an email to Mr. Quinn and then-Representative Rick Quinn with USC's budget priorities for that year. R. pp. 566–568. The message noted that

then-Senator John Courson would be key to the budget requests and proposed a meeting between the four—USC lobbyist Trey Walker, Richard Quinn, Representative Rick Quinn, and Senator John Courson—to discuss the budget request. The message also notes that Mr. Walker, “would like the home team to continue to get credit for budget on the Senate side.” Id.

The following year, in 2013, Mr. Walker again sent USC’s budget priorities to both Mr. Quinn and Representative Rick Quinn indicating that “it would be good to get the ‘team’ together like last time to go over them. Maybe we could get Jimmy [Merrill] and Kenney [Bingham] to join us all for dinner somewhere with Pastides to discuss.” R. pp. 570–571. In his testimony, Mr. Walker explained to the grand jury that Jimmy Merrill was a budget subcommittee chairman on the House Ways and Means committee and was thus a very important person to influence.

Mr. Walker went on to explain a key point about Mr. Quinn’s value. Mr. Quinn had a unique ability to influence legislators such as Mr. Merrill and Mr. Bingham because, “folks listen to him and thought that when he said something that it was -- it was very important, so he was, you know, he was very important.” R. pp. 573–574. He explained that a lobbyist should never ask a legislator to support an issue that will be a problem for the legislator politically. Instead, the successful lobbyist must communicate that supporting the issue will benefit the legislator politically. From the perspective of lobbyists seeking to persuade a legislator to support an issue for their principal, Richard Quinn had the ability to do what others could not because most legislators, “thought he was the . . . oracle.” What Mr. Walker did not know was that many of those legislators received money from RQA.

3. SCANA

The agreement with SCANA Corporation provides for a fee of \$72,000 to be paid to the First Circuit Solicitor’s Office. R. pp. 379–381. The funds have been received and placed into

escrow where they remain untouched pending approval from the presiding judge of the state grand jury. This agreement was negotiated on the basis of testimony before the state grand jury from current and former government affairs directors for the company. RQA had been on retainer with SCANA since the 90's and received monthly payments of \$9,750 until 2008 when it was cut to \$6,000. When asked why the retainer was cut, Charles McFadden, SCANA's then Vice President of Government Affairs who oversaw the RQA contract, testified, "[w]ell bottom line, he wasn't really doing any work for us." Mr. McFadden elaborated on RQA's expected role for SCANA as general PR work, "special projects," and that he helped with "relationship issues that [SCANA] had with a couple legislators." R. pp. 544-547. Evidence presented to the grand jury established that Mr. Quinn provided a valuable service to SCANA when it came to resolving issues with legislators.

Mr. Quinn set up meetings with the "team" for SCANA. By a response setting up a meeting, it is clear that the "team" consisted of at least himself, and House members Rick Quinn, Jim Harrison, and Kenny Bingham. R. p. 554, 556. In a 2015 email to Mr. McFadden's successor, Kenneth Jackson, Mr. Quinn elaborates on the composition of the team, noting that, "Rick, Jim Merrill and Kenny Bingham are the 3 McFadden normally met with to chat." R. p. 558.

4. South Carolina Association for Justice ("SCAJ")

The agreement entered by the SCAJ requires the entity to amend its prior filings with the South Carolina State Ethics Commission to reflect lobbying activities of Richard Quinn. The entity is required to appoint a compliance officer and obtain certification from its officers and directors that they are familiar with state rules concerning lobbying. Additionally, the entity is required to pay \$30,000. R. pp. 382-387. The funds have been received and placed into escrow where they remain untouched pending approval from the presiding judge of the state grand jury.

The CIA negotiated with the SCAJ was based primarily on a series of emails regarding Rick Quinn and RQA's role in assisting with a tort reform bill. The emails are between managing members of the SCAJ that discuss Richard Quinn's successful efforts to influence his longtime, powerful friend Senator Glenn McConnell. The emails detail discussions between the President of the SCAJ, Mark Joye, and former President of the SCAJ, Pete Strom regarding a tort reform bill working its way through the Senate, designated H.3375. These emails also highlight Rick Quinn's involvement with the SCAJ. Senator Glenn McConnell had posed amendments to the bill and SCAJ leadership was concerned that they would lose Senator McConnell's support for key aspects of the tort reform bill. An email from Mark Joye explains,

If word gets out that McConnell turned on us in this bill, it will have a pretty chilling effect on us giving the amount of money that we have consciously been doing the last 3 years None of us can tell that to McConnell but wondering if that is something that Richard [Quinn] can. We (you) hired Richard and Rick for which they get paid about \$100,000 a year.

R. p. 525.

In an email the same day, Mr. Strom reassured Mr. Joye about Rick Quinn's allegiances by telling him, "I am not worried about his loyalty. He is no true believer. This is business." R. pp. 527-528. Later, Mr. Strom noted that Mr. Quinn was successful in convincing Senator McConnell to support the SCAJ, writing, "[f]rom the reports I am getting from the meeting this AM, sounds like Mr. Quinn worked his magic [and] got him back on board!" R. p. 530. Clearly, the SCAJ implored Mr. Quinn to lobby Senator McConnell on their behalf regarding the tort reform bill and Mr. Quinn successfully did so.

Following the discovery of Mr. Quinn's efforts to sway Senator McConnell's position in favor of the trial lawyers, the grand jury heard testimony from Pete Strom, a former president of the SCAJ and participant in the emails regarding the McConnell issue. Mr. Strom's testimony shed

light on group's motives for hiring the Quinns, which did not involve their marketing prowess. Mr. Strom explained that the Quinns were hired as part of a strategy to gain more influence among Republican legislators. R. pp. 418–419.

5. Palmetto Health

The agreement entered by Palmetto Health requires the company to pay \$100,000. R. pp. 388–390. The funds have been received and placed into escrow where they remain untouched pending approval from the presiding judge of the state grand jury. This CIA was negotiated based upon testimony from the CEO of Palmetto Health, Charles Beaman, and the Director of Government Relations, Julian Gibbons. Both witnesses testified that RQA was retained for political access. As with many of the lobbyist's principals who testified before the grand jury, the central question put to the witnesses was, what exactly did RQA do to earn its monthly retainer? In the case of Palmetto Health, RQA was retained in 1996 and for more than 20 years was paid \$13,200 per month, or \$158,000 per year. Yet despite this generous retainer agreement, the witnesses had a difficult time articulating a tangible work product. When pressed, however, the witnesses conceded that a large part of RQA's value was Mr. Quinn's relationships with key legislative leaders—relationships that a typical contract lobbyist did not possess.

At the outset of testimony by both witnesses, they referenced Mr. Quinn's role as an advisor on issues important to Palmetto Health but could only recall a few such issues. Both witnesses referenced legislation concerning the Certificate of Need ("CON") program and its importance to Palmetto Health. However, when asked what specific advice Mr. Quinn offered on the issue, after a long pause, Mr. Beaman described Mr. Quinn's idea to study the impact of eliminating the CON in other states to gauge its effect in South Carolina. The notion that Mr. Quinn earned \$158,000

per year by simply advising Palmetto Health to check how other states managed CON programs is difficult to believe. See also R. pp. 415–416.

RQA's relationship with the Healthcare Subcommittee of the House Ways and Means Committee is notable with respect to Palmetto Health. During Rick Quinn's first tenure as a House Representative, which ended in 2004, he served as the Chairman of the House Ways and Means Healthcare Subcommittee. Clearly, this is a position of great significance to Palmetto Health. Once Rick Quinn lost his House seat in 2004, Tracy Edge took over his seat as the Chairman of the Healthcare Subcommittee. Concurrent with Rick Quinn losing his seat, RQA hired Tracy Edge—without any disclosures by either RQA or Mr. Edge—and paid Mr. Edge a monthly fee that terminated as soon as he lost his seat in the House.

V. The State's response to Judge Mullen's question about the rationale for the plea.

Finally, the State wishes to address the lack of relevance funding has in the prosecution of cases stemming from the investigation. Justice Hearn asked Solicitor Pascoe during oral arguments about the issue of funding. The State can only assume the Court's inquiry about CIA's comes from Solicitor Pascoe's response about having money. This response was almost in jest as the Court was exiting the courtroom. The fact of the matter is that funding, or lack thereof, has absolutely nothing to do with the prosecution of these cases.

Judge Mullen instructed Solicitor Pascoe to explain in detail the reasons for Respondent's plea. R. p. 193, line 25–p. 194, line 14. The question caught Solicitor Pascoe off guard, as prosecutorial discretion is not typically an appropriate topic for a court's inquiry during the course of a plea. Thrift, 312 S.C. at 292, 440 S.E.2d at 347. The State produced damaging evidence concerning Respondent's conduct as a legislator, and Solicitor Pascoe's initial response with respect Respondent was, "I think that a year in prison or close to a year in prison and resignation

from office is enough of a message to this defendant.” R. p. 195, lines 20–23. Funding has nothing to do ultimately with the State’s decision to plea Respondent. There were many reasons for the plea that the State tactfully did not wish to discuss that would have been critical, and the State believed best unsaid at that time.

More importantly, Solicitor Pascoe stated the most decisive reason for the plea prior to Judge Mullen’s request when he informed the court,

And there are a lot of reasons why I did it, but the most important reason I did it is, I believe that after four years I think the people need to see what’s been going on up there in Columbia, and there’s been no one more corrupt than Rick Quinn in Columbia, South Carolina. And no entity more corrupt than Richard Quinn & Associates.

R. p. 193, line 2–13. The State stands completely behind that statement.

Conclusion

The CIAs reached with SCANA, Palmetto Health, the University of South Carolina, AT&T, and the South Carolina Association for Justice are settlement agreements reached to resolve potential criminal charges arising from State Grand Jury Investigation 2016-257. These agreements were made in Solicitor Pascoe’s prosecutive authority over this Investigation after negotiation with counsel for each of the entities subject to the agreements and are believed to be in the best interest of the State of South Carolina.

The State welcomes the oversight and guidance of the judiciary regarding disposition of these funds, and the First Circuit Solicitor’s Office has maintained the funds in a manner that anticipates judicial approval of any reimbursement claims. However, the State has significant concerns regarding the posture of the inquiry. This matter is irrelevant to the issues raised by this appeal, and Respondent has no right to submit arguments concerning the manner in which the State negotiates settlement agreements to which he is not a party. Thus, any review of the CIAs prior to

a ruling by the presiding judge of the state grand jury on a matter raised by an interested party is premature.

Additionally, while these issues do concern the authority of the Attorney General to direct the prosecution of cases, this Court has determined the entire Attorney General's Office has been recused from this Investigation. Pascoe, 416 S.C. at 644, 788 S.E.2d at 695. Further evidence of the conflict of interest in this matter can be found in the state grand jury's Report describing the Attorney General's relationship to RQA. R. p. 412; pp. 437-451. For these reasons, the State will be submitting a contemporaneously filed motion to reconsider raising these issues.

Respectfully submitted,

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S.C. SUPREME COURT

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

Case No. 2017-GS-47-12, -13, -32

The State

Appellant,

v.

Richard M. Quinn, Jr.

Respondent

APPELLATE CASE NO. 2018-000494

**MEMORANDUM IN RESPONSE TO
COURT'S ORDER OF MARCH 12**

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Apr 21 2020

S.C. SUPREME COURT

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INTRODUCTION

Pursuant to its Order of March 12, 2020, this Court has invited the Attorney General or his designee to “file a responsive Memorandum” to the State in this matter. While Solicitor Pascoe seeks to have this Order reviewed and rescinded, we disagree with that position. As any court may, certainly this Court can, inquire into any issue in this case as it sees fit. See Prince v. Memorial Hosp. et al., 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. . . .”]. As we understand the Court’s questions, there is a desire to inquire further about a matter which arose at oral argument. This, of course, the Court is free to do.

In its March 12 Order, The Court seeks answers to the following questions:

1. What is the nature of the "corporate integrity agreements" referenced at oral argument?
2. What is the authority under South Carolina law of any representative of the State, including Solicitor Pascoe, to enter into a "corporate integrity agreement" in either a criminal or civil proceeding in exchange for a promise not to sue, and to demand or accept the payment of funds from a corporate or governmental entity or from an individual during the course of a criminal investigation?
3. Does Solicitor Pascoe have the authority to "direct" the expenditure of funds received pursuant to a "corporate integrity agreement" to the First Circuit Solicitor's Office, or must the funds be deposited in the State’s general fund? The State shall specifically address S.C. Code Ann. § 1-7-150(B) (2005); S.C. Code Ann. § 1-7-360 (2005); and S.C. Code Ann. § 39-3-180 (1976).

We, of course, had no direct knowledge of the “corporate integrity agreements” at the time Solicitor Pascoe executed them. We have only read about them in media reports as well as the State Grand Jury Report, dated October 9, 2018, with its accompanying press release. These agreements essentially exchange the nonprosecution of certain corporate entities for “donations” to the First Circuit Solicitor’s Office. The State newspaper reported shortly after the oral

argument in this case, that Solicitor Pascoe “in the past has complained about not having enough money to do his special prosecutor’s job sufficiently,” but that thanks to the corporate integrity agreements, he advised the Court that “cash is [now] not a problem.” The article notes that “Pascoe has pledged to use that money for prosecutions and give the remainder to the State Ethics Commission.” Attachment 1.

It should be noted, that, because of this Office’s recusal from the “redacted legislators investigation,” as required by this Court in Pascoe v. Wilson, 416 S.C. 628, 788 S.E.2d 686 (2016), the Attorney General’s Office has remained an observer from afar as to Solicitor’s Pascoe’s investigation. We are not here to quarrel with Pascoe v. Wilson.

While the Office of Attorney General has paid most of the fixed costs for the operation of the State Grand Jury which Solicitor Pascoe has used during his investigation, as will be discussed below, the Office has remained uninvolved in that investigation. We note that, like other Solicitors, we certainly respect Solicitor Pascoe as a prosecutor, and recognize that, as a prosecutor, he possesses broad discretion in any prosecutorial decisions made. Nevertheless, we submit this Memorandum, not as an adverse party in this matter, but to provide the Court, at its invitation, with any appropriate facts or legal authorities in order for the Court to address the questions presented.

SUMMARY

The “corporate integrity agreements” are unprecedented and without parallel in South Carolina. Not only were these agreements, executed by the special prosecutor, far in excess of the jurisdiction given him by this Court in Pascoe v. Wilson, but the agreements were not

authorized by South Carolina law – either statute, rule of court, or judicial decision. Their existence is based only upon “prosecutorial discretion” – which is not enough. The rule of law must prevail.

Moreover, the “corporate integrity agreements” themselves each of which require a financial “donation” in exchange for nonprosecution, are deeply troubling. Whether intended or not, they give the appearance that the special prosecutor has a financial stake and a conflict of interest in the prosecutorial decisions made in these cases. This Court has long counseled against such a financial interest being present. As long as ago as 1847, the Court stated that a public prosecution may not be permanently “suspended,” particularly by “men seeking gain.” Gray v. Seigler, 33 S.C.L. 117 (1847). It does not matter whether these funds are donated to the prosecutor’s budget or will end up in his pocket. A conflict is a conflict all the same.

Finally, the agreements violate the sacred rule in our Constitution that public funds may not be spent without an appropriation by law. The Legislature, possessing the exclusive power to appropriate money, has mandated that public funds such as those “donated” pursuant to these agreements must be deposited into the General Fund of the State, not into an escrow account for the First Circuit Solicitor’s Office held there over a period of two to three years. See e.g. § 1-7-150(A) and (B) [“all monies,” except “investigative costs” (awarded by court order or settlement) must be to the general fund]. The appropriation process may not be bypassed. See State ex rel. McLeod v. McInnis, 278 S.C. 307, 317, 295 S.E.2d 633, 638 (1982) [unconstitutional to permit the control of expenditures by administration, rather than legislation,

thereby giving a “veto” over the appropriations process]. See also § 11-9-10 [making it “unlawful” to spend contrary to an appropriation].

In our judgment, for all these reasons, the “corporate integrity agreements” violate Art. I, § 8, and Art. V, § 24 of the State Constitution, and are not authorized by law. They are ultra vires.

While the agreements with these large corporations are ultra vires, the Court is free to leave them in place if it wishes. This Court has held previously that even where the government has acted unconstitutionally, those who understandably relied upon the unconstitutional acts are protected. State ex rel. McLeod v. Probate Court of Colleton County, 266 S.C. 279, 223 S.E.2d 196 (1975). Detrimental reliance may make a plea agreement binding which would not otherwise be. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

Question 1. What is the nature of the “corporate integrity agreement” referenced at oral argument?

Solicitor Pascoe describes these agreements in his Memorandum. The State explains that the “corporate integrity agreements” in question are “non-prosecution agreements – contracts in which the Acting Attorney General exercised discretionary authority and agreed not to prosecute entities that retained Richard Quinn & Associates (“RQA”) who engaged in unregistered lobbying on their behalf.” Solicitor Pascoe continues: “In exchange for leniency, the entities agree to implement remedial measures to ensure that they refrain from unlawful activities. In doing so, these entities agreed to pay a sum of money to the State to reimburse the citizens of the First Circuit Solicitor’s Office while performing the duties of the Attorney General with the balance to be donated to the State Ethics Commission as judicially approved [by the presiding

judge of the State Grand Jury]” as explained below. State’s Brief, at 2.

Solicitor Pascoe does not explain how he arrived at the sum to be “donated” by the particular corporation, governmental entity [University of South Carolina] or Senator Courson. The Agreements, totaling more than several hundred thousand dollars in donations to Solicitor Pascoe’s office, generally note that the amount “donated” is reimbursement for the costs of the Investigation, with the balance to the Ethics Commission. Yet, there is no connection between the amounts donated and those costs. Moreover, there is no hint at how much his investigation might have cost. He notes the investigation is ongoing and he will submit receipts and invoices at the end of his investigation to the presiding judge of the State Grand Jury. Brief at 8. Apparently, however, he has not sought any reimbursements to date and the money was deposited in the escrow fund, held for the First Circuit Solicitor’s Office, in 2018. We observe that each Agreement is a bit different; most required amendment of lobbying forms; others do not. The requirements imposed in certain agreements are more detailed than others. The agreements are written like a civil settlement, making clear there is no admission of liability on the part of the corporation, but are a “compromise” or “settlement” of potential criminal charges, as well as civil liability and administrative liability arising from the Report of the State Grand Jury. See Supplemental Record on Appeal, 372-396. Solicitor Pascoe does not explain how a prosecutor may foreclose all civil and administrative liability by any State agency, as well as criminal prosecution.

However, in his Press Release accompanying the State Grand Jury Report, Supplemental Record at 369-371, Solicitor Pascoe describes the amounts paid by the corporations more as

“fines” imposed. He states:

[t]he First Circuit Solicitor’s Office reached corporate integrity agreements with the following lobbyist principals who retained RQ&A: AT&T, Palmetto Health; SCANA Corp.; South Carolina Association for Justice; and University of South Carolina. The agreements carry substantial terms, resulting in mandatory compliance procedures, and fines far greater than the penalties imposed by the Ethics Act. While these entities dispute these allegations, they do acknowledge that improprieties occurred.

Supplemental Record at 369-70 (emphasis added). Thus, the Agreements state that the donated funds will go for the “costs of the investigation,” while the Press Release speaks of having imposed “fines far greater than the penalties imposed by the Ethics Act.” In either event, there have been no requests for court awarded costs and no documentation of any unreimbursed costs of the investigation, and there can be no fines greater than penalties permitted by the statute. There is also no evidence that these entities acknowledged improprieties occurred – neither the payment of money nor the other conditional remedial measures contain any admission or acknowledgement but dispute the claims by the State and “specifically deny[] all allegations and claims related to the Report.” Supplemental Record at 380.

The one case of which we are aware, involving nonprosecution agreements, which has come before our appellate courts, is State v. Peake, 345 S.C. 72, 545 S.E.2d 840 (Ct. App. 2001), affd. 353 S.C. 499, 579 S.E.2d 297 (2003). There, both the Court of Appeals, as well as this Court, concluded that DHEC lacked the authority to enter a nonprosecution agreement with a potential defendant in exchange for the imposition of civil sanctions. This case will be discussed extensively below as part of the discussion of Question 2. However, the Court of Appeals description of nonprosecution agreements is pertinent in answering Question 1 as well. The

Court of Appeals observed:

[o]ther jurisdictions have applied these principles [contract law and a plea agreement analysis] to an agreement not to prosecute, even where no guilty plea has been entered [cases cited]. . . . However, enforcement of an agreement not to prosecute is subject to two conditions: (1) the agent must be authorized to make the promise; and the defendant must rely to his detriment on the promise. . . .

345 S.C. at 77, 545 S.E.2d at 842 (citing cases). In Peake, the Court of Appeals, as well this Court, concluded that if DHEC possessed the authority to forego a prosecution under the Pollution Control Act, such would violate Art. V, § 24 of the Constitution. The Court noted that, pursuant to Art. V, § 24, “the decision to prosecute is constitutionally granted to the Attorney General and cannot be impaired by the Legislature.” 345 S.C. at 79, 545 S.E.2d at 844. Thus, Peake makes clear that the “corporate integrity agreements,” entered into by Solicitor Pascoe, must be authorized by South Carolina law in order to be valid. For the several reasons which follow, we do not think that they are so authorized.

Question 2. What is the authority under South Carolina law of any representative of the State, including Solicitor Pascoe, to enter into a “corporate integrity agreement” in either a criminal or civil proceeding in exchange for a promise not to sue, and to demand or accept the payment of funds from a corporate or governmental entity or from an individual during the course of a criminal investigation?

We are unaware of any such authority. While throughout his Brief, Solicitor Pascoe relies upon his general “unfettered” discretionary power to decide which cases to prosecute, State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 346 (1994), we note that Thrift, in so stating, also caveated that “. . . on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.” Id., 440 S.E.2d at 397. Consistent with Thrift’s recognition is this Court’s statement in Ex Parte Littlefield v. Williams, 343 S.C. 212, 218-19, 540 S.E.2d 81, 84 (2000),

which explained that “[a]lthough prosecutorial discretion is broad, it is not unlimited. The judiciary is empowered to infringe in the exercise of prosecutorial discretion when it is necessary to review and interpret the results of the prosecutor’s actions when those actions violate certain constitutional mandates.” According to Littlefield, prosecutorial discretion may be examined when there is a question of the prosecutor’s use of race or “other arbitrary standards.” Id. See also State v. Needs, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998) [“A prosecutor’s discretion to bring charges against a person is subject to constitutional constraints.”]. Thus, as Peake held, this Court may examine, pursuant to Art. I, § 8, and Art. V, § 24, whether the prosecutor possesses the requisite authority to enter into a nonprosecution agreement where the payment of funds is “demanded or accepted” during the course of a criminal investigation and directed under his control for expenditure. We do not think he possesses that authority as the designated solicitor for limited purposes or even if he had the full power of the Office of the Attorney General.

To our knowledge, no statute or judicial order authorizes a nonprosecution agreement, particularly the type of “corporate integrity agreements” which Solicitor Pascoe executed here in which funds are donated to the prosecutor’s office in exchange for nonprosecution. This is in stark contrast to other forms of diversion programs, such as PTI (§ 17-22-10 et seq.) or drug court which are so authorized. See § 17-22-1120(B) [“. . . programs administered by circuit solicitors, which are either statutorily mandated or established by judicial order, and shall include, but are not limited to: alcohol education programs; drug courts for adults or juveniles; traffic education programs; worthless check units; pretrial intervention; mental health courts; or

juvenile arbitration.”]. The fact that the nonprosecution agreements (“corporate integrity agreements”), executed here, requiring “donations” to the prosecutor’s office, have not been authorized by the General Assembly, nor established by judicial order as these other diversion programs have been, is certainly striking – a clear indication that they are not permitted under our law. See Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) [“to express or include one thing implies the exclusion of another, or of the alternative.”].

Moreover, this Court, to our knowledge, has never approved a nonprosecution or “corporate integrity agreement” in a decision of the Court, or by Court rule. To the contrary, in the one instance in which this Court (and the Court of Appeals) has had a nonprosecution agreement before it – State v. Peake, supra – the Court held the agreement to be unauthorized and unconstitutional, if not construed consistently with Art. V, § 24. This was because Art. V, § 24 deems the Attorney General “the Chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record.” In State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 346 (1994), this Court explained the breadth of Art. V, § 24, concluding that “[t]he Attorney General as the State’s chief prosecutor may decide when and where to present an indictment, and may even decide whether an indictment may be sought.” Both the Court of Appeals, and this Court concluded that such an agreement was unauthorized because the agreement and DHEC statute, unless narrowly construed, infringed upon Art. V, § 24 of the South Carolina Constitution.

The critical issue in Peake was the validity of a nonprosecution agreement, executed by DHEC in exchange for civil sanctions. The Court of Appeals concluded that DHEC did not have

authority, in light of Art. V, § 24 of the Constitution, and this Court affirmed. In the Court of Appeals' decision, that Court noted that the trial court had concluded that the DHEC prosecutor "had the authority to promise forbearance of the criminal prosecution in exchange for civil sanctions." 345 S.C. at 79, 545 S.E.2d at 843. The Court of Appeals disagreed, concluding that Art. V, § 24 constituted a barrier to validity. Quoting State v. Thrift, the Court of Appeals concluded that "[u]nder Thrift, the decision to prosecute is constitutionally granted to the Attorney General and cannot be impaired by the Legislature." 345 S.C. at 79, 545 S.E.2d at 844. Accordingly, the Court held that "even if Hunter-Shaw intended to reach a binding agreement to forego prosecution of Peake in return for civil sanctions, she was without power to do so." 345 S.C. at 80, 545 S.E.2d at 844.

This Court affirmed. In the words of the Court,

[t]he decision whether to pursue criminal charges for an alleged violation of the Act is vested solely in the Attorney General [pursuant to Art. V, § 24]. The corollary of this proposition is that the authority to grant immunity from criminal prosecution also resides exclusively in the Attorney General. Cf. Ex Parte Littlefield, 343 S.C. 212, 540 S.E.2d 81 (2000) (prosecutor's discretion whether to try to plea, or not to prosecute at all).

353 S.C. at 504, 579 S.E.2d at 300. The interpretations of Art. V, § 24 was broadened in State v. Long, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014), by the Court's holding that this constitutional provision "firmly establishes the Attorney General as the chief prosecuting officer of the State of south Carolina for both criminal and civil proceedings." Thus, based upon Art. V, § 24, the Court concluded that it is the Attorney General who decides whether or not to prosecute

a case. In other words, a prosecutor cannot make a different policy choice and decide not to prosecute, using a procedure wholly at odds with the criminal statutes allegedly violated.

Of course, Solicitor Pascoe argues that, based upon Pascoe v. Wilson, supra, he is the “Acting Attorney General.” He urges that he is “performing the duties of the Attorney General,” and thus he is entitled to exercise his “discretionary authority [in agreeing] not to prosecute entities that retained Richard Quinn & Associates (“RQA”) who engaged in unregistered lobbying.” Further, he contends that in exchange for his decision not to prosecute, he is entitled to require these entities to “pay a sum of money to the State to reimburse the citizens of the First Circuit for expenses incurred by the First Circuit Solicitor’s Office while performing the duties of the Attorney General, with the balance to be donated to the State Ethics Commission, if judicially approved” by the presiding judge of the State Grand Jury. State’s Brief at 2. According to Solicitor Pascoe, “the State has generally sought approval from the presiding judge in procedural matters relating to the State Grand Jury, even where the State Grand Jury Act does not specifically require approval.” Id. at 4. He notes that the presiding judge is generally aware of the “corporate integrity agreements.” Id.

Thus, the questions for this Court to determine are whether Solicitor Pascoe is the “acting Attorney General” with respect to the execution of these “corporate integrity agreements,” and even if he is, are such agreements authorized by South Carolina law? We think the answer to both of these questions is “no.”

First, in executing these “corporate integrity agreements,” we believe Solicitor Pascoe takes this Court’s decision in Pascoe v. Wilson, entirely too far and by a remarkably wide

margin. The actual holding of the Court’s decision in Pascoe, demonstrates this. The very first paragraph of the Pascoe case notes that “Petitioner David Pascoe . . . asks this Court declare ‘the Attorney General’ recused himself and his Office from the redacted legislators matter, and vested Pascoe with the legal authority to act autonomously as the designee of the Attorney General with the powers of that Office.” 416 S.C. 630, 788 S.E.2d at 688 (emphasis added). The Court concluded that “[w]e find Pascoe has proven by a preponderance of the evidence that the Attorney General’s Office in its entirety was recused from the redacted legislator’s investigation, and 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).

This holding is consistent with the Court’s reference in the opinion to Chief Deputy McIntosh’s letter to Chief Keel, dated July 17, 2015, stating that “the Attorney General recused this Office from the legislative members of the redacted portions of the SLED report but has not recused this Office any other matters.” 416 S.C. at 632, 788 S.E.2d at 688 (emphasis added). With respect to the McIntosh letter, the Court noted that “[f]rom this language, we conclude that SLED may have been investigating matters related to the Harrell probe aside from those involving the redacted legislators.” Id. at 632, 788 S.E.2d at 688-89. It is also important to note the language above quoted from Pascoe, asking this Court “to declare that the “Attorney General recused himself and his Office from the redacted legislators matter.” Pascoe v. Wilson simply interpreted the actions of the Attorney General’s Office.

Thus, it is clear that the scope of Solicitor Pascoe’s investigation as established by this Court in Pascoe v. Wilson is the “redacted legislator’s investigation.” That is the extent of the

recusal of the Office of the Attorney General as set forth in Chief Deputy McIntosh's letter to Chief Keel on July 15, 2015. It is precisely what this Court mandated in Pascoe v. Wilson based upon the facts. No more, no less. Yet, Solicitor Pascoe has extended his investigation far beyond the "redacted legislators" to include corporations which had nothing to do with the original SLED investigation from which the recusal originated in the first place.

Courts in other jurisdictions have dealt with the outcome when a special prosecutor proceeds beyond his authorized assignment. For example, in his concurring opinion in In re the Thirty-Fifth Statewide Investigation Grand Jury, 631 Pa. 383 (Pa. 2015), Justice Baer of the Pennsylvania Supreme Court noted that "[t]here must be defined limits on the powers of the special prosecutor. . . . [H]ere the scope of the powers of the special prosecutor took on the role of a de facto district attorney which in my opinion, is not permissible." 631 Pa. at 407 (Baer, J. concurring).

Moreover, in People ex rel. Losario v. County, 199 Colo. 153 (1980), the Supreme Court of Colorado En Banc concluded that the special prosecutor had exceeded his authority to investigate alleged budget irregularities. In Losario, the special prosecutor, through an amended order, had been granted the power "to request an additional panel of the 1977 Pueblo County Grand Jury." Id. at 157. The indictment which resulted was challenged, contending that the special prosecutor had exceeded his authority in charging County Commissioner Williams for stealing a U-Haul trailer. The lower court denied the motion, reasoning that while the special prosecutor could not investigate allegations of theft, it was alleged that Williams attempted to

sell the trailer to county officials by deception or embezzlement, thereby creating a budget irregularity and thus within the special prosecutor's authority.

The Colorado Supreme Court disagreed. That Court acknowledged the lower court's rationale – that a successful sale of the trailer to the County would not pass good title, thereby constituting an improper use of public funds and a budget irregularity. Nevertheless, the Colorado Supreme Court rejected such a rationale, concluding

. . . [i]f the term 'budget irregularities' was construed in this fashion, its scope would encompass literally any allegation no matter how remotely it affected the public budget. This would constitute an impermissible abrogation of the district attorney's office and would go far beyond the limits of any [conflict of] interest that could be inferred from the appointment of the special prosecutor.

Id. at 161.

So too here. Based upon the Court's holding, this Court, in Pascoe, did not contemplate a never-ending investigation. It decided the narrow issue of whether Solicitor Pascoe could proceed, using the State Grand Jury with respect to the "redacted legislators investigation." The "redacted legislators" were, of course but two, Rick Quinn and former Rep. Merrill. Beyond that, this Court did not go. The Court certainly did not issue Solicitor Pascoe a blank check. While we are, of course, only addressing the questions posed, Pascoe v. Wilson certainly did not go so far as to contemplate the investigation of the corporations at issue here, nor the execution of any "corporate integrity agreements." The Court has emphasized, time and again, that Art. V, § 24 may not be undermined through legislation or otherwise. State v. Long, supra. As this Court emphasized in Peake, to allow another prosecutor to substitute for the statewide elected Attorney General "would create a constitutional infirmity where none need exist." 353 S.C. at

505, 579 S.E.2d at 300. Moreover, as this Court stressed in Littlefield, the exercise of prosecutorial discretion may not violate “constitutional mandates.” 343 S.C. at 219, 540 S.E.2d at 84. In this instance, the “constitutional mandate” being infringed is Art. V, § 24. Pursuant to Art. V, § 24, the Attorney General has the duty and authority to “supervise all criminal cases” except, of course, where he has clearly recused. However, with respect to Solicitor Pascoe’s settlement of criminal cases, as well as civil and administrative liability, of these corporations, by contracting for their “donations” to his office in exchange for nonprosecution, the Attorney General’s Office was not recused. Solicitor Pascoe thus had no authority outside his circuit. He had no authority to afford, in essence, civil and administrative immunity from liability. Accordingly, he had no authority to execute those agreements. They were thus ultra vires.

The issue of the “corporate integrity agreements” vividly illustrates the importance of Art. V, § 24 and its requirement that the Attorney General shall serve as “the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record.” Here, there has been no supervision of the special prosecutor.

The purpose of Art. V, § 24 is clear. The Attorney General is elected by all the people and is accountable to each of them. As this Court recognized in Anders v. S.C. Parole & Comm. Corr. Bd., 279 S.C. 206, 210, 305 S.E.2d 229, 231 (1983), “[t]he Solicitor is a quasi-judicial officer and serves under the Attorney General who has the duty of supervising the prosecution of all criminal cases and the work of the Solicitors and their assistants in general.” Moreover, “this Court has always regarded the Attorney General as the State’s chief prosecuting officer with broad common law and statutory authority to prosecute any case on behalf of the State.” State v.

Long, 406 S.C. at 516, 753 S.E.2d at 427 (citing State ex rel. McLeod v. Snipes, 266 S.C. 415, 419, 223 S.E.2d 853, 854 (1976)). Regardless of a conflict, the Attorney General must retain his role as chief prosecutor and supervisor of all criminal cases. Snipes, id. In other words, the Attorney General is not an ordinary lawyer; he is chief prosecutor.

As we argue, here, with respect to these large corporations, there is no conflict and there was no recusal. The Attorney General's role as chief prosecutor and supervisor of all prosecutions is constitutional and cannot be infringed by statute, State v. Long, supra, or by judicial ruling, State v. Thrift, supra, or by a nonprosecution agreement. State v. Peake, because "this constitutional provision" vests sole discretion to prosecute criminal matters in the hands of the Attorney General." Peake, 353 S.C. at 504, 579 S.E.2d at 300. We respectfully ask this Court to restore this constitutional balance long protected by Art. V, § 24 and the common law of South Carolina. The institutional framework protecting South Carolina's prosecutorial structure is vital to this State.

We turn now to the validity of "corporate integrity agreements" themselves. While such "nonprosecution agreements" are frequently utilized by federal prosecutors, and even prosecutors in other jurisdictions, as we understand it, they are rarely used in South Carolina. As noted, to our knowledge, State v. Peake, supra, is the one instance in which such an agreement has arisen before this Court. And in that instance, the Court disapproved it.

The usual method of dismissal of a case by a prosecutor in South Carolina is, of course, by nol pros. A "Nolle prosequi is a formal entry on the record of the prosecuting attorney by which he declares he will not prosecute the case further." State v. Gaskins, 263 S.C. 343, 347,

210 S.E.2d 590, 592 (1974). However, unlike a nonprosecution agreement, if the prosecutor “enters a Nolle prosequi, such will not be a bar to a subsequent prosecution for the same offense.” *Id.* (citing *State v. Messervey*, 105 S.C. 254, 89 S.E. 662 (1916) and *State v. Charles*, 183 S.C. 188, 190 S.E. 466 (1937)). As this Court long ago recognized in *State v. Haskett*, 3 Hill (S.C.) 95 (1836),

[i]n a civil case a non-suit vacates all the previous proceedings, and the plaintiff must begin *de novo*. In a criminal case, the party is brought into court by the warrant and recognizance. The indictment is one of the stages of the proceedings, and a discharge of that, by *nol pros*, does not impair the previous proceedings. It is competent, and every day’s practice, for the solicitor or attorney general to enter a *nol pros* on one indictment, and to prefer another; and the effect of this is only to vary the form of the charge, and neither entitles the party to a discharge from custody, nor to have an exoneration entered on his recognizance. In actions for malicious prosecution, this question has frequently arisen, and it has been often held, that a *nol pros* is not an end of the case, but that the attorney general may prefer a new bill.

Of course, there were, as we understand it, no court proceedings pending with respect to these corporate entities. Thus, Solicitor Pascoe employed the vehicle of nonprosecution agreements to do what a *nol pros* cannot do, but what a guilty plea could: bind the State permanently. Unlike a guilty plea, however, there was no court oversight at the time the agreements went into effect.

Typically, in South Carolina, a plea agreement, not a nonprosecution agreement, is the method by which the prosecutor binds the State through a contract. As the Court of Appeals stated in *State v. Peake*, *supra*, “[o]ur Supreme Court has ruled that a guilty plea rests upon contract principles and that the State can be required to fulfill the terms of its promise to forego further prosecution of the accused when such forbearance is part of the benefit of the bargain.”

345 S.C. at 77, 545 S.E.2d at 842 (citing State v. Thrift, 312 S.C. at 292-93, 440 S.E.2d at 347) (citing Santobello v. New York, 404 U.S. 257 (1971)). See also Reed v. Becka, 333 S.C. 676, 685, 688, 511 S.E.2d 596, 401, 402 (Ct. App. 1999) [holding a plea agreement is subject to contract principles and generally whether written or oral becomes binding when the court accepts the guilty plea]. Of course, there was no court to accept or oversee the nonprosecution agreements at issue here. While the Court of Appeals in the Peake case suggested that an agreement not to prosecute has been recognized in other jurisdictions, ultimately Peake concluded that DHEC lacked authority to make such an agreement. Likewise, we have already argued the same is true for Solicitor Pascoe because the scope of his authority did not extend beyond the “redacted legislators investigation,” as set forth in Pascoe v. Wilson.

Even beyond that argument, however, is the fact that neither the General Assembly, nor this Court, has approved the use of nonprosecution agreements. Such agreements have been widely criticized by legal commentators on numerous grounds. One has summarized the criticism as follows:

[a] nonprosecution agreement is different from a plea-bargained guilty plea. Like a plea agreement, a nonprosecution agreement is merely a contract solemnizing the result of the same type of give-and-take between parties common to commercial and plea negotiations. Like a private contract, the terms may be whatever the parties wish. No statute, regulation or rule defines what elements are required or out-of-bounds. The Constitution is irrelevant unless or until the government charges a target or seeks to enforce a nonprosecution agreement, . . . and the last result that either party wants is to go to court. Once a judge is drawn into a dispute over the agreement’s terms, or the parties’ compliance, the judge has the ultimate say on what the agreement means and whether (and how) it can be enforced. The result is that nonprosecution agreements are, practically speaking, lawless in the Holmesian sense: there is no law to police the parties’ conduct. . . .

Larkin, Jr., “Funding Favored Sons and Daughters: Nonprosecution Agreements and ‘Extraordinary Restitution’ In Environmental Criminal Cases,” 47 Loy. L.A. L.Rev. 1, 30-31 (Fall, 2013) (footnotes omitted). This commentator noted that an example of such abuse involved the extraction of a large monetary payment from the corporation: “Christopher Christie, former U.S. Attorney for New Jersey and . . . governor of that State . . . required Bristol-Myers-Squibb to spend \$5 million to endow a chair in business ethics at his alma mater, Seton Hall University School of Law, as a condition of a deferred prosecution agreement.” Id. at 32.

Some commentators also argue that the potential for abuse in executing nonprosecution agreements is so great they should be absolutely prohibited:

NPA’s [nonprosecution agreements] are contracts between a particular prosecutor and a defendant corporation that formalize the prosecutor’s decisions not to bring charges in exchange for a financial penalty and other terms. “[F]ormal charges are not filed and the agreement is maintained by the parties rather than being filed with a Court. . . .” Judicial approval is not involved; prosecutors just issue a press release, an NOA letter, and a statement of facts. . . . NPA’s are widely viewed as less punitive than DPA’s [deferred prosecution agreements], and the lack of criminal charges “give[s] a small public relations benefit to the company, which can truthfully assert it was never prosecuted for the misconduct....” Also unlike DPA’s, NPA’s lack any statutory basis [from Congress]. DOJ relies on its inherent authority to exercise prosecutorial discretion.

Werle, “Prosecuting Corporate Crimes When Firms Are Too Big to Jail: Investigations, Deterrence, and Judicial Review,” 128 Yale L.J. 1366, 1422 (March 2019) (emphasis added). This commentator added that “[p]rohibiting DOJ from entering into NPA’s requires legislation. To avoid prohibiting other forms of declinations, the ban should target the core issue: declinations issued to business organizations in exchange for money.” Id. at 1423 (emphasis added).

Requiring financial “donations” to the prosecutor’s office is particularly problematical because such a financial contribution creates the appearance of a conflict of interest on the part of the prosecutor. This Court has emphasized over the years that a prosecutor must not be tainted by the appearance of conflict. In State v. Capps, 276 S.C. 59, 61, 275 S.E.2d 872, 873 (1981), for example, the Court cautioned that “[a] prosecutor should at all times avoid the appearance or reality of a conflict of interest with respect to his official duties.” Moreover, in In re Richland County Magistrate’s Court, 389 S.C. 408, 411, 699 S.E.2d 161, 163 (2010), the Court, in disallowing non-lawyers representing a business to prosecute a misdemeanor charge other than a traffic offense in magistrate’s court, noted that “[b]ecause a prosecutor is an attorney representing community rather than private interests, the prosecutor’s role is very different from that of a civil attorney.” Thus, in the view of this Court, “[t]he importance to the public as well as to individuals suspected or accused of crimes, that these discretionary functions be exercised with the highest degree of integrity and impartiality and with the appearance thereof cannot be overstated.” 389 S.C. at 411-12, 699 S.E.2d at 163 (quoting People v. Dehle, 166 Cal. App. 4th 1380, 83 Cal. Rptr.3d 461, 465 (2008)). The Court in Richland County Magistrate’s Court held that if non-lawyers are allowed to prosecute in magistrate’s court on behalf of their companies, “we can no longer be assured that the powers of the State are employed only for the community at large,” but instead, “we can be absolutely certain that the interests of the private party will influence the prosecution. . . .” 389 S.C. at 412, 699 S.E.2d at 163. In this Court’s judgment, “[w]e find that allowing prosecution decisions to be made by, or even influenced by, private interests would do irreparable harm to the criminal justice system.” Id. (emphasis added).

Because of this harm of a prosecutor having a financial stake in a prosecution, South Carolina has long possessed a statutory provision prohibiting a prosecuting officer from receiving “any fee or reward” from “or on behalf of a prosecutor for services in any prosecution or business to which it is his official business to attend. . . .” S.C. Code Ann. § 17-1-20. As this Court recognized in Langford v. McLeod, 269 S.C. 466, 472, 238 S.E.2d 161, 163 (1977), § 17-1-20 “is clearly directed at the evil of a situation where the pecuniary interests of a prosecutor come in conflict with his official duties.” See also § 16-9-370 [prohibiting compounding or not prosecuting a public prosecution in exchange for money]. Moreover, as was stated in U.S. v. Farrell, 115 F.Supp.3d 746, 754 (S.D.W.Va. 2015),

[t]he potential for prosecutor partiality created by a pecuniary stake in the outcome of a criminal decision may also implicate due process. The Supreme Court has held that “[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.” [Marshall v. Jerrico, Inc., 446 U.S. 238] at 249-50 (1980). . . . The Fourth Circuit has also held that due process is violated when a prosecutor has a pecuniary interest in the outcome of a criminal case that threatens to deny a defendant “the possibility of fair minded exercise of the prosecutor’s discretion.” [Ganger v. Peyton, 379 F.2d 709, 712, 714 (4th Cir. 1967)].

The question of whether a substantial donation to a prosecutor’s office, as opposed to the prosecutor personally, also constitutes a conflict of interest, was answered in the affirmative by the Supreme Court of California in People v. Eubanks, 14 Cal. 4th 580, 59 Cal. Rptr.2d 200, 927 P.2d 310 (1997). There, the Court addressed the situation in which a motion to disqualify the entire district attorney’s office had been made, based upon the corporate victim’s contribution of \$13,000 toward the costs of the district attorney’s investigation of alleged theft of trade secrets.

According to the Court, the question was “whether a crime victim’s payment of substantial investigations expenses already incurred by the public prosecutor, creates a disabling conflict of interest for the prosecutor, requiring his or her disqualification.” 927 P.2d at 314.

In answering the question “yes,” the Eubanks Court noted that “the district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the interest or control of an interested individual.” 927 P.2d at 315-16. The critical point made in the Eubanks case was the argument made by the Attorney General: “[t]he Attorney General argues at length that financial contributions to the district attorney’s office should not, as a matter of law, be considered as creating a conflicting interest for purposes of disqualification, because any interest of the district attorney in such contributions would be an institutional rather than a personal interest.” In response to the Attorney General’s argument, however, the Supreme Court rejected it, concluding that “[t]he Attorney General fails to persuade us any legal principle restricts the concept of a conflicting interest to a district attorney’s personal financial or emotional stake in the prosecution.” Id. at 319. In short, Eubanks held that it does not matter if the “donations” go into the prosecutor’s budget for expenses or into his pocket for his own use – a “disabling conflict” is present.

Thus, based upon the substantial sums of money constituting the “donation” of each signatory to the “corporate integrity agreement,” we believe this Court could well conclude that acceptance thereof would contravene § 17-1-20 and the other conflict principles enunciated above. See also Liberty Mut. Ins. Co. v. Gilreath, 191 S.C. 244, 4 S.E.2d 126, 128 (1939) [“The general rule is that agreements to compromise or stifle public prosecutions and similar

agreements tending to obstruct or interfere with the administration of justice, are contrary to public policy.”]. The corporate integrity agreements set a dangerous precedent for prosecutorial policy in South Carolina.

Solicitor Pascoe cites two examples of “nonprosecution agreements” used by the Attorney General’s office in defense of his “corporate integrity agreements.” The first example refers to an agreement reached with “John O’Quinn to resolve charges for the unlicensed practice of law resulting from internet advertisements.” State’s Brief at 8, n. 7. However, this disposition was made pursuant to a guilty plea in Richland County Circuit Court. Moreover, the maximum statutory fine for the unauthorized practice of law is “\$5,000 per violation. The airplane that crashed had 37 deaths and 20 other injured victims. (<https://www.courtlistener.com/opinion/1528114/in-re-air-crash-at-charlotte-nc-on-july-2-1994/>). As an AP article at the time stated, “John O’Quinn was fined \$2500 for pleading to the misdemeanor charge and also agreed to donate \$250,000 to fund ethics seminars and a special prosecutor that will investigate ambulance chasing and other charges against lawyers.” ”See AP, “Prominent Lawyer Pleads Guilty to Ambulance Chasing Case,” December 15, 1997 (Attachment 2). There is a big difference when the fine does not exceed the statutory penalties; legal commentators make it clear that there is a big difference in a guilty plea, which is approved by the court and in a nonprosecution agreement, which is approved by no one.

Secondly, Solicitor Pascoe cites the following: “[a]t the State level, the South Carolina Attorney General frequently enters into non-prosecution agreements similar to the CIA’s relating to insurance fraud investigations. These agreements are described as Memorandum of

Understanding (“MOU”).” State’s Brief at 10, n. 8. However, such agreements are authorized by statute. See S.C. Code Ann. § 38-55-550(C) and (D) [authorizing agreements for civil penalties and appropriating “all revenues from civil penalties” to provide funds for the costs of enforcing and administering the costs of this article.”]. Again, there is a big difference if a statute authorizes the nonprosecution agreement versus reliance simply upon prosecutorial discretion.

These two examples, cited by Solicitor Pascoe, vividly illustrate the point here. Such agreements should be effectuated, if at all, pursuant to a guilty plea before a circuit court judge or they must be authorized by statute. Neither was present with respect to the “corporate integrity agreements.” After the fact approval by the presiding judge of the State Grand Jury is wholly inadequate.

Long ago in Gray v. Seigler, 33 S.C.L. 117 (1847), this Court offered an analysis which is controlling here. In Seigler, the Court dealt with the question of compounding a public prosecution i.e. “settling” a criminal offense by agreement between the complaining witness (“prosecutor”) and the defendant, which was deemed void against public policy. See Liberty Mut. Ins. Co. v. Gilreath, supra. In that regard, the Court noted that only the Solicitor and the Attorney General could suspend a public prosecution and, even then, only within well settled procedures such as a nolle pros. In Gray, the Court anticipated the question here:

[h]ow wise then, in public policy to suffer none but the Solicitor or Attorney-General to stop prosecutions, and the Governor to pardon. The Judge cannot do it, for even he do no more than counsel the proper officer. This is not unfrequently done, and possibly, erroneous notions may in time arise out of this practice, similar to the one I have just explained and avoided.

But the privilege must not be so perverted. The power to arrest or suspend public prosecutions, is the high and distinguished – and I apprehend the exclusive privilege of the Attorney-General or Solicitor, and subjects him and the Governor, when he pardons, to no small moral as well as official responsibility. Each has great discretionary power, which is truly judicial. For he is to look to the order, interest and moral growth of his State society, before he exercises his privilege of suspending the due course of legal punishment. But even the Solicitor does not stop the prosecution forever; it may be recommenced. The great consideration is, the good of society, and of this, interested men, seeking gain are not its judges.

Thus, Gray makes it clear that a prosecuting officer may not permanently bind the State to “suspend” a prosecution (plea bargain is different) and certainly may not be “interested” in the prosecution.

Question 3. Does Solicitor Pascoe have the authority to “direct” the expenditure of funds received pursuant to a “corporate integrity agreement” to the First Circuit Solicitor’s Office, or must the funds be deposited in the State’s general fund? The State shall specifically address S.C. Code Ann. § 1-7-150(B) (2005); S.C. Code Ann. § 1-7-360 (2005); and S.C. Code Ann. § 39-3-180(1976).

The short answer to this question is “no” and that any such funds must be deposited in the State’s general fund. Executive officers, such as Solicitor Pascoe, possess no authority to appropriate funds. Such authority lies exclusively with the General Assembly, which has directed that all such funds be deposited in the State’s general fund; neither Solicitor Pascoe nor the presiding judge of the State Grand Jury may direct otherwise. See Condon v. Hodges, 349 S.C. 232, 245, 562 S.E.2d 623, 630 (2002) [“... there is no provision in the South Carolina Code or Constitution which provides that the members of the executive branch have the ability to transfer funds from those to whom the General Assembly has appropriated money.”]. As this Court squarely held in McInnis, *supra*, expenditures of public funds cannot be controlled “by

administration rather than by legislation.” Such would give the executive branch a “veto” over the General Assembly.” *Id.* Such would violate separation of powers. Art. I, § 8.

Article X, Section 8 of the South Carolina Constitution provides that “[m]oney shall be drawn from the treasury of the State . . . only in pursuance of appropriations made by law.” S.C. Ann. Code § 11-9-10 deems it “unlawful for any monies to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless provided for in the annual appropriation act.” As this Court emphasized in *Edwards v. State*, 383 S.C. 82, 90, 678 S.E.2d 412, 416 (2009), “[t]he General Assembly has the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which appropriated money shall be spent.” The Court has added that where “the General Assembly directs that appropriated funds be treated in a particular manner, executive departments must comply with those directives.” *Hampton v. Haley*, 403 S.C. 395, 405, 743 S.E.2d 258, 263 (2013). In addition, the Court has also expressly held that “the appropriation of public funds is a legislative function” and “beyond the power of the Grand Jury. . . .” It is “likewise beyond the power of the judiciary, perforce Article I, § 14 of the Constitution.” [separation of powers now Art. I, § 8]. *Gregory v. Rollins*, 230 S.C. 269, 274-75, 95 S.E.2d 487, 491-92 (1956). In short, these “donations” were, by law, appropriated to the State’s general fund and Section 11-9-10 makes it “unlawful” to direct these monies from the general fund to the First Circuit Solicitor’s Office.

Here, the General Assembly has mandated that any funds obtained from the “corporate integrity agreements” must be accounted for and be paid to the State’s general fund, as those statutes referenced by this Court command. See particularly § 1-7-150(A) and (B). The statutes cited by the Court, in Question 3, were enacted to ensure that monies obtained from putative criminal defendants as part of the case resolution by the prosecutor must be deposited into the State’s general fund. Here, however, rather than follow the mandatory requirements of § 1-7-150(B) and deposit the “donated” funds in the State’s General Fund, the Solicitor placed the entire amount in an escrow account, designated for his Office, and has kept it there over the course of a number of fiscal years. Such actions fail to follow the mandatory direction of the statute. This is the kind of “veto” of legislation by administration which the Court in McInnis found to violate separation of powers. The Court found that “JARC, by exercising the powers allocated to it makes determinations that should be those of the entire General Assembly.” 278 S.C. at 314, 295 S.E.2d at 637. Likewise, Solicitor Pascoe has unilaterally made the decision reserved for the General Assembly, which designated the “donated” monies to the General Fund.

Moreover, § 117.1 of the 2020-2021 Appropriations Act provides that an agency’s receipt of funds “from any source whatsoever” must “be credited, unless otherwise directed by law to the General Fund of the State.” A similar version of this proviso has appeared in the Appropriations Act for many, many years. In an Opinion, Op. S.C. Att’y Gen., 1980 WL 120743 (June 25, 1980), for example, we advised with respect to a similar Proviso, that John de la Howe School could not maintain a separate account for tuition money, noting that the intent of the Proviso is that “funds are to be kept in a general account by the State Treasurer unless there

is some contrary directive either by the legislature or the Budget and Control Board.” Therefore, we explained, “it is the opinion of this Office that you may not retain your tuition in a special account but must continue to remit it to the general fund.” Thus, Solicitor Pascoe, like all other state agencies, must comply with the foregoing statutes and Proviso, including those the Court references, which require that the funds obtained from the “corporate integrity agreement” must be submitted to the State’s General Fund. No matter which statute is looked to, the result is the same: these funds were directed by the Legislature to the State’s General Fund. Neither he, the corporate entities, nor some future presiding judge of the State Grand Jury may reappropriate these funds to the First Circuit Solicitor’s Office or to the State Ethics Commission. Condon v. Hodges, *supra*; Gregory v. Rollins, *supra*.

Solicitor Pascoe incorrectly relies upon § 1-7-85 which is not applicable to him or his investigation. This statute allows “the Office of the Attorney General” to “obtain reimbursement of its costs in representing the State in criminal proceedings and in representing the State and its officers and agencies in civil and administrative proceedings.” On page 8 of his Brief, the Solicitor argues he is entitled to employ § 1-7-85, because “[i]n reaffirming Solicitor Pascoe’s authority to initiate this state grand jury investigation, the Court held that the transfer of authority to Solicitor Pascoe occurred outside the State Grand Jury Act and that he was appointed to “act as the Attorney General vested with the Attorney General’s power and authority for the purpose of that investigation.” (quoting Pascoe v. Wilson, 416 S.C. at 642, 788 S.E.2d at 694). However, on its face, the statute applies to the “Office of the Attorney General.” Even though Solicitor Pascoe may have been charged to act “as the Attorney General” for purposes of the

“redacted legislators investigation” does not transform him into the “Office of the Attorney General.” There is certainly only one “Office of the Attorney General” and that Office is under the elected Attorney General, not Solicitor Pascoe, even with a designation of “Acting Attorney General” for a particular investigation.

Moreover, the Court’s quote, which Solicitor Pascoe references, is to “that investigation,” meaning the “redacted legislator’s investigation.” We do not think this Court intended by any stretch of the imagination that the special prosecutor’s investigation should go beyond that of the “redacted legislators,” proceeding ad infinitum. Indeed, as noted, Chief Deputy McIntosh’s letter to Chief Keel stated that the Attorney General’s Office was not recused with respect to “other matters.” Thus, § 1-7-85 is inapplicable here. In other words, even if the Solicitor may have stepped into the shoes of the Attorney General because of the Office’s limited recusal, but he is not the Attorney General nor his Office for purposes of § 1-7-85.

Solicitor Pascoe notes that he has not spent any of the funds donated as part of the “corporate integrity agreements.” State’s Brief at 8. He adds that “[e]very penny of funds received under the CIA’s has been placed in an escrow account separate from the First Circuit Solicitor’s Office funds.” Id. at 8. He further states that

[a]s expenses incident to this Investigation arise, they are paid out of the First Circuit’s budget. Receipts and invoices related to the Investigation are maintained to substantiate reimbursement of expenses at the conclusion of the matter. Solicitor Pascoe 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 disbursements.

Id.

This is not in accord with the exclusive authority of the General Assembly to appropriate monies, including appropriation of the “corporate integrity agreement” monies, as already discussed above. It is not in keeping with Section 11-9-10. We note that the State has not requested court approval for any unreimbursed expenses or produced “receipts and invoices” for any court’s review, including this Court. And a state grand jury proceeding is not a court to award expenses. The monies have now been held in an account over more than one fiscal year. Further, the monies obtained from each corporate entity, do not appear to bear any correlation to investigation expenses. Solicitor Pascoe dismisses the applicability of § 1-7-150 by concluding that “[t]he funds collected under the CIA’s represent reimbursement for the costs of the investigation and litigation of the cases under the Investigation. . . .” State’s Brief at 9. However, the mandatory nature of § 1-7-150(B) requires that all monies other than court-awarded costs must go to the General Fund. A court – and not the state grand jury – must determine costs. Solicitor Pascoe cannot unilaterally make the determination to avoid the mandatory requirement of the statute.

The Designated Solicitor is further constrained by statute on collecting costs from defendants additional funds for salary or for out-of-circuit expenses. S.C. Code 1-7-360 (“ . . . All costs from defendants shall be paid over by each solicitor to the county treasurer for the use of the State. . . ; and in no instance, civil or criminal, shall they receive for such services any additional compensation, except that they shall be entitled to expense allowance, as provided for State employees and officers, when performing such services outside of their respective circuits.”). And solicitors get “an annual salary and a monthly expense allowance as is provided

by the General Assembly.” S.C. Code 1-7-325. Moreover, the General Assembly specifically provided for expenses when a solicitor is required to serve out of his circuit. Id.

Moreover, §§ 14-7-1780 and -1790 mandate the method in which expenses for a State Grand Jury Investigation are paid. Section 14-7-1780 requires the Attorney General to provide the space for meetings of the State Grand Jury and that SLED “shall provide service as the state grand juries require.” In addition, pursuant to § 14-7-1780, “[t]he other costs, associated with the state grand jury system, including juror per diem, mileage and subsistence must be paid from funds appropriated to the Attorney General’s Office. . . .”

As Attachment 3 demonstrates, the Attorney General’s Office, consistent with these provisions, bore the financial burden for virtually all of the fixed costs for operating the State Grand Jury for Solicitor Pascoe’s investigation. Exclusive of \$18,000 apparently spent by Solicitor Pascoe’s Office for transcripts, the Attorney General’s Office paid for all other costs for the State Grand Jury’s operating space for the Grand Jury; per diem to jurors; mileage to jurors; subsistence of jurors, etc. SLED, of course, provided its investigators and other expenses for the investigation through appropriations made for those purposes and certainly independent of the First Circuit Solicitor’s Office. Solicitor Pascoe has not provided any court what other “disbursements” Solicitor Pascoe is referring to in his statement in his Brief, quoted above. We have no information on that score. But the Attorney General’s Office supported the costs of the State Grand Jury; Solicitor Pascoe did not do so.

We also note that one corporation donated \$90,000, another \$60,000, still another \$72,000, another \$30,000 and so on. Where these figures were derived, how they bear on

expenses (or fines) are not explained. Regardless, the constitutional appropriation process, reserved exclusively to the General Assembly, cannot be replaced by a prosecutor's demand on corporations in exchange for nonprosecution agreements. To do so, infringes the fund the Legislators' prerogative and violates separation of powers.

The bottom line is that the monies from the nonprosecution agreements are public funds like any other such funds and must be devoted to and passed to the channels through which the General Assembly has appropriated those funds – to the State Treasurer and the general fund. This Court has observed that “[u]nquestionably, the General Assembly may appropriate funds from the State treasury to whatever it may think proper so long as the acts are not in conflict with the Constitution. . . .” Crawford v. Johnston, 177 S.C. 399, 181 S.E. 476, 480 (1935). The Legislature has thus designated that monies, such as those from the “corporate integrity agreements”, must go to the State’s general fund, obviously, for such use. The proposed arrangement suggested by Solicitor Pascoe avoids the appropriations process and designates the funds as he sees fit.

Again, legal commentators have criticized nonprosecution agreements, as used by the federal prosecutors, because the monetary payments those agreements extract circumvent the appropriations processes and procedures. As was explained by one commentator:

[i]n deciding whether to enter into a nonprosecution agreement, a corporation will determine exactly what penalty to pay to make an investigation go away, and it will care little about the name of the payee that its treasurer may put on the check. As a result, any money that the government demands to be paid to a private party [or to the prosecutor's office] is money that the corporation would be willing to pay into the federal fisc, which would help underwrite the general costs of running the government. Money that the government demands to be paid to a private party therefore is tantamount to disbursing money from the

Federal Treasury to a private party [or the prosecutor's office] that Congress has not authorized. . . .

Larkin, Jr., supra at 44-45.

The decision in Lane v. Phillabaum, 182 Ohio App.3d 145, 912 N.E.2d 113 (Ohio Ct. App. 2008), is instructive here. There, the Court had created a pretrial diversion program for all college students charged with alcohol-related offenses. As part of the program, students were required to make a donation either to the Law Enforcement Trust Fund or the Respect for Law Camp. The students challenged the program. The Court upheld the program generally, but concluded the “donation” requirement was void:

. . . it was improper for the court to order the students to make donations to a particular charity or nonprofit organization. R.C. 2949.11 states, “[A]n officer who collects a fine should pay into the treasury of the county in which such fine was assessed.” In this case, the students had to “donate” \$100 to either the Law Enforcement Trust Fund or the Respect for Law Camp rather than paying a fine into the county treasury.

In State v. Short, [1992 WL 158413 (1992)], the Twelfth Appellate District decided a case that had been appealed from the Butler County Common Pleas Court. . . . The defendant in Short was ordered to pay 4,000 to a county agency that worked to improve prosecution for child abuse. The Twelfth Appellate District vacated that part of the defendant's sentence. Citing R.C. 2949.11, the Court determined that the common pleas court did not have the authority to order the defendant to make a donation to a county agency because any payment would have to be made to the county treasury. Under Short, the Court in this case had no authority to order the students to donate \$100 to either the Law Enforcement Trust Fund or the Respect for Law Camp.

912 N.E.2d at 117. The Court added: “[a]lthough it is too late for the students to ask for their money back, we caution the Butler County courts that, in the future, participants in the diversion program cannot be ordered to make a donation to a fund.” Id. (emphasis added) See also In re Cushman, 401 S.C. 337, 737 S.E.2d 489 (2013) [city prosecutor received public reprimand for

utilizing the practice of “dismissing criminal charges in certain types of cases in exchange for payments from the defendant made to a ‘city drug fund.’”].

To this analysis, we would close by referencing an opinion authored by former State Treasurer Grady Patterson to Citadel President Mark Clark at a time when Mr. Patterson was an Assistant Attorney General. Mr. Patterson’s analysis well states the rule of law applicable here. The question was whether the Citadel could use certain revenues for faculty and staff for insurance benefits. Mr. Patterson responded that these funds must not be so used on the say so of the Citadel, but must instead go to the State’s general fund:

[w]ith respect to the use of funds derived from activities such as the Tailor Shop, Mess Hall, Laundry, etc. generally these funds are considered public funds even though they are not derived from taxation. The effect of §§1 and 76 of the current Appropriations Bill require that all revenue from any source whatever be remitted to the State Treasurer. Thus, the use of funds to effect payment of such premiums must necessarily require legislative action. . . .

Op. S.C. Att’y Gen., 1963 WL 11272 (June 12, 1963).

The same answer Mr. Patterson gave is also required here as to monies obtained from the “corporate integrity agreements.” The funds “donated” to Solicitor Pascoe’s Office are “public funds” like any other. As this Court recognized in Elliott v. McNair, 250 S.C. 75, 90, 156 S.E.2d 421, 429 (1967), to constitute public funds, “it does not matter whether the money is derived by ad valorem taxes, by gift or otherwise. . . .” The Court went on to say that “the money which will be received by the County Board in this case is impressed with a trust that it be used for the purpose for which was obtained, the construction of the project, for which reasons the money does not become public money whose expenditure would otherwise be confined to the general public good.” Id. Here the General Assembly has reserved these funds to be deposited to the

general fund. To do otherwise, per a nonprosecution agreement, replaces the Legislature with the special prosecutor and state grand jury presiding judge who determines how and to what and public funds are spent. This Court has long rejected such a result.

In Sumter County v. Hurst, 189 S.C. 316, 1 S.E.2d 242 (1939), the Sheriff of Sumter County received funds for housing federal prisoners. The monies belonged to Sumter County, but the Sheriff withheld the funds to apply to his claims against the County. This Court concluded that the Sheriff had no right to the money but that it was County money. The Court stated that “there can be no dispute of the proposition that when a public officer receives money for the public use, he is a trustee to receive such monies and to pay them to the public official or function for whom or which they were intended. . . . He had no discretion in the matter. . . . His failure to pay them to Sumter County after having received them for that purpose from the Federal Government was a breach of a plain ministerial duty. . . .” 1 S.E.2d at 244.

CONCLUSION

The “corporate integrity agreements” used here, with large sums of funds “far greater than the penalties imposed by the Ethics Act” being “donated” to the prosecutor’s office in exchange for nonprosecution, are foreign to our prosecution system. In our view, such agreements are not authorized by the Constitution, any statute of the General Assembly or by any decision of this Court or by court rule. Absent such authorization, prosecutors cannot make such agreements because they are ultra vires.

Further, these agreements were executed by a special prosecutor who lacked jurisdiction to do so under Pascoe v. Wilson, *supra*, which limited his jurisdiction squarely to the “redacted

legislator's investigation.” The exercise of such jurisdiction where none exists, because the Attorney General was not recused in this instance, undermines Art. V, § 24 of the State Constitution, which reserves exclusively to the Attorney General the power to supervise all prosecutions. It is vitally important to South Carolina's prosecutorial infrastructure for this Court to protect Art. V, § 24 of the Constitution making the Attorney General the chief prosecutor of the State with the authority to supervise all criminal cases in courts of record. The special prosecutor, to date, has had no such supervision.

Moreover, the agreements, in requiring “donations” to the First Circuit Solicitor's Office, have the appearance at least, of compounding or not prosecuting a public prosecution in exchange for money. See §§ 16-19-370 and 17-1-20 [acceptance of a fee or reward for prosecution]. Case law indicates that it does not matter whether the monies go into the prosecutor's budget or into his pocket; the conflict remains present. At a minimum, therefore, these “donations” place a “cloud” over the prosecutorial process and altogether bypass the legislative appropriation process.

These funds, even assuming they were obtained with proper authority, were designated by the Legislature for deposit in the State's General Fund, not in Solicitor Pascoe's special escrow account. Separation of powers under Art. I, section 8, prevents any executive officer from directing the appropriation of state money. The statutes cited by the Court in its Question 3, particularly § 1-7-150(B), make it clear that these funds should have been deposited in the State's General Fund, not kept “on ice” over the course of several fiscal years. This Court held in McInnis that executive officers cannot, consistent with separation of powers, spend public

funds by administration, rather than pursuant to legislation, and cannot exercise a “veto” over the General Assembly’s appropriation powers. Section 11-9-10 deems it “unlawful” to do so. Approval by the presiding judge of the State Grand Jury cannot “cure” this constitutional defect.

At the same time, the agreements insulate the corporations, not only from criminal prosecution, but from civil and administrative liability as well. The exercise of such prosecutorial discretion assumes policy decisions and powers only the General Assembly possesses.

In conclusion, we believe the “corporate integrity agreements” were executed without legal authority, and are ultra vires.

Respectfully submitted,

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April 21, 2020

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

RECEIVED

Apr 24 2020

S.C. SUPREME COURT

The State

Appellant,

v.

Richard M. Quinn, Jr.

Respondent.

**RESPONDENT'S REPLY TO
APPELLANT'S MEMORANDUM**

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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 McMahon. *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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April 24, 2020

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

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

Carmen T. Mullen, Circuit Court Judge

Case No. 2017-GS-47-12, -13, -32

The State,.....Appellant

v.

Richard M. Quinn, Jr.,.....Respondent

APPELLATE CASE NO. 2018-000494

APPELLANT’S REPLY

The State, by and through the Solicitor of the First Judicial Circuit, has maintained since the inception of State Grand Jury Investigation 2016-257 (the “Investigation”) that the Attorney General has a conflict of interest with respect to the individuals involved in the Investigation. The Attorney General’s Memorandum in Response to the Court’s Order of March 12 highlights the existence of this conflict and illustrates an effort to aid those at the center of the Investigation. This Court asked for memorandum regarding the propriety of the CIA agreements, yet the Attorney General took advantage of the opportunity to relitigate Pascoe v. Wilson, 416 S.C. 628, 788 S.E.2d 686 (2016). Respondent joins with the Attorney General and takes the opportunity to relitigate arguments made previously before a lower court that are irrelevant to this matter. The State respectfully requests this Court reconsider and vacate its March 12, 2020 Order inviting briefs

from Respondent and the Attorney General and take this matter up when it is ripe for consideration before the proper parties.

I. The Attorney General’s Memorandum makes misleading assertions.

a. The CIA payments are not “donations” to the First Circuit.

The Attorney General’s Memorandum is a thinly veiled effort to insinuate impropriety where none exists. The Attorney General insistently and improperly use the term “donation” to refer to the payments mandated by the CIAs. The State could not have been more clear in its March 23, 2020 Memorandum that these payments are not in any respect “donated to the prosecutor’s office,” as the Attorney General represents to this Court. AG Memo at 8. As the State’s Memorandum explained,

No portion of the funds have been expended or disbursed and no portion of the funds are designated to be retained by the First Judicial Circuit for any purpose other than reimbursement for actual expenses related to the Investigation and prosecution of the resulting cases. These funds were not collected as a windfall to the First Circuit or as additional compensation to any member of the First Circuit—they were collected to reimburse the citizens of the First Circuit, who have been required to bear the costs incurred for actual, substantiated expenses related to the Investigation and prosecution.

St. Memo at 4. It is disingenuous to argue that this describes “‘donations’ to the prosecutor’s office” AG Memo at 9.

Operating under an inaccurate assertion that the payments constitute “donations” to the First Circuit, the Attorney General’s Office reveals the portrait they have labored to paint by pointing out that, “[r]equiring financial ‘donations’ to the prosecutor’s office is particularly problematic because such a financial contribution creates the appearance of a conflict of interest on the part of the prosecutor.” AG Memo at 20. The Attorney General’s strategy is reckless and detached from reality. The State has been completely transparent about the nature of the CIAs and fully explained them in the State’s Memorandum.

The Attorney General's choice to ignore the facts in the State's Memorandum goes on as he protests, "the amount 'donated' is reimbursement for the costs of the Investigation, with the balance to the Ethics Commission. Yet there is no connection between the amounts donated and those costs. . . . Where these figures were derived, how they bear on figures (or fines) are not explained." AG Memo at 5, 31–32. This is a blatant misrepresentation. The State very clearly explained,

Each agreement was separately negotiated on the basis of evidence relevant to the entity, and each entity was represented by able counsel throughout the negotiation process. The amounts paid to the State by each entity were negotiated largely on the basis of the retainer payments paid by each entity to RQA.

St. Memo at 13. The CIA payments are not gifts to Solicitor Pascoe or the First Circuit and they certainly are not "donations." The payments are part of binding contractual arrangements intended to promote the ends of justice. Each of the entities subject to the CIAs paid a different retainer fee to RQA and the amount of these retainer payments provided a starting point for negotiation with each entity. The Investigation has not concluded and the total expense of litigating the matter is unknown. The State did not negotiate the CIAs on the basis of litigation expenses; the CIAs were negotiated based upon the size of the unreported liability and upon the strength of the State's case against each entity. The Attorney General is attempting to insinuate impropriety where there is none so that they may support their mendacious conclusion that the Court should intervene.

b. The Attorney General's Memorandum inaccurately infers it has incurred all of the costs of the Investigation.

The Attorney General incorrectly surmises that the State could have no expenses because the State Grand Jury Act requires the Attorney General to foot the bill for the grand jury in Sections 14-7-1780 and -1790. They provide an accounting of the substantial cost associated with each assembly of the grand jurors and proclaim, "the Attorney General's Office supported the costs of

the State Grand Jury; Solicitor Pascoe did not do so.” AG Memo at 31. It would appear that the Attorney General has indeed borne the cost of meeting space, allowances to jurors, coffee, and doughnuts. But to represent to this Court that the Attorney General has paid all of the costs associated with this Investigation is at best disingenuous. The funds dispersed from the First Circuit’s own budget to cover the costs of this Investigation and prosecution far exceed the set costs claimed by the Attorney General. The Attorney General should be fully aware that an investigation of this magnitude requires expert fees, travel costs, technology fees, and other expenses beyond the “fixed costs for operating the State Grand Jury” AG Memo at 31.

II. The Attorney General’s legal analysis is flawed.

As to the propriety of non-prosecution agreements, the Attorney General’s conflict of interest leads to an astounding conclusion that such agreements are impermissible; however, their position is unsupported by the law and the Attorney General’s prior opinions. Their brief notes, “[t]o our knowledge, no statute or judicial order authorizes a non-prosecution agreement, particularly the type of ‘corporate integrity agreements’ which Solicitor Pascoe executed here in which funds are donated to the prosecutor’s office in exchange for non-prosecution.” AG Memo at 8. This position represents a stark change from the Attorney General’s prior stance on a prosecutor’s authority to elect to forego prosecution based upon agreed conditions.

a. The Attorney General’s prior opinions on the matter.

The Attorney General’s position today is that no prosecutor can bind the State in a promise not to prosecute through any agreement other than a plea agreement or the statutory guidelines of the Pre-Trial Intervention program. This conclusion is flawed and inconsistent with prior opinions issued by the Attorney General’s Office. If this were the case, a great many immunity agreements and proffer agreements throughout the State must be revisited, including such agreements entered

in this Investigation. The effect of the Attorney General’s new position is that prosecutors would not be able to enter into immunity and proffer agreements because these agreements bind the State to non-prosecution of criminal matters, are not specifically authorized by statute, and are not subject to prior approval by the court. There is no authority that mandates that a solicitor may only dispose of a case through a nol pros or a guilty plea, as evidenced by the Attorney General’s need to cite foreign jurisdictions and pre-civil war cases to muster support for their predetermined outcome.¹ The Attorney General relies heavily on State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003), for the proposition that an agreement not to prosecute cannot be made. This is erroneous because Peake merely stands for the proposition that a person without criminal prosecutive authority, such as a DHEC Water Pollution Control Agent, cannot restrict a prosecutor’s discretion in a criminal matter. The decision in Peake only serves to strengthen the State’s argument that a prosecutor may enter consensual non-prosecution agreements because the Court made clear that only the criminal prosecutor may decide whether to prosecute and that he therefore has “the authority to grant immunity from criminal prosecution” Id. at 504, 579 S.E.2d at 300. Solicitor Pascoe is not a DHEC Agent—he is the prosecutor for this Investigation with authority to terminate the prosecution in the manner and under the conditions that he sees fit. The outcome is the same whether Solicitor Pascoe is prosecuting a typical General Sessions case within his judicial circuit

¹ The Attorney General cites Gray v. Seigler, 33 S.C.L. 117 (1847), as authority for his claim that a criminal matter may only be suspended by a nol pros. However, Gray and the cases that cite it concern the prohibition on private litigants contracting to terminate criminal prosecution because this authority is vested solely in the Solicitor or Attorney General. To permit private litigants to interfere in the public’s interest in criminal prosecution would “put the Solicitor’s office at the beck and call of selfish men, by allowing so extraordinary a privilege of interfering with public rights.” Gray, 33 S.C.L. at 122; see also Corley v. Williams, 17 S.C.L. 588 (S.C. App. L. & Eq. 1830); Williams v. Walker, Fleming & Co., 18 S.C. 577 (1883); Liberty Mut. Ins. Co. v. Gilreath, 191 S.C. 244, 4 S.E.2d 126 (1939).

or whether he is prosecuting a State Grand Jury public corruption case with the authority of the Attorney General's Office. Pascoe v. Wilson, 416 S.C. 628, 642 n.15, 788 S.E.2d 686, 694 n.15 (2016) ("Thus, Pascoe was acting as the Attorney General for the purpose of the redacted legislators matter *fully vested with the authority of South Carolina Constitution Article V, § 24*, and, therefore, is not in violation of S.C. Code Ann. § 1-7-380 (2005).") (emphasis added)).

The Attorney General previously agreed that a Solicitor has common law authority to set terms not to prosecute. In June 1996, the Attorney General issued an opinion answering whether "there are any legal problems with a prosecutor's 'deferring prosecutions of offenses under appropriate circumstances upon completion of certain conditions.'" Op. S.C. Att'y Gen., 1996 WL 452687, at *1 (June 3, 1996) (written by Solicitor General Robert Cook). The opinion begins by pointing out, "[t]he general principle that a prosecuting officer has virtually unlimited authority to decide whether or not to prosecute a case in a given instance has been reiterated by our courts as well as opinions of this Office dozens of times in a variety of contexts." Id. The opinion goes on to address the central issue of "whether or not, *without statutory authority*, a prosecutor can impose conditions such as restitution, community service, good behavior, or some other form of pretrial diversion in return for deferral or dismissal of the prosecution." Id. at *2 (emphasis added). Solicitor General Cook writes, "the issue is whether such is recognized at common law. There is authority which concludes that deferral of prosecution and dismissal upon fulfillment of certain conditions is within the prosecutor's inherent prosecutorial discretion" Id. The sole limitation offered by Solicitor General Cook regarding this broad authority is that "a dismissal may not be done corruptly and capriciously and is subject to the 'general supervision' of the court." Id. at *4. The opinion concludes,

as a general rule, a prosecutor possesses wide discretion as to whether to proceed with respect to a particular prosecution. Concerning the prosecutor's authority to

condition the non-prosecution of a case upon the meeting of certain reasonable conditions such as restitution or good behavior, I agree that, generally speaking, such is within the prosecutor's discretion under existing case law. Such authority apparently applies to any prosecutor, be it a Solicitor or in the municipal court, "in the discretion of the individual acting as the prosecutor."

Id. at *5 (quoting Op. Atty. Gen., 1979 WL 42923 (April 12, 1979)).

The current administration at the Attorney General's Office has expressly reaffirmed the position of its 1996 opinion stating,

Having reviewed the law, we agree with your concern that we do not see statutory authorization for the type of conditional plea you describe. Nevertheless, we affirm that a prosecutor has the authority to condition the non-prosecution of a case, as was outlined in our June 3, 1996 opinion.

Op. Atty. Gen., 2016 WL 2607249 (Mar. 15, 2016) (Reviewed and approved by Solicitor General Robert Cook). The Attorney General reiterated in 2018 that it is the Solicitor who has complete control of the prosecution of cases in his circuit and "where a solicitor directs a decision regarding the prosecution of cases—such as there shall be no pretrial diversion programs established for summary court cases—that decision is binding and must be followed." Op. S.C. Att'y Gen., 2018 WL 3494001 at *3 (July 3, 2018) (emphasis original).

This assessment of the authority of a prosecutor to decline prosecution in exchange for the fulfillment of agreed upon conditions is in stark contrast to the Attorney General's present position on the matter that, "[t]he fact that the non-prosecution agreements. . . have not been authorized by the General Assembly, nor established by judicial order as these other diversion programs have been, is certainly striking—a clear indication that they are not permitted under our law."² AG

² Indeed, the Attorney General's support for this assertion that because there is no statute specifically authorizing CIAs or similar non-prosecution agreements it is "a clear indication that they are not permitted under our law" makes little sense. The Attorney General cites a statute that requires PTI programs to collect and report data and he appears to imply that it is a complete list of permissible pretrial programs. Then, by a remarkable twist of logic, the Attorney General asserts that any non-prosecution arrangement that is not on that list is not permitted under our law because

Memo at 9. The Attorney General misapplies the law and references concurring opinions from distant jurisdictions, law review articles, and cases written prior to the civil war in an effort to arrive at a self-serving outcome. The Attorney General does not refer the Court to the opinions from his Office by the current Solicitor General in more applicable prior matters. The law has not changed, only the defendants have changed.

b. The Attorney General’s Memorandum raises an issue pending before the Court in a separate matter seeking to overturn convictions of Quinn associates.

In its introductory paragraphs the Attorney General’s Memorandum claims, “[w]e are not here to quarrel with Pascoe v. Wilson.” AG Memo. at 2. The Attorney General then proceeds to do precisely that by parroting the arguments made by Richard Quinn associate Jim Harrison, whose convictions arising from the Investigation are currently pending before this Court. See State v. James H. Harrison, Appellate Case No. 2018-002128. The Attorney General’s Memorandum argues that when he recused the office and granted authority to Solicitor Pascoe, he specifically limited the investigation to the “redacted legislators” in such a way that would act as a subsequent limitation on the State Grand Jury’s investigative power. The Attorney General claims that the Court’s decision in Pascoe v. Wilson, 416 S.C. 628, 788 S.E.2d 686 (2016), operated to limit the

“to express or include one thing implies the exclusion of another, or of the alternative.” AG Memo at 9 (quoting Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)). This assertion simply does not follow. The quoted language from Hodges v. Rainey refers to a statute that enumerates a specific and finite list of officers that are exempt from the Governor’s discretionary removal power. See S.C. Code Ann. § 1-3-240. The Court determined that exclusion from that finite list implied that the officer would be subject to the Governor’s power. The statutory list of diversion programs cited by the Attorney General is merely a list of examples of diversion programs that, by the very terms of the statute, “shall include, but are not limited to” S.C. Code Ann. § 17-22-1120. Yet the Attorney General would argue to this Court that because that list—which is not a list authorizing these programs—does not include corporate integrity agreements or non-prosecution agreements it is, “a clear indication that they are not permitted under our law.” AG Memo at 9. This argument is, quite simply, absurd.

“scope of Solicitor Pascoe’s investigation” to the “redacted legislator’s investigation.”³ AG Memo at 12.

The Attorney General and all of the defendants in this investigation place great significance on the reference to the Investigation as “the redacted legislators investigation.” However, no one knew at the time Pascoe v. Wilson was decided that investigators would discover criminal conduct by John Courson, Jim Harrison, and others in the course of investigating the redacted portions of the SLED report. The reference to the investigation cannot be read to impose an explicit limitation to only investigate certain individuals and to turn a blind eye to any other criminal conduct. The nature of a criminal investigation dictates that it is not predetermined.

The Attorney General’s argument is meritless and has been consistently rejected by the lower courts when made by the other defendants in this grand jury probe because it is simply not reality. All of the targets of this Investigation have related to improper dealings with Rick Quinn’s family business, RQA. The Harrell SLED report that raised this concern and formed the basis of the case initiation specifically referred to RQA:

While Quinn was the Majority Leader of the House, he had his own caucus team that discussed, decided, and produced mailers for candidates and House districts. Like Rep. Merrill, Quinn had his own consulting, advertising and marketing business. **This business (RQ&A) was run by Rick Quinn and/or his father Richard Quinn in Columbia, SC.** Yet unlike Rep. Merrill, Quinn ran his own printing house; therefore, he did not need to send the printing out to another source. Rep. Merrill felt that Quinn, while Majority Leader, sent most, if not all of the caucus mailers to his own business.

R. p. 489 (emphasis added). The above quoted passage is taken directly from the redacted portion of the SLED report. Naturally, investigators obtained and reviewed business records for RQA in

³ This argument was initially made by John Courson in a motion to dismiss his indictments arguing that Solicitor Pascoe lacked jurisdiction beyond the “redacted legislators.” The motion was denied by the lower court. Mr. Harrison later re-submitted the exact same motion, only substituting “John Courson” with “Jim Harrison.” The motion was again denied.

the course of the Investigation. As investigators reviewed the RQA financial records, they observed numerous suspicious payments to various current and former legislators as well as retainer payments from lobbyist's principles. They discovered documentary evidence demonstrating that Richard Quinn was lobbying on behalf of these lobbyist's principles with no accountability to the general public, as required by statute and relevant to the CIAs. The investigation also revealed that the payments from RQA to legislators violated state ethics laws. All of this was discovered while the State was investigating Rick Quinn's dealings with RQA.

To demonstrate the absurdity of the Attorney General's argument, one only needs to review the convictions of former Senator Pro Tempore John Courson and former House Judiciary Chairman Jim Harrison. SLED's review of RQA records led to the discovery of RQA illegally laundering Courson for Senate campaign account money back to John Courson personally. Their review also led to the discovery that Jim Harrison was employed at RQA while voting on legislation affecting RQA clients. The Attorney General's position is that SLED and Solicitor Pascoe should have looked the other way, or in the alternative, they would have Solicitor Pascoe send the evidence of criminal activity relating to RQA to the Attorney General.⁴ Both options are a ridiculous affront to justice.

⁴ See July 10, 2017 Campaign Disclosure, Michael A. Wilson, Attorney General. Mr. Courson was indicted on March 16, 2017 and the Attorney General's campaign disclosure reflects payments to RQA for bookkeeping services through June 2017. Following the indictments of Richard and Rick Quinn in October 2017, the Attorney General's January 2018 disclosures reflect payments to Mr. Quinn's daughter, Rebecca Mustian, rather than RQA for these services. The following quarter's disclosure, April 2018, reflects a switch to using Spring Strategies, which is a new corporation started by the Quinns in October 2017, following the indictments of Richard and Rick Quinn. This continued association with the Quinn family even after the indictments were publicly announced was a source of great frustration for members of the State Grand Jury. See R. pp. 449–450.

While the Attorney General and the defendants in this Investigation complain that Solicitor Pascoe has overextended the authority granted by Pascoe v. Wilson, no party has utilized the judicial oversight mandated by the State Grand Jury Act and sought an order of the presiding judge pursuant to Section 14-7-1630(G). Throughout the Investigation the State has operated well within the statutory requirements of the State Grand Jury Act and under the guidance provided by this Court. But if any interested party believed that the State was violating that authority, they could have sought relief from the presiding judge. Alternately, an indicted party could challenge the State's authority before the trial judge. Mssrs. Harrison and Courson raised the issue before the trial court and in each instance the trial court ruled in favor of the State's authority. The Attorney General has never raised his concerns under Section 14-7-1630(G). Instead, the Attorney General acquiesced with Solicitor Pascoe's use of the Statewide Grand Jury to prosecute all crimes uncovered during the course of the Investigation. Now, after Solicitor Pascoe has obtained convictions of Mssrs. Courson and Harrison, and indictments against Mssrs. Quinn, Sr. and Edge, the Attorney General has seized upon the opportunity provided by the Court to file what is essentially an amicus brief on behalf of all of the defendants in the corruption probe for whom the Attorney General maintains a clear conflict of interest.

III. The Attorney General's relationship to the Quinns.

When this Court decided Pascoe v. Wilson the full extent of the Attorney General's conflict of interest was not known. Information revealed in the time since that decision demonstrates the Court's wisdom in holding that the Attorney General's office was recused and Solicitor Pascoe was vested with authority to act as the Attorney General for this Investigation. The members of the 28th State Grand Jury concluded in their Report that "[Attorney General] Wilson put his loyalty to Richard Quinn above the duty and obligations to the citizens of South Carolina to respect and

enforce the State's laws." R. p. 450. After numerous convictions and years of hard fought litigation, it is difficult to comprehend how the Attorney General, whose close relationship with the Quinns led the State Grand Jury to call him as a witness in this Investigation, has now been permitted to lend the weight of his office to issue an opinion on this Investigation. Rather than simply addressing the Court's inquiry, the Attorney General's Memorandum cuts directly to the ultimate issue of whether the prosecutions of individuals involved in the Investigation are valid. The State respectfully implores the Court to reject the Attorney General's attempt to interject himself into the prosecution of his friends.

The Attorney General's conflict of interest is well documented, by the State Grand Jury⁵ and media Freedom of Information Act requests.⁶ The Attorney General's position would permit SCANA, Palmetto Health, USC, AT&T, and the Trial Lawyer's Association to escape without consequence or responsibility; it would permit John Courson to escape prosecution for laundering his campaign funds through RQA; it would permit Jim Harrison to escape prosecution for accepting nearly one million dollars of undisclosed funds from RQA; and it would permit Richard Quinn himself to escape prosecution for alleged perjury before the State Grand Jury. This shocking position advocated by the Attorney General demonstrates the conflict of interest.

This Investigation arose from revelations in a SLED report concerning then House Speaker Bobby Harrell that was made available to the Attorney General's Office in December 2013. From that moment forward, the Attorney General was on notice that Rick Quinn and RQA were

⁵ See R. pp. 439–451.

⁶ Glenn Smith, [Emails: South Carolina AG coordinated with key figure in statehouse probe on letter booting special prosecutor off case](https://www.postandcourier.com/politics/emails-south-carolina-ag-coordinated-with-key-figure-in-statehouse/article_db600c26-7871-11e7-9109-7bb3a89fa640.html), Post and Courier, Aug. 5, 2017, https://www.postandcourier.com/politics/emails-south-carolina-ag-coordinated-with-key-figure-in-statehouse/article_db600c26-7871-11e7-9109-7bb3a89fa640.html

potentially subject to a criminal investigation. But despite the fact that a criminal investigation by SLED had specifically named Rick Quinn and RQA due to questionable financial transactions, the Attorney General continued to involve both Rick and Richard Quinn in matters concerning that investigation. R. pp. 601–603, 605–606. In some instances, Richard Quinn was involved in drafting letters to Solicitor Pascoe regarding prosecution of the Harrell matter and the prospect of “any other cases related to or arising out of that one.” R. pp. 615–617. Notably, this example occurred after Solicitor Pascoe sent an email to the Attorney General on October 1, 2014 expressing his opinion that Rick Quinn should be investigated as part of any corruption investigation.

The events leading to the transfer of authority to Solicitor Pascoe have been thoroughly treated by this Court in Pascoe v. Wilson, and need not be restated here. See Pascoe, 416 at 631–639, 788 S.E.2d at 688–692. However, as the events leading up to that decision played out, Richard Quinn was always in contact with the Attorney General. Indeed, evidence presented to the grand jury is that Mr. Quinn and the Attorney General discussed the Investigation almost every day up to Mr. Quinn’s initial indictment. R. p. 611, lines 7–12.

Behind the scenes, the Quinns busily worked to discredit and undermine the Investigation. The State Grand Jury heard testimony that the Attorney General was pressured by a Quinn business associate to get the Investigation under control. R. p. 444. The Quinns drafted press releases for the Attorney General. R. pp. 622–632. Mr. Quinn even submitted purported legal memoranda to the Post and Courier Newspaper in an attempt to muster support for removing Solicitor Pascoe from the Investigation. R. pp. 634–640. The Attorney General’s own Public Affairs Director, Adam Piper, asked the Chairman of the Republican Party to join in the attempts to discredit

Solicitor Pascoe, only to have the emails published by the Post and Courier.⁷ Mr. Piper—who was being paid by both the Attorney General’s Office and RQA at the time—testified before the State Grand Jury that he sent the email because Rick and Richard Quinn were pressuring him. R. p. 445.

Jimmy Merrill testified to the State Grand Jury that as the criminal matters involving the Quinns and Mr. Merrill arose following the Harrell guilty plea, the Attorney General personally reassured him that everything would work itself out. He even informed Mr. Merrill that an opinion was coming out that would be good for him, referring to the December 11, 2015 Attorney General’s Opinion. R. pp. 441–442.

The State does not relish calling attention to these matters. However, it is necessary to inform the Court of the significant and pervasive conflict of interest the Attorney General has in this case. While the opinions of the Attorney General’s Office are typically viewed as persuasive, in this instance the Attorney General’s Memorandum should be viewed with a full understanding of the history of this Investigation.

IV. Respondent’s response is irrelevant and unreliable.

In addition to the brief submitted by the Attorney General’s Office, Respondent has submitted a memorandum in response to the Court’s inquiry “joining in support of the Attorney General’s filing” Resp. Memo at 1. Respondent’s memorandum digs deep into the history of the Investigation to pile on more inaccuracies to add to the Attorney General’s offering. Essentially all of Respondent’s brief is irrelevant to the Court’s inquiry and warrants little response.

⁷ Glenn Smith, Tony Bartelme, [Exchanges reveal contempt for Pascoe\[.\] Aide plotted with GOP figures before Wilson ripped special prosecutor, texts, emails show](https://www.postandcourier.com/politics/exchanges-reveal-contempt-for-pascoe-aide-plotted-with-gop-figures-before-wilson-ripped-special-prosecutor-texts-emails-show), Post and Courier, Apr. 3, 2016, https://www.postandcourier.com/politics/exchanges-reveal-contempt-for-pascoe-aide-plotted-with-gop-figures/article_4e2508ca-e4d1-5c7a-a274-822473645da2.html

As just one example, Respondent raises the same complaints made during litigation over the execution of a search warrant of RQA. Respondent and his father accused the State at that time of seizing and looking at privileged materials; they accused SLED of having no plan for the search; they accused Solicitor Pascoe of prosecutorial misconduct; and they conducted a fishing expedition on direct examination of the SLED case agents to try to drum up any other accusations they could think of. These issues were ruled upon by the Honorable Knox McMahon and found to be completely baseless. In an oral ruling, incorporated into a written order upon the request of defense counsel Judge McMahon ruled that there was a “taint team” search procedure in place to protect investigators from viewing privileged material; that there was no evidence that any member of SLED or the prosecution viewed any items that were seized; and that there was absolutely no misconduct.

V. Issues raised in the concurring opinion of State v. Quinn.

The State respects the Court’s decision in State v. Quinn, Op. No. 27966, (S.C.Sup.Ct. filed May 6, 2020) (Davis Adv. Sh. No. 18 at 78–98). Mr. Quinn stands duly convicted of statutory misconduct in office, which was the State’s primary concern. The majority concluded that the CIA issue had no bearing on the outcome of that case and the State contends it also has no bearing on the outcome of the Harrison matter. See id. at 87–88 n.8. In light the Court’s indication that the matter will be addressed during the Harrison oral argument, the State will address some of the issues raised by the Quinn decision.

With respect to the majority opinion’s concern that the Investigation is entering its fifth year, the State would assure the Court that the “probe” aspect of the Investigation concluded long ago. The final meeting of the state grand jury related to the Investigation occurred over one year ago on April 18, 2019. All that remains is disposition of the current indictments and appellate

matters. There are no plans to present further evidence to that body. The Investigation has continued for as long as it has due to many delays associated with hearings, trials, appeals, and document reviews. The concurring opinion’s concern that “we do not know whom else” is subject prosecution is unwarranted as all remaining defendants are publicly known.

While the majority is careful not to comment on the unheard and undecided issues regarding the CIAs and Solicitor Pascoe’s authority, the concurrence quotes sections of the Attorney General’s brief without having the benefit of the State’s reply, and thus Justice Few was presumably unaware that the Attorney General’s argument that prosecutors lack common law authority to enter into non-prosecution agreements is directly contradicted by two prior South Carolina opinions from his office. Neither the concurrence, nor the defendants in the Investigation, nor the Attorney General have indicated what specific authority has been violated by the State in the conduct of this Investigation. The majority decision in Pascoe v. Wilson was clear in its grant of Article V authority to Solicitor Pascoe for this Investigation. The State has taken no action contrary to the majority’s decision and respectfully disagrees with the assertion that the constitutional authority of the Attorney General’s Office cannot be transferred where the Attorney General maintains a clear conflict of interest.

The concurrence asserts that Solicitor Pascoe is operating completely unfettered because the Attorney General is not in a supervisory role.⁸ However, Solicitor Pascoe is restrained by numerous sources. He is accountable not only to the voters of his circuit—who are citizens of this State and thus interested parties in a statewide corruption probe—but also to his oath as an officer of this State and as an officer of the Court. He is accountable to the courts that oversee the

⁸ See section III *supra*. Supervision by the Attorney General in this matter would be inappropriate due to the pervasive conflict of interest.

Investigation. The State Grand Jury Act mandates judicial supervision at various stages and also provides remedies for interested parties to challenge the State's actions. See S.C. Code Ann. § 14-7-1630(G). This Investigation has been conducted according to the procedures and rules provided by the State Grand Jury Act and irrespective of whether the Investigation is conducted by Solicitor Pascoe or by the Attorney General himself, the guidance and oversight mandated by those rules is the same. He is also held accountable to the state grand jurors. A State Grand Jury investigation ultimately belongs to the grand jurors and if they direct the legal advisor to pursue an area of inquiry he is obliged by statute to do so.⁹ S.C. Code Ann. § 14-7-1650(A). Finally, he is accountable to SLED. The initiation of the Investigation was co-signed by Chief Mark Keel and the Investigation was conducted as a combined effort with SLED agents who do not work for Solicitor Pascoe.

The State respectfully disagrees with the characterization of the results of this Investigation as a “prosecutive’ mess.” Quinn, Op. No. 27966 at 98. As referenced in the grand jury’s Report, the former Director of the State Ethics Commission discussed some of the statutory shortcomings that limit the charges available to the grand jury in such cases. See R. pp. 436–437. The manner in which the resulting indictments are prosecuted is the prerogative of the prosecutor and should not be subject to second guessing by a court any more than a prosecutor second guessing a court’s discretion. Furthermore, while Mr. Quinn would likely not characterize his punishment as being “scot free[,]” the State asked for a harsh sentence and gave a lengthy sentencing presentation for that purpose. It is now settled that the lower court considered this evidence and used her discretion

⁹ To the extent the concurrence is asserting that the State entered into the CIAs against the wishes or without the knowledge of the grand jury, this is not the case. The members of the State Grand Jury, as well as the presiding judge were fully aware of the State’s plan to negotiate these agreements.

to mandate a suspended sentence. This is beyond the prosecutor's control, as sentencing is the province of the court. In addition to the conviction against Mr. Quinn, Jr., the Investigation has resulted convictions against other House Majority Leaders, a former Senator Pro Tempore, a former House Judiciary Chairman, and exposed significant issues in the conduct of state legislators and corporate lobbyists. To dismiss this Investigation as a "prosecutive mess" is a mischaracterization that diminishes the challenges of rooting out corrupt practices in this State, which this Investigation has achieved.

Conclusion

SLED's initial December 2013 investigation uncovered legislators along with their political consulting companies violating the public's trust by putting their own interests before the interests of South Carolina's citizens. While the Attorney General's Office did almost nothing with this evidence prior to this Court's ruling that Solicitor Pascoe was "acting as the Attorney General for the purpose of the redacted legislators matter fully vested with the authority of South Carolina Constitution Article V, § 24," SLED, the First Circuit Solicitor's Office conducted a thorough investigation under the supervision of the presiding judge of the State Grand Jury. Pascoe, 416 S.C. at 642 n.15, 788 S.E.2d at 694 n.15. The Investigation was both costly and time consuming, but well worth these expenditures as it uncovered significant violations of the public trust. For the State Grand Jury, SLED, and Solicitor Pascoe to turn their backs on this blatant corruption would strike a foul blow to justice.

As to the Court's March 12 inquiry regarding the CIA agreements that resolved potential criminal actions against some of the largest corporate entities in the State, those agreements required the payment of funds under conditions permitted by the prosecutor of this Investigation that benefit the State of South Carolina. There is also no statute or judicial decision that prohibits

Corporate Integrity Agreements. The mere fact that they are novel within this State does not prohibit their use by a prosecutor faced with a highly unique and complex scenario. In the absence of authority addressing the use of these non-prosecution agreements, the State ensured that the agreements were entered voluntarily by represented parties and that they are completely transparent. Additionally, the State has preserved the funds paid pursuant to these agreements for judicial review to further promote transparency and oversight. But it cannot be overstated that those agreements are not about the money—they are about putting these entities and others on notice that they cannot pay cash for political influence with no accountability to the general public. Solicitor Pascoe and the First Circuit have no interest in that money beyond reimbursement of substantiated litigation costs, as specified in each agreement and to be direct by the lower court.

Respectfully submitted,

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May 12, 2020
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Certificate of Counsel

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material. See Rule 210(g), SCACR.

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