

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

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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 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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