

DEC 06 2018

**JAMES R. PARKS
CLERK, STATE GRAND JURY**

IN THE STATE GRAND JURY OF SOUTH CAROLINA

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

**MOTION TO REMOVE
TEMPORARY REDACTIONS**

The State of South Carolina, by and through its lawfully designated prosecutor, David M. Pascoe, Jr., respectfully moves the Honorable Clifton Newman, Presiding Judge of the State Grand Jury, for an order removing the temporary redactions to the Report of the Twenty-Eighth State Grand Jury and releasing the full, unredacted version of the Report for public disclosure.

The State submits that the proposed redactions do not threaten any constitutional rights enjoyed by the Intervenor and that the public's interest in disclosure of the redacted portions greatly outweighs any interest in continued censorship.

The particulars of this motion are set forth more fully in the State's Memorandum in Support, which has been filed under seal contemporaneously with this motion. A redacted copy of the Memorandum in Support is attached to this unsealed Motion to permit public access to information that does not reveal sealed State Grand Jury material.

Respectfully submitted by,



David M. Pascoe
First Circuit Solicitor

December 6, 2018
Orangeburg, South Carolina.

IN THE STATE GRAND JURY OF SOUTH CAROLINA

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**MEMORANDUM IN SUPPORT OF THE STATE'S
MOTION TO REMOVE TEMPORARY REDACTIONS**

The State of South Carolina, by and through its lawfully designated prosecutor, David M. Pascoe, Jr., respectfully submits the following Memorandum in Support of the State's Motion to Remove Temporary Redactions. For the reasons that follow, the Court should order the State to remove all temporary redactions proposed by Intervenor Rick Quinn to the Report of the Twenty-Eighth State Grand Jury (hereinafter, the "Report"), and order release of the full, unredacted Report for public disclosure.

I. Background

On September 6, 2018, the State filed a motion to unseal the Report for public disclosure, and a hearing was scheduled for Wednesday, September 26, 2018. The day before the hearing, on Tuesday, September 25, Matthew Richardson, counsel for Richard "Rick" Quinn, Jr., sent an email requesting a copy of the Report and an opportunity to impose objections. Mr. Richardson was not available to attend the September 26 hearing, so a second hearing was conducted on October 3 to accommodate the request. As a result of the second hearing, Mr. Richardson submitted a number of proposed redactions to the Report, which the State opposed. See Proposed redactions, attached as **Exhibit A**. To address the proposed redactions, a third hearing was planned for the week of October 8, 2018.

In the interest of releasing the report without further delay and to permit the prosecution team to focus on the October 22, 2018 trial of Jim Harrison, the State consented to releasing the Report with temporary redactions reflecting Mr. Richardson's suggestions. In this way, the State was able to serve the public interest by releasing the Report, while preserving the concerns raised by Mr. Richardson and his client for future discussion. The undersigned proposed the release of the Report with temporary redactions in an October 7, 2018 email to the Court and Mr. Richardson. The letter was clear that the State does not believe the redactions are lawfully appropriate, and that a motion seeking removal of the temporary redactions would be filed following the Harrison trial. See October 7, 2018 Email, attached as **Exhibit B**. The Harrison matter has concluded, and the State now seeks to remove the temporary redactions imposed by Intervenor Rick Quinn.

II. Removal of the redactions would not affect a potential trial of Rick Quinn.

In his September 25 email, Mr. Richardson raised a concern that his client, Rick Quinn, could be prejudiced by the contents of the Report due to the potential that his plea could be overturned. On December 13, 2017, Mr. Quinn pleaded guilty to statutory misconduct in office. He received a probationary sentence from Judge Carmen Mullen over attempted objections by the State during a sentencing hearing on February 12, 2018. On March 21, 2018, the State filed an appeal challenging several issues related to Mr. Quinn's plea and sentence. A possible outcome of the State's appeal would result in vacation of the guilty plea and a subsequent trial on the charges. However, even if Mr. Quinn's case was called for trial, nothing in the redacted portions of the Report would prejudice his right to a fair trial.

As explained more fully in Section III below, there is nothing within the redacted portions of the Report related to Mr. Quinn's charges that is not already within the public domain. Further, a number of the redacted portions do not concern trial issues relating to Rick Quinn's charges, ■

[REDACTED]

Nevertheless, if we were to assume for the sake of argument that the redacted portions do contain previously unknown information that is material to the charges against Mr. Quinn, there is no possibility that a member of Mr. Quinn's trial jury would be unduly influenced by the contents of the Report.

First, the Report is a document issued by the State Grand Jury containing their findings and conclusions based on the documents and testimony before them. Their conclusions are not evidence and the Report would not be presented to Mr. Quinn's trial jury. Instead, the jury would draw their own conclusions based on the evidence and testimony presented to them at trial. Second, any assertion that the jury could be tainted simply by public release of the redacted portions of the Report presupposes that members of the trial jury would be familiar with the contents of the Report. While the State would like all of the citizens of South Carolina to read the Report, the fact of the matter is that only a very small percentage of the population will be familiar with its contents. Simply put, there will be no difficulty selecting jurors who have never heard of the Report or the Quinns. To the extent the jury pool does contain individuals who have read the Report, the preferred method for ensuring the impartiality of the jury is through *voir dire* rather than censorship. Ex parte Hearst-Argyle Television, Inc., 369 S.C. 69, 77, 631 S.E.2d 86, 90 (2006) ("Additionally, we take this opportunity to reiterate that jury *voir dire* is the preferred and generally accepted tool that protects a defendant from the prejudicial effects of pre-trial publicity.").

As a practical matter, it is important to note that Mr. Quinn's trial jury would presumably be asked in *voir dire* if they have read the Report even if the redactions are not removed. Thus, removal of the redactions is a moot issue because any juror who has read the Report—whether it

remains redacted or not—will likely be removed from the jury pool.¹ To continue to censor the Report would only serve to continue public speculation about the redacted portions while not affecting Mr. Quinn’s trial rights in any discernable way.

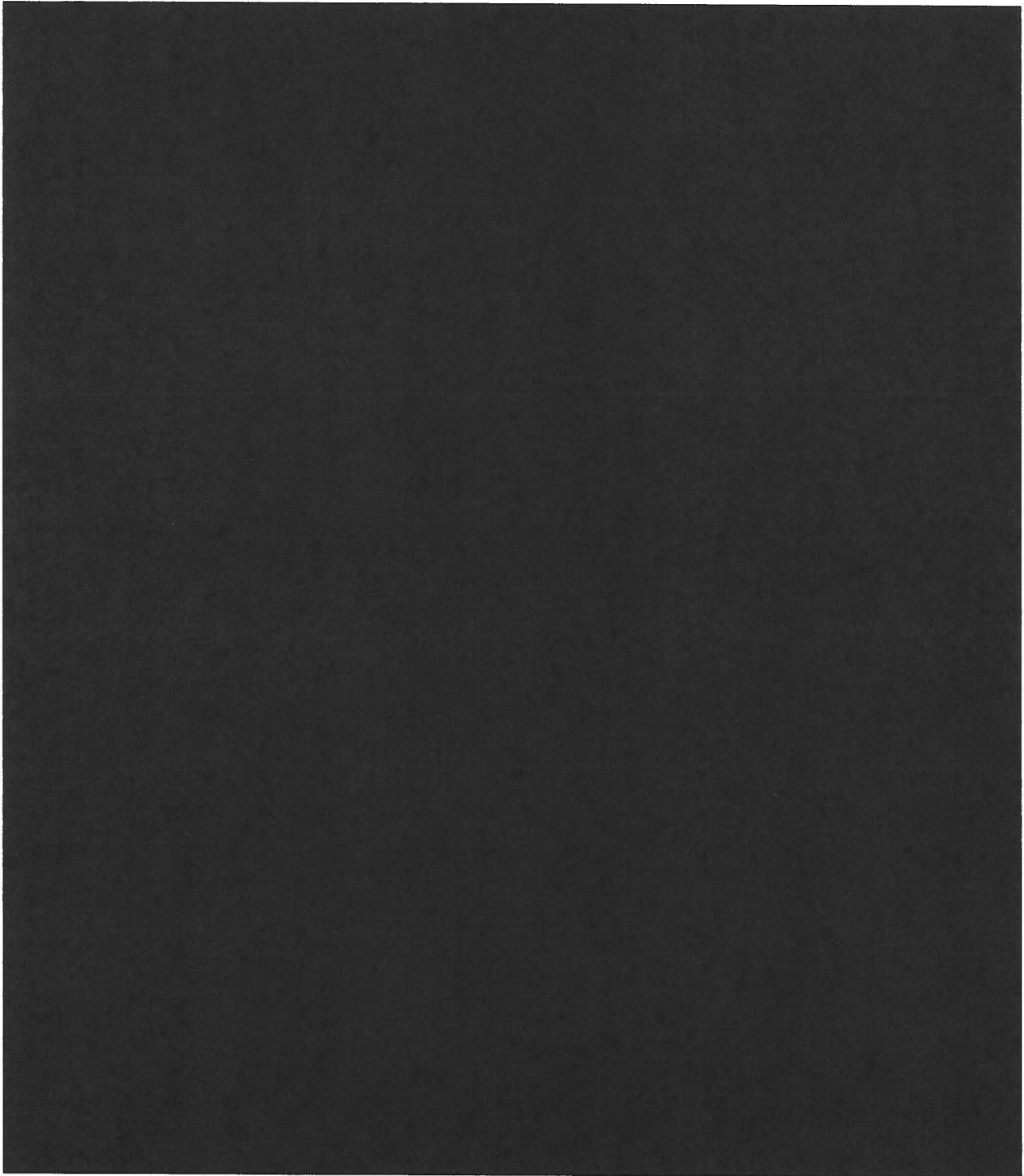
III. Specific redactions

The foregoing discussion assumes for the sake of argument that the redacted portions of the Report contain information relating to Mr. Quinn’s charges that is not already known by the general public. However, continuing to censor the Report with these redactions is inappropriate and unnecessary because there is nothing in the redacted portions of the Report relating to Mr. Quinn’s charges that the general public does not already know. While some of the redactions do contain information that was not previously disclosed by the State, these redactions concern matters that are not relevant to Mr. Quinn’s trial and their disclosure would not threaten any of Mr. Quinn’s constitutional rights.

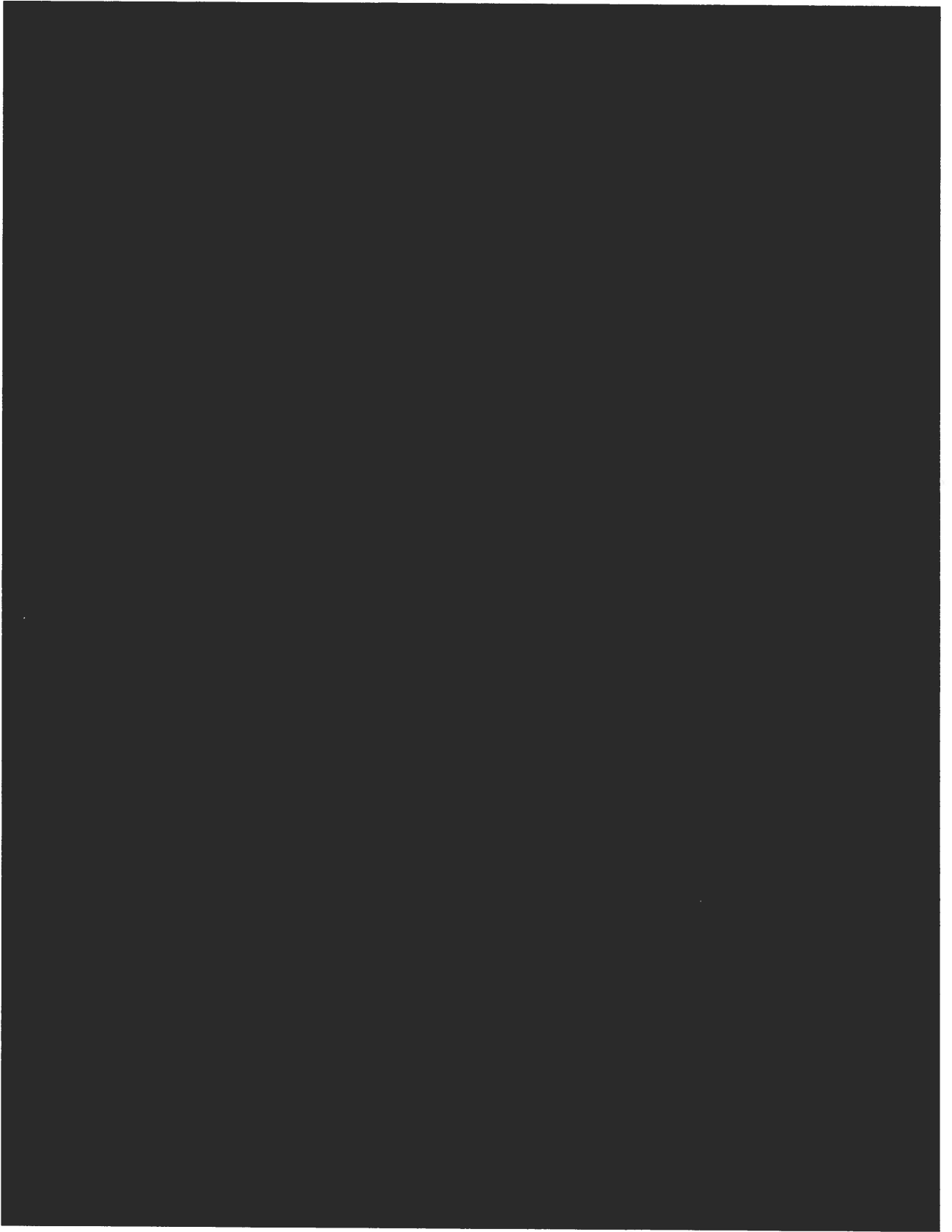
During the December 13, 2017 guilty plea of Mr. Quinn, the State presented a slide show to the trial court that contained a summary of some of the evidence and testimony that would have been presented at trial. The presentation contained a great deal of material that is also detailed in the Report; thus, much of the Report was already within the public domain upon its release. The guilty plea PowerPoint presentation is attached hereto as **Exhibit C**, and the relevant excerpt of the December 13, 2017 plea transcript is attached hereto as **Exhibit D**. The individual redactions submitted by Mr. Quinn are discussed below by reference to the page number of the Report on

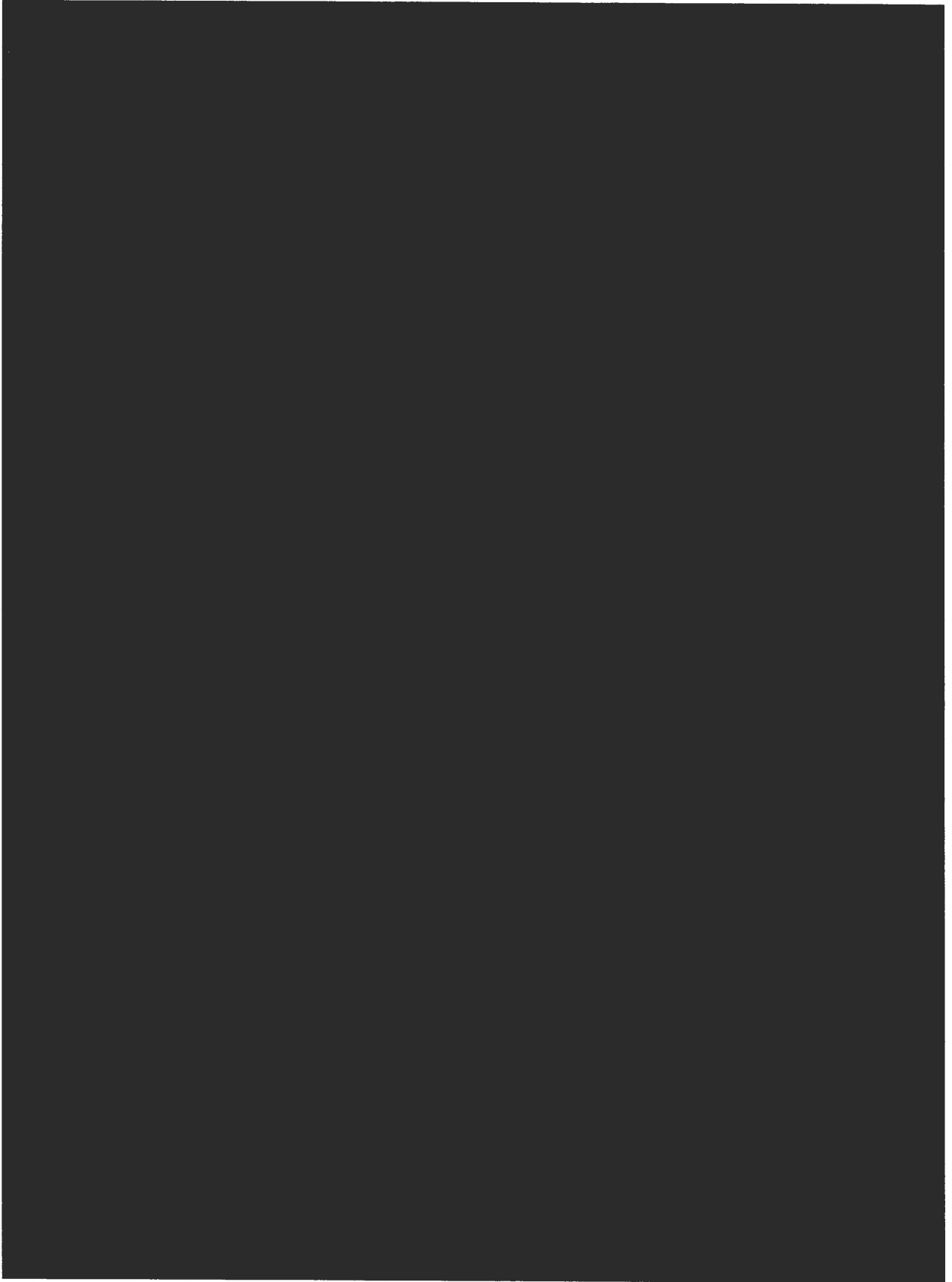
¹ Indeed, this practice was tested during the recent trial of James Harrison. Despite the significant public interest in the trial, the court had absolutely no difficulty selecting an impartial jury that had no knowledge of Mr. Harrison’s case or the broader corruption probe. Only a few jurors stood to indicate they had read about the probe, and those jurors could not recall any specific details.

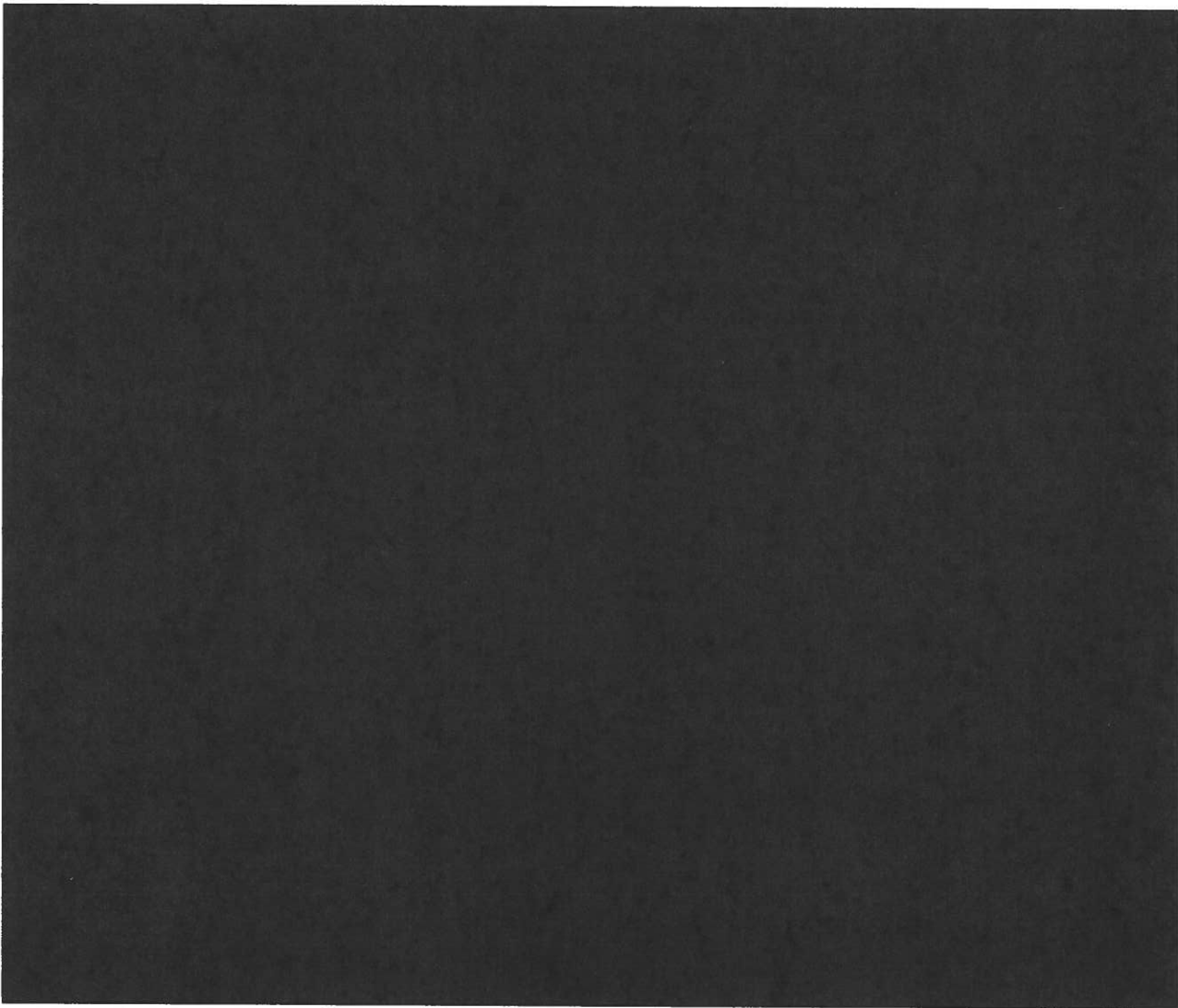
which the redaction appears. The highlighted redactions submitted by Mr. Quinn's counsel are attached as **Exhibit A**.



[Redacted text]







This final redaction, just as the above redactions, is not a trial issue for Rick Quinn, and there is no reason to redact it. Mr. Quinn may disagree with the statement or he may find it unflattering, but that is not a ground for redaction.

Conclusion

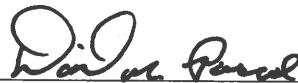
The Report was drafted at the request of the Twenty-Eighth State Grand Jury for the purpose of informing the citizens of this State about a years long investigation into the conduct of elected officials who serve this State. Censorship of any portion of the Report demands a strong showing that the party seeking redaction will suffer a violation of his constitutional rights if the

statements are not censored. As the foregoing discussion illustrates, the redactions proposed by Mr. Quinn do not present a threat to any constitutional right.

If the State is successful on appeal and Mr. Quinn is subject to trial, the case would not be called for trial for a considerable length of time. It is highly unlikely that there will be any difficulty selecting jurors at that time who have never read the Report or have any knowledge about Mr. Quinn's case. Further, any juror who does have knowledge of the Report will be discovered through jury *voir dire* and will likely not be seated on the jury. Importantly, this same procedure for screening jurors will be followed irrespective of whether the redactions are removed. Removal of the redactions will make no discernable difference on the trial court's ability to seat a fair and impartial jury in Mr. Quinn's case. Furthermore, each of the redactions requested by Mr. Quinn are already within the public domain or are not relevant to Mr. Quinn's charges. Thus, there is simply no compelling reason to continue to censor the Report.

While Mr. Quinn may not approve of the grand jury's findings and wish to suppress portions of the Report that portray him in a negative light, this is not a valid ground for denying the citizens of the State access to important information about its elected officials. For the foregoing reasons, the State respectfully requests the Presiding Judge issue an order permitting disclosure of the complete, unredacted version of the Report of the Twenty-Eighth State Grand Jury.

Respectfully submitted by,



David M. Pascoe
First Circuit Solicitor

December 6, 2018
Orangeburg, South Carolina.