

STATE OF SOUTH CAROLINA

In the matter of:  
ROBERT "BOBBY" HARRELL, JR.  
Candidate/Speaker of the House of Representatives,  
Dist. #114

COMPLAINANT: South Carolina Policy  
Council

RESPONDENT: Robert "Bobby" Harrell,  
Jr.

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TITLE: Speaker of the House of  
Representatives

- 1. State the clear, detailed facts upon which you base your complaint against the above-named respondent. (If additional space is needed, attach supplemental sheets.)**

The South Carolina Policy Council ("SCPC") – along with multiple citizens, organizations and South Carolina journalists – has publicly raised serious, valid and documented concerns that the Speaker of the House Robert Harrell, Jr. has engaged and may continue to engage in an ongoing pattern of abuse of power that appears to violate multiple South Carolina ethics laws. SCPC believes that such violations rise to the level of public corruption, as has been, unfortunately, the case in previous matters involving SC public officials.

An investigation by the appropriate public officials, in this case, the Attorney General, is not only warranted but necessary to protect SC citizens from the dire consequences of a corrupt government – consequences that the SC Ethics Laws are expressly designed to prevent. To avoid any allegations of whitewashing, the appearance of partiality or bias, or undue influence, the House Ethics Committee should immediately refer this Complaint to the Attorney General. SCPC submits the following:

I. If Robert Harrell used his office for his own financial benefit and that of his family business, he may have violated South Carolina law.

SC Code § 8-13-700 states that public officials cannot use their position in office for financial gain. The law states they cannot knowingly use their official office to obtain an economic interest for themselves or family members. The law is also quite clear that public officials are not permitted in any way to use their positions to influence a governmental decision in which they, a family member or a business have an economic interest. Attached documents show a pattern in which the Speaker appears to have done exactly that by using his position as Speaker of the House to solicit business for his private company and also to influence decisions of government officials in order to benefit his private business – a business in which he and certain family members did have/appear to still have an economic interest.

In a 2010 letter (see exhibit A), the Speaker deliberately mentioned his official position of Speaker in the first sentence of a marketing letter sent to hospitals to pitch his private business. The legislature clearly has some regulatory – and fiscal – authority over hospitals. By mentioning his position in the letter – regardless of the context – the Speaker makes his official position an immediate issue for regulated hospitals. According to emails involving Board of

Pharmacy officials, some of the hospitals subsequently contacted the Board to request the Board's "position on this letter" so they could all respond "in the same manner." (see exhibit J). One staff member noted that she had already received numerous complaints about the Speaker's letter (see exhibit J). The request from hospitals was put on the Board of Pharmacy's agenda (see exhibit J). Subsequently, it was decided that the request regarding the Speaker's letter would not be put on the agenda to avoid allowing "the hospitals to use the SC BOP to attempt to resolve their challenge on this issue" and so that the SC BOP will not be used as a scapegoat in the issue (see exhibit J). In a February 29, 2012 email discussing a regulatory issue that had been raised, a Board of Pharmacy staff member specifically notes that "Bobby Harrell is involved" (see exhibit B).

In 2011, it appears that the Speaker asked the Office of Licensure and Compliance to email a copy of a doctor's license to a pharmaceutical company (see exhibit K). In an email to the Board of Pharmacy, the office manager from the Speaker's company said that "Bobby Harrell told me that you could help me out in obtaining a physician's license." (see exhibit K). A Board of Pharmacy staff member states that she had received multiple requests since the Speaker's first request. Another staff member asks why she is emailing the licenses, stating that if the Speaker wants to see if a doctor has a license, he has to go on the Licensee Lookup website. She continues by stating, "You should not be emailing copies of anyone's license simply for the asking." (see exhibit K). The staff member replied that she was told to continue emailing copies of doctors' licenses upon the Speaker's request.

In an exchange of emails, fear was expressed that although the type of practice that the Speaker was pressing was against the law, if they pressed too hard, the Speaker "could certainly hurt us in other legislative ways." (see exhibit K). The email concluded with "I think the

practice should be stopped, but who is going to stand up to the Speaker of House and win? It's a lot like playing with fire!" (see exhibit K).

The attached documents also appear to show other instances where the Speaker used his position as Speaker of the House to attempt to obtain financial gain for his private business. In a hand-written note on his official Speaker of the House letterhead, Speaker Harrell demands "urgent attention" to his company's permit (see exhibit C) from the Board of Pharmacy Licensing Division. Additional documents show that a member of the SC Board of Pharmacy did believe that the Speaker used his position with regard to an unfavorable interpretation of the SC Pharmacy Practice Act by the Board, and also show that the Speaker attempted to influence the permitting process for his business (see exhibit D). According to these documents, the Speaker deliberately raised the issue of his position as Speaker, both verbally and in writing, with public officials, insisted on personal calls and meetings with public officials, and he urged public officials to act favorably toward his company. According to the documents, the Speaker also engaged his Statehouse staff in the process of acting for his private business. The Board member expressed multiple times his concern that the situation with the Speaker was being treated differently than any other, and that the Speaker was upset with decisions by the Board that affected the Speaker's business. On their face these documents raise serious concerns regarding the Speaker's use of his office to influence multiple government officials with regard to his business.

II. Robert Harrell seems to have broken the law by using campaign funds for personal purposes.

An article by the Charleston Post and Courier on September 24, 2012 documented the Speaker's reimbursement to himself from his campaign account for more than \$325,000 (see exhibit F). In a follow up to this story, the Charleston Post and Courier reported on October 17, 2012 that the Speaker's office had indicated that part of the reimbursement accounted for expenses related to the Speaker's travel in his personal plane, including trips to and from Columbia for the legislative session (see exhibit G). The law is clear that campaign funds can only be used for either campaign purposes or for ordinary expenses in connection with public office. Because the Speaker failed to specifically disclose the nature of each trip for which he was reimbursed, it is impossible to determine whether any of the other reimbursements are in compliance with state law. Furthermore, newspaper reports quote the Speaker's spokesman saying that the Speaker arbitrarily determined his own reimbursement rate by obtaining estimates for private charters and reimbursing himself less, but did not have a "set determination" on how much less. By choosing an arbitrary formula of his own design, the Speaker clearly did not follow any state model for appropriate reimbursement. In addition, by reimbursing himself rather than vendors directly, and then by failing to provide detailed descriptions of the nature of the original expenses, Speaker Harrell has avoided reporting the purpose of the original expenditures.

The Speaker also appears to have reimbursed himself beyond the actual cost of the flights (i.e., fuel), according to a breakdown he provided to the media, and included payment for his loan, taxes and "depreciation." Such costs appear to be personal expenses and not "ordinary," nor incurred in connection with his official duties as Speaker of the House.

III. Robert Harrell's appointment of his brother to a position on the Judicial Merit Selection Commission seems to be against South Carolina law.

By appointing his brother to the Judicial Merit Selection Commission, the Speaker appears to be in violation of SC Code § 8-13-750. (see exhibit H). The law clearly states that a public official may not cause the employment of a family member to a position which he/she manages or supervises, and that a public official may not participate in the discipline of a public employee who is a family member. Subsection D of the SC Code 2-19-10, which establishes the Judicial Merit Selection Commission and the terms of its members, specifies that members of the commission that are not General Assembly members are subject to removal by their appointer. In this case, the Speaker has caused the employment of a family member to a position for which he alone is in the position to administer the ultimate discipline of removal. This law was designed to prevent conflicts of interest such as the one created here, and violation of this particular law compromises the integrity of our judicial system and raises serious concerns regarding the lack of oversight and enforcement of the law with regard to the Speaker.

IV. Robert Harrell has publicly stated that he failed to maintain certain records to document his expenditures. State law requires candidates to maintain such records for four years.

State law requires that candidates maintain detailed records of campaign expenses for four years. The Speaker has recently stated publicly that he does not have some of those records and that he paid back his campaign the amount he claimed he couldn't document (see exhibit I). It is not clear that the Speaker has offered any documentation to any public official to substantiate that those records are the only ones he does not have or that the amount he paid back to his campaign was the appropriate amount. This is further evidence of the Speaker's pattern of failing to disclose the true nature of his campaign expenditures. The appropriate authority should investigate so that the public should not have to rely solely on the word of the Speaker or any public official as to whether the Speaker has properly followed the law.

V. Robert Harrell did not adequately itemize reimbursements to himself from his campaign account as the law requires.

In the attached September 24, 2012 article in the Post and Courier regarding the Speaker's reimbursements, it was noted that the Ethics disclosure documents that were reviewed did not appear to be in compliance with SC Code section 8-13-1360, which states that, "candidate reimbursements must be itemized so that the purpose and recipient of the expenditure are identified" (see exhibit F). The article states that an attorney for the State Ethics Commission – which does not oversee campaign practices of House and Senate members, but oversees that of all other elected officials (for whom the practices are the same as for legislators with regard to the SC Ethics Law) – indicated that the Speaker's records made for "incomplete disclosure," and that the method he used to reimburse himself "shouldn't be done."

If the Speaker were a private employee, his reimbursements likely would not be permissible. The Internal Revenue Service, through its accountable plan rules, requires employee expenses to: (1) have a business connection; (2) be adequately accounted for within a reasonable period of time; and (3) be returned to the employer within a reasonable period of time if they are in excess. The appropriate authority should investigate whether reimbursements were adequately itemized.

2. Set forth all applicable House Rules and/or Statutory Code sections alleged to have been violated by the Respondent.

SC Code Ann. § 8-13-700

SC Code 8-13-750

SC Code Ann. § 8-13-1348

SC Code Ann. § 8-13-1360

SC Code Ann. § 14-7-1615(B)

3. Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.

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4. State with specificity, the dates, places, and times at which or during which such allegations took place.

See response to Number 1 above.

5. State the names of any persons present during such alleged actions or possessing evidence of such alleged actions.

See responses to Numbers 1 and 3 above.

6. Set forth a list of and provide a copy of any documents related to your complaint regarding Respondent.

See Attachments to Complaint.

7. State any other facts that you feel are pertinent to the allegations against the Respondent. (Use additional space if necessary.)

SCPC requests that the Committee take the immediate action of referring this Complaint to the Attorney General. All parties to any complaint are entitled to assume complete objectivity on the part of the officials charged with investigating and ruling on the complaint. Such objectivity must be inherent in the process in order to protect all parties from undue influence over any officials charged with duties regarding the complaint, and also from any capriciousness on the part of those officials. The integrity of our justice system is dependent upon such an objective process, and also on a process in which matters are investigated by the proper officials who can be relied upon to have the appropriate training necessary, and that the official entities charged with such investigation are themselves created and maintained in a manner that cannot itself be subject to challenge. In the case of all of the above, the Committee is demonstrated not to be the appropriate authority to take any action on this Complaint except to refer it to the Attorney General, and to do so immediately for the following reasons:

1. This matter contains multiple instances of potential violations of the SC Ethics Act and establishes a pattern thereof that appears rise to the level of criminal public corruption defined in

SC Code Section 14-7-1615. In any matter involving criminal violations, the Committee is required to refer the matter to the Attorney General. SC Code section 14-7-1615.

2. This matter should not be considered by this Committee because the Committee was re-constituted and expanded to include ten members rather than the six prescribed by the statute that created the committee, and thus any ruling by the Committee could be subject to challenge. SC Code Section 8-13-510

3. This matter should not be considered by this Committee because the conflict of interest presented is unique and unparalleled, as well as inherent and unresolvable.