ALAN WILSON
ATTORNEY GENERAL

September 10, 2013

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
HAND DELIVERY

Re: State v. Michael Long/ State v. Gwinn

Dear Mr. Shearouse:

Enclosed for filing with your Office in this consolidated case are the unbound original and fourteen copies of the Reply Brief of the State together with Rule 211 Certificate and a Certificate of Service.

Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for the State of South Carolina

cc: S. Jahue Moore, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Writ of Certiorari to the Court of Common Pleas, Lexington County

---

Appellate Case No. 2013-001522

State of South Carolina..... Petitioner,

v.

Paul Gwinn.....Respondent.

and

On Writ of Certiorari to the Municipal Court of West Columbia, Lexington Co.

Appellate Case No. 2013-001519

State of South Carolina..... Petitioner,

v.

Michael Morris Long, ...Respondent.

REPLY BRIEF OF THE STATE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes:

Other Authority:

ARGUMENT

RESPONDENTS FAIL TO OVERCOME THE CLEAR AUTHORITY FOR THE ATTORNEY GENERAL TO PROSECUTE IN SUMMARY COURTS

Each of Respondents' arguments that the Attorney General possesses no authority to prosecute in summary courts is without merit.

First, Respondents rely upon principles of statutory interpretation in construing Art. V, §24, rather than recognizing that provisions of the Constitution are interpreted differently from statutory enactments. As this Court has stated with respect to interpretation of the Constitution, "we are not required to confine our attention to abstract or technical meaning of the words or words employed," but "must necessarily give to those words the sense in which they are generally by those who framed and those who adopted the constitution unless there is something in that instrument showing that the words in question were used in a different sense." *Charleston v. Oliver*, 16 S.C. 47, 52 (1881). Here, as demonstrated in our earlier brief, the intent of the framers of Art. V, § 24 was not to limit the prosecutorial authority of the Attorney General, through the use of the phrase "courts of record," but to codify the Attorney General's longstanding power to serve as chief prosecutor *in all courts*.

Secondly, contrary to Respondents' arguments, this Court has frequently relied upon the proceedings of the Committee To Make A Study of the South Carolina Constitution of 1895 ("West Committee") in interpreting various provisions of the South Carolina Constitution. *See e.g.: Joytime Distributors and Amusement Co. Inc. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999); *Diamonds v. Grvlle. Co.*, 325 S.C. 154, 480 S.E.2d 718 (1997); *Hospitality Assn. of S.C., Inc. v. County of Chas.*, 320 S.C. 219, 464 S.E.2d 113 (1995); *Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (1995). In this instance, the

proceedings of the West Committee are particularly persuasive in determining that Art. V, § 24 should be broadly construed to give the Attorney General prosecutorial oversight and the power to prosecute in all courts of the unified judicial system. As we have explained, the West Committee sought to make the Attorney General the chief prosecutor in all the courts of the unified judicial system much as the Chief Justice supervises the courts in that system. The Court's reliance upon the West Committee proceedings regarding the evolution of Art. V, § 24 is proper here.

Third, it is clear, notwithstanding Respondents' arguments, that this Court, in interpreting a constitutional provision, will examine the Joint Resolution submitting the constitutional amendment to the people, and the legislative act ratifying such amendment, as well as the vote of the people. As the Court stated in *Duncan v. Record Pub. Co.*, 145 S.C. 196, 311, 143 S.E. 31, 68 (1927):

> [w]hile the Legislature, in proposing a constitutional amendment is, in many respects, not subject to the rules controlling ordinary legislative action, still the fundamental purpose in construing an amendment is to ascertain and give effect to its framers and of the people who adopted; and the court must keep in mind the object sought to be accomplished, and the evils sought to be remedied.

(quoting *Heintish v. Floyd*, 130 S.C. 434, 438, 126 S.E. 336, 336 (1925). In this instance, neither the General Assembly, in proposing Art V, § 24 (then Art. V, § 20), nor in ratifying that amendment, mentioned the term "courts of record." Indeed, these provisions only referenced that the Attorney General was to be the "chief prosecutor." Thus, the people did not vote upon and approve the referendum adopting Art. V, § 24 as any limitation upon the Attorney General's prosecutorial powers or authority. There is no evidence whatsoever that the General Assembly intended any such limitation (*i.e.*, an understanding by the Legislature which Respondents argue is different from that which

the people voted upon) through the use of the term "courts of record." Contrary to Respondents' arguments, this term had no technical meaning at any stage of the constitutional process.

Fourth, Respondents' argument that Section 1-7-100(2) no longer exists, because of the adoption of Art. V, § 24, is likewise without merit. As we have pointed out, this Court, in *State ex rel. McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976), discusses § 1-7-100(2) extensively in conjunction with Art. V, § 24 (Art. V, § 20). Indeed, *Snipes* notes that the Attorney General now possesses the constitutional authority "to supervise the prosecution *of all criminal cases.*" 266 S.C. at 420, 223 S.E.2d at 855 (emphasis added). Moreover, as we noted earlier, *Snipes* also states that Art. V, § 24

> designated the Attorney General as the chief prosecuting officer for the first time, *it represented no practical change in the situation of the Attorney General from that which existed prior to the adoption of this provision of the condition in 1973.*

266 S.C. at 419, 223 S.E. 2d at 854. (emphasis added). As was recognized in *Anders v. S.C. Parole and Community Corrections 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." (emphasis added). Thus, Respondents' suggestion that § 1-7-110(2) somehow was read out of existence by virtue of the adoption of Art. V, § 24 is patently incorrect.

Respondents' remaining arguments are without merit and have nothing to do with interpretation of Art. V, § 24. The designation of the Attorney General in Art. V, § 24, as "chief prosecuting officer" speaks for itself. In *State v. Tootle*, 330 S.C. 512, 514, n. 2, 500 S.E.2d 481, 482, n. 2 (1998), this Court stated:

> Attorney General Condon prosecuted this case in his capacity as chief prosecuting officer of the State. *See* S.C. Const. Art. 5, § 24; see also S.C. Code Ann. § 1-7-100(2) (1986) (when interest of State requires, Attorney General shall be present and have the direction and management of any cause in which the State is a party or interested).

Thus, it is plainly wrong to urge that the Attorney General may somehow act as supervisor of the prosecution in all courts, but may not himself (or his Office) prosecute in those same courts. There are times, in CDV cases as well as other cases, where the Attorney General or his Office must prosecute in summary courts. Section 1-7-100(2) expressly so states. Moreover, any argument that West Columbia is being deprived of counsel of its choosing is plainly meritless.

This case is of fundamental importance to the State and its citizens. As we noted earlier, at stake is not only the correct interpretation of Art. V, § 24, and the power of the Attorney General to prosecute and/or supervise criminal cases in all the courts of South Carolina, but also the importance of a unified judicial system. Victims of crime, as well as the citizens at large, deserve to have one statewide elected official available to prosecute on behalf of the State at any time, in any court, for any offense.

CONCLUSION

For the foregoing reasons including those in the State's Opening Brief, the West Columbia Order in *Long* should be reversed and the *Gwinn* order affirmed.

Respectfully submitted,

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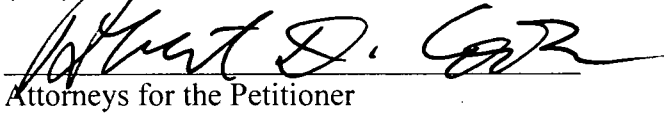
By: 

Attorneys for the Petitioner
State of South Carolina

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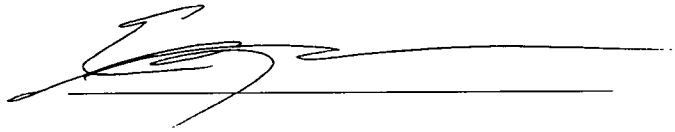
CERTIFICATE OF COMPLIANCE WITH RULE 211 (b)

I hereby certify that the Final Reply Brief of the State of South Carolina complies with Rule 211(b), SCACR.



J. Emory Smith, Jr.
Deputy Solicitor General

August 23, 2013

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CERTIFICATE OF SERVICE

I hereby certify that I have three copies of the State's Reply Brief upon counsel for the Respondent by mailing copies to him at the address below via the United States Mail this September 10, 2013:

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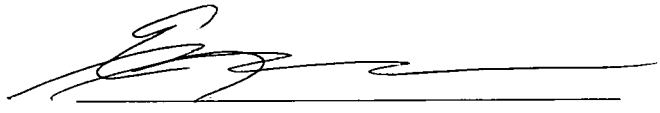

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August 23, 2013