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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000961

Ryan McAvoy, ...Appellant,

v.

The Town of Hilton Head Island, South Carolina,.....Respondent.

FINAL BRIEF OF APPELLANT

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2. THE TRIAL COURT ERRED IN FAILING TO RULE THAT THE TOWN'S GRANT OF PUBLIC FUNDS TO ASSIST SIDA MEMBERS, (INDIVIDUALS IN A PRIVATE ASSOCIATION), VIOLATED ART. X §§ 5 AND 11 OF THE SOUTH CAROLINA CONSTITUTION, BECAUSE THE INDIVIDUAL BENEFIT TO THE SIDA MEMBERS IS SUBSTANTIAL AND IN COMPARISON, THE BENEFIT TO ALL OF THE RESIDENTS AND INHABITANTS OF HILTON HEAD ISLAND WAS SPECULATIVE, INDIRECT, AND OF LIMITED ACCESS.

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STATEMENT OF THE CASE

Appellant seeks declaratory judgment on behalf of the taxpayers of the Town of Hilton Head Island ("Town"), that the Town unlawfully subsidized Sea Pines Plantation yacht owners' dredging their private property with public funds through their private association, the South Island Dredging Association (Complaint, (R. pp. 10-62)).

This Court possesses jurisdiction under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, and under many cases cited in the Complaint, which address public interest and taxpayer standing, to bring a declaratory judgment action against public officials for their acts in their official capacity, including the following: *South Carolina Public Interest Foundation v. Wilson*, 437 S.C. 334, 342, 878 S.E.2d 891, 895 (2022); *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016).

The Town of Hilton Head contributed $600,000 of public funds to subsidize a $5 million dredge event of private marinas, private docks, and private boat slips (Testimony of John Brinkley, President of SIDA (R. p. 157, line. 24 - p. 158, line 1; R. p. 191, line 22 - page 201, line 1); Exhibit 1, Town Clerk Christa Weidemeyer Affidavit (R. pp. 210-242) and Attached Certified Town of Hilton Head Island Resolution No. 2022-11, signed May 3, 2022 (R. pp. 210-216), and Attached Contract between Town and SIDA (R. pp. 236-242); Exhibit 10, Letter of John F. Brinkley, President of SIDA to the Town confirming public funds assistance (R. pp. 248-249)).

Appellant contends that this expenditure violates the S.C. Constitution's requirement to "distinctly state the public purpose to which the proceeds of the tax shall be applied" and the provision that "the state or any of its political subdivisions" [must not pledge or lend credit] for the benefit of any individual, company, association, or corporation" (Complaint (R. pp. 10-62)).

S.C. Const. art. X, 5, 11. This expenditure of public funds primarily benefited a private community and private individuals in violation of the Constitution.

The Circuit Court dismissed the case on the merits under SCRCP 41(b) (Order of May 8, 2024 (R. pp. 1-9)). The Circuit Court reasoned that plaintiff had failed to show any right to relief under the facts and law that the Town violated S.C. Constitution, art. X, §§ 5 and 11 because it did not show that the "waterways are not publicly owned."

> There is no evidence in the record to show that the waterways are not publicly owned. All the evidence offered by Ryan McAvoy related to Sea Pines is property abutting the waterways and roads and subdivisions existing in Sea Pines.

(Order, p. 8 (R p. 8)). However, with accepting the Court's Findings of Fact, Plaintiff contends that the Circuit Court made an error of law in limiting its determination of a private purpose for the public funds to part of the location of the dredging rather than examining the primary objective of the project and the primary beneficiaries.

The Circuit Court erred in failing to state and apply the correct legal analysis: whether the primary objective and benefit of the project was for private individuals, companies, associations, or corporations under S.C. Const. art. X,§§ 5 and 11 and S.C. Supreme Court interpretations of those provisions. The Circuit Court ruled: "because [plaintiff] failed to produce evidence to show that the Harbor Town Yacht Basin, the entrance channels to it and Braddock Cove Creek are private, as opposed to public, waterways, he has failed to show a right to relief in this case." (Order of May 8, 2024 (R. pp. 1-9)).

The Circuit Court found that the Town assisted SIDA with its maintenance program of dredging the Harbour Town Yacht Basin and Braddock Cove Creek.

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH THE SOUTH ISLAND DREDGING ASSOCIATION **TO PROVIDE FUNDING ASSISTANCE FOR THE DREDGING OF THE HARBOUR TOWN YACHT BASIN** AND BRADDOCK COVE CREEK.

> WHEREAS, the South Island Dredging Association (hereinafter, the "Association") has a **maintenance program of dredging the Harbour Town Yacht Basin** and Braddock Cove Creek […]

(Exhibit 1, Town Clerk Christa Weidemeyer Affidavit (R. pp 210-244) and Attached Certified Town of Hilton Head Island Resolution No. 2022-11 signed May 3, 2022 (R. pp. 210-216) and Attached Contract between Town and SIDA (R. pp. 236-242)); Exhibit 10, Letter of John F. Brinkley, President of SIDA to the Town confirming public funds assistance (R. pp. 248-249) (emphasis added)). The Court also found, "The Harbour Town Yacht Basin and Braddock Cove Creek both have private boat slips or marinas in them, and both waterways are bordered by Sea Pines Resort, which is a private, gated community." (Order of May 8, 2024, finding 7, p. 5) (R. p. 5)). Appellant respectfully suggests that it proved its case in large measure by the admissions of the Town and the Findings of Fact by the Circuit Court. The Town of Hilton Head made multiple admissions that establish the elements of the claim.

1. The Town of Hilton Head admits that it used public funds.

"The funds to be delivered under this Agreement from the Town to the Association are **public funds**" (Exhibit 1, Town Clerk Christa Weidemeyer Affidavit (R. pp. 210-244) and Attached Certified Town of Hilton Head Island Resolution No. 2022-11 signed May 3, 2022 (R. pp. 210-216), and Attached Contract between Town and SIDA (R. pp. 236-242); Exhibit 10, Letter of John F. Brinkley, President of SIDA to the Town confirming public funds assistance (R. pp 248-249)).

2. The Town of Hilton Head admits that the boat slips and marinas are privately owned.

"**[B]oat slips** in the Harbour Town Yacht basin **are privately owned.**" (Answer of Town of Hilton Head, par. 13). Mr. John F. Brinkley, the President of SIDA, testified likewise:

> 24 Q Is the Harbour Town Marina **a private marina**
> 25 existing in the waters of Harbour Town Yaught [sic] Basin?
> 1 A **Yes**.

(R, p. 157, line 24 - p. 158, line 1 (emphasis added)).

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22 THE COURT: Tell me again what you
23 elicited from him.
24 MR. CARPENTER: That **the Harbour Town**
25 Marina is a private marina.
1 THE COURT: Okay, **he did say that**.

(R. p. 191 line 22 -201, line 1(emphasis added)). The Circuit Court recognized that he admitted that the Harbour Town Marina[1] is private.

3. The Town of Hilton Head admits that it spent public funds to maintain private boat slips, docks, and marinas.

The Town of Hilton Head admitted that it used public funds to subsidize the South Island Dredging Association ("SIDA") and its boat slip owners and marina owners to dredge their private Sea Pines Plantation property. A Town resolution signed in May 2022, states:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH THE SOUTH ISLAND DREDGING ASSOCIATION **TO PROVIDE FUNDING ASSISTANCE FOR THE DREDGING OF THE HARBOUR TOWN YACHT BASIN** AND BRADDOCK COVE CREEK.
> WHEREAS, the South Island Dredging Association (hereinafter, the "Association") has a **maintenance program of dredging the Harbour Town Yacht Basin** and Braddock Cove Creek […]

(Exhibit 1, Town Clerk Christa Weidemeyer Affidavit (R. pp. 210-244) and Attached Certified Town of Hilton Head Island Resolution No. 2022-11, signed May 3, 2022 (R. pp. 210-216), and Attached Contract between Town and SIDA (R. pp. 236-242)).

The resolution continues:

> Whereas, the **Association has historically undertaken a program of periodically dredging the Harbour Town Yacht Basin** which includes areas of the entrance channel, **fuel docks, and inner basin**, and Braddock Cove Creek which includes the **Gull Point [Marina] and South Beach [Marina].**

[1] DHEC defines **"marina"** as "a land-based fueling facility that dispenses fuel over or in close proximity to a waterway. https://des.sc.gov/programs/bureau-land-waste-management. S.C. Code Ann. Section 23-9-600 defines **"marina"** as "a commercial facility which provides mooring or dry storage for watercraft" and "**boat dock**" as "a man-made structure that protrudes into a body of water for the purpose of mooring a vessel and is connected to an electrical power source. This includes a boat livery but does not include a structure that is privately owned and used exclusively by the owner and the owner's guests for noncommercial purposes. S.C. Code Ann. Section 54-13-10 defines **"privately owned dock"** as "any dock which is constructed on or appurtenant to property on which the person constructing the dock owns a leasehold interest in or title to or has obtained permission, express or implied, from the title owner to construct the dock."

Id. (emphasis added).

Appellant filed a Notice of Appeal on June 10, 2024.

STANDARD OF REVIEW

The Circuit Court dismissed this action under SCRCP 41(b), ruling that plaintiff failed to produce any evidence that the Harbour Town Yacht Basin, its entrance channels and Braddock Cove Creek are private, as opposed to public waterways and that he had failed to show a right to relief in this case. (Order of May 8, 2024 (R. pp. 1-9)). However, the Court erred in its definition of "public purpose." The Supreme Court ruled that Rule 41(b), SCRCP applies **only when** a plaintiff has shown **no right to relief based on the facts and the law.** *Harleysville Group Ins. v. Heritage Cmtys., Inc.*, 420 S.C. 321, 803 SE.2d 288 (2017). As the trier of fact in a non-jury trial, the court's findings will not be disturbed unless they are without evidentiary support.

> In an action at law, tried without a jury, the judge's findings [of fact] will not be disturbed unless they are without evidentiary support. Townes Assoc. Ltd. v. City of [317 S.C. 389] Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). His findings are equivalent to those of a jury in an action at law. *Id*.

King v. PYA Monarch, Inc., 453 S.E.2d 885, 317 S.C. 385 (S.C. 1994).

However, "appellate courts review questions of law *de novo*, with no deference to trial courts." *Mangal v. State*, 805 S.E.2d 568, 421 S.C. 85 (S.C. 2017). In the case at bar, the Circuit Court's Findings of Fact, taken together with the admissions in the Answer, and testimony and exhibits of the Town's witness admitted by the Court, demonstrate that the Town's assistance to the SIDA dredge violated the public purpose requirement of South Carolina Constitution, art. X,§§ 5 and 11, as argued below (Order, pp. 3-5 (R. pp. 3-5), Answer, par. 13-14 (R. p. 59), Exhibit. 1, Town Clerk Christa Weidemeyer Affidavit and Attachments (R. pp. 210-244), Exhibit 10, Letter of John F. Hinckley to Town Manager (R. pp.248-249), Certified Town of Hilton Head Resolution 2022-11 of May 3, 2022 (R. pp. 210-216) and attached Contract (RD. pp. 236-242)); R, p.157 line 24- p. 158 1ine 1 and p. 190 line 25 -p. 192, line 1).

Accordingly, under this standard of *de novo* review of questions of law and in view of the acts found by the Circuit Court and admitted below, this public expenditure was ***primarily for "the***

benefit of an individual, company, association, or corporation" in violation of the S.C. Constitution, Article X, §§ 5 and 11.

STATEMENT OF FACTS

I. THE TOWN SPENT PUBLIC FUNDS TO SUBSIDIZE A SIDA DREDGE EVENT WITH THE PRIMARY AND PRIVATE PURPOSE OF ASSISTING THE SIDA MEMBERS TO MAINTAIN ACCESS AND EGRESS FROM THEIR PRIVATELY OWNED YACHT SLIPS, DOCKS, AND MARINAS.

A. SIDA purpose and history

The South Island Dredging Association ("SIDA") was formed around 2000. Before that time, individual members had been arranging for dredging of their private property individually. (Testimony of John Brinkley, SIDA President (R. p. 134, lines 2-3); Answer, par. 13 (R. p. 59)).

> Well, the people got together because what was happening originally was individuals were arranging **their dredging on an individual basis**. So part of the appeal of bringing the group together was, they had a common interest, they had a common need.

(Testimony of John Brinkley, SIDA President (R. p. 138, lines 10-19) (emphasis added)).

Historically, the South Island Dredging Association ("SIDA") has pooled the resources of the member dock owners and boat slip owners within Sea Pines Plantation to dredge private docks, private boat slips, private marinas, and waterways within Sea Pines Plantation on the southern end of Hilton Head Island (Testimony of John Brinkley, SIDA President (R. p. 173, line 5 – p. 174, line 22)).

B. Letter from SIDA president requesting public assistance from the Town for the SIDA dredge event

In 2022, the SIDA president sent a letter to the Town Council requesting public assistance to help pay for the dredging. The Town Council voted to contribute $600,000 of public funds to SIDA to subsidize the cost of their dredging (Exhibit 1, Affidavit of Town Clerk Christa Weidemeyer and Attachments (R. pp. 210-244), Certified Town Resolution of May 2022 (R. pp. 210-216); Exhibit 10, Letter of SIDA President John Brinkley to Town Manager, Marc Orlando (R. pp. 248-249)).

C. The Town passed the resolution to "assist the South Island Dredging Association with dredging […]"

The Town passed a resolution in May of 2022 to subsidize Sea Pines Plantation yacht owners, private slip owners, and a dock owners' association, South Island Dredging Association ("SIDA") for a dredging expenditure of $5 million with $600,000 of public funds (R. pp. 210-216 and R. pp. 236-242). Accordingly, The Town of Hilton Head public funds helped pay to dredge the individual boat slips, private docks, and private marinas within Sea Pines Plantation to allow members of SIDA to use their boats fully.[2] (Testimony of John Brinkley, SIDA president, (R. p. 101, lines 1-18; R. p. 157 line 24 – p. 158 line 1; R. p. 173, line 5 – p. 174, line 22; R. p. 191, line 20 – p. 192, line 1); Answer par. 13 (R. p. 59); Exhibit. 1, Town Clerk Christa Weidemeyer Affidavit and Attachments (R. pp. 210-244); Certified Town of Hilton Head Resolution 2022-11 of May 3, 2022 (R. pp. 210-216) and attached Contract (R. pp. 236-242); Exhibit 10 Letter of SIDA President John F. Brinkley to Town Manager, Marc Orlando (R. pp. 248-249)).

In the letter confirming this expenditure of public funds to assist the SIDA members, Mr. Brinkley, wrote to the Town Manager, Mr. Marc Orlando:

> The purpose of this letter is to confirm the request by South Island Dredging Association **for funding assistance** for the planned South Island dredge event scheduled for November this year. It is our understanding that the Town has reserved $400,000 to date and will reserve another $200,000 in its fiscal 2023 budget. The requested Town's support of $600,000 is approximately 12% of the expected project costs.

(Exhibit 10, p. 1 (R. p. 248)). Notably, this confirmation did not reference any specific target within the dredge event for the Town's public funds, but instead stated that the Town's funds would assist with 12% of the total cost. *Id.* Also of note, in 2018, the Town also subsidized SIDA member payments with $600,000 in public funds to dredge many of these same private slips, docks, and

[2] *See also* the permit maps included in Plaintiffs Exhibit 18, Exhibit B to Affidavit of SIDA President John F. Brindley Affidavit and Attachments (R. pp. 298-300, 316, 319, 322, 326, 328, 341), which show that private boat slips, docks and marinas comprise a significant portion of the dredging targets including the Yacht Basin.

marinas (Testimony of John F. Brinkley, President of SIDA (R. p. 156, lines 13-17); Exhibit 10 Letter of SIDA President John F. Brinkley to Town Manager, Marc Orlando (R. pp. 248-249)).

D. The Primary Objective of the Dredge Event was to Maintain the "Availability to Use Your Boat Frequently"

Mr. Brinkley testified that the primary purpose of the dredging was to allow the members to take their boats in and out from the private boat slips.

Q: And the SIDA has raised and spent a lot of money over the course of the 23 years, is that right?
A: That's correct.
Q: And **your members have come up with the money** to pay for the dredging, right?
A **Yes**.
Q And dredging is all you do in the SIDA, right?
A That's correct.
Q So what I'd like to ask you is: What are your members getting for all their time, effort, and money by the dredging? What do they benefit from it?
Q What keeps them doing it?
A Well, **they do that to preserve navigation. A boat is pretty difficult to use if it's sitting in the mud, and they've all had that experience.**
Q Okay. Anything else?
A Well, I think that's **the principal thing**, is **the availability to use your boat frequently**.

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Q Okay. What about property values? Those people that bought the yaught [sic] slips had to pay for them, right?
A Yes.

(Testimony of John F. Brinkley (R. p. 173, line 5 – p. 174, line 22) (emphasis added)).

E. The SIDA dredge event dredged private areas.

All of these boat slips and docks are privately owned within Sea Pines Plantation, which is a private gated community (Answer par. 13 (R. p. 61)). Appellant contends that subsidizing the dredging of the Harbor Town marina and the private boat slips and docks is an unconstitutional expenditure of public money for private purposes under S.C. Constitution art. X, §§ 5 and 11.

II. THE TOWN FINANCIALLY ASSISTED SIDA MEMBERS WITH THEIR PRIMARY PURPOSE OF A MEMBER DREDGE EVENT TO MAINTAIN THEIR PRIVATE YACHT SLIPS AND DOCKS AND PRIVATE MARINA AND THEIR INGRESS AND EGRESS TO THAT PRIVATE PROPERTY, WHICH IS ONLY ACCESSED BY LAND WITHIN THE PRIVATE, GATED SEA PINES PLANTATION COMMUNITY.

Not only are these boat slips and docks owned by SIDA members located behind the gates of Sea Pines, but they are also in private communities within Sea Pines (Testimony of John F. Brinkley, SIDA president (R. p. 135, line 2 -136, line 10)). The boat slips, docks, yacht club, marina, and communities are privately owned by individuals and smaller, private organizations within Sea Pines Plantation, a private gated community at the southern end of the Island (R. p. 197, line 24 – p. 158, line 1); Answer, par. 13 (R. p. 61)). Accordingly, the Town has spent public funds for "the benefit of [an] individual, company, association, or corporation […]," in violation of the S.C. Constitution art. X, § 11.

Not only are these boat slips and docks owned by SIDA members located behind the gates of Sea Pines, but they are also in private communities within Sea Pines (Transcript, pp. 135-136). The boat slips, docks, yacht club, marina, and communities are privately owned by individuals and smaller, private organizations within Sea Pines Plantation, a private gated community at the southern end of the Island (Transcript, p. 157-158; Answer, par. 59). Accordingly, the Town has spent public funds for the "benefit of [an] individual, company, association, or corporation . . . " in violation of the S.C. Const. , art. X, 11.

ARGUMENT

In South Carolina, since 1895, the S.C. Constitution, art. X, §§ 5 and 11 have marked a boundary for state and political subdivision bodies and officials. No matter how commendable the secondary benefits, these provisions block officials from spending public funds "for the benefit of any individual, company, association, corporation, or any religious or other private education institution." To further observe this limitation, officials must identify "distinctly" in writing the purpose of each endeavor to which they direct public funds (which may not be private). S.C. Constitution, art. X, §§ 5 and 11.

Recently, in an opinion addressing social and educational expenditures governed by Article 9, the S.C. Supreme Court emphasized the magnitude and weight of duty given to them to interpret and apply these limits of the constitution on government officials who have disregarded their boundaries, no matter how appealing the secondary benefits.

> Courts tempt fate when they begin deciding cases based not on what the words of the constitution mean but on what they believe the constitution should mean to give legal cover to some fashionable innovation in social policy. Scalia, supra at 46. **No matter how sound or popular a given legislative policy choice may be, it cannot remain law if it is prohibited by the plain words of the higher law—the Constitution.** See Feldman & Co. v. City Council of Charleston, 23 S.C. 57, 66 (1885) ("[W]hen the legislature has clearly overstepped its constitutional powers, it is not only the right, but the duty, of this court so to declare."). As the author of a definitive treatise on our Constitution emphasized:
>
> > **Article X of the Constitution of 1895 is a document that reeks of fiscal restraint. Especially abhorrent to Article X is the use of public funds by private entities whether they be railroads or hospitals.** In a sense Article XI, section 9, of the original 1895 Constitution, and its current counterpart Article XI, section 4, are an extension of **the traditional South Carolina fiscal conservatism** to the educational and social services area . . . . **Let private organizations look to private sources**.
>
> III James Lowell Underwood, The Constitution of South Carolina 170-71 (1992). **If the spending of public funds for the direct benefit of private schools is an idea the people wish to embody in our Constitution (and Respondents**

> **proclaim there is public clamor for it), the Constitution provides a ready method to amend its terms**—a method that by our count has been successfully used at least 100 times since 1974, including twice in 2022.

Eidson v. S.C. Dept. of Education, Op. No. 28235 (S.C.Sup.Ct. filed September 10, 2024) (emphasis added).

I. THE TOWN'S GRANT OF PUBLIC FUNDS TO ASSIST SIDA, A PRIVATE ASSOCIATION, VIOLATED ART. X §§ 5 AND 11 OF THE SOUTH CAROLINA CONSTITUTION BECAUSE THE ADMITTED PRIMARY OBJECTIVE OF THE DREDGE EVENT WAS TO MAINTAIN FREE PASSAGE FOR SIDA'S INDIVIDUAL MEMBERS' BOATS IN AND OUT OF THEIR PRIVATE BOAT SLIPS AND PRIVATE MARINA.

The S.C. Constitution, art. X, § 5 requires that taxes (public funds) be spent for public purposes. It states that any tax "**shall distinctly state the public purpose**." S.C. Const. art. X, 5 (emphasis added).

Similarly, art. X, § 11 provides:

> SECTION 11. **Credit of State and political subdivisions.**
> The credit of neither the State **nor of any of its political subdivisions** shall be pledged or loaned **for the benefit of any individual, company, association, corporation**, or any religious or other private education institution.

S.C. Const. art. X, 11 (emphasis added).

Furthermore, " a law authorizing taxation for any other than a public purpose is void. *Feldman & Co. v. City Council of Charleston*, 23 S.C. 57,62 (1885).

A. "Public purpose" means that the *primary objective* must "promote" the primary benefit to *all, or substantially all,* of the inhabitants or residents, rather than a small group of individuals.

The S.C. Supreme Court has defined "public purpose" as used in S.C. Constitution Article X, §§ 5 and 11:

> As a general rule a **public purpose** has for its **objective the promotion of the public health, safety**, morals, general welfare, security, **prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof**.

Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) (emphasis added). *See also, South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, ("In deciding whether governmental action satisfies a public purpose, we look to the object sought to be accomplished." *Quoting Carll v. S.C. Jobs-Econ. Dev. Auth.*, 284 S.C. 438, 443, 327 S.E.2d 331, 334 (1985)). *Id.* at 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017).

B. "Credit" means "<u>any</u> 'pecuniary liability' or 'pecuniary involvement.'"

The term "credit" has been construed as "**<u>any "'pecuniary liability' or 'pecuniary involvement</u>**.'" *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967) (emphasis added). (In *Elliot*, the Court ruled that the Industrial Revenue Bond Act was for a public purpose as part of an established legislative policy of improving the industrial climate of the state.)

C. Upon SIDA's request, the Town financially assisted SIDA members by spending public funds for the SIDA dredge event which was for the <u>admitted "principal" objective</u> of keeping the members' private yacht slips, docks and marina, accessible for their boats.

First, SIDA requested the public funds to assist them with their dredge event to dredge their private boat slips, marinas, and channels to them, and the Town granted their request (Ex.. 1, Town Clerk Christa Weidemeyer, Affidavit and Attachments (R. pp. 210-244); Exhibit 10, Letter of John F. Brinkley to Town Manager (R. pp. 248-249); Certified Town of Hilton Head Resolution 2022-11 of May 3, 2022 (R. pp. 210-216) and attached Contract (R. pp. 236-242); Exhibit 18 (Exhibit B to John F. Brinkley, president of SIDA, Affidavit) (R. pp. 292-378)).

Second, the Town admitted in its Answer, "Boat slips in the Harbor town yacht basin are private" (Answer par. 13-14) and John F. Brinkley, President of SIDA, and the Town's witness, admitted that the Harbour Town Marina is also private (and the court acknowledged the admission) (Testimony of John F. Brinkley, president of SIDA (R. p. 157, line 24 – p. 158, line 1) (R. p. 190, line 25 – p. 192, line 1)).

Third, John F. Brinkley, President of SIDA, admitted that the Harbour Town Marina is also private (and the Circuit Court acknowledged the admission) (Transcript, pp. 157-158).

Fourth, as presented in the Statement of Facts, the Town's witness, John F. Hinckley, President of SIDA admitted the principal objective of the Association's dredging event was to allow the members full use of their boats.

> Q So what I'd like to ask you is: What are your members getting for all their time, effort, and money by the dredging? What do they benefit from it?
> Q What keeps them doing it?
> A Well, **they do that to preserve navigation. A boat is pretty difficult to use if it's sitting in the mud, and they've all had that experience.**
> Q Okay. Anything else?
> A Well, I think that's **the principal thing**, is **the availability to use your boat frequently**.

(Testimony of John F. Brinkley, SIDA president and witness for the Town (R. p. 173 lines 13-22).

In the present case, the Town voted to "assist" SIDA with its dredge event which their witness explained was for the principal objective of preventing their boats from "sitting in the mud" (Exhibit. 1, Town Clerk Christa Weidemeyer Affidavit and Attachments (R. pp. 210-244); Exhibit 10, Letter of John F. Hinckley to Town Manager (R. pp. 248-249); Certified Town of Hilton Head Resolution 2022-11 of May 3, 2022 (R. pp. 210-216) and attached Contract (R. pp. 236-242); Testimony of John F. Brinkley, president of SIDA (R. p. 173, lines 18-22)). Accordingly, in light of the S.C. Supreme Court's standard for determining a "public purpose" in *Anderson v. Baehr*, the primary objective of the dredge event falls short because it promotes a small portion of the inhabitants or residents rather than a "substantial part." *Id.*

II. THE TOWN'S GRANT OF PUBLIC FUNDS TO ASSIST SIDA MEMBERS, (INDIVIDUALS IN A PRIVATE ASSOCIATION), VIOLATED ART. X §§ 5 AND 11 OF THE SOUTH CAROLINA CONSTITUTION, BECAUSE THE INDIVIDUAL BENEFIT TO THE SIDA MEMBERS IS SUBSTANTIAL AND IN COMPARISON, THE BENEFIT TO ALL OF THE RESIDENTS AND INHABITANTS OF HILTON HEAD ISLAND WAS SPECULATIVE, INDIRECT, AND OF LIMITED ACCESS.

A. The benefit to all of the residents and inhabitants of Hilton Head Island was speculative in comparison to the benefit to the SIDA members' concrete and immediate benefit.

In *Baehr*, the Supreme Court further reasoned,

> We think it a fair conclusion to say that the ***benefit to the developer or entrepreneur, would be substantial*, and the benefit to the public would be *speculative.*** Some public benefit comes from the development of any property by free enterprise or by the government. **Many objects may be public or beneficial in the general sense that their attainment will benefit or promote the public convenience, but not be public in the sense that legislation is permitted** […].

Id. (emphasis added). The primary benefit of the SIDA dredge event was to members by clearing their private yacht slips and docks and marina so they don't "sit in the mud" and can use their "boat[s] frequently" (Testimony of John F. Brinkley president of SIDA and witness for the Town (R. p. 173, lines 13-22). In comparison, the benefit of the dredge event to each resident and inhabitant of Hilton Head as a whole is speculative from individual to individual.

B. The Town joined hands with the SIDA members in a venture that directly benefitted the individual members and but did not directly benefit all or substantially all of the residents and inhabitants of Hilton Head Island.

S.C. Constitution art. X, § 11 **prohibits** a joint venture between a municipality and a private entity that **primarily benefits the private entity.**

> We have no doubt but that the city officials would exercise powers granted by the Act in good faith, but **in considering the constitutionality of the Act**, we must take into consideration the things which the Act affirmatively permits. In our view, it **permits the city to join hands with a developer and undertake projects which would be primarily to the benefit of the developer**, with no assurance of more than **negligible advantage to the general public.** It is **not sufficient that an undertaking bring about a** remote ***or indirect public benefit*** to categorize it as a project within the sphere of 'public purpose.'

Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) (emphasis added). S.C. Const. art. X, 5 and 11. This subsidized dredging did not provide a primary benefit to "all of the inhabitants or residents [of Hilton Head], or at least a substantial part thereof" (R. p. 173, line 5 p. 174, line 22) (R. pp. 181-184) (R. p. 157 line 24 – p. 158 line 1); Answer par. 13-14 (R. p. 61)). *Anderson v. Baehr,* 265 S.C. 153, 217 S.E.2d 43 (1975). The SIDA members, however, received a proximate and direct benefit.

This week, the South Carolina Supreme Court ruled in *Eidson v. S.C. Dept. of Education,* that in violation of the S.C. Constitution, art. XI, § 4, public funds were spent for the direct benefit of private schools in S.C. *Id.* Op. No. 28235 (S.C.Sup.Ct. filed September 10, 2024). The Court discussed the nature of a direct private benefit from public funds and reasoned that even if the funds could be directed to either a private school or public school by individual student choice and some of the funds in the program went to public schools, the private schools still received a direct benefit in violation of the Constitution.

> The inherent flaw in Respondents' choice argument is that the constitution prohibits "direct benefit." **We liken Respondents' choice argument to the adage that "a rising tide lifts all boats." Like the tide, the public funds released by the Act for tuition benefit all education service providers, public and private. But just because the benefit is diffuse does not mean it is not direct; the effect of the tide is the same on all the boats.** The fact that the Act allows the Department to hand pick the education service providers (the boats) that the student may choose, which may be private or public, is irrelevant. It is this same direct effect we found unconstitutional in Adams and Hartness, and this prohibition on using public funds for tuition at a private school is the direct benefit that we hold today Article XI, Section 4 forbids.

Eidson v. S.C. Dept. of Education, Op. No. 28235 (S.C.Sup.Ct. filed September 10, 2024).

In the case at bar, with this expenditure of public funds, the Town has "join[ed] hands with Sea Pines Plantation [individual boat slip owners, dock owners, and marina owners and their association, SIDA, and the Harbour Town Yacht Club]. *Id.* SIDA President John F. Brinkley's

testified that the **primary objective** of SIDA dredging is to benefit the Sea Pines Plantation private boat slip and dock owners by allowing them full use of their boats and yachts. "Well, I think that's the principal thing, is the availability to use your boat frequently" (Testimony of John F. Brinkley, president of SIDA (R. p. 173, line. 13 – p. 174 line 22).

Instead, the Town's expenditure directly benefitted the SIDA members and any benefit to all or substantially all of the inhabitants of Hilton Head Island was indirect. As in *Anderson v. Baehr*, Hilton Head joined hands with private slip owners and private dock owners and private marinas of Sea Pines Plantation through their associations to dredge the private marinas, private docks and individually owned private slips " (Testimony of John F. Brinkley, president of SIDA (R. p. 173, line. 13 – p. 174 line 22). Although citizens and taxpayers of Hilton Head may have received an "indirect public benefit" from the dredging, it was "primarily to the benefit" of the private slip owners and private dock owners and marinas of Sea Pines Plantation to have the "availability to use [their] boat frequently."

Accordingly, taking the Court's Findings of Fact, the Admissions in the Answer, and Town witness admissions at trial, and applying the S.C. Supreme Court's reasoning in *Anderson*, the Town's expenditure fails to meet the public purpose requirement of the S.C. Constitution, art. X, §§ 5 and 11 and the Circuit Court erred in dismissal under SCRCP 41(b).

C. The town joined hands with SIDA members in a joint venture of which the members, with their private ownership were the beneficiaries, not the public at large, whose access to and use of the private yacht slips and marina is limited.

The South Carolina Supreme Court addressed another similar case in 2017, cited above. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 412 S.C. 110, 804 S.E.2d 854 (2017) ("Bridge Inspection case"). In the Bridge Inspection case, at the request of a city councilman, acting as a private individual, and at the request of a state

representative, the South Carolina Department of Transportation inspected bridges in a private, gated community in Aiken. Plaintiffs sued, alleging it was unconstitutional to use public funds for private purposes. The Circuit Court and the Court of Appeals ruled against the plaintiffs on standing, mootness, and on the merits. *Id.* (The dissent focused on the issue of safety and would have upheld the expenditure.) The Supreme Court reversed. *Id.* The Supreme Court found that plaintiffs should be granted public importance standing, and that the public importance exception to the mootness doctrine applied.

As to the merits, the Court cited Article X, § 5 of the Constitution and stated, "Thus, all taxes levied must be used towards a public purpose." *Id.*, 412 S.C. at 123. The Court also ruled:

> We find the inspection of the bridges did not serve a public purpose. We do not doubt that the inspection was conducted to assuage safety concerns. However, the **owners of the bridges were the beneficiaries of the inspection, not the public at large, whose access to the bridges is limited to the authorization provided by the homeowners.**

Id., 412 S.C. at 123. The Court concluded, "[W]e find [SCDOT's] action unconstitutional." *Id.* Likewise, in this case, the Town's assistance to the SIDA members with public funds benefitted the members and their private yacht slips and marina and not the Hilton Head Island residents and inhabitants at large, whose access is more limited than the SIDA members who own the boat slips and marina being dredged.

III. THE TOWN'S GRANT OF PUBLIC FUNDS TO ASSIST SIDA, A PRIVATE ASSOCIATION, VIOLATED ART. X §§ 5 AND 11 OF THE SOUTH CAROLINA CONSTITUTION BECAUSE DREDGING *CHANNELS AND BASINS* WITH PUBLIC FUNDS *FOR THE PRIVATE INTEREST AND USE OF INDIVIDUALS* IS NOT A PUBLIC PURPOSE.

A. The partial public location included in the dredge event which had the primary objective of SIDA members' continued use of their boats does not render the purpose public.

The Circuit Court erred in its focus. For the purpose of determining whether a public expenditure violates S.C. Constitution art. X, §§ 5 and 11, the **partial public location of the use of**

funds for private individuals is not determinative when applying the test of whether **1)** the primary objective of the endeavor is to assist an individual, association, company, or private or religious educational institution and **2)** whether accordingly the expenditure directly benefits private individuals, associations, companies or private or religious educational institutions and **3)** gives a more speculative, indirect or limited benefit to the rest of the inhabitants of the municipality. In *Brumby v. City of Clearwater*, the Florida Supreme Court similarly ruled that the City of Clearwater violated the Florida Constitution, because it appropriated public money **to dredge a channel and basin for an individual's benefit**. *Brumby v. City of Clearwater*, 108 Fla. 633, 149 So. 203 (Fla. 1933).

> […T]he contract on which appellant relies for the relief sought [is]void because the city of Clearwater was **without authority to undertake the expenditure** of public funds for the purpose of dredging a channel and basin **for the use of an individual** with which to carry on and maintain his private business enterprise […].

Id.

B. In the case at bar, instead of examining the expenditure according to the S.C. Supreme Court's guidance presented above, the Circuit Court, at the Town's urging, largely limited Its legal analysis to a focus on the partial public location included in the dredge event.

In the present case, the Town has persuaded the Circuit Court to focus on "the dredging of the Harbor Town Yacht Basin, the entrance channels to it, and Braddock Cove Creek" (Order, finding 5 (R. p. 5)). The Court below reasoned, "Both the Harbor Town Yacht Basin, its entrance channel and Braddock Cove Creek are open to Calibogue Sound, the water in them is saline and is affected by the tides" (Order, finding 6, (R. p. 6)). Although the law directs otherwise and the Basin contains many private boat slips (Exhibit 18 permit maps (R. pages 298-300, 316, 319, 322, 326, 328, 341)), the Circuit Court seemed to reason that because the dredging took place in saline water that was affected by the tides and touched some public property, the dredging must be for a public purpose. The Court below further reasoned, "The Harbour Town Yacht Basin, its entrance

channel and Braddock Cove Creek are navigable waterways open to the public" (Order, finding 8 (R. p. 6)).

The flaw in this reasoning is that like the DOT in the Driveway Case (R. PP. 379-390), it focuses exclusively on the accompanying improvements made to the actual roadway, thereby excluding the Constitutional issue determined by the **1)** primary objective to promote an individual or small group of individuals and **2)** the direct benefit to the individuals with a speculative or indirect and limited benefit or even less to all or substantially all of the inhabitants or residents of the Town. In fact, the Circuit Court disregarded the determinative characteristics of both primary objective and more direct benefit in its legal analysis even while it acknowledged the argument of primary benefit to the SIDA members as owners of the private boat slips and marinas.

> [Appellant's] argument was because the waterways are bordered by Sea Pines resort, which is a private, gated community, because the waterways have **privately owned marinas and boat slips in them that were benefited by the dredging, the expenditure of public funds on the dredging of the waterways** violates S.C. Const. art. X, § 5. [Appellant] also argued that S.C. Const. art. X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties."

(Order (R. P. 7) (emphasis added)). Despite this clear statement of the Appellant's position, the Circuit Court nevertheless rejected the argument. The Circuit Court's error flows not only from an error in focus on location rather than on the primary objective and benefit to private individuals and associations, but it also flows from a false assumption that the $600,000 of public funds and the public areas touched by the dredging could be conceptually joined and segregated away from the private SIDA member funds and their yacht slips, docks and marinas.

C. The public funds the Town granted to assist SIDA members at their request with their dredge event are fungible and assisted the SIDA members with dredging their private boat slips, docks, and marinas, and importantly, with the primary purpose of the event: to allow them to use their boats.

Accordingly, the Circuit Court has erred by applying a legal test that differs from the S.C. Supreme Court's interpretation of these provisions as presented above. It has in effect,

determined that if any of the dredging event touched public property, than the public funds the Town devoted to assisting the SIDA members in their dredge event may be isolated and relegated to that public property only, thereby satisfying the public purpose requirement. However, as Justice Hearn reasoned in her dissent in *City of Myrtle Beach v. Tourism Expenditure Review Committee*,

> Quite simply, **a dollar is a dollar; money is fungible. For purposes of the Act, it makes no difference whether a dollar with a particular serial number was expended for one purpose as opposed to another.**.

Id. at 407 S.C. 298, 308, 755 S.E.2d 435 (2014). The U.S. Supreme Court has also ruled that public funds are fungible:

> **Money is fungible,** bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value. It is enough that the statute condition the offense on a threshold amount of federal dollars defining the federal interest such as that provided here.

Sabri v. U.S., 541 U.S. 600 (2004). Accordingly, the Circuit Court made a legal error in ruling that Appellant must prove in essence, that none of the areas touched by the dredge were public.

IV. THE TOWN'S GRANT OF PUBLIC FUNDS TO ASSIST SIDA, A PRIVATE ASSOCIATION, VIOLATED ART. X §§ 5 AND 11 OF THE SOUTH CAROLINA CONSTITUTION BECAUSE IT SPENT PUBLIC FUNDS TO IMPROVE PRIVATE PROPERTY DIRECTLY AND CONCRETELY INCLUDING YACHT SLIPS, DOCKS, AND MARINAS.

Shortly after the Supreme Court issued its opinion in the Bridge Inspection Case, the Circuit Court for Richland County issued a decision in another similar case. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, Case Number 2013-CP-40-03677, Order entered January 29, 2018) ("The Driveway Case"). The Circuit Court had waited to issue a decision in the Driveway Case until the Supreme Court ruled in the Bridge Inspection Case. (Order entered January 29, 2018 (R. pp. 1-11)).

In this Court's opinion, the issues raised in the *Bridge Inspection* case would have

> a substantial impact upon the decision in this pending case. To avoid the potential of additional litigation on the same or similar matters, this Court delayed the issuance of a final order pending the Supreme Court's decision. The Supreme Court issued its decision in *S. C. Pub. Interest Found. v. S.C. Dep't. of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017). This Court now addresses the issues raised in the instant case

Id.

The Circuit Court presented the facts of the Driveway Case (R. pp. 379-390) which are analogous to the facts of the case at bar (Order (R. pp. 1-11).

> In November 2012, two SC DOT employees (Jeffrey Stroud – crew supervisor and Willie Walls – backhoe operator) were inspecting roads and performing work near the home of Holly Roof (nee Holly Guy), an SC DOT Chester maintenance inspector. She asked Stroud, who was leaving the job site, to push rock that had washed from her driveway into the road back up her driveway off the apron of the highway. The slope of the driveway caused the material to drift off her property onto the roadway. Roof previously had made work requests on two occasions for the same type of work because the rain washed the rocks into the road.
>
> When Stroud's crew finished its work for the day, he asked Walls to go to Guy's house in Richburg, South Carolina. Stroud also went there to inspect the area. Guy's house is located on the highway heading back to the Chester Maintenance shop. Roof met Stroud and Walls at her driveway. Stroud determined that the rock and debris that washed in the roadway was a safety hazard and removal of the debris was appropriate. They performed the work moving the rocks back into the driveway and "feathering" it out covering the ruts in the driveway and working both on and off the right of way. Guy did not direct how the work was to be done or supervise the work at the site. As DOT employees, Roof is not Stroud's supervisor. The rock and gravel were pushed and dragged up the driveway and the remainder was "feathered" out in the right-of-way on the road.
>
> * * *
>
> The evidence showed that the work lasted about 20-30 minutes. Defendants submitted evidence that, based on DOT figures, the value of the work performed on Ruth's driveway amounted to $123.39. This figure includes the value of three DOT employees' time expended on the project, and the rental value of the DOT pickup, the DOT dump truck, the DOT trailer, and the DOT backhoe/loader. The Court accepts this evidence as to the value of the services performed. The Department determined that the part of the work involved in cleaning the highway and the driveway entrance was necessary to remove mud and rocks which presented a hazard to the traveling public. Spreading the material out on the driveway violated Department Directive 49 since it did not fall within the exception to the prohibition against working off of the State's right of way.

> Directive 49 dated March 23, 2012 provides guidance on the use of Department resources on private property, including private roads and bridges. Directive 49 provides "[t]he use of Department resources (personnel and equipment) on privately owned property is prohibited unless there is a legitimate Department purpose involved. Each case must be decided on its own facts based upon the applicable laws and regulations."

Id. at pp. 4-6.

As an initial matter, the Court in the Driveway Case (R. pp. 379-390) ruled, "The appellate courts of this State have ruled that the manner in which public funds are spent is of immense public importance.' *Sloan v. School District of Greenville County*, 342 S.C. 515, 524, 537 S.E.2d 299, 303 (2000).

In its analysis of the legal issues, the Circuit Court in the Driveway Case ruled as follows:

> Article X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612, 615 (1981), *overruled on other grounds* by *WDW Prop. v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000). The Supreme Court ruled that "all legislative action must serve a public rather than a private purpose." *Id.*, 276 S.C. at 328, 278 S.E.2d at 615. The removal of rocks from the roadway was certainly a public purpose promoting the public health and safety of the public using the public roadways of the State. **The action of the Department became unlawful when it used the public resources to improve the condition of the private driveway**.

Id. at p. 9.

The Circuit Court in the Driveway Case ruled, "[T]his action is factually similar to the *Bridge Inspection* case" (R. p. 388). The Court concluded, "the South Carolina Department of Transportation violated Article X, §§ 5 and 11 of the South Carolina Constitution when it did construction work and improvements on a privately owned driveway at public expense." *Id.* R. p. 389). Having just lost the Bridge Inspection Case, the South Carolina DOT did not appeal the Driveway Case.

The case at bar is similar to the Bridge Inspection Case and the Driveway Case. In all three situations, government actors are using public funds to improve private property: one bridges

within a private community, one a driveway on private property, and one private yacht slips, docks, and marinas. In all three cases, this conduct violates S.C. Constitution art. X, §§ 5 and 11.

CONCLUSION

As the S.C. Supreme Court ruled in *Eidson*,

> […**A]s a Court mindful of the separation of powers, we have no right to amend by forced judicial interpretation our fundamental founding document simply to fit whatever policy may be fashionable—no matter how wise or foolish it may seem to be**. *Gentry, 192 S.C. at 150, 5 S.E.2d at 859* (holding legislative policy must bend to constitutional principles: "if the provisions of the Constitution are not broad enough or sufficiently elastic to meet the needs of [legislative policy], . . . that instrument itself provides how" it may be amended "if the people so will"); The Federalist No. 78 (Alexander Hamilton) ("**The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitutions of their pleasure to that of the legislative body.** The observation, if it proved anything, would prove that there ought to be no judges distinct from that body.").

Eidson v. S.C. Dept. of Education, Op. No. 28235 (S.C.Sup.Ct. filed September 10, 2024) (emphasis added).

In the case at bar, the Constitutional flaw is not the dredging of Braddock Cove Creek or the entrance to the Harbour Town Yacht Basin, with their saline water affected by the tides; the constitutional violation is spending public funds for the primary and direct purpose of assisting SIDA members to achieve their goal of free navigation in and out of their privately owned yacht slips and boat slips and marina, private docks and slips that are not open to the public.

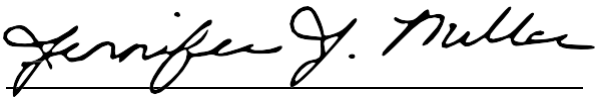
The taxpayers are paying to improve areas that are not open to the public, just like the public paid to inspect bridges that were not open to the public in the Bridge Inspection case. This dredging of private areas is just as unconstitutional as the improvements made to the private driveway in the Driveway Case and the inspection of the private bridges in the gated community in the Bridge Inspection Case. It is as unconstitutional as the dredging of the private channel and

basin for an individual in the Clearwater, Florida case.

Finally, in the case at bar, the primary purpose and benefit focus upon a *limited number* of private individuals (yacht and boat owners) together in a single association (SIDA). In *Eidson*, the S.C. Supreme Court ruled that the state violated the public purpose requirement in art. XI, § 4 even though the public funds directly benefited a much greater number of individuals and institutions (private and religious schools and their students). If this broad-based expenditure of public funds to benefit a great number of students and schools was ruled unconstitutional, how much more the spending of public funds by the Town for the primary objective of assisting a much smaller number of private boat and yacht owners joined together in a single private association? *Eidson v. S.C. Dept. of Education*, Op. No. 28235 (S.C.Sup.Ct. filed September 10, 2024.

Accordingly in the case at bar, by error of law, the Circuit Court erred in dismissing the case and ruling that Appellant failed to prove that the Town of Hilton Head violated S.C. Constitution, art. X §§ 5 and 11 by expending public funds for the benefit of "an individual, company, association, [or] corporation." Instead, the Circuit Court should have granted declaratory judgment that the Town violated the S.C. Constitution, art. X, §§ 5 and 11, enjoined the Town from spending $600,000 in public funds for SIDA members' dredge event, and granted Plaintiff his attorneys' fees and costs under S.C. Code Ann. § 15-77-300 ff. and all other relief deemed just and proper. For the reasons stated, this Court should reverse the judgement of the Circuit Court.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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March 19, 2025

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000961

Ryan McAvoy, Individually and on Behalf Of All Others Similarly Situated,...Appellant,

v..

The Town of Hilton Head Island, South Carolina, ...Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

March 19, 2025

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PROOF OF SERVICE

I certify that I have served Appellant's Final Brief on upon Respondent, the Town of Hilton Head Island, South Carolina, by emailing a copy of it on March 19, 2025, addressed to its attorney of record, Curtis L. Coltrane.

March 19, 202

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