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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, individually and on behalf of all others similarly situatedAppellant,

v.

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

RETURN TO PETITION FOR REHEARING

NOW COMES the Appellant, by his undersigned attorneys, and files this Return to the Petition for Rehearing. Appellant agrees that the Court properly understood the issues, the Court properly dealt with the issues, and the Court rendered a proper ruling. Accordingly, the Petition for Rehearing should be **DENIED**.

Sea Pines Plantation is a private, gated community. Within Sea Pines is a smaller group of people called the South Island Dredging Association (“SIDA”). These are boat owners, yacht owners, and owners of private marinas within Sea Pines Plantation. John Brinkley, President of SIDA, testified that SIDA had privately funded the entire dredging project for nearly 20 years, before they first obtained a commitment for a subsidy from the Town of Hilton Head Island. He also testified that the principal reason for the dredging was to “utilize your boat.”

In 2017, the Town of Hilton Head Island committed \$600,000 of public funds to subsidize

SIDA's dredging project, and in so doing, it violated article X, sections 5 and 11 of the South Carolina Constitution. Plaintiff, McAvoy, brought this civil action contesting the unconstitutional expenditure.

This Court properly understood, "McAvoy contends the Town used public funds to subsidize the dredging with the primary purpose of assisting SIDA members in maintaining access to and from their privately owned boat slips, docks, and marinas." Slip opinion, p. 6.

I. THE COURT PROPERLY FOCUSED ON THE PRIMARY PURPOSE AND BENEFIT OF THE EXPENDITURE, NOT WHO OWNED THE WATERWAYS.

S.C. Constitution, article X, § 11 specifically prohibits the expenditure of public funds for the **benefit** of private entities:

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.

Id. In addition, S.C. Constitution article X, § 5 states, "Any tax which shall be levied shall distinctly state the **public purpose** to which the proceeds of the tax shall be applied." S.C. Const. art. X, § 5 (emphasis added).

Accordingly, the proper legal inquiry in the case at bar is: did the Town of Hilton Head Island pledge or loan credit (public funds) "for the benefit of" the South Island Dredging Association members? S.C. Const. art. X, § 11. The secondary inquiry follows the first question: whether the tax that the Town levied stated a "public purpose." S.C. Const. art. X, 5.

Both the history of SIDA members' paying to dredge and the geography of the dredge demonstrate that this dredge is for the benefit of SIDA members. For many years, SIDA members individually had been paying to dredge their own boat docks, yacht slips, and private marinas for

access to the Calibogue Sound (Testimony of John Brinkley, president of SIDA (R. p 135, line 13) (R. p. 138, line 10 – p. 139, line 4) (R. p. 140, lines 3-5) (R. p. 142, line 18 – p . 146, line 18)).

About 20 years ago, they joined together to form SIDA to share costs and coordinate their efforts to keep their boats free to travel. Recently, SIDA members approached the Town to request public funds to supplement their costs, while still paying for the majority of the dredge themselves (Testimony of John Brinkley, SIDA president (R. p. 138, line 10 – p. 139, line 4) (R. p. 139, lines 9-13) (R. p. 140, lines 3-11) (R. p. 142, line 18 – p. 146, l. 18) (R. p. 149, line 5 – p. 152, line 6) (R. p. 153, line 18- p. 154, line 22); correspondence (R. pp. 248-249), and contract between SIDA and the Town (R. pp. 236-242). Historically, SIDA has been the primary source and beneficiary of the dredging.

Furthermore, SIDA's contract with the Town identifies SIDA as the primary beneficiary of the public funds. Third, the geography of the dredge also identifies SIDA members as the primary beneficiaries. The maps of the marinas, boat docks, yacht slips and basins, which were admitted into evidence, demonstrate that the dredged areas lead to the SIDA members' private docks, yacht slips, and marinas as the primary destination and are more precisely analogous to driveways than to roads (R. pp. 298-300, 316, 319, 322, 326, 328, 341). Accordingly, the Circuit Court's analogy of the dredged area to a road is incomplete.

The Court of Appeals properly ruled that the Circuit Court erred in focusing the legal inquiry away from the identification of the private beneficiary. The Circuit Court then dismissed the case under SCRC 41(b). The Court of Appeals properly ruled that the Circuit Court, instead, should have focused on who was the primary **beneficiary** of the dredging. SIDA's president Mr. Brinkley testified that the primary purpose of the dredges is to allow member boats to come and go from their slips, docks, and marinas.

This Court properly ruled that the Town violated the S.C. Constitution, art. X, §§ 5 and 11 in agreeing to spend \$600,000 in public funds for SIDA members' dredge event. Respondent fails to adequately address the ruling that this was spending of public monies for private purposes, but rather continues to assert that no public funds were "spent on" private property. This assertion is also false. The docks in the yacht basin are privately owned. The docks in the area owned by Braddock Cove, the private neighborhood, are privately owned. Much of the dock at the South Beach Marina is privately owned. All the dredging under these privately owned docks was spending public money on private property, but more importantly, it was for private **purposes** and private **benefit**.

This Court of Appeals properly ruled that the Town of Hilton Head Island pledged or loaned credit (public funds) "for the benefit of" the South Island Dredging Association members a private association. This Court properly ruled, "The circuit court erred by framing the issue as a question of whether the waterways were publicly owned as opposed to whether the purpose of the expenditure was intended to promote the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents or a substantial part thereof and whether the expenditure benefitted the public." Slip opinion, p. 7.

Contrary to this sound holding, the Town of Hilton Head continues to argue that the Plaintiff failed to produce evidence to show that the waterways are privately owned, as opposed to public, waterways. This Court properly focused on who was the **beneficiary** of the dredging.

II. THE TOWN MISREADS THE RELEVANT AUTHORITIES.

The Town continues to misread the relevant authorities from the South Carolina Supreme Court. This Court relied primarily on *S.C. Public Interest Foundation v. S.C. Dept. of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017) for the proposition that "all taxes levied must

be used towards a public purpose.” *Id.*, 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017). Further, in that opinion, the Supreme Court also cited *Carll v. S.C. Jobs-Econ. Dev. Auth.*, 284 S.C. 438, 443, 327 S.E.2d 331, 334 (1985) for the rule that, “In deciding whether governmental action satisfies a public purpose, we look to the object sought to be accomplished.”

Other major Supreme Court rulings interpret S.C. Const. art. X, § 11 to say the main prohibition is to benefit private individuals and entities. “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, [or] corporation” *Anderson v. Baehr*, 265 S.C. 153, 157, 217 S.E.2d 43, 45 (1975) (*emphasis added*); *Eidson v. S.C. Dept. of Education*, 444 S.C. 166, 906 S.E.2d 345 (2024).

This Court properly found that the main benefit was to the private SIDA members and owners. The Town continues to argue erroneously that no public monies would be spent on privately owned property. However, that is not the test. The dredging provides a primary benefit to the private owners of the docks, yacht slips, and marinas, the members of SIDA. For nearly 20 years, the members of SIDA had been funding the periodic dredging of their boats slips, yacht basins, and marinas, and the waterways to and from them, totally with private funds. Then, this private group asked the Town of Hilton Head Island to spend public monies for the benefit of this private group, SIDA. This expenditure was an unconstitutional use of public monies for private purposes. This Court properly focused on the private purpose of the expenditure of public funds, not on the alleged ownership of some of the waterways.

CONCLUSION

This Court properly focused on whether the public funds were spent for private purposes. This Court properly ruled, on these facts, that the expenditure of public monies to help private boat owners get their boats and yachts to and from the ocean violated the South Carolina Constitution. Accordingly, Appellant prays the Court to deny the Petition for Rehearing.

Respectfully submitted,

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