

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble Circuit Court Judge

Case No. 2025-001907

RECEIVED

APR 20 2026

SC Court of Appeals

Pallav Desai, Appellant,

v.

South Carolina Department of Transportation, Respondent.

APPELLANT'S INITIAL BRIEF

S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF CASE 2

STATEMENT OF THE FACTS 3

STANDARD OF REVIEW 5

ARGUMENTS 6

 I. WHETHER THE TRIAL COURT ERRED IN ENFORCING S.C. CODE ANN. § 28-2-470 TO REQUIRE A LANDOWNER TO CHALLENGE THE RIGHT TO TAKE WITHIN THIRTY (30) DAYS OR WAIVE THAT RIGHT, WHERE THE LANDOWNER HAS NO MEANINGFUL OPPORTUNITY TO CONDUCT DISCOVERY.

 II. WHETHER THE EMINENT DOMAIN PROCEDURE ACT VIOLATES DUE PROCESS BY REQUIRING A LANDOWNER TO ASSERT A CHALLENGE TO THE RIGHT TO TAKE WITHOUT ACCESS TO THE FACTUAL BASIS NECESSARY TO SUPPORT SUCH A CLAIM.

 III. WHETHER A LANDOWNER’S STATUTORY RIGHT TO CHALLENGE A TAKING IS RENDERED ILLUSORY WHEN IT MUST BE EXERCISED BEFORE DISCOVERY OR FACTUAL INVESTIGATION IS POSSIBLE.

CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 734 (1961).....8

Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999).....9

Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000).....9

Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).....10

Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital, 344 S.C. 426, 544 S.E.2d 838 (2001).....10

Greenwood County v. Watkins, 196 S.C. 51, 12 S.E.2d 545 (1941).....6

Riley v. Charleston Union Station Co., 71 S.C. 457, 51 S.E. 485 (1905).....8

Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930).....8

Twin City Power Co. v. Savannah River Electric Co., 163 S.C. 438, 161 S.E. 750 (1930).....8

Other Authorities

S.C. Code Ann. §§ 28-2-10.....2,3

S.C. Code Ann. § 28-2-450.....2

S.C. Code Ann. § 28-2-470.....1,2,3,7,12

SCRCP 56.....4,5

SCRCP 26.....6

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT ERRED IN ENFORCING S.C. CODE ANN. § 28-2-470 TO REQUIRE A LANDOWNER TO CHALLENGE THE RIGHT TO TAKE WITHIN THIRTY (30) DAYS OR WAIVE THAT RIGHT, WHERE THE LANDOWNER HAS NO MEANINGFUL OPPORTUNITY TO CONDUCT DISCOVERY.**

- II. WHETHER THE EMINENT DOMAIN PROCEDURE ACT VIOLATES DUE PROCESS BY REQUIRING A LANDOWNER TO ASSERT A CHALLENGE TO THE RIGHT TO TAKE WITHOUT ACCESS TO THE FACTUAL BASIS NECESSARY TO SUPPORT SUCH A CLAIM.**

- III. WHETHER A LANDOWNER'S STATUTORY RIGHT TO CHALLENGE A TAKING IS RENDERED ILLUSORY WHEN IT MUST BE EXERCISED BEFORE DISCOVERY OR FACTUAL INVESTIGATION IS POSSIBLE.**

STATEMENT OF THE CASE

Respondent initiated a condemnation action against Appellant pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. §§ 28-2-10 et seq. (Summons and Complaint, R. ____).

The Notice of Condemnation, issued under S.C. Code Ann. § 28-2-450, informed Appellant that any challenge to Respondent's right to take must be filed within thirty (30) days. (Summons and Complaint, R. ____). Any objection to the right to condemn must be raised by answer within thirty days after service of the notice, or the objection is waived. S.C. Code Ann. § 28-2-470(A).

At the time of receiving the notice, Appellant had not been afforded discovery and lacked access to critical information necessary to determine whether a valid challenge existed. Nevertheless, because failure to act within the statutory period would result in waiver of a substantial property right, Appellant filed a timely challenge to preserve its rights. (Answer dated ____, R. ____).

Despite this, the statutory framework required Appellant to make a legally consequential decision without access to the underlying facts necessary to support or evaluate that decision.

STATEMENT OF THE FACTS

This case arises from a condemnation action initiated by the South Carolina Department of Transportation (“Respondent”) pursuant to the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10 et seq. (Notice of Condemnation, R. ____).

Respondents issued and served a Notice of Condemnation seeking to acquire property interests belonging to Respondents in connection with a highway improvement project. (Notice of Condemnation, R. ____). The notice informed Respondents that, pursuant to S.C. Code Ann. § 28-2-470, any challenge to Respondent’s authority or right to condemn the property must be asserted within thirty (30) days of service of the notice or the right to challenge would be deemed waived. (Notice of Condemnation, R. ____).

At the time the Notice of Condemnation was served, Appellant had not been provided discovery and had no access to the underlying materials or internal determinations supporting Respondent’s decision to condemn the property. Nevertheless, because failure to act within the statutory period would result in a permanent waiver of their right to challenge the taking, Appellant timely filed an action contesting Respondent’s authority and right to condemn. (Summons and Complaint, R. ____).

Appellants subsequently filed an Amended Summons and Complaint asserting their statutory challenge to the taking. (Amended Summons and Complaint, R. ____). In their pleadings, Appellants alleged, among other things, that the proposed condemnation exceeded what was reasonably necessary for the stated project and that Respondents failed to adequately consider reasonable alternatives that would avoid or minimize the intrusion upon Appellants’ property rights. (Amended Summons and Complaint, R. ____). Appellants further asserted that

Respondents had not demonstrated compliance with the statutory prerequisites governing the exercise of eminent domain authority. (Amended Summons and Complaint, R. ____).

Shortly after the pleadings were filed, and before discovery had occurred, Respondents filed a Motion for Summary Judgment pursuant to Rule 56, SCRC. (Motion for Summary Judgment, R. ____). In its motion, Respondents argued that no genuine issues of material fact existed and that it was entitled to judgment as a matter of law regarding its authority to condemn the property. (Motion for Summary Judgment, R. ____).

At the time the motion was filed and heard, Appellants had not yet been afforded an opportunity to conduct discovery concerning the factual basis for Respondent's determination that the taking was necessary for the project. Information relevant to that determination, including project planning materials, engineering analyses, and internal agency decision-making, remained within the exclusive possession and control of Respondents. Despite the early stage of the litigation and the absence of discovery, the trial court entered an Order Granting Defendant's Motion for Summary Judgment, concluding that Respondent was entitled to judgment as a matter of law on Appellant's challenge to the right to condemn.

As a result of that ruling, Appellants were denied the opportunity to develop the factual record necessary to test the legality and necessity of the proposed taking. (Order, R. ____). Respondents now appeal the trial court's order granting summary judgment.

STANDARD OF REVIEW

Issues of statutory interpretation and constitutional due process present questions of law reviewed de novo. In reviewing an order granting summary judgment, the appellate court applies the same standard governing the trial court under Rule 56, SCRCP. Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. All evidence and reasonable inferences must be viewed in the light most favorable to the non-moving party.

ARGUMENT

I. The Statutory Framework Forces Landowners to Assert Challenges Without Access to the Facts Necessary to Support Them

This action was initiated by the South Carolina Department of Transportation through service of a Notice of Condemnation seeking to acquire Plaintiffs' property. The Notice of Condemnation was in proper statutory form and informed Plaintiffs of their right to contest the Department's authority to condemn the property.

However, the notice also triggered the strict deadline imposed by S.C. Code Ann. § 28-2-470, which requires a landowner to file a challenge action within thirty days of service or permanently waive the right to contest the taking. (Notice of Condemnation, R. ____). Faced with this deadline, Plaintiffs filed their challenge action almost immediately following service of the condemnation notice. (Summons and Complaint, R. ____). Plaintiffs had no practical choice but to do so, as failure to file within thirty days would have resulted in the permanent forfeiture of their statutory right to challenge the taking. (Summons and Complaint, R. ____).

The right of a landowner to challenge the authority of a condemning body is firmly established under South Carolina law. The South Carolina Supreme Court has long recognized that landowners may contest the legality of a condemnation action. *Greenwood County v. Watkins*, 196 S.C. 51, 12 S.E.2d 545 (1941).

Yet the statutory framework places landowners in an impossible position. While the statute requires a challenge to be filed within thirty days, it provides no mechanism by which landowners may obtain discovery during that period. Discovery in civil litigation, including condemnation proceedings, is governed by the South Carolina Rules of Civil Procedure, most notably Rule 26,

SCRCF, which generally contemplates discovery occurring after the pleadings have been filed and the issues joined.

As a result, landowners must decide whether to challenge the taking without access to information that lies exclusively within the possession and control of the condemning authority. Such information may include internal project planning documents, engineering analyses, determinations of necessity, and records demonstrating whether the condemnor complied with statutory prerequisites before initiating condemnation.

The statutory structure therefore compels landowners to assert claims without the factual foundation typically required in civil litigation, forcing them either to file protective challenges based on incomplete information or to permanently forfeit their rights.

II. The Statutory Scheme Raises Serious Due Process Concerns

The interaction between the thirty-day waiver provision of S.C. Code Ann. § 28-2-470 and the absence of any mechanism for obtaining discovery during that period raises significant due process concerns.

Fundamental due process requires that individuals be afforded the opportunity to be heard “at a meaningful time and in a meaningful manner.” When the government seeks to take private property through eminent domain, procedural protections must ensure that affected landowners have a realistic opportunity to investigate and present objections.

Although the statutory framework technically permits landowners to file a challenge action, it provides no mechanism by which landowners may obtain the information necessary to determine whether a challenge is warranted before the deadline expires. Without access to

discovery, a landowner cannot meaningfully evaluate whether the proposed taking serves a legitimate public use, whether the condemning authority has exceeded its statutory authority, whether the amount of property sought exceeds what is reasonably necessary for the project, or whether the condemnor complied with mandatory statutory prerequisites prior to initiating condemnation.

By requiring landowners to assert objections before the factual basis for those objections can be discovered, the statutory framework denies landowners the meaningful opportunity to be heard that due process requires.

III. South Carolina Law Recognizes That the Power of Eminent Domain Is Not Unlimited

South Carolina courts have long recognized that the power of eminent domain is not absolute and must be exercised within reasonable limits.

In *Riley v. Charleston Union Station Co.*, 71 S.C. 457, 51 S.E. 485 (1905), the Supreme Court held that the exercise of the power of condemnation must be reasonable and necessary to accomplish the public purpose.

Similarly, South Carolina courts have repeatedly emphasized that condemning authorities must demonstrate that the taking is reasonably necessary and that reasonable alternatives have been considered. *Seabrook v. Carolina Power & Light Co.*, 159 S.C. 1, 156 S.E. 1 (1930); *Twin City Power Co. v. Savannah River Electric Co.*, 163 S.C. 438, 161 S.E. 750 (1930); *Atkinson v. Carolina Power & Light Co.*, 239 S.C. 150, 121 S.E.2d 734 (1961).

These cases make clear that the condemning authority bears the burden of demonstrating that the proposed acquisition is reasonably necessary and that less intrusive alternatives have been considered. Because these determinations depend heavily upon engineering analyses, project planning documents, and internal agency deliberations, they are inherently fact-intensive inquiries that cannot be resolved without the development of a factual record.

IV. The Trial Court Erred in Granting Summary Judgment Before Discovery Could Occur

After Plaintiffs filed their challenge action, the Department immediately moved for summary judgment before any meaningful discovery had taken place and while the case remained in its earliest stages. (Motion for Summary Judgment, R. _____)

Summary judgment is a drastic remedy and should be granted sparingly. The South Carolina Supreme Court has repeatedly emphasized that summary judgment must be cautiously invoked to ensure that no party is improperly deprived of the opportunity to litigate disputed facts. *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000).

Because summary judgment deprives a party of the opportunity to present evidence at trial, courts must exercise particular caution before granting such relief. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

Here, the trial court granted summary judgment before Plaintiffs had any meaningful opportunity to develop the factual record. Much of the evidence necessary to evaluate the necessity and scope of the proposed taking—including engineering studies, project planning materials, and internal agency communications—remains within the exclusive possession of the Department. (Order, R. _____)

South Carolina courts have also recognized that summary judgment is inappropriate where further factual development would assist in clarifying the application of the law. *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C. 426, 544 S.E.2d 838 (2001).

Likewise, summary judgment should not be granted even when evidentiary facts appear undisputed if reasonable persons could draw different conclusions from those facts. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

Because the issues raised by Plaintiffs—including the necessity of the acquisition, the existence of reasonable alternatives, and the scope of the taking—require factual development, summary judgment was premature and improper.

V. The Trial Court Improperly Accepted the Condemning Authority's Assertions Without Meaningful Judicial Review

The trial court's ruling effectively adopted the Department's assertions regarding necessity and project design without requiring evidentiary support subject to adversarial testing.

While courts recognize that condemning authorities are afforded discretion in determining how to implement public projects, that discretion does not create an irrebuttable presumption that the government's determination of necessity is correct.

South Carolina law clearly recognizes that courts retain the authority to determine whether a condemning authority has exceeded its statutory authority or acted arbitrarily in exercising the power of eminent domain. The cases discussed above make clear that the question of reasonable necessity remains subject to judicial review.

By granting summary judgment based largely on the Department's own assertions regarding necessity and project design, the trial court effectively insulated the Department's decisions from meaningful judicial scrutiny. Such an approach undermines the protective function of the statutory challenge procedure and improperly shifts the burden onto landowners to disprove governmental determinations without access to the information necessary to do so.

VI. The Trial Court's Decision Effectively Nullifies the Statutory Right to Challenge the Taking

The Eminent Domain Procedure Act expressly provides landowners with the right to challenge the legality of a condemnation action. The purpose of this statutory challenge procedure is to ensure that landowners have a meaningful opportunity to test the legality of a condemning authority's exercise of eminent domain before their property rights are permanently affected.

However, if courts accept a condemnor's assertions of necessity without requiring evidentiary support and without allowing discovery, the statutory challenge process becomes meaningless.

The right to own and possess private property is one of the most fundamental rights protected under the law. Here, the State seeks to take Plaintiffs' property without their consent. Plaintiffs should therefore be afforded a full and fair opportunity to investigate the factual basis for the proposed taking and to present their challenge before the court resolves the issue as a matter of law.

CONCLUSION

The South Carolina Eminent Domain Procedure Act, as applied through S.C. Code Ann. § 28-2-470, deprives landowners of due process by requiring them to assert challenges to the right to take within thirty days, without access to discovery or a meaningful opportunity to investigate.

This framework renders the right to challenge the taking illusory, the decision below should be reversed.

Respectfully submitted,

s/S. Jahue Moore
S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Appellants

April 13, 2026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 20 2026

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

CC Court of Appoa

The Honorable Daniel Coble Circuit Court Judge

Case No. 2025-001907

Pallav Desai, Appellant,

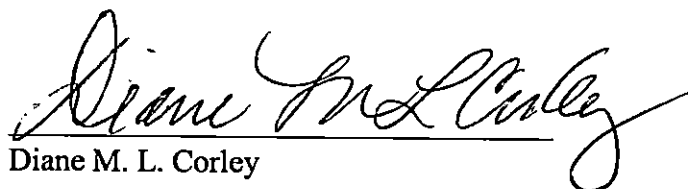
v.

South Carolina Department of Transportation, Respondent.

PROOF OF SERVICE

I, Diane M. L. Corley, an employee of Moore Bradley Myers Law Firm, P.A., certify that I have served the Appellant's Initial Brief and Designation of Matter on the Respondent by transmitting a copy of same on April 20, 2026, by electronic mail, addressed to its attorney of record as follows:

David G. Pagliarini, Esquire
Pagliarini Law Firm, LLC
145 River Landing Drive, Suite 101-B
Daniel Island, SC 29492
E-mail: david@lawplf.com


Diane M. L. Corley



S. Jahue Moore†
 James Edward Bradley*
 Sheila McNair Robinson
 Christian G. Spradley
 William H. Edwards
 S. Jahue Moore, Jr.
 William B. Fortino
 Ralph Nichols Riley, Jr.
 John C. Bradley, Jr.
 Lester McGill Bell, Jr.
 Sierra Carini Hartley
 Emily E. Collins

Melissa K. Moore
 Catherine Liscusky Jumper
 Brian M. Eckstrom
 Joshua S. E. Martin
 Madison B. Kelly

Retired
 J. Mark Taylor**
 C. David Sawyer, Jr.†
 Billy C. Coleman (1916-2019)
 Stanley L. Myers** (1976-2023)
 Robert D. Hazel† (1936-2024)

April 20, 2026

VIA E-MAIL: ctappfilings@sccourts.org
VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
 Clerk, South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201

RECEIVED

APR 20 2026

SC Court of Appeals

RE: Pallav Desai vs. SC Department of Transportation
 Appellate Case No.: 2025-001907

Dear Ms. Kitchings:

Please find included with this cover letter Appellant's Initial Brief and Designation of Matter with Attorney Certification for filing of the same.

Thank you in advance for your assistance in this matter.

Yours very truly

s/S. Jahue Moore
 S. Jahue Moore

SJM:dc
 Enclosures
 cc w/encls.: David G. Pagliarini, Esquire

MBM MOORE
BRADLEY
MYERS

PO Box 5709, West Columbia SC 29171
1700 Sunset Boulevard, West Columbia SC 29169

RECEIVED

APR 20 2026

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201