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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

FROM THE SOUTH CAROLINA
COURT OF APPEALS

Appeal from Dorchester County
The Honorable Roger M. Young, Sr.,
Circuit Court Judge

Appellate Court Case No. 2023-000951
Unpublished Opinion No. 2026-UP-062 (S.C. Ct. App. Filed February 18, 2026)
Circuit Court Case No. 2017-CP-18-00138

Mitch Randall Yawn and Juanita Mae Stanley d/b/a
Flowertown Bee Farm and Supplies,..... Petitioners,

v.

Dorchester County..... Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

I certify that a petition for rehearing was made and ruled on by the Court of Appeals on March 24, 2026.

s/W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.

Counsel for Petitioners

Pursuant to Rule 242, SCACR, Petitioners Mitch Randall Yawn and Juanita Mae Stanley d/b/a Flowertown Bee Farm and Supplies respectfully petition this Court for a writ of certiorari to review the Court of Appeals' unpublished decision affirming summary judgment in favor of Respondent Dorchester County on Petitioners' negligence, gross-negligence, and trespass claims.

This case warrants discretionary review because the Court of Appeals' decision materially expands governmental immunity under the South Carolina Tort Claims Act and narrows the intent element of trespass in a way that conflicts with established South Carolina tort principles. The opinion effectively holds that a governmental entity may avoid liability for breaching a specific undertaking to identified citizens so long as the undertaking arose in the course of carrying out a public function. It likewise treats intent to invade land as requiring intent to cause the resulting harm, contrary to settled trespass law. Both rulings raise important recurring questions about the boundary between the Tort Claims Act's limited waiver of immunity and traditional tort duties, as well as the continued vitality of South Carolina trespass doctrine when the invasion is deliberate but the resulting damage is claimed to be unintended.

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in holding that Dorchester County owed no duty to Petitioners under the voluntary undertaking doctrine, and in further holding that even if such a duty existed, the claim was barred by section 15-78-60(4), when the record showed that the County's mosquito-abatement coordinator maintained a beekeeper notification list, Petitioners were on that list, Petitioners were told they would be notified before spraying, and Petitioners relied on that undertaking to protect their bees.

II. Whether the Court of Appeals erred in affirming summary judgment on Petitioners' trespass claim by treating intent to cause the resulting harm as the relevant inquiry, rather than whether Respondent intentionally caused the physical invasion of Petitioners' property by aerially applying

pesticide over it.

STATEMENT OF THE CASE

In August 2016, during public concern over the spread of the Zika virus, Dorchester County undertook an aerial mosquito spray in portions of the county. (See 2026-UP-062 at 2). Petitioners owned and operated Flowertown Bee Farm and Supplies, a bee-related business in Dorchester County. Their apiary was located in an open field and ordinarily the "whole sky" above it "would be covered with bees." (R.pp. 225-226).

The County's mosquito-abatement coordinator, Clayton "Scott" Gaskins, maintained a list of local beekeepers and provided personal notice before mosquito spraying so beekeepers could take protective measures. (R.pp. 206-207). When Petitioners sought to protect their bees, Town officials directed them to Gaskins, who kept a list and "would call and notify before spraying." (R.p. 225). Petitioners then contacted Gaskins and "got on his list." (R.p. 225).

The record further shows that Petitioners were on that list in 2016 and that Gaskins repeatedly called Yawn when the County planned truck spraying in Yawn's zone. (R.pp. 206-207). However, before the aerial spray at issue, Petitioners were not personally notified. (R.pp. 219-220); (see also 2026-UP-062 at 2-4).

On August 28, 2016, Allen Aviation flew over the Summerville area, including Petitioners' property, and released Naled (Trumpet). (R.p. 226; R.pp. 214-215). The product labeling described the chemical as "highly toxic" to bees exposed to direct treatment. (R.pp. 160-161; R.pp. 173-174). The next morning, Stanley observed no normal bee activity and instead saw "piles of bees just laying there." (R.p. 226). Petitioners contend that the spray killed their hives and destroyed their bee business. (R.p. 227).

Petitioners sued, asserting federal and state constitutional claims and state tort claims. After the federal claims were resolved and the remaining claims were remanded, the circuit court granted

summary judgment to Dorchester County on the state-law negligence, gross-negligence, and trespass claims. (See 2026-UP-062 at 3-4). The Court of Appeals affirmed in an unpublished opinion filed February 18, 2026. 2026-UP-062. It held that no voluntary undertaking duty arose, and that even if one had arisen, section 15-78-60(4) barred the negligence claim. (Id. at 5-7). It also held Petitioners could not establish the intent element of trespass because the bee deaths were not intended and were not conclusively shown to be the direct result of the invasion. (Id. at 7).

Petitioners timely sought rehearing, arguing that the panel misapprehended both the voluntary undertaking doctrine and the intent element of trespass. (Petition for Rehearing at 1-4). The Court of Appeals denied rehearing on March 24, 2026. (Order Denying Rehearing (Mar. 24, 2026)). This petition follows.

Reasons the Writ Should Be Granted

I. The decision presents an important question about whether the Tort Claims Act extinguishes voluntarily assumed duties undertaken by governmental actors toward identified individuals.

South Carolina recognizes that a duty may arise when a defendant voluntarily undertakes to render services for another's protection and the plaintiff is harmed either because of reliance on that undertaking or because the undertaking increases the risk of harm. *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 213, 826 S.E.2d 285, 290-91 (2019). Petitioners' appeal squarely presented that principle. Petitioners did not argue that a statute or regulation required individualized notice. Instead, they argued that Dorchester County, through its coordinator, affirmatively undertook to maintain a list of local beekeepers, told Petitioners they were on that list and would be notified before spraying, repeatedly gave such notice in the past, and then failed to do so before the aerial application that destroyed Petitioners' hives. (R.p. 225; R.pp. 206-207; R.pp. 219-220).

The Court of Appeals held that no duty arose because the County had not previously conducted aerial spraying and because prior calls were courtesy calls made before truck spraying. (2026-UP-062 at 5-6). That reasoning narrows the voluntary undertaking doctrine in a way that effectively disregards the reliance-based branch of the doctrine recognized in Wright. The relevant question is not simply whether the identical delivery method had been used before; it is whether the County undertook to notify these identified beekeepers before pesticide spraying and whether Petitioners relied on that undertaking. See *Wright*, 426 S.C. at 213, 826 S.E.2d at 290-91. The evidence, viewed in Petitioners' favor at summary judgment, permitted that finding. (R.p. 225; R.pp. 206-207).

The Court of Appeals then went further, holding that even if such a duty arose, section 15-78-60(4) immunized the County because the undertaking occurred in the course of the County's compliance with the law governing mosquito abatement. (2026-UP-062 at 6-7). That ruling significantly broadens Tort Claims Act immunity. Although limitations on governmental liability are construed to limit liability, they do not erase distinct tort doctrines unless the statute clearly requires that result. See, e.g., *Steinke v. S.C. Dep't of Lab., Licensing & Regul.*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999); *Repko v. Cnty. of Georgetown*, 424 S.C. 494, 500, 818 S.E.2d 743, 747 (2018). If a governmental entity may voluntarily assume a specific duty toward identified citizens and then invoke subsection (4) simply because the undertaking occurred while performing a governmental function, the voluntary undertaking doctrine will have little practical application against government actors.

That question is of statewide importance. Counties, municipalities, school districts, and state agencies regularly make individualized safety assurances and undertake specific protective measures beyond what statutes expressly require. Clarification from this Court is warranted on whether such undertakings remain actionable under ordinary tort principles or are categorically displaced by subsection 15-78-60(4).

II. The opinion appears to conflict with South Carolina voluntary-undertaking jurisprudence.

South Carolina decisions following Restatement (Second) of Torts section 323 recognize that liability may arise when a defendant undertakes to provide protection and another relies on that undertaking. *Wright*, 426 S.C. at 213, 826 S.E.2d at 290-91; *Russell v. Columbia*, 305 S.C. 86, 89-90, 406 S.E.2d 338, 339-40 (1991). Petitioners argued below that the County's undertaking was specific, individualized, and relied upon: they sought out the County official responsible for mosquito spraying, placed themselves on his beekeeper notification list, and relied on the promised notification to cover and protect their hives. (R.p. 225; R.pp. 206-207).

The Court of Appeals' analysis focused on whether prior aerial spray calls had been made, rather than on whether the County's undertaking and Petitioners' reliance were sufficient to create a duty. That focus risks collapsing a reliance-based duty into a historical identical-practice requirement not found in section 323 jurisprudence. Review is warranted so this Court may clarify that the doctrine turns on undertaking and reliance, not on whether the exact same operational circumstances occurred in prior instances.

III. The trespass ruling warrants review because it blurs the distinction between intent to invade and intent to harm.

Petitioners' second issue presents a fundamental tort question. The County deliberately arranged for an aircraft to spray pesticides over the relevant area. Petitioners contend that the flight path and application included their property. (R.p. 226; R.pp. 214-215). The Court of Appeals acknowledged the affirmative act of flying the plane over the designated areas to spray for mosquitoes. (2026-UP-062 at 7). Yet it concluded there was no intentional invasion because the County's objective was mosquito abatement and it did not intend the bee deaths.

That reasoning conflates intent to invade with intent to injure. Traditional trespass principles require that the defendant intentionally commit the physical act causing the invasion. *Snow v. City of*

Columbia, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991); see also *Snakenberg v. Hartford Cas. Ins. Co.*, 299 S.C. 164, 170, 383 S.E.2d 2, 5 (Ct. App. 1989). Petitioners do not contend that the County specifically intended to kill their bees as an end in itself. Rather, they contend that the County intentionally caused pesticide to be dispersed over their property, and that the resulting damages followed from that intentional physical invasion. (R.pp. 226-227; R.pp. 214-215). The Court of Appeals' approach risks converting many intentional-entry cases into negligence cases whenever the defendant claims a benign purpose or denies intent to produce the precise injury that followed.

This question has significance well beyond pesticide applications. Government and private actors alike may intentionally cause physical matter to enter another's property while asserting that the resulting damage was unintended. Review would allow this Court to clarify the proper South Carolina standard and preserve the distinction between intent to enter or invade and intent to cause harm.

IV. The decision has practical statewide significance in public-health and regulatory operations.

This case arises from a governmental public-health response, but the legal questions it raises are broader. Government entities routinely balance public safety concerns against risks to particular citizens and property owners. They also often issue individualized warnings, maintain special notification lists, or promise specific protective measures beyond bare statutory minimums. The Court of Appeals' ruling may be read to mean that once a governmental entity is engaged in complying with a law or policy, any separately assumed individualized undertaking is absorbed into Tort Claims Act immunity.

Likewise, the trespass ruling may be understood to shield deliberate physical invasions from trespass liability whenever the actor claims it did not intend the resulting damage. Those consequences justify this Court's intervention.

Argument

I. The Court of Appeals erred in holding that no voluntary undertaking duty arose and in alternatively applying section 15-78-60(4) to bar the claim.

Petitioners' theory is straightforward. The County was not sued merely because it failed to satisfy a statutory notice regime. Rather, it was sued because it undertook additional, individualized protective measures for local beekeepers, including Petitioners, and Petitioners relied on those measures. Petitioners sought out the County official responsible for spraying, were placed on the notification list, and had reason to rely on individualized warnings to protect their hives. (R.p. 225; R.pp. 206-207).

Under ordinary voluntary-undertaking principles, a jury could find that the County assumed a duty to Petitioners and that Petitioners suffered harm by relying on that undertaking. *Wright*, 426 S.C. at 213, 826 S.E.2d at 290-91; *Russell*, 305 S.C. at 89-90, 406 S.E.2d at 339-40. The Court of Appeals' conclusion that no duty arose because prior notifications concerned truck sprays rather than aerial sprays gives dispositive weight to a factual distinction that should not defeat the undertaking as a matter of law. (2026-UP-062 at 5-6). Petitioners' alleged undertaking was notice before mosquito spraying so their bees could be protected. The difference in delivery method may bear on breach or foreseeability, but it should not extinguish the duty at summary judgment when the evidence must be viewed in Petitioners' favor. See *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006).

The Court of Appeals' alternative holding under section 15-78-60(4) is equally significant. Subsection (4) protects governmental entities from losses arising from adoption, enforcement, or compliance with the law, including rules, regulations, and written policies. Petitioners' claim, however, arose from a separately assumed undertaking directed to identified persons, not from a challenge to the statutory notice scheme itself. See *Repko*, 424 S.C. at 500, 818 S.E.2d at 747. By extending subsection (4) to immunize that undertaking, the opinion permits the immunity exception to swallow

duties the government voluntarily assumes beyond what the law requires.

This Court should grant certiorari to clarify that subsection 15-78-60(4) does not automatically bar claims based on specific undertakings to identified persons merely because those undertakings fall within a broader field of governmental regulation.

II. The Court of Appeals erred by rejecting Petitioners' trespass claim.

Petitioners' trespass issue also merits review. The County intentionally caused an aerial pesticide application over the relevant area. Petitioners contend that the application included their property. (R.p. 226; R.pp. 214-215). The Court of Appeals recognized the affirmative act but held that there was no intentional invasion because the County's purpose was mosquito control and it took steps it believed would avoid harming bees. (2026-UP-062 at 7).

That analysis misframes the intent inquiry. A defendant may intentionally commit a physical invasion even if the defendant does not subjectively desire the resulting damage. *Snow*, 305 S.C. at 553, 409 S.E.2d at 802. If the County intentionally caused pesticide to be released over Petitioners' property, the invasion element of trespass is satisfied. Whether the County hoped to avoid harm, believed the precautions were adequate, or acted for a public-health purpose does not negate the intentional nature of the entry. Id.

The Court of Appeals also relied on the notion that the bee deaths were not conclusively shown to be the direct result of the invasion. But this case was resolved on summary judgment, where reasonable inferences should be drawn in Petitioners' favor. See *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024). Petitioners' evidence showed that the spray was immediately followed by massive bee deaths and the destruction of their hives and business. (R.pp. 226-227). At a minimum, the causation question should not have been resolved against them as a matter of law on this record.

For these reasons, the trespass issue independently warrants certiorari.

Conclusion

This petition presents two preserved and significant questions of South Carolina law:

I. Whether a governmental entity's specific voluntary undertaking to identified citizens may create an actionable duty notwithstanding section 15-78-60(4); and

II. Whether an intentional physical invasion of property may be defeated as trespass merely because the resulting harm was not specifically intended.

The Court of Appeals' opinion materially affects the scope of governmental tort immunity and the scope of trespass liability in South Carolina. Petitioners respectfully request that this Court grant the petition for a writ of certiorari and review the Court of Appeals' decision.

Respectfully submitted,

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April 23, 2026
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APPENDIX

The following documents should be included in the appendix to this petition:

1. Court of Appeals Opinion, **2026-UP-062**, filed February 18, 2026.
2. Petition for Rehearing, filed March 5, 2026.
3. Order denying Petition for Rehearing, filed March 24, 2026.
4. Record on Appeal (2023-000951)

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Mitch Randall Yawn and Juanita Mae Stanley d/b/a
Flowertown Bee Farm and Supplies,..... Petitioners,

v.

Dorchester County.....Respondent.

PROOF OF SERVICE

I certify that Petitioners' Petition for Writ of Certiorari was served upon Respondent Dorchester County via e-mail to counsel of record listed below on April 23, 2026. A copy of the service e-mail is attached hereto as Exhibit A.

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s/ W. Andrew Gowder, Jr.
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EXHIBIT A

Thursday, April 23, 2026 at 3:57:28 PM Eastern Daylight Time

Subject:	Writ of Certiorari - Appellate Case No. 2023-000951 - Yawn, et al. V Dorchester County
Date:	Thursday, April 23, 2026 at 3:57:15 PM Eastern Daylight Time
From:	Bailey Pope
To:	Roy
CC:	Andy Gowder, Mike Rose, teresa@maybanklaw.com
Attachments:	20260423_Petition for Writ of Cert_2023-000951.pdf, 20260423_Proof of Service_Writ of Cert_2023-000951.pdf

Dear Counsel,

Attached for service, please see the Petition for Writ of Certiorari in the above-referenced matter. The corresponding Proof of Service is also attached.

Best,

Bailey Pope

Paralegal to W. Andrew Gowder Jr.

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April 23, 2026

The Honorable Patricia A. Howard
Clerk of Court, Supreme Court of South Carolina
P.O. Box 11330
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Re: Yawn, et al. V Dorchester County
Appellate Court Case No.: 2023-000951

Dear Ms. Howard,

Enclosed for filing in regard to the above-referenced matter, please find Petitioners' Petition for Writ of Certiorari and Proof of Service. The associated filing fee will be mailed to the Court. Please advise if anything further is needed or if you have any questions.

Best regards,

AUSTEN & GOWDER, LLC

s/Bailey Pope

Bailey Pope