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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000961

Ryan McAvoy, Respondent,

v.

The Town of Hilton Head Island, South Carolina, Petitioner

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Respondent Ryan McAvoy respectfully submits this Return to the Town of Hilton Head Island's Petition for Writ of Certiorari. The Petition should be denied.

STANDARD OF REVIEW

This case was dismissed under Rule 41(b), South Carolina Rules of Civil Procedure. Accordingly, the question is whether plaintiff had presented some evidence sufficient to proceed at that stage of the trial. At the Rule 41(b) stage, the Court was not permitted to weigh competing factual inferences or decide the ultimate constitutional merits. The sole question was whether Respondent presented sufficient evidence from which a constitutional violation could reasonably be found.

SUMMARY OF ARGUMENT

This case does not warrant Supreme Court review because the Court of Appeals did not decide the ultimate merits of the constitutional claim. It simply reversed a premature Rule 41(b), SCRCF, dismissal, and remanded for a new trial, because Respondent made a sufficient evidentiary showing to proceed.

The case does not satisfy any of the considerations that guide the Court in accepting a case under a petition for writ of certiorari.

The Court of Appeals correctly held that the Circuit Court applied the wrong legal focus. The question is not merely whether the water is public. The constitutional question is whether the public expenditure was for a public purpose, or whether it primarily benefited private individuals, private marinas, private boat slips, private docks, and a private association inside the private Sea Pines Plantation.

The Town's Petition attempts to turn this case into one simple phrase: "public water." The Town repeatedly argues: "the waterways are public; therefore the subsidy is public." However,

public funds do not become constitutionally immune, merely because some portion of a project touches public property. Otherwise, any subsidy to private interests adjacent to public infrastructure could evade Article X scrutiny.

But sections 5 and 11 of Article X of the South Carolina Constitution do not permit government to avoid constitutional scrutiny simply by attaching public funds to a project touching some public water. The constitutional test focuses on purpose, object, and benefit.

The Court of Appeals correctly recognized that Ryan McAvoy presented evidence that the Town's \$600,000 subsidy assisted SIDA, a private dredging association, in a \$5 million dredging project serving Harbour Town Yacht Basin, Braddock Cove Creek, private marinas, private boat slips, private docks, and Sea Pines Plantation, a private gated community.

The Court of Appeals also correctly recognized that SIDA's president testified the principal reason for the dredging was to "utilize your boat." That testimony alone was sufficient to defeat dismissal under Rule 41(b). This was not a final ruling on the merits. It was a ruling that Respondent had produced enough evidence to continue.

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE CASE SHOULD NOT HAVE BEEN DISMISSED UNDER RULE 41(b).

The Town argues the case begins and ends with its claim that the waterways are publicly owned. That is not the constitutional test.

Article X, section 5 requires tax funds to be spent for a public purpose. Article X, section 11 prohibits the State or its political subdivisions from pledging or loaning credit for the benefit of any individual, company, association, or corporation.

The public-purpose inquiry therefore asks what object the expenditure seeks to accomplish and who primarily benefits. The Court of Appeals properly relied on *Anderson v. Baehr*, 265 S.C. 153, 157, 217 S.E.2d 43, 45 (1975) and *South Carolina Public Interest Foundation v. South*

Carolina Department of Transportation, 421 S.C. 110, 804 S.E.2d 854 (2017) (the *Bridge Inspection* case) for the principle that indirect, remote, speculative, or limited public benefit does not save an expenditure whose primary benefit is private.

Here, Respondent presented evidence that:

1. The Town committed \$600,000 in public funds to assist SIDA.
2. SIDA is a private association made up of private property owners, private marina interests, and private boat slip interests.
3. The dredging project historically had been privately funded by SIDA.
4. Sea Pines Plantation is a private gated community.
5. The Harbour Town Yacht Basin and South Beach Marina had signage reflecting limited/private access.
6. Mare Deckard was questioned when entering the Harbour Town Yacht Basin.
7. SIDA's president admitted the principal reason for the dredging was to allow members to use their boats.
8. The dredging benefited private docks, private slips, private marinas, and private boat owners.

That evidence was more than sufficient to survive Rule 41(b). The Court of Appeals therefore correctly reversed the dismissal and remanded the case for a new trial.

II. THE CASE DOES NOT SATISFY ANY OF THE CONSIDERATIONS THAT GUIDE THE COURT'S DISCRETION IN ACCEPTING A CASE UNDER A PETITION FOR WRIT OF CERTIORARI.

Rule 242(b) of the South Carolina Appellate Court Rules lists several considerations that should guide the Court's discretion in deciding whether to grant the petition for writ of certiorari.

This case does not satisfy any of the considerations guiding the Court's discretion.

(b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

The case at bar satisfies none of these considerations. This case involved only a decision of whether Ryan McAvoy had presented sufficient evidence to survive a motion under Rule 41, SCRPC.

There are no novel questions of law. There was no dissent in the Court of Appeals. The decision of the Court of Appeals is not in conflict with the prior decision from this court. There is no substantial constitutional issue directly involved. There is no federal question involved in the case which conflicts with the Court of Appeals decision. Accordingly, all of the guidelines for the courts discretion in exercising certiorari counsel against the granting of this petition.

III. THE TOWN'S "PUBLIC WATERWAYS" ARGUMENT DOES NOT RESOLVE THE CONSTITUTIONAL ISSUE.

The Town argues that because the submerged lands or waterways may be public, any expenditure connected to them is automatically constitutional. That argument is far too broad.

If accepted, any private marina, private dock system, private yacht basin, or private gated-community amenity touching navigable water could be subsidized with taxpayer money merely by calling the water public. That would disembowel Article X, sections 5 and 11.

The Constitution does not ask only "where" public funds were spent. It asks "why" they were spent and "for whose benefit."

The Town's own Petition confirms the problem. It repeatedly argues the waterways are public, but it avoids the central fact: the dredging was requested by SIDA, private organization. It was also historically paid for by SIDA, and organized by SIDA, and it principally benefited SIDA members' ability to use private boat slips, docks, and marinas.

A public feature in a project does not automatically transform the whole project into a public purpose. The Court of Appeals correctly rejected the circuit court's narrow ownership-only analysis.

IV. ANDERSON AND THE BRIDGE INSPECTION CASE SUPPORT THE COURT OF APPEALS' DECISION.

The Town argues *Anderson v. Baehr* and *South Carolina Public Interest Foundation v. South Carolina Department of Transportation* are distinguishable. But the Court of Appeals properly relied on those cases for the correct legal principles.

In *Anderson*, the Supreme Court held that an undertaking is not constitutional merely because it produces some indirect public benefit. The inquiry is whether the primary object and benefit are public or private.

In the *Bridge Inspection* case, the Supreme Court held that public funds could not be used to inspect bridges inside a private, gated community, where the bridge owners, not the public at large, were the beneficiaries.

That reasoning applies here. Sea Pines is a private gated community. SIDA members own private boat slips, private docks, and private marina interests. The dredging was historically paid for by those private owners because they were the direct beneficiaries. The fact that SIDA privately funded the dredging for years before seeking taxpayer subsidy strongly supports the inference that the principal beneficiaries were the private parties who historically bore the cost themselves. The

fact that others may receive some tangential or indirect benefit does not defeat the constitutional claim.

The Town's road analogy also fails. Public roads are designed, owned, maintained, and used as public infrastructure for broad public travel. This dredging was not a general public roadway project. It was a subsidy to a private dredging association for a project historically paid for by private members to keep their private boats usable and their private marina access functional. Unlike a traditional public roadway broadly open to unrestricted public travel, the evidence here showed controlled access, private marina restrictions, gated-community characteristics, and direct benefits to identifiable private owners.

V. THE TOWN MISREADS *CARLL*, *NICHOLS*, AND PUBLIC-PURPOSE DEFERENCE.

The Town argues that legislative findings of public purpose are entitled to great weight. The Town cites *Nichols v. South Carolina Public Research Authority*, 290 S.C. 415, 425-426, 315 S.E.2d. 155, 161 (1986), and argues that the Town made a finding that the expenditure was for public waterways, and that the waterways are public. Respondent does not dispute that public-purpose findings may receive weight in appropriate cases. However, *Carll v. S.C. Jobs-Econ. Dev. Auth.*, 284 S.C. 438, 443, 327 S.E.2d 331, 334 (1985) stands for the rule that, "In deciding whether governmental action satisfies a public purpose, we look to the object sought to be accomplished."

But legislative labels are not conclusive. If a town council could constitutionalize any private subsidy merely by reciting "tourism," "economic activity," "health," "safety," or "welfare," Article X would have no force.

The Supreme Court remains the final guardian of constitutional limits. Public officials cannot avoid constitutional review by drafting a resolution that re-characterizes a private benefit as a public benefit.

Here, the Town's resolution cannot override the evidence that the subsidy assisted a private association's dredging project, historically funded by private members, for the principal purpose of allowing private boat owners to use their boats.

VI. THIS CASE DOES NOT ASK THE SUPREME COURT TO DECIDE THE FINAL MERITS NOW.

The Town's Petition acts as though the Court of Appeals entered final judgment against the Town. It did not.

The Court of Appeals made a narrow procedural ruling: Respondent produced enough evidence to survive a Rule 41(b) dismissal. The case was reversed and remanded for a new trial.

That ruling is correct and modest. The Town remains free to present its full defense at trial. The Town may present evidence regarding public access, public benefit, tourism, navigation, permits, hospitality tax, and any other claimed public purpose. Ryan McAvoy may present contrary evidence showing private purpose and private benefit.

The Supreme Court does not need to intervene now to prevent a trial on a developed record.

VII. THE PETITION SHOULD BE DENIED BECAUSE THE COURT OF APPEALS APPLIED THE PROPER TEST.

The Court of Appeals correctly held that the Circuit Court erred by framing the issue solely as whether the waterways were publicly owned. The proper inquiry is whether the expenditure promoted the public health, safety, morals, general welfare, security, prosperity, and contentment of all inhabitants or a substantial part thereof, and whether the expenditure benefited the public rather than private parties.

Respondent presented evidence that the Harbour Town Yacht Basin serves primarily Sea Pines Plantation, a private gated community; that access was limited or controlled; that signs

reflected private marina restrictions; that SIDA historically funded the dredging privately; and that SIDA's president testified the principal reason for dredging was to allow boat use.

Under the plain text of Article X, sections 5 and 11, that evidence was sufficient to survive dismissal.

CONCLUSION

The Town's Petition should be denied. The Court of Appeals did not issue a broad final constitutional ruling. It correctly reversed a premature Rule 41(b) dismissal because Respondent presented evidence sufficient to proceed. The Circuit Court improperly focused on ownership of waterways instead of the constitutional questions of purpose, object, and primary benefit.

The Town seeks a rule that public money may subsidize private interests whenever some aspect of the project touches public property. Article X was designed to prevent exactly that type of constitutional end-run. The Court of Appeals correctly held only that Respondent presented sufficient evidence to proceed. Nothing more was decided, and nothing more is required at this stage.

This case should return to the Circuit Court for a full trial on whether the Town's \$600,000 subsidy to SIDA violated Article X, sections 5 and 11 of the South Carolina Constitution.

For these reasons, Respondent respectfully requests that the Supreme Court deny the
Petition for Writ of Certiorari.

Respectfully submitted,
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