

**RECEIVED**

**Jun 08 2026**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. SUPREME COURT

---

Appeal from Beaufort County

Court of Common Pleas

Hon. Jocelyn Newman, Circuit Court Judge

---

Appellate Case Number 2026 - 001153

---

Ryan McAvoy .....

Respondent,

v.

Town of Hilton Head Island .....

Petitioner.

---

REPLY OF PETITIONER

---

COLTRANE & WILKINS, LLC  
Curtis L. Coltrane  
LaQuin J. Andrus  
Post Office Box 6808  
Hilton Head Island, SC 29938  
(843) 785-5551  
[curtis@coltraneandwilkins.com](mailto:curtis@coltraneandwilkins.com)  
[laquin@coltraneandwilkins.com](mailto:laquin@coltraneandwilkins.com)

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
SCOPE OF REVIEW .....	1
REPLY ARGUMENT NUMBER 1 .....	2
REPLY ARGUMENT NUMBER 2 .....	4
REPLY ARGUMENT NUMBER 3 .....	6
REPLY ARGUMENT NUMBER 4 .....	7
REPLY ARGUMENT NUMBER 5 .....	8
REPLY ARGUMENT NUMBER 6 .....	10
REPLY ARGUMENT NUMBER 7 .....	11
CONCLUSION .....	12

TABLE OF AUTHORITIES

SOUTH CAROLINA CASES

*Anderson v. Baehr*, 265 S. C. 153, 217 S.E.2d 43 (1975) ..... 7

*Brownlee v. S.C. Department of Health & Environmental Control*, 382 S.C. 129, 676 S.E.2d 116 (2009) ..... 3

*Carll v. South Carolina Jobs-Economic Development Authority*, 284 S.C. 438, 327 S.E.2d 331, 443 (1985) ..... 8

*Hoffman v. Greenville County*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963) ..... 10

*Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) ..... 1

*Lowcountry Open Land Tr. v. State*, 347 S.C. 96, 101, 552 S.E.2d 778, 781 (Ct. App. 2001) ..... 1

*McQueen v. S.C. Coastal Council*, 354 S.C. 142, 149, 580 S.E. 2d 116, 119 (2003) ..... 2

*Nichols v. South Carolina Public Research Authority*, 290 S.C. 415, 425-426, 315 S.E.2d 155, 161 (1986) ..... 6

*Port Royal Min. Co. v. Hagood*, 30 S.C. 519, 9 S.E. 686 (1889) ..... 2

*Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006) ..... 1

*S. C. Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017) ..... 7

*State v. Hardee*, 259 S.C. 535, 193 S.E.2d 497 (1972) ..... 2

*State v. Pac. Guano Co.*, 22 S.C. 50, 84 (1884) ..... 2

*Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 459, 536 S.E.2d 878, 880 (Ct. App. 2000) ..... 1

*Wigfall v. Fobbs*, 295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988) ..... 1

SOUTH CAROLINA CONSTITUTION

S. C. Const., Art. X, § 5 ..... 4, 7

S. C. Const., Art. X, § 11 ..... 4, 7

SOUTH CAROLINA STATUTES

S. C. Code Ann. § 6-1-730 (Supp. 2024) ..... 2, 8

S. C. Code Ann. § 48-39-220 (Supp. 2026) ..... 1, 8

S.C. Code Ann. § 48-39-10(X)(Supp. 2026) ..... 2

SOUTH CAROLINA APPELLATE COURT RULES

Rule 242(b), SCACR ..... 4

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 41(b), SCRCF ..... 1, 3, 12

OTHER AUTHORITIES

§ 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983) ..... 2, 8

## SCOPE OF REVIEW

At trial, The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”) motion to dismiss Ryan McAvoy’s (hereinafter, “McAvoy”) case under Rule 41 (b), SCRPC, was granted. In his Return, McAvoy mis-states the scope of review that is applicable to a dismissal under Rule 41(b), SCRPC, in an action at law.

A motion for involuntary non-suit under Rule 41(b), SCRPC, “allows the judge as fact finder to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified.”<sup>1</sup> Because this case is a law case, McAvoy’s appeal is from the trial court’s factual findings as a judge in a non-jury action at law.<sup>2</sup>

“In an action at law tried without a jury, an appellate court’s scope of review extends merely to the correction of errors of law.”<sup>3</sup> An appellate court may not “disturb the trial court’s findings unless they are found to be without evidence that reasonably supports those findings.”<sup>4</sup>

---

<sup>1</sup> *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992).

<sup>2</sup> *Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 459, 536 S.E.2d 878, 880 (Ct. App. 2000). In McAvoy’s Complaint and at Trial, McAvoy disputed the public ownership of the navigable waterways to be dredged. An action concerning the determination of ownership of tidelands pursuant to S. C. Code Ann. § 48-39-220 (Supp. 2026), is an action at law. See: *Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006). McAvoy’s assertions questioning the use of public funds for dredging a public waterway implicate the ownership of the waterways. South Carolina case law holds that “where the main purpose of the complaint concerns the determination of title to real property, it is an action at law.” *Lowcountry Open Land Tr. v. State*, 347 S.C. 96, 101, 552 S.E.2d 778, 781 (Ct. App. 2001) [citing *Wigfall v. Fobbs*, 295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988)]. Because McAvoy challenges the public ownership of these waterways, this is an action at law.

<sup>3</sup> *Wilson v. Gandis*, 430 S.C. 282, 291, 844 S.E.2d 631, 636 (2020).

<sup>4</sup> *Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc.*, *supra*.

## REPLY ARGUMENT NUMBER 1

The eight items that McAvoy promotes in support of the Court of Appeals' opinion are not supported by the record, or are not relevant to the question that was before the Court of Appeals.<sup>5</sup> The responses follow the numbering on page 3 of McAvoy's Return.

1. It is undisputed that the Town committed \$600,000 of local accommodations tax money to support the dredge work. The waterways in question are undeniably public.<sup>6</sup> One of the stated purposes of the dredge work is to maintain adequate depths to improve navigability for recreational and commercial vessels.<sup>7</sup>

2. While the South Island Dredging Association ("SIDA") is a private organization, the work that SIDA seeks to undertake is the maintenance of publicly owned assets, and this work to maintain the publicly owned assets was permitted by both the State of South Carolina and the United States of America.<sup>8</sup>

3. See number 2 above. Irrespective of whether SIDA has, in the past, paid for the maintenance of the waterways has no bearing on the question presented to the Court of Appeals. The question whether there the expenditure of public funds to maintain a public

---

<sup>5</sup> May 27, 2026, Return of McAvoy, p. 3.

<sup>6</sup> *McQueen v. S.C. Coastal Council*, 354 S.C. 142, 149, 580 S.E. 2d 116, 119 (2003); *State v. Pac. Guano Co.*, 22 S.C. 50, 84 (1884); *Port Royal Min. Co. v. Hagood*, 30 S.C. 519, 9 S.E. 686 (1889); *State v. Hardee*, 259 S.C. 535, 193 S.E.2d 497 (1972). See also: S.C. Code Ann. § 48-39-10(X)(Supp. 2026).

<sup>7</sup> Exhibit 11, p. 2 of 33, App., p. 255; Exhibit 18, App., p. 307. The source of funding for the contribution to the dredging of the public waterways that are used for recreational purposes is local hospitality taxes which is authorized under S. C. Code Ann. § 6-1-730 (Supp. 2026), and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).

<sup>8</sup> Exhibit 11, App. pp. 252 - 287; Exhibit 18, App., pp. 294 - 380.

asset is improper.

4. Whether Sea Pines is a private community is not relevant to the question of the public ownership of the navigable waterways.

5. The ownership of marinas that are permitted by the State of South Carolina to exist in a public waterway does not change the nature of the waterway. The waters and the submerged lands under them are owned by the public.

6. The testimony of McAvoy's witness Mare Deckard was that she was able to navigate both the Harbour Town Yacht Basin and Braddock Cove Creek.<sup>9</sup>

7. McAvoy misstates the testimony of John Brinkley, who testified that the purpose of the dredge work was to preserve navigation. Using a boat is navigation, and McAvoy's statement is an inaccurate recitation of the testimony.<sup>10</sup>

8. Any benefit to private marinas or docks permitted to be in the publicly owned waterway does not change the fact that the maintenance of the public waterway benefits the public. The only evidence in the record is that any member of public can navigate the waterways.

Because the only relevant evidence offered by McAvoy demonstrated that the funds committed by the Town would be used to improve navigation in publicly owned waterways, the Court of Appeals incorrectly ruled that McAvoy's evidence was sufficient to survive the Town's motion under Rule 41(b), SCRPC.

---

<sup>9</sup> The existence of a dock or marina in a public waterway does not change the nature of the waterway. In order that the stream or body of water be classed as navigable, it need not be navigable in its entirety. *Brownlee v. S.C. Department of Health & Environmental Control*, 382 S.C. 129, 676 S.E.2d 116 (2009).

<sup>10</sup> See: App. p. 175, l. 17 - 19.

## REPLY ARGUMENT NUMBER 2

McAvoy's argument on this point is contrary to the plain language of Rule 242(b), SCACR. McAvoy argues that five sub-parts of Rule 242(b), SCACR act as limitation on this Court's authority to take up a case. The text reads, in relevant part: "The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of the reason which will be considered: . . ." Far from acting as a limitation on the Supreme Court's authority to accept cases, the language makes clear that the Supreme Court's authority extends beyond the things listed Rule 242(b), 1 - 5, SCACR.

In the May 10, 2024, Order, Judge Newman found that the Harbour Town Yacht Basin, Braddock Cove Creek and the entrance channels to them are public.<sup>11</sup> The only evidence in the record supports this finding.<sup>12</sup> The only evidence in the record is that the purpose of the work to dredge the waterways is to remove sediments to maintain adequate depths to maintain navigational access.<sup>13</sup>

This case should be accepted for review by this Court, because the Court of Appeals' opinion creates an illogical requirement for the government to demonstrate that the maintenance of public property has a public benefit. This requirement does not appear in S. C. Const., Art. X, § 5 or S. C. Const., Art. X, § 11, and neither McAvoy nor the Court of

---

<sup>11</sup> Appendix, pp. 8 - 10.

<sup>12</sup> Exhibit 11, p. 2 of 33, App., p. 255; Exhibit 18, App., p. 307; App. p. 175, l. 17 - 19; Exhibit 11, App., 252 - 287; Exhibit 18, R., 295 - 380; App. p. 93, l. 19 to p. 96, l. 13; App., p. 124, l. 16 - 21.

<sup>13</sup> Exhibit 11, p. 2 of 33, App., p. 255; Exhibit 18, App., p. 307.

Appeals cite any authority for such a requirement. Further, this is backwards. As the Plaintiff, McAvoy carried the burden to show there is no public benefit from the maintenance of the public waterways, and he failed to do so.

### REPLY ARGUMENT NUMBER 3

The premise of McAvoy's third argument, which is that the existence of marinas, docks and boat slips in a navigable waterway makes the act of maintaining navigability in the waterway a private benefit. In South Carolina, legislation may subserve a public purpose even though it (1) benefits some more than others and, (2) results in a profit to individuals. Legislation does not have to benefit all of the people in order to serve a public purpose. At the same time, legislation is not for a private purpose merely because some individual makes a profit as a result of the enactment.<sup>14</sup>

McAvoy's argument states the issue in a way that is backwards. Under McAvoy's argument, any public work that touches private property or benefits some private property is a constitutional violation.<sup>15</sup> It is not. The government routinely maintains roads, builds community parks and runs utility lines into communities which benefits private and commercial interests, and the work to which the Town has committed funds is no different. The beneficiary of the maintenance of a public asset is the public, and McAvoy has shown no authority to the contrary.

---

<sup>14</sup> *Nichols v. South Carolina Public Research Authority*, 290 S.C. 415, 425-426, 315 S.E.2d 155, 161 (1986).

<sup>15</sup> The only evidence in the record is that the waterways and submerged lands in them are the target of the dredge work and that the purpose of the dredge work is to maintain the navigability of the waterways. There is no evidence that any money will be spent to improve or maintain a dock or marina

#### REPLY ARGUMENT NUMBER 4

Neither *Anderson v. Baehr* nor *S. C. Public Interest Foundation v. South Carolina Department of Transportation* are applicable to the facts of this case.<sup>16</sup> Both cases concern property that was either private (*S. C. Public Interest Foundation v. South Carolina Department of Transportation, supra.*) or which would become private (*Anderson v. Baehr, supra.*). Neither is the case here. The waterways to which the Town committed funds are and will remain public property. The waterways are not private now, as was the case in *S. C. Public Interest Foundation v. South Carolina Department of Transportation, supra.*, and will not become private in the future, as was the case in *Anderson v. Baehr, supra.*

McAvoy has failed to show any authority for the proposition that the maintenance of public property does not benefit the public or that such violates S. C. Const. art. X, § 5 and S. C. Const. art. X, § 11.

---

<sup>16</sup> *Anderson v. Baehr*, 265 S. C. 153, 217 S.E.2d 43 (1975); *S. C. Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017).

REPLY ARGUMENT NUMBER 5

McAvoy's fifth argument ignores the only evidence in the record regarding the purpose of the dredge work to which the Town committed funds. The purpose is to maintain navigation in public waterways. The permits from the State of South Carolina and the United States of America that authorize the dredge work say so in plain language:

- (a) To maintain navigational access from certain Sea Pines waterways to Calibogue Sound for recreational and commercial use;<sup>17</sup> and
- (b) To remove sediments from existing tidal waterways in order to provide adequate depths for recreational and commercial vessels utilizing the waterways.<sup>18</sup>

McAvoy argues that the purpose is something else, but there is no evidence to support his argument.

The Town Council made detailed findings of both the public purpose and the public benefit of the maintenance dredging of the waterways.<sup>19</sup> Through the adoption of S. C. Code Ann. § 6-1-730 (Supp. 2026) and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), which authorize an expenditure to maintain tourism related recreational facilities, both the State of South Carolina and the Town have found that the maintenance of tourism related recreational facilities is a public purpose.

---

<sup>17</sup> Trial Exhibit 11, App. p. 2 of 33, App. p. 255.

<sup>18</sup> Trial Exhibit 18, App. p. 307. Trial Exhibit 18 includes the following statement: "This permit was issued under the provisions of the Federal laws for the protection and preservation of the navigable waters of the United States." App. p. 296.

<sup>19</sup> Trial Exhibit 1, App. pp. 212 - 213. The legislative determination as to what constitutes a public purpose or public need is entitled to great weight *Carll v. South Carolina Jobs-Economic Development Authority*, 284 S.C. 438, 327 S.E.2d 331, 443 (1985).

The facts in this case show that the Town's findings regarding public purpose are supported by the only evidence in the record. The facts do not show that the Town's findings regarding the public purpose are either unsupported or are contrary to the evidence.

## REPLY ARGUMENT NUMBER 6

The fact that the Court of Appeals' opinion did not result in a final determination of this case is beside the point. At trial, McAvoy bore the burden of proof.<sup>20</sup> He failed to carry his burden of proof because he failed to produce evidence to demonstrate that the public is not the beneficiary of maintenance of public property.

---

<sup>20</sup> *Hoffman v. Greenville County*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963).

## REPLY ARGUMENT NUMBER 7

In McAvoy's Argument Number 7, he reiterates his argument that the Town improperly allocated local hospitality taxes to defray a part of the cost of dredging public waterways that serve recreational and tourism needs. McAvoy has shown no basis to dispute that the waterways are public property. McAvoy does not challenge Judge Newman's finding that the navigable waterways serve recreational and tourism needs.

McAvoy fails to point to any evidence to show that the navigable waterways and submerged lands in them are not public waterways and that the purpose of the dredge work is to maintain navigability of the public waterways.

Each of McAvoy's arguments is premised on the claim that public funds are committed to the improvement of private property or for private purposes in violation of S. C. Const, Art. X, § 5 and S. C. Const, Art. X, § 11. There is no evidence in the record that supports McAvoy's arguments. The public funds are to aid in the dredging of publicly owned navigable waterways that serve recreational, tourism and commercial needs. There is no evidence in the record to show otherwise.

CONCLUSION

Judge Newman properly granted the Town's motion to dismiss under Rule 41(b), SCRCF, because McAvoy failed to carry his burden of proof to show that public funds committed to the maintenance of public property does not have a public purpose. For the reasons set out above, the Town urges this Court to reverse South Carolina Court of Appeals' Opinion 2026-UP-163 and reinstate the May 10, 2024, Order of the Hon. Jocelyn Newman.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By: 

Curtis L. Coltrane (S.C. Bar No.: 1344)  
LaQuin J. Andrus (S.C. Bar No.: 106520)  
Post Office Box 6808  
Hilton Head Island, SC 29938  
T: (843) 785-5551  
F: (843) 785-5552  
Attorneys for The Town of Hilton Head Island

Hilton Head Island, South Carolina

This 8<sup>th</sup> Day of June, 2026.