

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM THE COURT OF COMMON PLEAS,
BARNWELL COUNTY

S.C. SUPREME COURT

The Honorable R. Markley Dennis, Jr., Judge

Appellate Case No. 2016-000428

James Jefferson Jowers, Sr., Andrew J. Anastos, Ben Williamson, Melanie Ruhlman and Anthony Ruhlman Appellants,

vs.

South Carolina Department of Health and Environmental Control, Respondent.

**REPLY TO RETURN TO
PETITION FOR REHEARING OF APPELLANTS**

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TABLE OF CONTENTS

I. This Case is Ripe for a Facial Challenge to the Constitutionality of the Act 1

II. There is a Need for Future Guidance Supporting Public Importance Standing 5

III. Navigable Waters are Held in the Public Trust 8

IV. The Registration Process is an Unconstitutional Violation of Public Trust Doctrine Because it Disposes of Public Trust Assets for Private Benefit 9

V. Common Law Remedies are Unavailable and Would not Cure the Public Trust Doctrine Violation 11

VI. CONCLUSION 12

The Appellants James Jefferson Jowers, Sr., Andrew J. Anastos, Ben Williamson, Melanie Ruhlman and Anthony Ruhlman submit this reply to the S.C. Department of Health and Environmental Control's ("DHEC" or "Department") Return to the Petition for Rehearing. In sum, this case is not an as-applied challenge; it is a facial challenge to a law that permanently disposes of public trust assets. In that way, it matters not the extent of the injury suffered to-date, as asserted by DHEC. Once public trust waters are given away under the Act, the State has no ability to regain control of those publicly-owned assets, which is a matter of significant public importance. While the Department and the majority cite the proper test for determining whether a public trust violation has occurred, they fail to analyze the public trust doctrine in the context of the registration process.

I. This Case is Ripe for a Facial Challenge to the Constitutionality of the Act

Evaluating the constitutionality of disposing of public trust property is purely legal and does not require this Court to assess specific factual context, thus it is appropriate to bring a facial challenge.

The doctrine of ripeness stems from Article III's command that courts have jurisdiction only over cases or controversies. See Allen v. Wright, 468 U.S. 737, 750, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984) (identifying ripeness, along with standing, mootness, and political question, as "doctrines that cluster about Article III"). "Ripeness concerns the 'appropriate timing of judicial intervention.'" Va. Soc'y for Human Life, Inc. v. FEC, 263 F.3d 379, 389 (4th Cir.2001) (quoting *221 Renne v. Geary, 501 U.S. 312, 320, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991)).

To determine whether a claim is ripe, a court must evaluate (i) "the fitness of the issues for judicial decision" and (ii) "the hardship to the parties of withholding court consideration." Abbott Labs. v. Gardner, 387 U.S. 136, 149, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). With respect to the first

prong, “[a] case is fit for judicial decision when the issues are purely legal and when the action in controversy is final and not dependent on future uncertainties.” Miller, 462 F.3d at 319. As for the second prong, hardship “is measured by the immediacy of the threat and the burden imposed on the [plaintiffs] who would be compelled to act under threat of enforcement of the challenged law.” Charter Fed. Sav. Bank, 976 F.2d at 208-09.

Importantly, facial challenges to a law are “generally ripe the moment the challenged [law] is passed.” Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 736, n. 10, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997). This is because facial challenges are “[p]ure questions of law [that] do not suffer generally from development defects and are particularly well suited for pre-enforcement review.” Robinson Twp., Washington Cty. v. Com., 623 Pa. 564, 592, 83 A.3d 901, 917 (2013). See also Clayland Farm Enterprises, LLC v. Talbot Cty., Maryland, 672 F. App'x 240, 244 (4th Cir. 2016); Awad v. Ziriaux, 670 F.3d 1111, 1124–25 (10th Cir. 2012); S.C. Citizens for Life, Inc. v. Krawcheck, 301 F. App'x 218, 220-22 (4th Cir. 2008); Asociacion De Subscripcion Conjunta Del Seguro De Responsabilidad Obligatorio v. Flores Galarza, 484 F.3d 1, 14–15 (1st Cir. 2007); Cty. Concrete Corp. v. Town of Roxbury, 442 F.3d 159, 165–66 (3d Cir. 2006); Ohio Valley Env'tl. Coal. v. Bulen, 410 F. Supp. 2d 450, 459 (S.D.W. Va. 2004), modified in part, No. 3:03-2281, 2004 WL 2384841 (S.D.W. Va. Aug. 13, 2004), and aff'd in part, vacated in part, 429 F.3d 493 (4th Cir. 2005), and aff'd in part, vacated in part, 429 F.3d 493 (4th Cir. 2005); North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705, 709 (4th Cir.1999); Florida ex rel. McCollum v. U.S. Dep't of Health &

Human Servs., 716 F. Supp. 2d 1120, 1149–50 (N.D. Fla. 2010).¹

First, as with many facial challenges, whether the registration provisions of the Act violate the Public Trust Doctrine is fit for a judicial determination. On its face, the Act's registration provisions mandate that the State permanently dispose of public trust property, both by grandfathering in existing users and by requiring the issuance of additional registrations as they are applied for, with no discretion to deny a registration to an agricultural user. The court should decide whether the registration provisions violate the Public Trust Doctrine.

Second, the hardship to the parties of withholding Court consideration falls in favor of deciding this case. Respondent has not claimed that it would experience any hardship should this Court decide the case on its merits. Indeed, even if Appellants prevail and the registration process is invalidated, the Act already has a permitting mechanism in place that DHEC has been using for years and could utilize for agricultural water withdrawers, as well. The hardship on Appellants (and the public), in contrast, is quite serious. Appellants are riparian property owners who use and enjoy the waterways adjacent to their properties. Some of the waters that they use and enjoy have been disposed of in perpetuity, and those are waters which, before the Act was passed, could have been used by Appellants. Furthermore, as long as the registration process is in operation, DHEC must continue to dispose of more and more water. Therefore, the hardships to the parties also demonstrate that this case is sufficiently ripe to allow for judicial review.

Respondent cites Sangamo Weston for the proposition that this lawsuit is premature. (Return,

¹ Thus, logically, a facial challenge to the constitutionality of a law may be ripe before an as-applied challenge. Kines v. Day, 754 F.2d 28, 31 (1st Cir. 1985).

1.) Sangamo Weston concerned an insurance contract that covered a property in South Carolina but was between two out-of-state parties. One of the issues raised was whether the Court should reform its statutory law and precedent to conform with the Restatement because there may be a conflict with other states' interests. Since the other states with an interest had not been identified yet, this Court found that answering that question was not necessary, and thus it would not give an "advisory opinion." Sangamo Weston, Inc. v. Nat'l Sur. Corp., 307 S.C. 143, 148, 414 S.E.2d 127, 130 (1992).

The case before this Court for rehearing is completely unlike Sangamo Weston. Instead, this case is like many other facial challenges brought and found to be ripe and ready for review of public trust claims. See Rural Water Dist. No. 2 v. City of Glenpool, 698 F.3d 1270, 1276 (10th Cir. 2012); Sierra Forest Legacy v. Sherman, 646 F.3d 1161, 1179 (9th Cir. 2011); S. Lyme Prop. Owners Ass'n., Inc. v. Town of Old Lyme, 539 F. Supp. 2d 524, 543 (D. Conn. 2008); Comm. to Recall Robert Menendez From the Office of U.S. Senator v. Wells, 204 N.J. 79, 100, 7 A.3d 720, 732 (2010); Orion Corp. v. State, 109 Wash. 2d 621, 633, 747 P.2d 1062, 1069 (1987); Robinson Twp., Washington Cty. v. Com., 623 Pa. 564, 592, 83 A.3d 901, 917 (2013); Aged Hawaiians v. Hawaiian Homes Comm'n, 78 Haw. 192, 203, 891 P.2d 279, 290 (1995); Planning & Conservation League v. Dep't of Fish & Game, 54 Cal. App. 4th 140, 485, 62 Cal. Rptr. 2d 510, 514 (1997), republished as modified at (Apr. 10, 1997); W. Oil & Gas Assn. v. State Lands Com., 105 Cal. App. 3d 554, 561, 164 Cal. Rptr. 468, 472 (Ct. App. 1980).

Finally, any concern about passing judgment on an abstract injury is tempered by the fact that this Court is not limited to the "case or controversy" requirement imposed on the federal courts by way of Article III of the Federal Constitution. Therefore, it may consider issues of public importance.

II. There is a Need for Future Guidance Supporting Public Importance Standing

Public importance standing is appropriate here because of the public trust resources that have been and continue to be disposed of through the registration process in the Act – 232 registrations disposing of 68 billion gallons annually. (Petition 17-22). The injury to the public trust has already occurred and continues to occur because the State has lost control of these public trust assets.

Respondent argues that this case is distinguishable from the Infrastructure Bank case because that case presented a need for “future guidance.” (Return 1-2). That case explains the public importance exception as follows:

The public importance exception grants standing to a party who has not suffered a particularized injury where the issue involved is of such public importance that its resolution is required for future guidance. ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). “It is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.” Id. at 199, 669 S.E.2d at 341.

S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank, 403 S.C. 640, 645–46, 744 S.E.2d 521, 524 (2013)

Thus, the “future guidance” requirement is meant to give public importance standing on “an issue which transcends a purely private matter,” which involves “immense public interest.” Id. See also Baird v. Charleston Cty., 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (“Thus, by virtue of the immense public interest at stake here, Doctors have standing to bring the present action”); Thompson v. S. Carolina Comm'n on Alcohol & Drug Abuse, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976) (“the questions involved are of such wide concern, both to law enforcement personnel and to the public, that the court should determine the issues in this declaratory judgment action.”) That the

issues presented in this case are of immense public interest and importance is exemplified by the volume of articles, editorials and opinion pieces published over the past four years.²

²Cindi Ross Scoppe, Editorial, *Whose Water is it Anyway?*, The State, May 24, 2017, <http://www.thestate.com/opinion/opn-columns-blogs/cindi-ross-scoppe/article152393837.html>; Sammy Fretwell, *Upstate company has sold thousands of S.C. acres to mega-farms*, The State, Apr. 26, 2017, <http://www.thestate.com/news/local/article147002524.html>; Sammy Fretwell, *Thirsty mega-farms siphon S.C.'s rivers as state watches*, The State, Apr. 25, 2017, <http://www.thestate.com/news/local/article146774494.html>; Sammy Fretwell, *Faucets go dry near SC mega-farms*, The State, Apr. 24, 2017, <http://www.thestate.com/news/local/article146505864.html>; Sammy Fretwell, *Thousands of acres of SC forests fall to make way for mega-farms*, The State, Apr. 23, 2017, <http://www.thestate.com/news/local/article146322939.html>; Sammy Fretwell, *Mega-farms bring odors, cleared forests, huge water demands to rural SC*, The State, Apr. 22, 2017, <http://www.thestate.com/news/local/article146223014.html>; Bo Peterson, *Google's controversial groundwater withdrawal sparks question of who owns South Carolina waters*, The Post and Courier, Apr. 22, 2017, http://www.postandcourier.com/news/google-s-controversial-groundwater-withdrawal-sparks-question-of-who-owns/article_bed9179c-1baa-11e7-983e-03d6b33a01e7.html; Christina Cleveland, *Aiken County residents meet with legislative oversight committee over farm water use*, Aiken Standard, Feb. 6, 2017, http://www.aikenstandard.com/news/aiken-county-residents-meet-with-legislative-oversight-committee-over-farm/article_a352ea6e-ec77-11e6-be98-af63cf73556d.html; Christina Cleveland, *Windsor residents concerned about wells, groundwater levels*, Aiken Standard, July 9, 2016, http://www.aikenstandard.com/news/windsor-residents-concerned-about-wells-groundwater-levels/article_0dda2337-82d1-55b8-8095-87147af3450d.html; Bo Peterson, *A drop to drink; state to assess river basin water supply*, The Post and Courier, Mar. 4, 2016, http://www.postandcourier.com/archives/a-drop-to-drink-state-to-assess-river-basin-water/article_8d02b735-decb-5ee0-b67b-828d66ad0263.html; Dan Geddings, *A river runs through it*, The Times & Democrat, June 21, 2015, http://thetandd.com/print-specific/column-with-byline/a-river-runs-through-it/article_75f0b436-1033-5bdf-a81b-207820a52c7b.html; Melanie Ruhlman, Opinion, *State's water law has a significant loophole*, Greenville Online, June 20, 2015, <http://www.greenvilleonline.com/story/opinion/contributors/2015/06/20/states-water-law-significant-loophole/28995761/>; Frank Wooten, *What next when the wells run dry?*, The Post and Courier, May 29, 2015, http://www.postandcourier.com/columnists/what-next-when-the-wells-run-dry/article_5a7dd2e6-e837-58e2-9682-76a0e12de8bf.html; Opinion, *Prevent overuse of SC rivers*, The Post and Courier,

In Infrastructure Bank, the issue was “a colorable claim that the [Infrastructure Bank’s Board of Directors] is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board.” 403 S.C. at 646, 744 S.E.2d at 524. Based upon that issue, this Court found public importance standing to be appropriate despite a lack of injury to the plaintiff. Id. (“Sloan has not asserted he has suffered a particularized harm or injury as a result of section 11–43–140, but we find this case fits within the public importance exception.”) Similarly to Infrastructure Bank, Appellants claim unconstitutional action on the part of a public entity – the State of South Carolina – and the action is not merely Board composition, but the permanent disposal of public

Apr. 15, 2015,

http://www.postandcourier.com/opinion/prevent-overuse-of-s-c-rivers/article_9ea1053b-a62b-5bfa-b50a-fcda0751bdd1.html; Bo Peterson, *Farm fight for Edisto*, The Post and Courier, Apr. 12, 2015, http://www.postandcourier.com/archives/farm-fight-for-edisto/article_b437f01f-0d8f-589f-9ea4-154aaf57af42.html; Sammy Fretwell, *Water-slurping farms put Edisto on list of most imperiled rivers*, The State, Apr. 7, 2015, <http://www.thestate.com/news/local/article17594078.html>; Alan Mehrzad, Opinion, *Letter: Enact sustainable water rules*, The Post and Courier, Feb. 8, 2015, http://www.postandcourier.com/opinion/letter-enact-sustainable-water-rules/article_b48eab1b-d606-5ae6-8d56-3d0803fd95fc.html; Bo Peterson, *Landowners in Edisto ‘water war’ lose bid to halt withdrawal*, The Post and Courier, Jan. 14, 2015, http://www.postandcourier.com/archives/landowners-in-edisto-water-war-lose-bid-to-halt-withdrawals/article_2d57e1b8-0dc9-5650-9b5d-c77cbab744a9.html; Bo Peterson, *Where is the water? River level drops spur concern*, The Post and Courier, July 20, 2014, http://www.postandcourier.com/archives/where-s-the-water-river-level-drops-spur-concern/article_c1fd227a-2527-520d-9336-11fab1b8ff99.html; Bo Peterson, *Future hangs in the balance for ‘backwaters’ Edisto*, The Post and Courier, Feb. 15, 2014, http://www.postandcourier.com/archives/future-hangs-in-balance-for-backwaters-edisto/article_94252e01-549e-5cc2-94d2-0c02fcfdcef8.html; Steve Gilbert, Opinion, *Agricultural exemption hurts environment*, The Post and Courier, Jan. 20, 2014, http://www.postandcourier.com/opinion/agricultural-exemption-hurts-environment/article_bc88a68a-9e8c-5fd6-bd9d-8b1bc7ef8730.html; Gene Zaleski, *Concern over potato farm’s water use expands*, The Times & Democrat, Jan. 5, 2014, http://thetandd.com/news/local/concern-over-potato-farm-s-water-use-expands/article_36ce695e-75c9-11e3-ad58-0019bb2963f4.html.

trust property. Thus, this case presents an even more compelling need for future guidance than Infrastructure Bank.

III. Navigable Waters are Held in the Public Trust

Our State Constitution is clear: “All navigable waters shall forever remain public highways free to the citizens of the State and the United States” S.C. Const. art. XIV, § 4.

Respondent attempts to rewrite the explicit parameters of public trust property contained in our state Constitution by claiming only tidal waters are held in the public trust, citing Illinois Central. In fact, that case aptly explains that the genesis of tidal action as an historic way to demark public trust property boundaries is from England, where there is virtually no distinction between tidally influenced waters and navigable waters:

In England the ebb and flow of the tide constitute the legal test of the navigability of waters. There no waters are navigable in fact, at least to any great extent, which are not subject to the tide. There, as said in the case of *The Genesee Chief*, 12 How. 443, 455, ‘tide water,’ and ‘navigable water’ are synonymous terms, and ‘tide water,’ with a few small and unimportant exceptions, meant nothing more than public rivers, as contradistinguished from private ones;’ and writers on the subject of admiralty jurisdiction ‘took the ebb and flow of the tide as the test, because it was a convenient one, and more easily determined the character of the river. Hence the establishes doctrine in England, that the admiralty jurisdiction is confined to the ebb and flow of the tide. In other words, it is confined to public navigable waters.’

But in this country the case is different. Some of our rivers are navigable for great distances above the flow of the tide,—indeed, for hundreds of miles,—by the largest vessels used in commerce. As said in the case cited: ‘There is certainly nothing in the ebb and flow of the tide that makes the waters peculiarly suitable for admiralty jurisdiction, nor anything in the absence of a tide that renders it unfit. If it is a public, navigable water, on which commerce is carried on between different states or nations, the reason for the jurisdiction is precisely the same, and, if a distinction is made on that account, it is merely arbitrary, without any foundation in reason, and, indeed, would seem to be inconsistent with it.’

Illinois Cent. R. Co. v. State of Illinois, 146 U.S. 387, 435–36 (1892).

Navigability, not tidal action, is the test for public trust property because of “the necessity of preserving to the public the use of navigable waters from private interruption and encroachment, – a reason as applicable to navigable fresh waters as to waters moved by the tide.” *Id.* at 436. Thus, all navigable waters and the lands below them are public trust property, both by common law and our State Constitution.

In this case, there is no dispute that the surface waters of the state which are subjected to registered surface water withdrawals are navigable waters. Therefore, the surface waters at issue are public trust property.

**IV. The Registration Process is an Unconstitutional Violation of Public Trust Doctrine
Because it Disposes of Public Trust Assets for Private Benefit**

The specific claim at issue in the underlying petition for rehearing is whether the registration provisions of the Act violate the public trust doctrine because they: 1) dispose of public trust property by, 2) granting it to private owners in perpetuity, and such disposal is 3) neither *de minimis* nor in furtherance of the public interest. As established above, the surface waters at issue are public trust property. The Act plainly states, and Respondent does not contest, that the registration process disposes of surface waters in perpetuity by granting them to private water withdrawers. S.C. Code Ann. § 49-4-35(C). The disposal occasioned by the mere passage of the Act was 63 billion gallons per year, and has since grown to 68 billion gallons per year. (R. 178-200.) Respondent does not allege that such disposal is *de minimis*, and the volume of such disposal clearly exceeds a *de minimis* threshold.³

³The Act already has a threshold of three million gallons per month, which prevents the State from regulating *de minimis* withdrawals. The six billion gallons per month that have been given away by

Therefore, the only remaining element to prove violation of the Public Trust Doctrine is that the disposal is not in furtherance of a public interest. This requirement is rooted in the trust concept that the State, as trustee, holds the property for the benefit of the public and must act in furtherance of trust purposes. Specifically to navigable waters, the trust purpose is to preserve the waters for public use and protect them “from private interruption and encroachment.” Illinois Central, 146 U.S. at 436; see also Clarke v. S. Carolina Pub. Serv. Auth., 177 S.C. 427, 181 S.E. 481, 486 (1935) (holding “that navigation, health betterment, flood control, and the reforestation of watersheds are public purposes” for which the state may constitutionally use public trust resources).

The majority’s opinion confuses the **permitting process** (a portion of the Act not at issue in this case), which arguably has some public purpose because it allows for allocation of waters for a fixed amount of time and only after meeting certain reasonableness criteria, with the registration process, which does neither. (Opinion, 42.) Aside from the fact that the permitting process does not involve a mandatory permanent disposal, whether that process is in furtherance of the public interest is irrelevant because only the **registration process**, which does involve mandatory permanent disposal, is at issue in this case.

With a focus on the registration process of the Act, this Court must determine whether that process furthers the public interest. The registration process gives away surface waters to extremely large, private agricultural users without any evaluation as to whether that use is reasonable. S.C. Code Ann. §§ 49-4-35, 49-4-50. There is absolutely no requirement that any registered use be for public

way of the registrations is exponentially greater than the three million gallon exemption threshold.

benefit or in furtherance of the public interest. Registrations are for private industrial agricultural uses, and private economic development is not a protected trust purpose. In re Water Use Permit Applications (Wai'ahole I), 9 P.3d 409 (Haw. 2000); In re Water Use Permit Applications (Wai'ahole II), 93 P.3d 643 (Haw. 2004). Therefore, the registration process is not in furtherance of the public interest and violates the Public Trust Doctrine.

V. Common Law Remedies are Unavailable and Would not Cure the Public Trust Doctrine Violation

The only appropriate action for a facial challenge to a law that violates the public trust doctrine is the one before this Court. The availability of an as-applied challenge down the road is not a bar to bringing a facial challenge to an unconstitutional law. See Kines v. Day, 754 F.2d 28, 31 (1st Cir. 1985). Nor would such a challenge alleviate the complained-of permanent disposal of 68 billion gallons of water annually. Furthermore, the common law reasonableness challenge is unavailable to remedy public trust violations because such remedy (1) is only available to riparian owners who have lost property rights, not the public whose assets have been disposed of, and (2) is incapable of remedying permanent disposals.⁴

If no remedy exists, then seeking to obtain it is futile, and the case does not suffer from a lack of

⁴The test for violating the public trust, as more thoroughly discussed in the petition, is whether trust assets have been disposed of, meaning transferred in perpetuity from state control to the control of private parties, and if so whether such disposal does not violate the public trust because it is either *de minimis* or in the public interest (in furtherance of trust purposes). This Court must evaluate the validity of this claim separately from the takings and due process claims. See Clayland Farm Enterprises, LLC v. Talbot Cty., Maryland, 672 F. App'x 240, 247–48 (4th Cir. 2016) (evaluating the jurisdiction of each claim asserted by plaintiff, including takings and due process violations).

ripeness. In Sunset Cay, this Court found that a developer could challenge an ordinance as depriving it of the right to obtain a sewer extension, even though the developer did not apply for any extension. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 422, 593 S.E.2d 462, 465–66 (2004). This Court acknowledged and agreed that “there would be no point in Developer exhausting a remedy that does not exist,” because the statutory language did not allow discretion for the city to grant such an extension. Id. (internal quotation marks omitted).

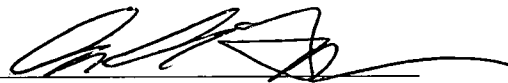
Similarly, the Surface Water Withdrawal Act supercedes common law remedies and expresses that registered uses are reasonable, with no discretion on the part of DHEC. S.C. Code Ann. § 49-4-110 (B) (“Surface water withdrawals . . . shall be presumed to be reasonable. No private cause of action for damages . . . may be maintained . . .”). While compliance with common law is reserved vis a vis permitted uses, there is no such reservation for registered users. S.C. Code Ann. § 49-4-110 (C). Therefore, just as in Sunset Cay, there would be no point in the Appellants seeking a remedy that does not exist.

Moreover, even if the common law reasonableness doctrine were available, such remedy would be practically complicated because of the high volume of registrations that have been issued. Individually challenging each of the 232 registrations on reasonableness grounds (setting aside the question of whether the presumption of reasonableness is rebuttable) would result in inefficient use of judicial resources.

VI. CONCLUSION

WHEREFORE, the Appellants James Jefferson Jowers, Sr., Andrew J. Anastos, Ben Williamson, Melanie Ruhlman and Anthony Ruhlman seek an Order granting Rehearing, and ultimately

reversing the lower court's conclusions with respect to standing and the public trust doctrine; concluding that the registration provisions of the Surface Water Withdrawal Act are unconstitutional for violating the State's special obligations under the Public Trust Doctrine; concluding that the Appellants have public importance standing; and striking down the registration provisions of the Act as unconstitutional.



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South Carolina Department of Health and Environmental Control, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the Appellants' Reply to Return to Petition for Rehearing upon counsel for the Respondent by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

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