

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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JUN 10 2019

S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Opinion No. 5627 (S.C. Ct. App. Filed February 9, 2017)
Supreme Court Appellate Case No. 2019-000705

Georgetown County, Appellant/Petitioner,

v.

Davis & Floyd, Inc., Republic Contracting Corporation, S&ME, Inc.,
The South Carolina Department of Transportation and The City of Georgetown, Defendants,

Of whom

The South Carolina Department of Transportation and The City of Georgetown
are..... Respondents.

**GEORGETOWN COUNTY'S REPLY TO JOINT RETURN OF CITY OF
GEORGETOWN AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
TO APPELLANT'S PETITION FOR A WRIT OF CERTIORARI**

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ARGUMENT IN REPLY

Petitioner, Georgetown County (the “County”), respectfully submits the following Reply to the Joint Return of Respondents, City of Georgetown (the “City”) and South Carolina Department of Transportation (“SCDOT”).

County recognizes under Rule 242, SCACR, a writ of certiorari is not a matter of right and will be granted only where there are special and important reasons for doing so. County respectfully submits this is such a case.

This case presents a novel question of law. The only case remotely bearing on the issue here is Edgefield County v. Georgia-Carolina Power Co., 104 S.C. 311, 88 S.E.801 (1916), a case decided more than 100 years ago, when the relationship between the state and its political subdivisions was dramatically different than that relationship is today.

This case presents a substantial constitutional question, bearing on the 21st century relationship between the state and its political subdivisions. Respondents’ Joint Return demonstrates the significance of the issues presented here by making combined references to the South Carolina Constitution, the United States Constitution and the constitutions of various other states no less than 80 times.

This case also involves issues of significant public interest, including the property rights of governmental entities whose taxpayers should be entitled to the same legal remedies available to their private citizens and corporate taxpayers when property for which those taxpayers have paid is taken by another political subdivision.

As pointed out in the County’s petition, the Amicus Curiae Brief of the South Carolina Association of Counties, an organization dedicated to the statewide representation of county governments, stresses the importance of this case to the forty-six South Carolina county

governments, and their desire that governmental entities be afforded the same legal remedies as private entities when their separate and discrete ownership interests are taken outside the purview of the Eminent Domain Procedures Act.

Respondents argue the County has cited no case law in which the term “private property” has been found to be ambiguous.¹ Respondents are correct in a very narrow sense.

The United States Supreme Court, however, has found no ambiguity in the takings clause of U.S. Const., amend. V in concluding the Federal government must compensate state and local governments for the taking of their *public* property. See e.g. Ark. Game and Fish Com’n v. U.S., 568 U.S. 23 (2012) (finding a taking of the Commission’s lands requiring compensation) and Town of Bedford v. U.S., 23 F.2d 453 (1st Cir. 1927) (stating the Federal government is a stranger to the town and that the Federal government can no more take, without compensation, a town’s property rights, than it can those of an individual).

South Carolina’s Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-30(16) clearly defines a “person,” i.e., a condemnee entitled to just compensation under the Act, to include “public entities.”

Finally, S.C. Const. art. VIII, § 17, mandates the liberal construction of constitutional provisions or laws concerning local government, such as the County and in the context of this litigation.

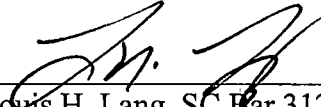
For the reasons set forth in the County’s petition, and above, the County respectfully requests the petition be granted, the Court of Appeals decision be reversed, and the case remanded

¹ Appellant does not argue the term “private property” is ambiguous. Instead Appellant argues Georgetown County property is “private property” vis-à-vis the State and the City.

to the Circuit Court to allow the County to pursue its inverse condemnation claim against SCDOT and the City.

Respectfully submitted,

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I certify that I have served a copy of the following as indicated hereinbelow by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

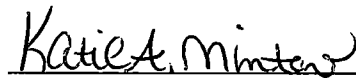
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June 10, 2019
Columbia, South Carolina