

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Case No. 2018 - 000637

John Dalen, Appellant

v.

The State, Respondent

**RECEIVED**

DEC 16 2020

SC Court of Appeals

PETITION FOR REHEARING EN BANC

Appellant petitions The South Carolina Court of Appeals for a Rehearing En Banc per South Carolina Appellate Court Rules, Rule 219 (a)(2)(b).

John D. Dalen  
108 Jessie Road  
Westminster, SC 29693  
Phone: 864.647.4705  
Appearing Pro Per/Appellant

Attorney for Respondent, The State:

Attorney General Alan McCrory Wilson  
Senior Assistant Deputy Attorney General  
William M. Blich, Jr., Esq.  
S. C. Attorney General's Office  
P. O. Box 11549  
Columbia, SC 29211

**TABLE OF CONTENTS AND CASES**

This Table of Contents and Cases refers and corresponds to the pages in this Appellant’s Final Brief filed with this court in this case. Please refer to my final Brief as I am asking this court En Banc to review the arguments I presented in that Brief.

Authorities / Cases ..... ii  
Statutes ..... vii  
Other Authorities..... viii  
United States Constitution..... ix

Appellant puts forth these additional arguments:

Appellant’s Assertion of Rights..... 1  
Argument..... 1  
Conclusion and Demand for Relief..... 5

## TABLE OF AUTHORITIES

### Cases

Allen v. Wright, 468 U.S. 737, 751, (1984).....P. 9

#### Requirements of Standing

Bacahanan vs. Wanley, 245 US 60 .....Pp. 7, 14

“The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution.”

Boyd vs. United States, 116 US 616 .....P. 15

“It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon.”

Braunfeld v. Brown, 366 U.S. 599 (1961) .....P. 35

“...because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution.” (*First Amendment* case)

Byars v. U.S. 273 U.S. 28, 32 (1927) .....P. 15

Constitutional provisions to be liberally construed, and “it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.”

Chicago Motor Coach vs. Chicago, 169 NE 22 ..... Pp.10, 13

Ligare vs. Chicago, 28 NE 934..... Pp:10, 13

Boon vs. Clark, 214 SSW 607..... Pp:10, 13

“The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived.”

Connolly vs. Union Sewer Pipe Co., 184 US 540 .....Pp. 7, 14

“With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority.”

Delaware v. Prouse, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L.Ed. 2d 660 (1979)...P. 26

An ordinary traffic stop by a police officer is a “seizure” within the meaning of the *Fourth Amendment*.

Hale vs. Hinkel, 201 US 43, 74-75.....Pp. 6, 14

“...there is a clear distinction...between an individual and a corporation...”  
“Among his Rights are...immunity of an individual and his property from arrest or seizure except under warrant of law.”

Hurtado vs. California, 110 U.S. 516 .....Pp. 14, 30

“The state cannot diminish Rights of the people.”  
Due process of law is process of law according to the law of the land, i.e. the U.S. Constitution as exercised within the limits prescribed and interpreted according to the principles of common law.

Manning v. Ketcham, 58 F. 2d 948 (1932) .....	P. 15
<p style="padding-left: 40px;">“Where there is no jurisdiction at all, there is no judge; the proceeding is as nothing.”</p>	
Marbury v. Madison, 5 U.S. 137 .....	Pp. 5, 14
<p style="padding-left: 40px;">Constitution is the Supreme Law of the land. Any law in conflict is null and void.</p>	
McNutt v. GMAC, 298 US 178 .....	Pp. 6, 15
<p style="padding-left: 40px;">“The burden of proof of jurisdiction lies with the asserter.”</p>	
Miller vs. U.S., 230 F. 486, 489 .....	P. 15
<p style="padding-left: 40px;">“The claim and exercise of a constitutional Right cannot be converted into a crime.”</p>	
Miranda vs. Arizona, 384 US 436, 491 .....	P. 15
<p style="padding-left: 40px;">“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”</p>	
Mulger vs. Kansas, 123 US 623, 661.....	P. 16
<p style="padding-left: 40px;">Duty of the court to recognize the substance of things and not the mere form.</p>	
Murdock v. Pennsylvania, 319 US 105 .....	Pp. 10, 13
<p style="padding-left: 40px;">The state may not convert a secured liberty into a privilege, and issue a license and fee for it.</p>	
Rubenstein v. Collins, 20 F. 3d 160 (1990) .....	P. 16
<p style="padding-left: 40px;">“Failure to disclose material information necessary to prevent a</p>	

statement from being misleading, or making representation despite knowledge that it has no reasonable basis in fact are actionable as fraud under law.”

Sherbert v. Verner, 374, U.S. 398 (1963)..... Pp. 33, 34

*First Amendment* case, U.S. Supreme Ct. overturns South Carolina Supreme Ct.

Shuttlesworth v. Birmingham, Alabama, 373 U.S. 262..... Pp. 10, 13

“If the state does convert your right into a privilege and issue a license and charge a fee for it, you can ignore the license and fee and engage in the right with impunity.”

Simons vs. United States, 390 US 389 .....Pp. 16, 32, 35

“We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another.”

Snerer vs. Cullen, 481 F. 946 .....Pp. 14, 15

“There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights.”

Stephenson vs. Rinford, 287 US 251..... P. 13

Explains distinction between “Right” to use public roads and “privilege”

Thomas v. Collins, 323 U.S. 516, 530 ..... P. 33-34

Limitations on *First Amendment* Rights

Thompson vs. Smith, 154 SE 579..... P. 13

“The Right of the citizen to travel...is not a mere privilege...but a common Right which he has under the right to life, liberty, and the pursuit of happiness.”

US v. Bishop, 412 US 346..... Pp. 9, 15, 31

Regarding criminal elements required to be proven – willfulness is one of the major elements defined as an “evil motive or intent to avoid a known duty...under the law”.

U.S. v. Blair, 524 F.3d 740, 748 [6<sup>th</sup> Cir. 2008]..... P. 25

An ordinary traffic stop by a police officer is a “seizure” within the meaning of the *Fourth Amendment*.

U.S. v. Campa, 529 F. 3d 980, 992 (11<sup>th</sup> Cir. 2008)..... P. 4

Standard of Review, errors of law

United States v. Carolene Products Co., 304 U.S. 144 (1938).....Pp. 11, 34

*Footnote 4*, Strict Scrutiny Standard

United States v. Interstate Commerce Commission, 337 U.S. 426, 430.....P. 16

Justiciable controversy

Warth v. Seldin, 422 U.S. 490, 498 (1975)..... P. 17

A Standing case

## Statutes

- S.C. Code Ann. Title 22, Magistrates and Constables, Chapter 3.....P. 8  
    Jurisdiction and Procedure in Magistrates' Courts, See: Sec. 22-3-540
- South Carolina Code of Laws, Title 16, Chapter 5.....P. 16  
    Offenses against Civil Rights  
    See: Sec. 16-5-10, Sec. 16-5-20, Sec. 16-5-30
- South Carolina Code of Laws, Title 56, Chapter 1.....Pp. 8, 10, 18, 22, 36  
    Motor Vehicles  
    See: Sec. 56-1-20
- United States Code, Title 18, Deprivation of Rights under Color of Law.....P. 16  
    See: Sec. 242
- United States Code, Title 42, Civil Action for Deprivation of Rights.....P. 16  
    See: Sec. 1983

## Other Authorities

- II Am. Jur. (1<sup>st</sup>) Constitutional Law, Sec. 329, p. 1135.....Pp. 10-11, 14  
Right of the citizen to travel on the public highways
- 16 Am. Jur. 2d, Sec. 177 late 2d, Sec. 256.....Pp. 5, 11, 14  
“The general misconception is that any statute passed by legislators  
bearing the appearance of law constitutes the law of the land.”
- 16 Am. Jur. 2d, Sec. 70.....Pp. 11, 14  
No public policy of a state can be allowed to override the positive  
guarantees of the U.S. Constitution
- 16 Am. Jur. 2d, Sec. 260.....P. 12, 14  
Right to travel
- 19 Am. Jur. 2d Corp., Sec. 559.....P. 16-17  
Definition of “Standing”
- 25 Am. Jur. (1<sup>st</sup>) Highways, Sec. 260.....P. 12, 14  
Requirement that regulations not violate constitutional guarantees
- 25 Am. Jur. (1<sup>st</sup>) Highways, Sec. 427, p. 717.....P. 12  
Defines the terms travel and traveler
- Ballantine’s Law Dictionary, p. 1209.....P. 17  
Definition of “Standing”
- Black’s Law Dictionary, 4<sup>th</sup> Edition.....P. 18  
Definition of “Motor Vehicle”

Oxford English Dictionary.....P. 20  
Defines “term of art” as a word or phrase that has a precise, specialized  
meaning within a particular field or profession.

West’s Encyclopedia of American Law, Ed. 2.....P. 20  
Defines “term of art” as a word or phrase that has special meaning in  
a particular context.

### United States Constitution

U. S. Constitution, Article III..... P. 9  
“The judicial power shall extend to all cases....”

U. S. Constitution, Article VI.....Pp. 11, 14  
Constitution is the Supreme Law of the Land and judges are bound  
thereby

U. S. Constitution, 1st Amendment.....Pp. 31-36  
Freedom of Religion

U. S. Constitution, 4<sup>th</sup> Amendment.....Pp. 7, 18, 26  
Unreasonable Search and Seizure

U. S. Constitution, 5<sup>th</sup> Amendment.....P. 23  
Due Process of Law

U.S. Constitution, 14<sup>th</sup> Amendment.....Pp. 23, 33-35  
Applying 1<sup>st</sup> Amendment Protections to the States

## Appellant's Assertion of Rights

Appellant asserts all his unalienable rights, privileges, and immunities at Natural Law, Common Law, Maritime Law, and all his commercial rights relevant to "this state."

## Argument

I am asking for a rehearing by this court en banc because these proceedings involve a question of exceptional importance as per Rule 219 (a)(2). Appellant relies on all of the arguments put forth in appellant's final brief to this court. Appellant believes that the court has failed to consider the "terms of art" that was discussed in the aforementioned brief. Some additional clarification may be in order:

- 1) Appellant is not a legal "person" subject to administrative jurisdiction, orders, fines, or other penalties. Appellant denies being a legal "person" under the Statutory meaning of that term as defined by the South Carolina Code of Laws, Title 56, Chapter 1, which definition applies to any and all Titles, Chapters, Sections and Provisions of the Motor Vehicle Code, and also Appellant denies having acted in any "legal capacity" therewith.
- 2) The magistrate court judge and the circuit court judge each have a legal duty to know and understand the laws associated with the duties of their respective offices, as well as how to properly use and apply them consistent with the

legislative meaning and intent provided for therein and the fundamental and due process rights of the appellant and those similarly situated.

3) Section 56-1-10 of Title 56 Chapter 1 (22) defines “Person” –

“means every natural person, firm, partnership, trust, company, firm, association or corporation. Where the term ‘person’ is used in connection with the registration of a motor vehicle, it includes any corporation, association, partnership, trust, company, firm, or other aggregation of individuals which owns or controls the motor vehicle as actual owner, or for the purpose of sale or for renting, as agent, sales person, or otherwise.” Appellant reminds the court of the rules of statutory construction and interpretation, in that “includes” and “including” while defined as being “terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. This does not mean that such definitions are without any constructive limitations or restrictions upon that which may be “included” within any given enumeration using such terms, but merely defines a specific “class” of thing within which the “enlargement” provision may be exercised by which such definition is then simultaneously limited to those things that reasonably fall within that same specified “class”.

The phrases “ejusdem generis” (Latin: the inclusion of one thing excludes another) and “inclusio unius est exclusio alterius” (Latin: the expression of one thing is the exclusion of the other), are common rules of

statutory construction and interpretation. These rules are used to determine the actual meaning and application of statutory terms and definitions so as to not have a ridiculous or unintended outcome to an interpretation or application of same.

These rules of interpretation specify that a particular section of the statute shall not be divorced from the rest of the act, or from the provisions of other acts that might be relevant to and influential upon the meaning and application of that same subject within an act. The rule of *ejusdem generis* is a principle of statutory construction used to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear, such as an example definition that reads “Person” includes an individual, corporation, association, partnership, or other “legal entity.”

The rule of *inclusio unius est exclusion alterius* is a principle of statutory construction which means that, when one or more things of a class are expressly mentioned others of the same class are excluded. Therefore, the term “individual” in the example definition would require proper resolution as to its meaning, because “individual” is usually loosely defined as a “living being” and is not normally defined as or associated with a class of “legal entity” like those also listed therein.

Therefore, the only logical manner by which to apply these rules of statutory construction in the above example definition is to find a logical way to reconcile the term “individual” as being somehow representative of the same “class” or “type” as the “other legal entities” expressly listed therein.

Since a "legal entity" can *never* be a class of "living being" the method of interpretation must seek the alternative by determining if an "individual" can ever be defined as a "class" or "type" of "legal entity." The only manner that an appellant can reasonably theorize by which this may be achieved without a ridiculous result, is that an "individual" may serve as an "agent" for any "other legal entity" as expressly listed, i.e. act within the "legal capacity" of "agent" thus, authorizing and allowing the "individual" to act on behalf / for the benefit of any class of "legal entity" or "other legal entity" as expressly listed therein.

Appellant is a living, breathing man, and is not a "legal entity" or an officer, individual, agent, representative, or employee of any "legal entity" expressly included in the statutory definition of a legal "person" within the South Carolina Code of Laws, Section 56-1-10 of Title 56, Chapter 1 (22) and is not a legal "person" or "individual" as those terms apply to any provision of the South Carolina Code of Laws, Title 56, Chapter 1.

Appellant is not a "legal entity," legal "individual," or legal "agent," acting on behalf / for the benefit of any "class" of "legal entity" listed therein, and, therefore is not a legal "person" within the meaning and application of this statutory definition and its application and usage within the South Carolina Code of Laws Title 56, Chapter 1.

Therefore appellant asserts that the charges that were levelled against me under this statute are without merit and lacking in jurisdiction, substantive facts, and / or admissible evidence that would serve to provide

them with any validity whatsoever: Again, the charges were levelled against me under this statute arbitrarily, negligently, and libelously in violation of law and statute as appellant is not and never has been a legal "person" as defined by said law or statute as one being subject to same, or to the administrative jurisdiction of the Department of Motor Vehicles as codified therein.

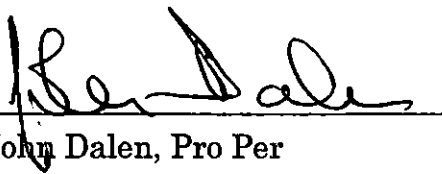
### **Conclusion and Demand for Relief**

The statute in question, the South Carolina Code of Laws, Title 56, Chapter 1 converts a Constitutionally-protected right into a privilege in violation of the United States Constitution. The U.S. Supreme Court has ruled repeatedly that a state cannot convert a right into a privilege. The appellate court's ruling in this case is based on faulty statutory interpretation of terms of art. The Appellate has never waived any of his rights, and in fact cannot waive fundamental, unalienable rights, within which is the right to travel. If the Appellate court wishes to hold to their ruling of December 2, 2020, then the statute itself is unconstitutional. Proper statutory interpretation of terms of art is the only way that the statute can be constitutional.

Appellant moves that all allegations and recommended administrative penalties against him be withdrawn, and all fines collected be immediately refunded to the appellant. Appellant also demands that should the appellant face further attempts to move forward with the assessment of any fees or

penalties of any kind in relation to the South Carolina Code of Laws Title 56, Chapter 1, that the administrative court be permanently enjoined from further harassment and libelous treatment of appellant and all others similarly situated, requiring the administrative court to cease and desist in any and all future actions relating thereto.

DATED this 15<sup>th</sup> day of December, 2020

By:   
John Dalen, Pro Per  
108 Jessie Road  
Westminster, SC 29693  
Ph. 864.647.4705

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh

Case No. 2018 - 000637

John Dalen, Appellant

v.

The State, Respondent

**RECEIVED**  
DEC 16 2020  
SC Court of Appeals

CERTIFICATE OF SERVICE

I, John D. Dalen hereby certify that a copy of the foregoing Petition for Rehearing En Banc was sent to the parties of record by First Class mail addressed to:

Attorneys for Respondent, The State: Attorney General Alan McCrory Wilson  
Senior Assistant Deputy Attorney General  
William M. Blich, Jr., Esq.  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

DATED this 15th day of December 2020

John D. Dalen  
108 Jessie Road  
Westminster, SC 29693  
Phone: 864.647.4705  
Appearing Pro Per/Appellant

*John Dalen*

108 Jessie Road  
Westminster, SC 29693

(864) 647-4705  
email: johndalen@gmail.com

December 14, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
P. O. Box 11629  
Columbia, SC 29211

**RECEIVED**

DEC 16 2020

**SC Court of Appeals**

RE: John Dalen, Appellant vs. The State, Respondent  
Case no. 2018 - 000637

Dear Ms. Kitchings:

Enclosed for filing are one original and seven copies of Appellant's Petition for Rehearing En Banc. along with a Proof of Service for the Attorneys of Record.

Please stamp one copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you.

Sincerely,



John D. Dalen  
108 Jessie Road  
Westminster, SC 29693  
Ph. 864.647.4705

Cc: Attorney General Alan McCrory Wilson  
Sr. Asst. Deputy Attorney General  
William M. Blich, Jr. Esq.  
S.C. Attorney General's Office  
P. O. Box 11549  
Columbia, SC 29211

