

# **Bond Case Briefs**

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## **EMINENT DOMAIN - SOUTH CAROLINA**

### **Jowers v. South Carolina Department of Health and Environmental Control**

**Supreme Court of South Carolina - May 30, 2018 - S.E.2d - 2018 WL 2449220**

Owners of property along rivers and streams brought action against the Department of Health and Environmental Control (DHEC), claiming that the Surface Water Withdrawal, Permitting, Use, and Reporting Act's registration provisions were an unconstitutional taking of private property for private use, that the Act violated their due-process rights by depriving them of their property without notice or an opportunity to be heard, and that the Act violated the public-trust doctrine by disposing of assets that the state held in trust.

The Circuit Court granted summary judgment for DHEC on standing and ripeness grounds and also denied property owners' claims on the merits. Property owners appealed.

On rehearing, the Supreme Court of South Carolina held that:

- Act did not deprive property owners of their common-law riparian rights, and thus owners did not have standing;
- Public-importance exception to the requirement of standing did not apply;
- Claim that registration provisions of Act violated the public-trust doctrine was not justiciable; and
- Public-importance exception to the requirement for standing did not apply to claim that registration provisions of Act violated the public-trust doctrine.

Surface Water Withdrawal, Permitting, Use, and Reporting Act did not deprive owners of property along rivers and streams their common-law riparian rights, and thus owners did not suffer an injury-in-fact required to establish standing in their action against Department of Health and Environmental Control (DHEC) that challenged Act's registration provisions regarding use of surface water by registered agricultural users as an unconstitutional taking under the state constitution and as a deprivation of owners' due-process rights; Act did not prevent owners from seeking an injunction against another riparian owner, including a registered agricultural user, for unreasonable use, Act did not prevent owners from filing a declaratory judgment against registered agricultural users and requesting the court declare their use unreasonable, and Act contemplated a private cause of action for damages against registered agricultural users.