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THE STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

David J. Mason, Individually and as Class Representative.....Petitioner

vs.

Town of Surfside Beach, SC; City of North Myrtle Beach, SC;
and P2 of SC, LLC, d/b/a Pivot Parking Respondents

**PETITION FOR ORIGINAL JURISDICTION
AND EXPEDITED CONSIDERATION**

David J. Mason, Individually and as Class Representative, respectfully requests that the South Carolina Supreme Court authorize the bringing of the attached suit within its original jurisdiction pursuant to Rule 245, SCACR, S.C. Code Ann. § 14-3-310 and S.C. Const. art. V §5. A proposed complaint is attached along with exhibits. The Petition and proposed complaint assert that the Town of Surfside Beach and City of North Myrtle Beach ordinances allowing private for profit companies to enforce parking violations is prohibited by the South Carolina Constitution. Further, the Petitioner who has received a parking violation must appeal his violation to that same private company, (P2 of SC, LLC hereinafter “Pivot Parking”) who is paid from those same parking infractions.¹ A private company cannot enforce parking violations nor can it be the judge and jury of whether a violation has occurred. Due process requires an independent judicial officer

¹Pivot Parking has a contract with the Town of Surfside to enforce parking regulations to include electronic ticketing. (See Exhibit 2 Pivot Parking Contract Summary Scope of Services, Section 1.a).

decide whether a parking ordinance has been violated. A South Carolina Attorney General opinion dated November 15, 2024 advised that a town or city may not delegate its police powers to a private entity. (Exhibit 1). This practice is widespread throughout coastal South Carolina with the cities of Folly Beach, Hilton Head, Isle of Palms, Myrtle Beach and North Myrtle Beach all having enacted similar ordinances and all have contracted with private companies to enforce their parking ordinances.

I.

INTRODUCTION AND SUMMARY

The Petitioner understands and respects the right of a city, county or town to enforce parking violations. This case is not about parking enforcement as Petitioner admits a city employee may issue a ticket for a parking violation. It is about whether a private company (Pivot Parking), which is paid out of the proceeds of parking tickets, may also enforce parking violations and at the same time handle appeals of those parking violations by aggrieved persons such as the Petitioner. Petitioner seeks an Order of this Court finding it is unlawful and an unconstitutional transfer of the police and judicial powers for a city or town council to adopt ordinances allowing private corporations to enforce parking violations.

Immediately after the Attorney General issued its opinion, Surfside and North Myrtle Beach employees told media outlets they would continue to delegate parking violations to private companies. This petition seeks to end that practice which is ongoing statewide and which affects tens of thousands of people each summer season in coastal South Carolina. This Court has long held that a municipality, town or county may not contract with a private authority and delegate police power which was granted to a city, county or municipality by state law. See *Sammons v. City of Beaufort*, 225 S.C. 490, 83 S.E.2d 153 (1954) (It is a fundamental principle of constitutional

law that no legislative body may part with its right to exercise the police power, nor may a municipality to which such power has been delegated divest itself of same by contract or otherwise); *Willis v. Town of Woodruff*, 20 S.E.2d 699, 100 S.C. 266 (1942) (The “police power” of a municipal corporation cannot be exercised for private purposes or for benefit of particular individuals or classes.)

Local governments derive their police powers from the state. S.C. Const. art VIII, §§ 7, 9. The state of South Carolina has granted local governments broad powers to enact ordinances “respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities.” S.C. Code Ann. § 57-7-30 (1976). This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943). However the grant of power is given to local governments with the proviso that the local law not conflict with state law or the Constitution. *City of Charleston v. Jenkins*, 243 S.C. 205, 133 S.E.2d 242 (1963). A city ordinance conflicts with state law when its conditions, express or implied, are inconsistent or irreconcilable with state law. *Town of Hilton Head v. Fine Liquors, Ltd.*, 302 S.C. 550, 553-54, 397 S.E.2d 662, 664 (1990) (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169-70, 164 S.E.444, 445 (1932)). Where there is a conflict between a state statute, the Constitution or case law and a city ordinance, the ordinance is void. *State v. Solomon*, 245 S.C. 550, 141 S.E.2d 818 (1965).

II.

AUTHORITY OF THE COURT TO ASSUME ORIGINAL JURISDICTION

Rule 245, SCACR allows for the filing of a petition in the original jurisdiction of this Court on specific grounds. Rule 245(a), SCACR provides:

(a) When Appropriate. If the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the reasons must be stated in the petition.”

It is well settled that original jurisdiction cannot be exercised by agreement of the parties, but is a determination by this Court in light of the facts and its rules as to whether jurisdiction should be invoked. *Modern Finance Co. v. Hicks*, 235 S.C. 212, 110 S.E.2d 859 (1959). See also, *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n.*, 407 S.C. 67, 753 S.E.2d 846 (S.C. 2014). (“Rule 245 is concerned with whether a case should be resolved by this Court in the first instance because of the public interest involved and need for prompt resolution....”).

This Court has exercised its authority in the original jurisdiction in several recent cases involving challenges to local ordinances or actions. *Adams v. McMaster*, 432 S.C. 225, 231, 851 S.E.2d 703, 706 (2020) (declaratory judgment action challenging the constitutionality of Governor’s allocation of federal emergency education funding); *Mitchell v. City of Greenville*, 411 S.C. 632, 633, 770 S.E.2d 391, 391 (2015) (challenge to municipal election ordinance); *State v. Cty. Of Florence*, 406 S.C. 169, 171, 749 S.E.2d 516, 517 (2013) (challenge to proposed county tax referendum.); *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 694 S.E.2d 213 (2010) (challenge to helmet ordinance); *O’Brien v. S.C. ORBIT*, 380 S.C. 38, 46, 668 S.E.2d 396, 400 (2008) (challenge to City decision to invest in equity securities). This Court has also granted original jurisdiction to challenges to State legislation. See, e.g., *Doe v. State*, 421 S.C. 490, 808 S.E.2d 807 (2017) (challenge on definitions of “household member” in the Domestic Violence Reform Act and the Protection from Domestic Abuse Act); *S.C. Pub. Interest Found. V. Lucas*, 416 S.C. 269, 270, 786 S.E.2d 124, 125 (2016) (challenge to Appropriations Act proviso); *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013) (challenge to exemptions and caps placed

on the state's sales tax); *Wilson v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (2021) (City of Columbia mask ordinance unconstitutional).

This case falls squarely within the Court's authority of original jurisdiction since a significant public interest is involved and the legal issue involves multiple towns and cities. Here, the Surfside and North Myrtle Beach ordinances are challenged because they are in direct conflict with the Constitution and this Court's precedent. Adherence to the rule of law is clearly and profoundly in the public interest. This court should grant this Petition for this reason and the other reasons offered in this petition.

III.

REASONS FOR TAKING ORIGINAL JURISDICTION IN THIS CASE

A. This case involves significant public interest.

The Petitioner, David J. Mason, was issued a parking ticket by Pivot Parking, a private corporation which has a contract with the Town of Surfside Beach to provide parking enforcement for the town. (Pivot Parking Contract Exhibit 2). Other towns and cities in South Carolina have hired Pivot Parking and other private corporations to perform parking enforcement. The Town of North Myrtle Beach also has a contract providing for parking enforcement by Pivot Parking. Surfside Beach, like these other towns, has adopted ordinances which illegally delegate police powers for parking enforcement to private companies such as Pivot. Surfside Town Ordinance Sec. 9-17(b)(2) provides in pertinent part:

Parking violations may be cited by police officers, authorized code enforcement officials, authorized enforcement officials, or the town's parking contractor representative.²

² Petitioner does not challenge the authority of the police or code enforcement officials to issue parking violations.

The Surfside Beach ordinance provides that private contractors can perform any initial judicial action if a citizen objects to the parking ticket. Pivot Parking may delegate any appeal by someone who has a parking ticket to its corporate representative. See Town Municipal Code Sec. 9-17(c)(1):

.... The town is entitled to delegate the appeal process for technical matters to an authorized designee, including an authorized parking contractor's representative.

See also, Sec. 9-17(c)(2): "Administrative level adjudication. All violators not prevailing at a technical level adjudication, shall also have a right to request a hearing before an independent hearing officer (approved by the town)...." The Town of Surfside Beach's ordinances are similar to other parking ordinances in the Isle of Palms, Folly Beach, North Myrtle Beach and Myrtle Beach.³ Each of these cities allow private companies to write parking tickets for parking violations.⁴

³ For instance, the City of Folly Beach has Ordinance § 72-18 entitled Parking Contractors. § (A) provides: The City may enter into contracts with individuals or companies, parking contractors, to enforce parking ordinances in the city, including the collection of fees in paid parking areas. § (B) Parking contractors may issue parking citations, collect payment, and perform other duties and responsibilities approved by city council. (C) Parking contractors shall use parking citations that have been approved by the director of public safety.

It should also be noted that the Town of Hilton Head Island, through Ordinance No. 2024-15 adapted a parking management program which allows parking contractors to enforce parking violations. Ordinance Sec. 12-3-118 allows a designated parking contractor to affix a notice to the owner of a motor vehicle that has been parked in violation. See 12-3-118(b). Further, Sec. 12-6-120 (a) allows a person who has been given a parking ticket to appeal the citation within 30 days to the designated parking contractor. If that person disagrees with the decision of the parking contractor he may appeal to the town attorney. The decision of the town attorney is final. Sec. 12-6-120(d).

⁴ The City of North Myrtle Beach has a similar ordinance to that of Surfside. Ordinance Sec. 21-32 states: "Whenever a police officer, parking enforcement officer or personnel, employed by a parking management service contractor retained by the city to provide parking management services, observes a vehicle parked in violation of a city ordinance or state law, he or she is authorized, in addition to other methods of enforcement, to issue a parking citation on a form approved by the director of public safety, and affix such citation to the parked vehicle." See also Ordinance Sec. 21-33(a)(1): "Immobilization shall be at the direction of a city police officer, personnel employed by parking management services contractor retained by the city to provide parking...."; and Sec. 21-33(2): "Upon that mobilization, the officer, employee of the

Recent news articles show that Surfside’s parking contractor and the Town have collected in excess of \$1,000,000.00 for parking tickets issued by Pivot Parking, and that a percentage of those collections have been paid to Pivot Parking for its services. (See Exhibit 3, an interview with *My Horry News* in which Town Manager, Gerald Vincent, indicates that over \$1 million in parking fines have been collected through Pivot Parking.)⁵

On December 18, 2024, the South Carolina Attorney General’s Office issued an opinion about private companies having the power to issue parking citations in South Carolina. The Attorney General’s opinion (attached hereto as Exhibit 1) finds that private entities may not issue parking citations, that only municipalities may exercise police powers. Despite the Attorney General’s opinion, Surfside Beach and the other towns who have instituted this procedure have indicated they will continue to contract with private contractors who may issue parking violations throughout their respective cities and towns.

parking management services contractor or city employee shall place upon the vehicle sufficient to warn the owner....”

The City of Myrtle Beach has similar parking ordinances. Sec. 12-150.1(a) provides: Whenever a public officer or other enforcement authority designated by the manager under authority of Section 12-81 shall observe a vehicle parked in violation of local law, he or she is authorized...to issue a parking citation.... Sec. 12-150.1(c). Administrative review. Any person aggrieved by the issuance of a parking citation may seek administrative review by submitting a written statement.... Such written statement must be submitted with payment of the fee due and received by the enforcement authority.

⁵ According to a Charleston TV Station, ABC4 News, the Isle of Palms issued 6,499 parking tickets between May and September 2024 through the city’s parking enforcement service, PCI Municipal Services. According to that same news story, the Isle of Palms has a three year contract with PCI Municipal Services, 76% of the ticket revenue goes to the city and PCI takes home the remaining 24%. Folly Beach and Hilton Head also use PCI Municipal Services for parking enforcement. PCI Municipal Services provides parking enforcement for the cities of Hilton Head Beach and Folly Beach Island. Both towns appear to allow for appeals to PCI Municipal Services which enforces parking in both of these municipalities. In Folly Beach, PCI Municipal Services offers an administrative appeal process to resolve citations that have been received. The website says “If you believe that your Park Folly Beach citation has been issued in error, you may request an administrative review. Park Folly Beach will gladly review any issues concerning a citation that you may wish to appeal. To get started, please appeal by any one of the methods below within 30 days from the citation issuance date.” The Park Folly website advises offenders to file an appeal online to the same entity which issued the parking ticket.

The Petitioner is informed and believes that there is a substantial public interest here since coastal towns and cities are going to continue to collect fees for parking tickets and/or violations written by private contractors and ignore the Attorney General's opinion. As an example, a parking ticket fine in the Town of Surfside is \$200. (See Mason ticket Exhibit 4.) If the Town of Surfside collected \$1 million in parking fines which it shared with Pivot Parking over 5,000 people will have paid a parking ticket issued by a private contractor. Petitioner asserts that the other coastal towns who have similar ordinances are much larger and have more visitors and thus have collected millions of dollars more in fines using this unconstitutional method. Further, this illegal parking enforcement scheme will continue into the future with no recourse by the people who are ticketed.

Petitioner seeks an order in the original jurisdiction of this Court upholding the South Carolina Attorney General's opinion that private companies cannot enforce parking violations in cities and towns in South Carolina since to do so is an unconstitutional delegation of police powers. See *Marchant, Adjutant General v. Hamilton*, 309 S.E.2d 781 (S.C. App. 1983) (While this Court is not bound by an opinion of the Attorney General, it should not be disregarded without cogent reason, citing *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E.2d 682 (1950)). Further, the Surfside parking ordinances (and most of the other town and city ordinances) require an appeal to the private parking contractor of any ticket which an individual disagrees with. This essentially is the "fox guarding the henhouse" since those contractor's fees are paid from collections.

In the coming months, millions of tourists and residents in these coastal towns will flock to South Carolina beaches for the spring and summer seasons. Millions of dollars of parking violations will be written and collected by those same private companies, most of which will be

paid by people who are visiting these towns and cities and who will not contest parking fines which have been levied in violation of state law and the South Carolina Constitution. Petitioner believes it is in the public interest for this Court to immediately address this situation and bypass the normal litigation process by which the trial court would first determine this issue.

B. Other good reasons exist why this Court should exercise original jurisdiction.

If this matter goes through the ordinary litigation process, it will take five or more years to reach this Court. During that time, towns and cities will continue to collect the parking fees through their private parking contractors and may eventually be ordered to repay those fees which may cause severe financial hardship. Petitioner and the affected cities and towns should agree on one thing: This Court should immediately take up the issue of whether or not it is unconstitutional for a town or city to delegate its police powers to private parking contractors to issue parking violations and to require a potential violator to appeal the parking violation to that same private contractor.

It is for these reasons that this Court should exercise its original jurisdiction, entertain this matter in the first instance and issue its opinion finding this practice illegal. Petitioner respectfully requests that his request for an extraordinary writ be granted and that this matter be heard by this Court before the busy spring and summer beach season.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

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