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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**

**APPELLATE CASE NO. 2025-000102**

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

**PETITIONER’S REPLY TO RESPONDENTS’ RETURN TO PETITION FOR ORIGINAL JURISDICTION AND EXPEDITED CONSIDERATION**

The Petitioner, replying to the Respondents’ Return to Petition for Original Jurisdiction and Expedited Consideration, would respectfully offer the following additional argument.

**I. INTRODUCTION**

In a few short weeks, spring break and the summer season will come to Coastal South Carolina. Millions of vacationers, day trippers, campers, school children and sun lovers will flock to South Carolina’s beaches. They will be met by an army of private parking contractors who get paid a commission to write parking tickets for the Respondents. Those parking contractors are not employees of any town, but work for private companies and have been delegated police powers by the Respondents. This private business model exists in North Myrtle Beach, Myrtle Beach, Surfside Beach, Folly Beach and the Isle of Palms (hereinafter Coastal Beach Municipalities).<sup>1</sup>

<sup>1</sup> Hilton Head passed a similar ordinance which went into effect on January 1, 2025.

Each of the Coastal Beach Municipalities have adopted ordinances and signed contracts to effect this scheme. The vacationers, the tourists, school children, day trippers and tourists are not “scofflaws” as the Respondents allege in their brief, but are law abiding citizens who come to the beaches of South Carolina to rest, relax and be treated fairly with equal protection under the law. Unknown to these visitors is the unique private parking agreements signed by the Coastal Beach Municipalities designed to pick their pockets. Pivot Parking, the parking contractor, has contracts with the Town of Surfside Beach, the City of North Myrtle Beach and the City of Myrtle Beach to enforce parking, write parking tickets, impound cars and place immobilization devices on them. (See Exhibits 1, 2, 3). As will be seen in this reply, the parking contractors for the Coastal Beach Municipalities are based on unconstitutional ordinances and private parking contracts which allow private parking contractors to act as police and to write parking tickets. The challenged ordinances also limit the right of a citizen to contest the ticket based on complex ordinances, which includes an adjudication decided solely by the private contractor. These contractors exercise police powers reserved to the municipalities. To pour salt on the wound, the ability to contest these actions in municipal court by the parking contractors is very limited. It is for this reason that this Court should accept original jurisdiction of this unique case.

## II. SIGNIFICANT PREJUDICE WILL RESULT UNLESS THIS COURT ACTS.

This case is the prima facie definition of significant public interest. The actions of the Coastal Beach Municipalities along the coast of South Carolina in hiring parking contractors and delegating them police power to write tickets, put boots on cars and impound cars is a violation of the South Carolina Constitution. The Attorney General’s Office in its written opinion made clear

that only a city, county or town has police power and it cannot be delegated to private companies. (See Opinion of Attorney General, November 15, 2024).<sup>2</sup>

Despite the written Attorney General's Opinion, the Coastal Beach Municipalities have decided to continue to enforce their parking ordinances and allow their private contractors to exercise their police enforcement powers. This decision by the Coastal Beach Municipalities is quite lucrative as can be witnessed by the removal papers in *Daniel v. City of Myrtle Beach, SC, et al.*, C/A No. 4:25-cv-1231-SAL. (Exhibit 4). The *Daniel* case, which was filed by Petitioner after this case was filed, was filed to preserve the statute of limitations and will be governed by this Court's ruling. The *Daniel* case highlights the reason why the Coastal Beach Municipalities continue to enforce these illegal parking ordinances which are policed by private contractors who are paid a commission to write a ticket. The reason of course is money – and lots of it for the private contractors and the Respondents.

In an Affidavit in support of removal signed by Steve Robertson of Lanier Parking Meter Servies, LLC, Robertson told the district court that his company had contracted with Myrtle Beach and at least three other municipal entities to provide parking enforcement. Robertson's Affidavit reveals that during the class period Lanier had collected for the City of Myrtle Beach \$1,817,579; for the City of Folly Beach \$1,366,465; for the Town of Surfside Beach \$168,476; and for the City of North Myrtle Beach \$373,477. Robertson also swore that total parking revenue for all Coastal Beach Municipalities exceeded \$16,600,000 during the class period. Obviously, these revenue numbers show a significant public interest since most parking tickets and/or violations are between \$50 and \$200. Petitioners point out based on the dollar amounts in the Robertson

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<sup>2</sup> The Coastal Beach Municipalities call this Opinion by the Attorney General informal. This is incorrect. There are two types of opinions: Opinions to the Governor and elected officials and opinions offered to local officials and local public bodies. Both types of Opinions carry the same weight, both are written and both are public opinions.

Affidavit that if each parking ticket is an average of \$75, then 49,679 people will have been cited during the class period. Therefore, unless this Court declares that the delegation of police powers to a private entity by Coastal Beach Municipalities is unconstitutional and unlawful, then we can expect that a similar number of people will be cited each year. (See Exhibit 5 Robertson Affidavit). If these ordinances continue for the next five years while the litigation winds its way through the courts, then almost 250,000 people can expect to receive parking tickets by the private parking contractors who get a percentage of the fine. At the end of five years, using the parking ticket violations figures in Robertson’s Affidavit, the Coastal Beach Municipalities will have collected \$18,629,985. Clearly, the Coastal Beach Municipalities’ ordinances and their private parking contractor scheme affect the public interest since so many people have been and will in the future be affected by their actions and the decision by the Coastal Beach Municipalities to ignore the Opinion of the Attorney General.

III. ALL THE CITY ORDINANCES ARE SIMILAR.

The Myrtle Beach, Surfside and North Myrtle Beach parking ordinances are almost identical in that each of them grant parking contractors police power to issue citations and to police and patrol parking in those municipalities. The below chart provides the Court a quick summary of how the City parking ordinances mimic each other.

PARKING ORDINANCES			
	MYRTLE BEACH Sec. 12-150.1	SURFSIDE BEACH Sec. 9-17	NORTH MYRTLE BEACH Sec. 21-32
Parking contractor can issue parking ticket	X	X	X
Parking contractor may dismiss ticket	X	X	X
Administrative remedies for person accused of parking ticket violation	X	X	X

Warrant after 45 days or debt collection	X	Civil infraction - vehicle impounded	Civil infraction - vehicle impounded
Right to trial when warrant issued	X	X	X

This chart shows how the commissions are paid to the private parking contractors:

FEES FOR PARKING ENFORCEMENT			
	MYRTLE BEACH	SURFSIDE BEACH	NORTH MYRTLE BEACH
MONTHLY FEES	\$2,750 Citation services \$550 Decal services	\$725	-
COMMISSION	4.50%	6.50%	6.38% Total on All Revenue > \$400,000
REASONABLE EXPENSES	Contract has 8 amendments which discuss expenses.	X	\$61,797.76 and \$21,880.00

**IV. THE PARKING ENFORCEMENT CONTRACTS BETWEEN THE PARKING CONTRACTORS AND THE CITIES ARE SIMILAR.**

Myrtle Beach, North Myrtle Beach and Surfside Beach all have similar contracts regarding parking enforcement. The Town of Surfside originally signed a contract with Lanier Parking Meter Services, LLC from 2004 to 2022. The Contract Article 2 provides:<sup>3</sup>

The Company will provide overall management of on-street parking, including parking enforcement, meter maintenance and administration of any merchant validation....

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<sup>3</sup> This is the prior contract the Town of Surfside had with Lanier Parking Meter Services.

The current parking management contract abstract with the Town of Surfside Beach (Exhibit 6)<sup>4</sup> is similar to the parking contract that North Myrtle Beach has with Pivot Parking (Exhibit 2). Exhibit A to the City of North Myrtle Beach’s contract in salient part provides:

- A. Enforce parking regulations relating to pay stations and other parking controls within an area designated by the City during the months of March through October and during the hours of 9:00 a.m. to 5:00 p.m. Enforcement activities will include electronic ticketing, immobilization, and towing.
  
- F. Establish designated patrol routes for its enforcement officers.

Similar language is found in the Myrtle Beach and the Myrtle Beach Redevelopment Corporation’s contract with Lanier Parking Meter Services to provide “enforcement activities will include electronic ticketing and towing. (See Exhibit 7).<sup>5</sup>

In sum, each of these contracts with the Coastal Beach Municipalities allow private contractors to ticket citizens and visitors for parking violations, to immobilize their cars and to tow them if necessary. Here, police power has been transferred by ordinance to private companies in violation of State law. See *Sammons v. City of Beaufort*, 225 S.C. 490, 83 S.E.2d 153 (1954) (holding that the police power cannot be delegated by contract to private individuals.) (“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.”).

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<sup>4</sup> The abstract allows the parking contractor to perform the following enforcement functions:

- 1. a. Enforce parking regulations relating to meters and other parking controls within an area designated by the Town during the months of March through October and during the hours of 7:00 a.m. to 7:00 p.m. Enforcement activities will include electronic ticketing and towing. The Town may adjust the geographic locations for enforcement activities in its sole discretion.
- d. Enforce scofflaw regulations related to towing of vehicles as per Town ordinances.
- f. Establish designated patrol routes for its enforcement officers.

<sup>5</sup> The Myrtle Beach Parking agreement has been amended eight times, but the basic services are found on page 27 and have remained constant over the life of the agreement.

V. ORIGINAL JURISDICTION IS APPROPRIATE IN THIS CASE.

Original jurisdiction of this Court has been invoked on many occasions when there is significant public interest involved. In this case, the significant public interest involved includes the following issues:

- Police enforcement of parking violations by a private contractor which is contra to a written Attorney General's Opinion;
- Contracting by municipalities to delegate police powers to a private contractor which is contra to established case law of this Court;
- Continued enforcement of parking violations by private contractors for the next five years when such practice if declared unlawful could threaten the financial stability of the Coastal Beach Municipalities if required to refund the unlawful fines;
- Significant potential exposure to taxpayers if this matter is not decided quickly;
- Significant harm to the public in allowing private contractors to exercise police powers which include putting boots on cars, levying fines and possible arrest.
- 49,679 people issued parking tickets by private contractors on a yearly basis; See Robertson Affidavit.

This Court has frequently invoked original jurisdiction in circumstances such as these where multiple towns and cities are involved and tens of thousands of people may be affected. Probably the best example is *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), which involved disputed retirement benefits of State employees. In that case, this Court granted original jurisdiction and certified a class. It also, ordered monies be placed in an escrow account, minimized costs, and set specific deadlines for materials to be submitted, which was less than 80

days. Petitioners believe this case is similar to *Layman* and that there is an overriding public interest to decide this case immediately.

Other cases of this Court have granted original jurisdiction in similar public interest cases. These include: *Cox v. Bates*, 237 S.C. 198, 116 S.E.2d 828 (1960) (original jurisdiction over distribution of monies from the State Reserve Fund); *City of Hardeeville v. Jasper County*, 340 S.C. 39, 530 S.E.2d 374 (2000) (City ordinance regarding adoption of accommodation taxes); *American Petroleum Institute v. SCDOR*, 677 S.E.2d 16 (2009) (Constitutional Challenge to Act of General Assembly); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2004) (constitutional challenge as to the One Subject Rule, the Court noting issue is of such public importance as to require resolution for future guidance); *Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (1995) (original jurisdiction for rejection of petitions in regard to a challenge to Governor's veto); *State Ex Rel. Lyon v. Dock*, 78 S.C. 286, 58 S.E. 803 (1907) (original jurisdiction regarding sale of liquor in certain bars); *State v. Bellardino*, 429 S.C. 563, 841 S.E.2d 621 (2020) (Magistrate Courts have authority to order competency evaluations); *Boone v. Quicken Loans*, 420 S.C. 542, 803 S.E.2d 707 (2017) (Original jurisdiction with referral to special referee); *State ex rel. Wilson v. Condon*, 410 S.C. 331, 764 S.E.2d 247 (2014) (original jurisdiction while U.S. District Court resolves issues regarding same sex marriage licenses); *Ravenel v. Dekle*, 218 S.E.2d 521, 265 S.C. 364 (1975) (original jurisdiction regarding whether or not Ravenel was a resident and could run for governor); *Anderson v. S. C. Election Comm.*, 397 S.C. 551, 725 S.E.2d 704 (2012) (original jurisdiction for candidate's name to appear on primary election ballot); *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (original jurisdiction regarding authority to remove members of the Public Service Commission); *Pascoe v. Wilson*, 416 S.C. 628, 788 S.E.2d 686 (2016) (original jurisdiction regarding state grand jury proceedings); *Foundation v. S.C. Transp. Infrastructure Bank*, 403 S.C.

640, 744 S.E.2d 521 (2013) (original jurisdiction as to whether the infrastructure bank was constitutional); *Reynolds v. Ryland Group*, 340 S.C. 331, 531 S.E.2d 917 (2000) (original jurisdiction as to whether a subsequent purchaser of a home could sue a builder under the Unfair Trade Practices Act); *Johnson v. Catoe*, 345 S.C. 389, 548 S.E.2d 587 (2001) (original jurisdiction for new trial concerning after discovered evidence).

Each of the above cases shows the Courts' thinking over the last hundred years as to when original jurisdiction is appropriate. This case is similar to the above cited cases because it has significant statewide importance since Coastal Beach Municipalities have delegated their police powers to private parking contractors who are not employees of those municipalities but have authority to write parking tickets, impound cars, put boots on cars and ultimately arrest warrants under similar city ordinances – all for profit. This is especially important since the private parking contractors are paid a commission based on the amount of revenue they can collect and clearly have a conflict of interest since it affects their pocketbooks. This is a unique situation where a municipality has delegated its police powers to a private entity which makes a profit from each parking ticket it issues.

## VI. CONCLUSION

In sum, this Court should grant the Petition for Original Jurisdiction as there is a significant constitutional issue here and a failure to act will send a message that all municipalities statewide can delegate their police powers to private parking contractors or other contractors for any reason. Further, if this Petition is denied, Surfside, Myrtle Beach, North Myrtle Beach, Folly Beach and Hilton Head will continue to collect revenue through this scheme by which private parking contractors can write tickets with impunity and those funds will be spent without limitation. The

Petitioners in this case are not “scofflaws”<sup>6</sup>-- but in fact are law abiding private citizens such as the Petitioner, who is a licensed South Carolina attorney who has continually contested his parking ticket since it was issued but is unable to even get a trial in Surfside despite repeated requests. Certainly, Mason and others like him have a legitimate interest in objecting to private parking contractors who are paid money and/or commission from writing tickets for the town. It is for this good reason and others listed above that the Court should grant the Petition for Original Jurisdiction, set a limited scheduling order and decide the seminal issue: May a city or county enact an ordinance delegating police power to a private parking contractor who is paid on commission? The answer of course is a resounding: “No.” Petitioner asks this Court to accept this case and issue a ruling, while also ordering all parking fines be held in escrow pending a decision of this Court.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

*s/ Gene M. Connell, Jr.*

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<sup>6</sup> The ordinances of the Coastal Beach Municipalities use the term “scofflaw” which is undefined. The insinuation that the Petitioner, a licensed attorney, and others who contest a parking ticket are persons who consistently flout the law is outrageous..