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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

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.....Respondent.

AMICUS CURIAE BRIEF OF THE CHARLESTON BEACH FOUNDATION

March 27, 2025

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, South Carolina 29415-1121
(843) 729-0928
E-mail: tgoldstein@cobblaw.net
Attorneys for Charleston Beach Foundation

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INTEREST OF *AMICUS CURIAE*

The Charleston Beach Foundation is a non-profit, eleemosynary corporation organized in August of 2020 as successor to an unincorporated association of South Carolina residents who organized to protect and promote public access to the beaches of South Carolina. The original unincorporated association called themselves the “Charleston Area Beach Access and Parking Group,” and in October 2020, they filed an injunction against the Isle of Palms seeking a court order to prevent the municipality from eliminating public parking on state highways to prevent the public from access to the beach. While that action was pending, the General Assembly mooted that effort in May 2021, when it adopted § 57-5-845, S. C. Code, ann., which prevented the Isle of Palms from eliminating public parking on state owned roads. The Isle of Palms and the “beach communities” in general refer to visitors as “day-trippers” to distinguish them from “residents,” for whom the beach communities define as homeowners or their tenants, including short term rental tenants who qualify for special parking privileges. (See § 8-2-21, Isle of Palms Ordinances for definition of “resident” as “(a) owners of residential units located within the City limits that are assessed for property tax purposes at the four (4) percent rate” or “(b) tenants or residents of a residential unit located within the City limits, other than the owner, who occupy the residential unit for a period of more than three (3) months; and (c) *Part-time resident owners*—owners of residential property or units located within the City limits that are assessed for property tax purposes at the six (6) percent.”)

The Charleston Beach Foundation’s sole purpose is to prevent the Isle of Palms, Sullivans Island, and Folly Beach, municipalities which Petitioner calls “beach communities,” from restricting or eliminating public access to local beaches by eliminating public parking. The beach communities frequently cite home rule as their authority to control public beach access by curtailing parking on roadways owned and maintained by the State or the County. The Charleston

Beach Foundation has considerable experience with the beach communities' efforts to restrict access to public beaches for which the bounty hunting private parking strategy Petitioner describes is but the latest manifestation. The Charleston Beach Foundation can offer additional evidence and support for Petitioner's correct claim that the profound issues of public interest he raises affects tens of thousands of South Carolina's citizens across multiple beach communities. The Charleston Beach Foundation can demonstrate further that Petitioner's application presents the Court an opportunity to address a legal issue that impacts every citizen of South Carolina who desires to visit the State's most significant public amenity and for which meaningful judicial review for an improperly issued parking fine is out of reach because it is impractical for an improperly cited motorist to travel from Columbia or Greenville to challenge a \$100 or \$200 citation. As Respondents correctly point out, there are already several challenges now pending in Beaufort, Charleston, and Horry Counties over the identical issue. The multiplicity of legal challenges not only places an undue burden on citizens to challenge unlawful local government conduct but also guarantees judicial inefficiency and the potential for uneven adjudications across multiple jurisdictions. Because no "day tripper" can have her parking issue resolved economically or in a judicially meaningful manner, the issue Petitioner raises cannot be determined in a lower court in the first instance without material prejudice to the rights of thousands of residents whose access to the public beaches of South Carolina is threatened and for whom no reasonable remedy exists to address what even the Respondents tacitly acknowledge is an unlawful delegation of governmental authority.

INTRODUCTION AND SUMMARY OF ARGUMENTS

Even though beach communities have implemented different strategies to impose parking restrictions to limit the public's access to public beaches, the newest implementation of crowd control breaks new ground through the governmental chutzpah identified in Petitioner's

application. To step up the “enforcement” of parking restrictions, the “beach communities” have delegated this governmental function to private companies and incentivized them to pursue aggressively parking “scofflaws” by offering them a cut of the municipal fines generated by the tickets they issue! The Isle of Palms stands out as an ostentatious example of this aggressive strategy, the latest in a line of municipal history illuminating its willingness to violate the law to restrict and intimidate public day trippers from beach access in an open preference for privatizing the beach as much as possible to favor of the ultra-wealthy. (As this brief is being typed, a typical Sullivans Island house just changed hands for 10.1 million.) Over 1600 acres—1.1 mile of beach—is gated on the Isle of Palms for a private resort that was falling into the sea until the taxpayers of South Carolina rescued the development by government funded beach renourishment. (Now that is chutzpah on a David Geffen scale.) In 2020, using the COVID-19 virus as a pretext, the Isle of Palms implemented a series of “emergency” ordinances to eliminate completely public parking alongside state highways even though the State constructed and maintains those roads. Isle of Palms’ aggressive elimination of public access drew the State’s Department of Transportation and the General Assembly into the controversy. After extensive involvement by the Department of Transportation, in 2021, the General Assembly moved to curtail the Isle of Palms’ (and all beach communities’) restrictions on public access. In May 2021, the General Assembly adopted § 57-5-845, S. C. Code, ann., and the Isle of Palms restored public parking along the state highways, while reducing parking on City owned side streets to “residents” only:

SECTION 57-5-845.Parking facilities in beach communities.

(A) Parking facilities on state highway facilities located in beach communities that are eligible for beach renourishment funds:

- (1) must include free public beach parking;
- (2) may include paid public beach parking; and
- (3) only may be restricted by the department if the department determines that the restrictions are necessary under the circumstances.

(B) Any municipality electing to charge for public beach parking may use the parking revenues for the operation, maintenance, preservation, or funding of:

- (1) public beach parking facilities;
- (2) beach access, maintenance, and renourishment;
- (3) traffic and parking enforcement;
- (4) first responders;
- (5) sanitation; and
- (6) litter control and removal for beaches.

HISTORY: 2021 Act No. 89 (S.40), Section 2, eff May 24, 2021

As Petitioner’s application to this Court demonstrates, the effort to reduce access did not end there. The Charleston Beach Foundation’s experience with local municipalities sheds considerable light on Petitioner’s assertion that the issues he raises are of significant public interest and statewide effect requiring statewide relief that can only be provided by this Court and for which Rule 245 is designed to address.

The Isle of Palms municipal authorities were so incensed by the State’s intervention in May 2021, that a year later, City officials held a well-publicized secession rally in which the Mayor, a town attorney, and other government officials dressed up as Founding Fathers, read a proclamation declaring separation from the State of South Carolina and the formation of the “Palm Republic.” This tone deaf proclamation adopted various emblems, including a Palm Republic flag depicting a middle finger against a marijuana leaf background.¹ These same government officials formed a companion limited liability company, “The Palm Republic, LLC” and on October 28, 2022, filed an original jurisdiction Petition with this Court, requesting an Order to restrain the State and the Department of Transportation from interfering in the municipality’s parking bans! See *The Palm Republic, LLC v. The State of South Carolina and South Carolina Department of Transportation*, Case No. 2022-001525. This Court denied the request on January 12, 2023, and The Palm Republic refiled in circuit court on February 2, 2023, at Case No. 2023-CP-10-00547. The circuit

¹ “South Carolina is too small for a republic, but too large for an insane asylum.” James Louis Petigru

court dismissed that case with prejudice on January 19, 2024, and it is a revealing Order that casts considerable light upon the beach communities’ resolve to thwart public access and upon the Petitioner’s justification in asking this Court to take this case in its original jurisdiction. In dismissing the case, the circuit court wrote: “Plaintiff, the Palm Republic, LLC, “advocates for preserving the natural resources of the Isle of Palms [“IOP”] **and the residents who live there.**”

Complaint ¶ 1. It alleges that before the provisions it challenges [quoted above] were enacted, **municipalities had unfettered authority** to institute paid parking on state highways falling with municipal boundaries.” (emphasis added) This procedural history provides important context illuminating the beach communities’ real motive in deploying their private parking enforcement strategy, the procedure Petitioner demonstrates is unlawful, citing among other significant controlling authority, the South Carolina Constitution, Article VIII, §9. To inhibit beach visitors, municipalities are hiring private bounty hunters to pursue parking “scofflaws” in exchange for a cut of the municipal fines. The narrow issue Petitioner puts before the Court—the delegation of government police power to private companies to issue parking citations in exchange for a cut of municipal fines—is undisputably unconstitutional, and the beach communities are aware that the longer they prevent an adjudication on the merits, the longer they can engage in obviously unlawful conduct and intimidate “day trippers” from visiting the beach. It is nothing short of astonishing that the beach communities assert their decision to delegate law enforcement to private parties with a financial stake in the prosecution is legal or ethical. If local governments incentivized city officials to enforce other municipal ordinances by offering, for example, police officers, code enforcement officers, or building inspectors a cut of any fine collected, the Court would strike it down in less than a second. The beach communities are deafeningly silent in failing to explain how the same conduct delegated to non-municipal employees is legal.

On February 21, 2024, the Isle of Palms delegated parking enforcement to a private firm, PCI Parking Services, LLC., a California company, which receives 24% of “gross parking revenues.” (Folly Beach uses the same company.) The “Parking Management Services Agreement” sets the compensation formula in paragraph B(2) as follows:

In return for the right to retain all Parking Revenue generated from the System, Contractor shall pay the City a monthly “Operating Payment.” The Operating Payment shall be equal to seventy-six percent (76%) of the total “Gross Parking Revenue.” The first Operating Payment hereunder shall be due to the City on or before the 20th day of the second month of this Agreement, with monthly payments being payable on or before the 20th day of all succeeding months during the Term of this Agreement.

- a. Gross Parking Revenues includes: all parking fees, permit fees, boot fees, immobilization Fees, and parking citation fines and fees collected by either Party from the System. Convenience fees assessed by third party technology providers shall be excluded in the calculation of Gross Parking Revenues.

The Charleston Beach Foundation is the only organization in the State dedicated to protecting the rights of South Carolina citizens to access the public beaches of the State. As the procedural history briefly summarized above demonstrates, the efforts of the Beach Foundation to protect against local governments who restrict beach visitors and privatize public beaches is something akin to whack-a-mole. Each time the Charleston Beach Foundation obtains success in keeping the beaches open, the municipalities devise a new strategy to impede visitors, and the Petitioner provides this Court with an opportunity to issue a statewide ruling of one of the most important public issues imaginable: the right of thousands of ordinary citizens to visit South Carolina beaches without being burdened by predatory private companies incentivized to issue parking citations. This issue falls squarely into the rationale and purpose of Rule 245, allowing this Court to take up case of public importance impacting tens of thousands of South Carolina citizens.

Argument 1. Petitioner raises a need for original jurisdiction to address a wide-ranging public issue and to prevent irreparable harm from occurring repeatedly to members of the public for whom there is no practical remedy and to address harms that can never be redressed without a statewide rule.

In resisting this Court’s discretion to exercise original jurisdiction under Rule 245, the Respondents correctly state that “the burden is on Petitioner to state facts showing *both* ‘material prejudice to the rights of the parties’ if this matter is determined in the circuit court in the first instance, *and* that the matter involves a significant public interest, an emergency, or some other compelling reason for this Court to entertain the matter in its original jurisdiction.” Respondent’s March 3, 2025 Return at page 5, citing *King v. Aetna Ins. Co.*, 168 S.C. 84, 167 S.E. 12, 15 (1932). Amicus is not sure why Respondents rely on a case decided over 50 years before the adoption of the *S. C. Carolina Appellate Court Rules* or a case that dismissed the petition because it decided, in part, petitioner was attempting to defeat federal court jurisdiction. The Respondents then assert Petitioner fails to show either a material prejudice or a significant public interest.

Treating these assertions in reverse order—because the second is more important and easily refuted—it is unsurprising that the beach communities are necessarily protective of their economically favored base. It is a matter of common knowledge that disproportionately wealthy beach owners resent the crowds of ordinary citizens who crowd “their” beach. As noted above, 1600 acres of beach front is already private and gated on Isle of Palms. As the Palm Republic’s 2022 application to this Court demonstrates, local governments are openly contemptuous of public access and Respondents—at least the Isle of Palms—laugh off a family’s decision to avoid the beach for fear of being saddled with an excessive fine as a “material” prejudice. The “let them eat cake” legal principle has not fared well in American jurisprudence, being rejected in every form. Separate but equal fell long ago, and it failed for the same reason: courts acknowledged “separate” is never “equal,” and paying bounties to private party parking enforcers is simply the latest strategy to discriminate. The General Assembly disagrees with the Respondents, and it has made clear that the public’s right to access the beaches is both a “material” right and a critical component of South Carolina economy:

SECTION 48-39-250. Legislative findings regarding the coastal beach/dune system.

The General Assembly finds that:

(1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions:

- (a) protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner;
- (b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;

See also the General Assembly's statement of public policy in the *Comprehensive Beach Management Plan* at § 48-39-320, S. C. Code, ann.:

Comprehensive beach management plan; pilot projects to address beach and dune erosion

(A) The department's responsibilities include the creation of a long-range and comprehensive beach management plan for the Atlantic Ocean shoreline in South Carolina. The plan must include all of the following:

- (1) development of the database for the state's coastal areas to provide essential information necessary to make informed and scientifically based decisions concerning the maintenance or enhancement of the beach/dune system;
- (2) development of guidelines and their coordination with appropriate agencies and local governments for the accomplishment of:
 - (a) beach/dune restoration and nourishment, including the projected impact on coastal erosion rates, cost/benefit of the project, impact on flora and fauna, and funding alternatives;
 - (b) development of a beach access program to preserve the existing public access and enhance public access to assure full enjoyment of the beach by all residents of this State;. . .**
(emphasis added)

Thus, the General Assembly has established unequivocally that public beach access is an important and fundamental legal principle, and the Respondents' efforts to interfere in public's access by rewarding heightened prosecution of parking enforcement presents a justiciable question over an important public interest.

The Respondent's other complaint is that the harm suffered by thousands of visitors subject to the beach communities' unlawful delegation of parking enforcement to bounty hunters is minor

and not irreparable because affected motorists can appeal the citations. Of course, the contract between the Isle of Palms and Folly Beach and PCI gives away the game. In the Orwellian vocabulary of the PCI contract, the Isle of Palms and Folly Beach intentionally gloss over the obvious illegality, calling the private party parking enforcement personnel “ambassadors”:

The workshops focus on customer service, reinforcing the employee’s role as an Ambassador and reinforcing the role that each of our employees play in representing our company and our clients.” (PCI Parking Management Contract, page 21) In the pay scale of the same contract, the parking enforcement personnel are listed as “ambassadors.”

As the supporting affidavit of Charleston Beach Foundation principal, Myra Jones, attests, the current regime of parking enforcement is neither diplomatic nor impacting only few visitors, most of whom will never be fully identified because they simply pay the exorbitant fine and resolve never to return to the beach.

It is not surprising that Respondents laugh off the inconvenience of paying an unjustified fine or the disappointment of a family deciding not to visit the beach because they are intimidated by aggressive and expensive parking enforcement. Moreover, public parking regulations in the beach communities can be subjective and sometimes even contradictory: four feet from the asphalt or all four wheels off the asphalt, *etc.*:

Sec. 8-2-2. - General prohibitions.

- (1) No person shall stop, stand, or park a vehicle in any of the following public places or manners except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, parking control officer, other authorized person, or traffic control device:
 - (a) On a sidewalk;
 - (b) In front of the entrance to a public or private driveway or alleyway, or within twenty feet (20') of the driveway entrance to any fire station;
 - (c) Within an intersection or within twenty-five feet (25') of the center of an intersection;
 - (d) Within thirty feet (30') of a stop sign;
 - (e) Within fifteen feet (15') of a fire hydrant or fire safety sprinkler, standpipe, or other fire protection system control valve, whether such valve is mounted on a building or on the ground;
 - (f) Along any street curb painted yellow;
 - (g) On a crosswalk or within twenty feet (20') of the center of any crosswalk;
 - (h) More than eighteen inches (18") from the street curb;

- (i) On the street pavement if there is no street curb, except as otherwise marked or posted. Vehicles shall be parked in such a manner so that all four (4) tires are off of the street;
- (j) In the opposite direction of the movement of traffic;
- (k) Along side or opposite any street excavation or obstruction when doing so would obstruct traffic or interfere with the excavation;
- (l) On the roadway side of any vehicle stopped or parked at the edge or curb of a street, sometimes called "double parking";
- (m) In front of a place of business for longer than two (2) hours between the hours of 9:00 a.m. and 5:00 p.m., except for Sundays and State and Federally sanctioned holidays, unless a different regulation is provided by sign or a pay station;
- (n) In any area of a public parking lot not marked as a single parking space;
- (o) In any parking space where payment is required, unless the proper payment has been deposited so that the occupancy of the space does not exceed the time indicated on the pay station receipt;
- (p) In any parking space designated and established for use by disabled persons unless the vehicle properly displays special designating plate or a placard issued and valid under State law;
- (q) On the approaches to or upon any bridge;
- (r) In a manner that blocks traffic or interferes with or blocks the passage of other vehicles;
- (s) At any place where official signs prohibit stopping, standing, or parking; or in any manner that violates any official sign or curb marking regulating stopping, standing, or parking;
- (t) A. Along the rights-of-way of Palm Boulevard between 21st Avenue and 40th Avenue in any of the following manners:
 1. Within four (4) feet of the pavement, except as otherwise posted;
 2. In any manner other than angled parking in the designated marked spaces on the land side of Palm Boulevard;
 3. In any manner other than parallel parking in the direction of traffic on the ocean side of Palm Boulevard and;
 4. Double parking on the passenger side of any vehicle that is parallel parked along the right-of-way on the ocean side of Palm Boulevard.
- B. Along the rights-of-way of Palm Boulevard between 42nd and 53rd Avenue in any of the following manners:
 1. Within four (4) feet of the pavement, except as otherwise posted;
 2. In any manner other than parallel parking in the direction of traffic; and
 3. Double parking on the passenger side of any vehicle that is paralleled parked along the right-of-way.
- (u) On a beach access as defined in section 5-4-15(C)(l), or on a public right-of-way in such a manner as to obstruct pedestrian use or authorized emergency vehicular use of a beach access. Any vehicle parked in violation of this subsection may be moved from its location upon order of any police officer.

Even a casual glance at this ordinance reveals how a parking “ambassador” could issue citations on subjective provisions, and the Court can see why allowing these disputes to be litigated in the usual manner in simultaneously pending separate actions invites inconsistent decisions and less

efficiency than this Court can provide through Rule 245 to address uniformly important legal issues of statewide public importance.

Even though over a mile of Isle of Palms' beach is private and gated, the municipality reduces crowd size further through its illegal parking enforcement to privatize the public beaches as much as possible to please a small segment of the ultra-wealthy at the expense of economically modest families whose only opportunity to visit a beach is as a "day tripper." (Irony is non-existent in beach communities because the public beaches are periodically "renourished" at considerable public expense.) Such a stratagem is the definition of irreparable harm because it is an injury that affects a fundamental right and recurs daily for which there is no readily available or practical remedy. The private contracts even inhibit motorists' efforts to challenge an improper citation. The "Key Performance Indicators (KIPI's) in the contract also demonstrate how the "ambassadors" are incentivized to make sure no one challenges a ticket:

Key Performance indicators (KPI's)

PCI Municipal Services will work with the city to establish a set of Key Performance Indicators for the Ambassador team. These metrics will be used to measure what matters. As some very smart people have often said, "What is measured matters!" The following are our recommended KPI's for the City of Isle of Palms parking enforcement program:

- Void Percentage (Voided Citations/Citations Issued)
- Citation rate (Citations Issued per hour)
- Customer Complaint Rate
- Appeals Outcome Rate (% of Citations Upheld on Appeal)
- Citation Diversity (Issuance per Violation Type)
- Scofflaw Capture Rate

(PCI Parking Contract Page 23)

The Respondents would never contend that being turned away from a lunch counter because of a diner's ethnicity is not a cognizable harm, and the effort to turn away "day trippers" by hyper-aggressive "ambassadors" who are financially rewarded for aggressive patrolling is the same harm, the only difference being that the discrimination is based on economic status and not race. It is

even worse for the families who can never be identified who decide to forego a beach visit because they are scared to run the risk of a financial penalty they cannot easily handle.

The unintended irony of the Respondents' legal position is that they acknowledge the delegation of government authority to private parties is illegal (see Respondents' Return at page 10 discussed in the following section), and they could easily agree to pause the program to keep the parties at *status quo ante*, which would allow the several circuit courts to consolidate the cases and develop a full trial record. Instead, Respondents pursue delay for the purpose of collecting as much as they can from an obviously illegal scheme.

Argument 2. The Respondents tacitly concede that municipalities cannot delegate legislative authority and/or municipal police powers to private companies, especially those that profit from the exercise of improperly delegated governmental powers.

As set forth above, the Respondents tacitly concede the answer to the legal issue before the Court is adverse to their legal position: “Even if there is some limitation on a home rule municipality’s authority to enter into contracts with private entities—which Respondents do not concede—a mere statement of that general proposition would not resolve Petitioner’s claims.” (Respondent’s Return at page 10) This straw man statement is a testament to the creativity of lawyers to ignore the obvious and perform the alchemy of turning clear into opaque. First, Petitioner never suggests the straw man assertion that a local government cannot enter “contracts with private entities.” Otherwise, there would be no paper towels in the City Hall bathroom, pens in the office, or paper on which to write. Respondents’ misdirection intentionally obfuscates the question Petitioner clearly raised to the Court: Can municipalities hire private parties—parking “ambassadors”—to conduct police duties and get paid out of the fines they assess? The General Assembly has already answered this question in § 5-7-60, SC Code, ann. (2024):

Any municipality may perform any of its functions, furnish any of its services, **except services of police officers**, and make charges therefor and may participate in the financing thereof in areas

outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. (emphasis added)

Thus, the debate over whether the beach communities can delegate parking enforcement to private parties is already answered. In addition, through misdirection, the Respondents attempt to gloss over an even more salient issue that Petitioner clearly raises and to which Respondents ignore: Can a municipality put a bounty on code enforcement? The private entities enforcing parking for the beach communities get a percentage of the municipal fines imposed. Such a bounty is obviously illegal whether it is paid to a private third-party parking “ambassador” or to a sworn police officer. If a motorist appeared at a Municipal Court to contest a parking ticket and received a \$200.00 fine, it would be more than merely surprising if the Court directed the “scofflaw” to pay \$48.00 to the officer and \$152.00 to the Court. It is not short of astonishing that Respondents assert to this Court that municipalities can both delegate law enforcement to third parties in violation of the statutory limitations on municipal authority and motivate parking enforcers by compensating them with a contingency fee for handing out citations. This formula for mischief is especially strong where beach communities’ parking rules, an example cited above, can be complicated and subjective. An innocent visitor could certainly miscalculate “four feet,” and be resentful at receiving a \$100.00 parking ticket for being 3 feet and 7 inches from the pavement. One would suppose that a law enforcement officer would exercise discretion in such a circumstance, but a privately paid “ambassador” who gets to pocket \$24.00 for each \$100.00 ticket might be inclined to apply the ordinance unfairly because of the financial reward. The application of these highly subjective rules has already engendered considerable controversy, and the

mechanism for an innocent motorist to challenge an improperly issued ticket is so procedurally difficult and financially burdensome that the majority simply pay an excessive fine for lack of a meaningful alternative. The municipalities' desire to motivate parking enforcement by giving the "ambassadors" 24% of the fines is the same illegal conduct as police departments assigning officers a quota of tickets to seek promotions in the department. See § 23-1-245, S. C. Code, ann.: "A law enforcement agency, department, or division may not require a law enforcement officer employed by the agency, department, or division to issue a specific amount or meet a quota for the number of citations he issues during a designated period of time." The procedure before the Court is worse: no tickets, no pay. This sorry situation demonstrates why the Respondents rely on bogus contentions that this issue "requires a fact-intensive inquiry into the nature of the duties to be performed, the limits of the authority conferred on the private company, and the amount of supervision exercised by the municipality." (Respondent's Return at page 10) No it doesn't. The General Assembly has spoken clearly. As Petitioner rightfully identifies, the longer this blatantly illegal program continues, the longer the beach communities will pocket illegal money. The Respondents never explain how extensive discovery is necessary to flesh out an indisputable and fundamental principle of law that municipalities cannot delegate police functions to third parties or share fines with enforcement officers. Similarly, neither discovery nor constitutional analysis is required to condemn the practice of rewarding code enforcement officers, whether commissioned officers or private parties, with a contingency fee based on citations issued.

Municipalities have no inherent governmental authority to act. Whatever powers they possess, they possess from the General Assembly. See § 5-7-30, S. C. Code, ann.: "Each municipality of the State, in addition, to the powers conferred to its specific form of governance, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of the State . . ." See State Constitution Article VIII § 9. The authority of

municipalities under this statutory grant of power does not include the right to ignore state law. “The General Assembly has specifically granted municipalities the authority to enact ordinances so long as the ordinances are not ‘inconsistent with the Constitution and general law of this State.’ S.C. Code Ann. §5-7-30 (Supp.2017).” *Olds v. City of Goose Creek*, 424 S.C. 240, 818 S.E.2d 5 (2018) (City could not redefine General Assembly’s grant of power to collect a business license tax on “gross income” into a power to collect a license tax on “gross receipts.”) The municipalities here are attempting to violate the law in the same manner by ignoring the General Assembly’s clear statutory directives on the limitations of police power and the public’s access to public beaches. See § 48-39-320 Comprehensive beach management plan; pilot projects to address beach and dune erosion (South Carolina Code of Laws (2025 Edition))

Argument 3. Even if the Court declines to exercise its original jurisdiction, it can protect all parties’ interests by returning the parties to *status quo ante* while the parties develop a record.

Even if this Court declines to exercise jurisdiction over this case under Rule 245, it can still fashion a remedy that protects all the parties and allows the case to be developed in the various circuit courts without prejudice to the Petitioner. The Court could decline to take the case in its original jurisdiction while entering an Order preserving the *status quo ante* while the cases are litigated in the trial courts. Even Respondents must concede that a municipal proposal to delegate police power duties to a private party is highly unusual and unprecedented. Likewise the Respondents must concede that if a court strikes down the procedure as unlawful, it will be extremely burdensome to track down hundreds and hundreds of motorists who received unlawful parking citations and paid fines. The beach communities cannot identify any prejudice from allowing their police departments from continuing to enforce parking regulations since that has been the procedure for over a hundred years. The beach communities will still enforce parking

regulations, still issue citations, and still receive fines, but in a lawful manner, and an order preserving *status quo ante* not only accelerates a disposition of Petitioner's case whether in this Court in its original jurisdiction or below but also promotes judicial economy.

Conclusion

The Petitioner's January 17, 2025, Petition seeking to invoke this Court's original jurisdiction fits squarely within Rule 245. Petitioner raises a fundamental issue addressing a fundamental right that touches potentially every citizen of South Carolina. The issue of delegating law enforcement to private individuals in exchange for a portion of the fines assessed is an astonishing assertion contrary to both the South Carolina Constitution and well-established statutory precedent. The bounty hunter plan on parking enforcement inflicts intolerable harm on a vast class of citizens and raises a question of utmost public importance. The Charleston Beach Foundation respectfully requests this Court grant the Petitioner's application to accept the case in the Court's original jurisdiction, set a briefing schedule and address the issue on the merits. In the alternative, the Charleston Beach Foundation submits that an order preserving the *status quo ante* is potential middle ground but, as Petitioner points out, the beach communities should not be allowed to profit from their own wrongdoing by procuring unnecessary delay on a principle of law that is not in doubt.

Respectfully submitted,

April 2, 2025

/s/Thomas R. Goldstein
Thomas R. Goldstein, Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 729 0928
tgoldstein@cobblaw.net