

STATE OF SOUTH CAROLINA
BEFORE THE SUPREME COURT
CASE NUMBER: [NOT YET ASSIGNED]

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

The Palm Republic, LLCPetitioner

vs.

The State of South Carolina and
South Carolina Department of Transportation Respondents.

COMPLAINT

Petitioner, The Palm Republic LLC, hereby complains of the Defendants as to the illegality and unconstitutionality of certain legislative and agency actions as follows:

BACKGROUND

1. Petitioner The Palm Republic LLC is a private entity established under the laws of the State of South Carolina, located and operating on the Isle of Palms in Charleston County, SC. Petitioner advocates for preserving the natural resources of the Isle of Palms and the residents who live there, and for taking such actions as are necessary to protect the quality of the island and its natural resources, while also encouraging regulation of the fair use of the beaches within the Isle of Palms by tourists without unduly burdening the Isle of Palms, its infrastructure, resources, government, or citizens.

2. Petitioner possesses standing to bring this action pursuant to the public interest standing requirements of state law.
3. The State of South Carolina is named as a Defendant herein because this action challenges the constitutionality of recent legislation. The Attorney General will be served with a copy of the summons and complaint in this action pursuant to Rule 4(d)(4)(A), SCRCP, but no specific relief is sought against the Attorney General unless the Attorney General attempts to support or enforce the actions of DOT complained of hereinbelow.
4. Defendant South Carolina Department of Transportation (“DOT”) is an agency of the Executive Branch and is vested with only such limited powers as enumerated by the General Assembly. S.C. Code § 57-1-30.
5. Among its powers is the duty to build and maintain the public highways and bridges of the state, and to cooperate and assist municipalities in certain matters related to the highways of the state that are located within the municipalities.
6. The Secretary of Transportation is an officer of the DOT and is required, inter alia, to represent the Department in its dealings with local governments. S.C. Code § 57-1-430(A).
7. The DOT does not have the authority to override decisions of municipalities regarding parking or lane striping on those portions of the state highway system which lie within the geographic boundaries of municipalities of the state. S.C. Code §5-7-30.
8. Sections of the state highway system that are within municipal corporations of the state are within the exclusive jurisdiction and control of the municipalities, as is parking on those portions of the state highway system within the municipalities and the

municipalities retain the right to construct and maintain off-street parking facilities at its discretion¹. S.C. Code § 5-29-40 and § 57-5-140.

9. The Isle of Palms (“IOP”) is a duly constituted municipality of the State of South Carolina which is organized with a city council (hereinafter “City Council”).
10. The powers of a municipality shall be liberally construed in favor of the municipality. S.C. Code § 5-7-10.
11. As a municipality of the State, IOP is expressly permitted to enact regulations, resolutions and ordinances including the exercise of power in relation to roads and streets, including parking on those portions of the state highway system as are within the geographic boundaries of the municipality. S.C. Code §5-7-30.
12. IOP is obligated to keep in good repair all the streets and bridges within the limits of the city and is vested with all the powers, rights and privileges within the limits of such city that are given to the governing bodies of the several counties of this State. S.C. Code § 5-7-120.
13. In 2015, the SC DOT approved a proposal by the IOP “to manage resident and visitor parking demands well into the future.” In 2017, DOT conducted a review of IOP plans again, resulting in DOT approval and reaffirmation as to IOP’s exclusive authority over parking facilities on the highways within the municipality.
14. As a municipality of the State, IOP is expressly permitted to adopt emergency ordinances necessary to meet public emergencies affecting life, health, safety, or property of the

¹ DOT must compensate municipalities for in the installation of rights-of-way on the public highways within the municipalities. S.C. Code § 57-5-150.

people, with such emergency ordinances effective immediately but expiring automatically as of the sixty-first day following the date of enactment per S.C. Code § 5-7-250(d).

15. After the nation was plunged into a state of emergency as a result of the Covid-19 pandemic, Governor Henry McMaster issued a series of Emergency Executive Orders implementing necessary prohibitions and mandates throughout the State of South Carolina in an effort to curb the spread of Covid-19.
16. On March 30, 2020, Governor Henry McMaster issued Executive Order No. 2020-16 (Emergency Access Restrictions for Public Beaches and Waters) which, *inter alia*, closed all public beach access sites within the State as a result of the State and Federal declarations of emergency then existing, finding that “individuals have continued to patronize the State’s beaches and access the State’s public waterways without heeding the instructions of public health officials or adhering to appropriate ‘social distancing’ practices.”
17. On April 12, 2020, in Executive Order No. 2020-23, the provisions of Executive Order No. 2020-16 were extended and ordered to remain in effect for the duration of the State of Emergency or until further Executive Order of the Governor.
18. On April 20, 2020, in Executive Order No. 2020-28, Governor McMaster amended Section 1(B) of Executive Order No. 2020-16 to rescind his prior order and directive that closed all public beach access points in the state, to include any adjacent or associated public parking lots, and restored to the municipalities the authority to issue such orders as may be necessary over public beach access points to close, in whole or in part, or otherwise restrict the use of any such public beach access points, to include any adjacent

or associated public parking lots or other public facilities if determined by the municipality that such action was necessary to preserve and protect public health.

19. On July 15, 2020, City Council acted pursuant to its statutory authority and the authority vested in it by Governor McMaster's Executive Order 2020-28, when it passed Emergency Ordinance 2020-11, which ordered certain restrictions on activity within IOP, modified its existing parking restrictions to prohibit public parking in certain areas of the public streets for all persons except residents with proper decals, and enacted a provision exempting any person parking in the restricted area for business purposes in the public street parking areas otherwise restricted to residents.
20. On August 13, 2020, City Council again acted pursuant to its statutory authority and the authority vested in it by Governor McMaster's Executive Order 2020-28. On that date, City Council passed Emergency Ordinance 2020-12, which amended the parking restrictions enacted in Emergency Ordinance 2020-11 to prohibit beach parking on the landside of Palm Boulevard between 21st and 40th Avenue, on one side of 3rd through 9th Avenues as determined by Police and Fire Department staff, limiting parking on Hartnett Boulevard, between 27th and 29th Avenue to recreational department use only and authorizing all metered parking on the public streets to be enforced from 8:00 a.m. through 6 p.m. until October 31, 2020.
21. On September 22, 2020, the City Council adopted Emergency Ordinance 2020-13, which extended the parking regulations enacted in Emergency Ordinance 2020-12 through December 12, 2020.

22. No further Emergency Ordinances were enacted relative to the subject matter of this action, and Emergency Order 2020-13 expired pursuant to its terms in accordance with S.C. Code § 5-7-250(d).
23. As a result, the provisions of S.C. Code § 5-7-30 became operative again, and IOP continued to be vested with exclusive authority to regulate on street parking on those roads of the state highway system which are within the geographic limits of IOP.
24. Senator Larry Grooms introduced 2020 Senate bill S*0040 on December 9, 2020 which, *inter alia*, originally sought to amend S.C. Code §§ 5-29-30 and 57-5-840, and to enact §57-5-845 to “provide that parking on state highway facilities on barrier islands is free and any restrictions may only be made by the Department of Transportation” among other amendments.
25. In February 2021, then-DOT Assistant Secretary Christy Hall notified IOP that it was revoking the authority granted to it during the 2017 review to regulate public parking on the state highway system roadway within the municipality.
26. Almost immediately, under cover of darkness and without the approval or even notice to the governing body of IOP (City Council), DOT began to unilaterally and illegally change the line striping on the Isle of Palms Connector² to add bicycle and pedestrian lanes and eliminated the emergency lane on the bridge, which negatively impacts ingress and egress to the island and endangers the lives and safety of both citizens and visitors on the Island.

² The Isle of Palms connector bridge, also called the Clyde Moultrie Dangerfield Highway, was constructed in 1990-1993 and connects SC Highway 703 on the Isle of Palms with U.S. Highway 17 in Mount Pleasant. The Connector is located, in part, within the municipal jurisdiction of IOP and the placement of striping on the bridge is therefore within the jurisdiction of IOP.

27. IOP officials repeatedly objected to the DOT's unilateral decision to change the lane striping on the IOP Connector, citing legal authority and safety concerns with no success. *See* footnote 13 of the Petition, which will be included in the Appendix³.
28. Assistant Secretary Hall attended a special meeting of the IOP City Council on February 20, 2021, and stated, "there is no dispute that South Carolina DOT, we have exclusive authority over the state-owned highway system" and her "rule of thumb... at the time was is what the local governments doing in this emergency situation fair and reasonable? Do I feel like they are making fair and reasonable decisions based on what they feel is appropriate to protect their communities?"
29. Assistant Secretary Hall said that DOT had allowed municipalities broad discretion until IOP's decisions allegedly "crossed over that fair and reasonable threshold for us" which permitted DOT to take unilateral action as to the parking and traffic configuration on state highways within the municipality of IOP.
30. At that meeting Assistant Secretary Hall said DOT had "made a mistake" approving the 2015 and 2017 parking plans for IOP and she expressly rejected any authority of IOP to regulate parking on streets within the City that are part of the state highway system. "Nowhere in our [prior approval and] review which is widely considered as the approval authority for the parking plans, nowhere in our review was equity considered. Nowhere did we look at whether it afforded non-residents quality of privilege... or whether it was fair and reasonable."

³ For ease of reference, all exhibits to the Petition and those Exhibits which are incorporated into this Complaint will be filed with the Court in an Appendix upon grant of the Petition.

31. On May 24, 2021, Governor McMaster signed amended R-101, S.40 into law, and so notified Senator Grooms by letter of his action, rationalizing that the legislation was “a reasonable effort to clarify existing law in a manner that will facilitate further cooperation and compromise.” In his letter, Governor McMaster advised Senator Grooms that he had ordered DOT Secretary Christy Hall to “explore any and all options and potential resolutions to both preserve public access” to the State’s beaches, noting that Secretary Hall was “familiar with the tensions involved, and she understands the issues and [unspecified] expectations.”
32. The amendment did not expressly or impliedly repeal S.C. Code § 5-7-30, as S*0040 had been amended prior to its passage to delete any amendment to § 5-7-30. Governor McMaster omitted any reference to S.C. Code § 5-7-30 in his letter to Senator Grooms. Accordingly, that code section, which codified existing common law for decades as the general law of the state, remains in effect.
33. Since that time, DOT has rejected reasonable efforts of IOP officials to be heard or to consider its arguments regarding the IOP connector and the on-street parking on those portions of the state highway system that lie within the geographic limits of the City.
34. DOT’s unlawful and unilateral work on the IOP Connector continues unabated despite DOT’s knowledge of IOP’s position, that its action is illegal and harmful to the public interest and the property interests of IOP and its citizens.
35. After the Governor signed R-101, S.40 into law, DOT has taken the position that IOP has no authority to regulate parking on the streets within the municipality which are part of the state highway system, and the City is now obligated to provide free public parking for beach access in accordance with § 57-7-845.

36. The enactment of R.101 and S*0040, codified as an amendment to S.C. Code § 57-5-840 and the enactment of S.C. Code § 57-5-845 violate the South Carolina Constitution and applicable general law for reasons further described and referenced below.
37. The Palm Republic LLC seeks an order of this Court finding the subject legislation unconstitutional and issuing a temporary and permanent restraining order prohibiting DOT from attempting to interfere with or regulate parking within the municipality and from making changes to the lane striping on that portion of the IOP connector that lies within the municipality's geographic limits without the express agreement of the governing body of IOP.
38. Petitioner is informed and believes that there is irreparable damage occurring to IOP, its residents and the public at large as a result of the acts and omissions of DOT as described herein, for which there is no adequate remedy at law, such that temporary and permanent injunctive relief from this Court is required.

FIRST CAUSE OF ACTION

(Special Legislation/Home Rule – S.C. Const. Art. III, §§ 17, 34(IX), and art. X)

39. Each and every paragraph set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.
40. Article III, § 34(IX) of the South Carolina Constitution prohibits the General Assembly from enacting “local or special laws concerning” certain subjects. While Section 34(IX) does not categorically prohibit all special legislation, it does prohibit legislation that lacks a reasonable basis by which the law is applicable to some – but not all – things in a particular class.

41. On information and belief, a legislative mandate which requires only barrier islands to provide free public parking on portions of the state highway system that lie within the municipal borders of four specific communities violates Article III of the Constitution.
42. The legislative mandate at issue here appears to designate only select tourist areas/attractions within the state in that it requires “free” parking facilities for beaches on barrier islands. It is hard to imagine more “special” legislation than provisions that mandate free public parking for beaches exclusively, but leave other tourist attractions in the state properly within the regulation of the municipalities in which those tourist attractions are located.
43. The enactment of R.101 and S*0040 therefore must be vacated as violative of the constitution and the general law of the State as expressed in S.C. Code § 5-9-30.
44. On information and belief, Petitioner is entitled to an order declaring the special legislation challenged herein, which affects only a tiny percentage of the property and only four municipalities within the state by requiring mandatory free parking in municipalities on barrier islands, isolating them from other tourist attractions in the state and forcing only the citizens and municipal governments on barrier islands to provide free public parking while other municipalities which house other tourist attractions may still collect fees for providing municipal infrastructure for municipal services, invalid and unconstitutional.

SECOND CAUSE OF ACTION

(Due Process – S.C. Const. Art. I, Section 15)

45. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.

46. All municipalities have the right to establish and regulate on-street parking facilities. S.C. Code. § 5-29-30.
47. For more than 70 years, municipalities in South Carolina have had the exclusive right to establish and regulate parking meters, curb lines or other facilities to regulate the parking of motor vehicles on any street of the state highway system within the corporate limits of the municipality and to require “the payment of a charge for the right to make use of any portion of any street set apart for motor vehicles.” § 5-29-30.
48. To the extent that the enactment of R-101, S*0040 operated to impliedly repeal S.C. Code § 5-29-30, which is expressly denied, such legislative and executive action, now codified at S.C. Code § 57-5-840 (as amended 2021) and § 57-5-845 (as enacted 2021), constitutes a taking of the property rights of the governing body of IOP, which acts on behalf of its citizens, in that it forces IOP and its citizens (and select other municipalities and their citizens) to provide free parking for visitors to the beaches, without providing reasonable compensation for the deprivation of IOP’s and its citizens’ prior existing property rights as set forth by prior existing law. Additionally, to do so would deprive IOP of the statutory right to govern the parking on those portions of the state highway system that lie within the municipality of IOP.
49. Accordingly, IOP has been deprived of the ability to charge visitors for the privilege of parking on those portions of the state highway system that lie within the municipal limits, resulting in IOP’s inability to require visitors to help fund and offset of attendant costs for municipal services required to enable and maintain such access and visitation. Such costs must be incurred, but as a result those charges are solely and unlawfully borne by IOP citizens, acting through its duly elected city council.

50. Such action has been without payment of just compensation and without due process of law, which constitutes an unlawful taking of property from the municipality of IOP and its citizens.
51. To the extent that the enactment of R-101, S*0040 operated to impliedly repeal § 5-29-30, which is expressly denied, such legislative and executive action was violative of Article I, Section 15 of the South Carolina Constitution, and must be stricken.
52. Petitioner therefore seeks and order vacating the referenced special legislation and resulting unlawful and unconstitutional effects thereof.

THIRD CAUSE OF ACTION

(Deprivation of Privileges and Property – S.C. Const. Art. I, § 3)

53. Each and every allegation of the paragraphs set forth above are incorporated herein where relevant, as fully as if repeated verbatim herein.
54. Article I, Section 3 of the South Carolina Constitution reserves to the people of this state and their municipal representatives, who speak as their collective voice, of the privileges and property guaranteed by the Constitution.
55. To the extent that the enactment of R-101, S*0040 operated to impliedly repeal § 5-29-30, which is expressly denied, such legislative and executive action, now codified at S.C. Code § 57-5-840 (as amended 2021) and § 57-5-845 (as enacted 2021), constitutes a deprivation of the Constitutional privileges and property of the citizens of IOP and their municipal representatives, who speak as the collective voice of its citizenry, abridging and abolishing the privileges and property of the citizens of IOP and their municipal representatives by requiring the citizens of IOP and their municipal representatives to

bear the costs and burdens of providing free public parking within the municipal boundaries of IOP.

56. Petitioner also seeks a temporary and permanent injunction to prohibit DOT from attempting to enforce the provisions of S.C. Code § 57-5-840 (as amended 2021) and S.C. Code § 57-5-845 (as enacted 2021).
57. Petitioner also seeks an order of this Court requiring and mandating that DOT return the IOP connector to the lane striping configuration as it existed prior to the DOT's unlawful usurpation of municipal authority and specifically to return the emergency traffic lane to that portion of the IOP connector that lies within the geographic boundaries of IOP.
58. Plaintiff reserves the right to amend this complaint as may be determined appropriate and necessary to effectuate the relief sought herein.
59. Plaintiff reserves the right to seek attorney's fees as may be permitted by law.

Wherefore, Plaintiff seeks an order:

- A. Vacating R.101 and S*0040 as signed and enacted by the Governor as violative of the constitution and the general law of the State as expressed in S.C. Code § 5-9-30.
- B. Vacating the referenced special legislation and resulting unlawful and unconstitutional effects thereof including a mandate that the IOP Connector be returned to its original configuration as existed prior to the unlawful acts of the DOT.
- C. Temporarily and permanently enjoining DOT from unlawfully imposing restrictions and exert control over those portions of the state highway system that are located within the municipal limits of IOP.

D. And for such other and further relief as the Court deems appropriate to remediate the unlawful activity described herein.

Respectfully submitted,

s/ Desa Ballard
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