STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
CHARLESTON BEACH FOUNDATION, LLC, f/k/a CHARLESTON AREA PUBLIC BEACH ACCESS AND PARKING GROUP,	)	Civil Action No. 2020-CP-10-03374
	)	**FINAL ORDER**
Plaintiff,	)	
vs.	)	
CITY OF ISLE OF PALMS,	)	
Defendant.	)	

INTRODUCTION

The Plaintiff Charleston Beach Foundation, LLC has brought this action against the Defendant City of Isle of Palms pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.* The Plaintiff also alleges that the City's imposition of a $100 fine "for parking on a state-owned, public right-of-way" violates the Excessive Fines Clause of the South Carolina Constitution. A bench trial was held on January 12, 2023.

After careful consideration of the testimony and exhibits presented at trial as well as the legal arguments of counsel both during the trial and in proposed orders, the Court makes the following findings of fact and conclusions of law in according with Rule 52(a), SCRCP:

PROCEDURAL HISTORY AND FINDINGS OF FACT

On August 4, 2020, an unincorporated association identified in the Complaint as "Charleston Area Public Beach Access and Parking Group" brought this action against the Defendant City of Isle of Palms seeking a preliminary and permanent injunction from the enforcement of Emergency Ordinance 2020-11, which was adopted by City Council on July 15, 2020 and was effective on July

17, 2020. The unincorporated association alleged that Emergency Ordinance 2020-11 was enacted by City Council in violation of FOIA.

On May 12, 2021, the Plaintiff Charleston Beach Foundation, LLC filed an Amended Complaint, which is the operative pleading when this action was called to trial. Charleston Beach Foundation, LLC was formed on August 25, 2020.

On July 15, 2020, the City Council held an emergency meeting to consider Emergency Ordinance 2020-11. An agenda for the emergency meeting was issued identifying the meeting's purpose as follows: "Consideration of Emergency Ordinance 2020-11, [a]n ordinance to prohibit coolers, chairs and umbrellas on the beach, prohibit live entertainment and amplified music after 9:00 p.m., limit to 50% indoor occupancy at restaurants and bars and other emergency measures proposed for the safety and public health of the City of Isle of Palms." *See*, Agenda for July 15, 2020 Emergency Meeting. During the meeting, a motion was made to "prohibit parking on the landside of Palm Boulevard, the finger streets of 3rd-9th avenues, and to reduce parking availability in the municipal lots by 50% effective Friday 17, 2020 and lasting 30 days." That motion passed by a 7-1 vote. A subsequent motion was made to "make parking along Hartnett Boulevard between 27th and 29th avenues and the Recreation Center Recreation Center resident parking only for the next 30 days." That motion passed unanimously. A motion was then made to "eliminate parking along both sides of Palm Boulevard for the next 30 days with 24/7 enforcement, while allowing for properly decaled residents to park in that area." That motion passed by a 6-2 vote. A motion was next made to "allow for properly licensed businesses to park where work is being conducted as long as proper signage is displayed in the vehicle." That motion passed unanimously. Lastly, a motion was made to "require the City to provide parking signage for members of the Turtle Team." That motion passed by a 7-1 vote.

Emergency Ordinance 2020-11 was enacted which included the following provision that is at issue in this litigation:

> Beach Parking is prohibited on Palm Boulevard (all sides) and 3rd through 9th Avenues; and all municipal lots will be reduced to fifty-percent (50%) capacity. Parking on Hartnett Blvd. between 27th and 29th shall be for residential recreation department uses only. These restrictions shall be enforced 24/7, and will remain in place for thirty (30) days or until Council amends. Residents (with proper decals) will be allowed to park along Palm Boulevard. Any persons parking in the above areas for business purposes (with proper signage) are exempt from this prohibition. Groups, such as Carolina Sea Turtles, may apply for parking passes from the Police Department during this period to allow for parking in the above areas.

See, Emergency Ordinance 2020-11. The ordinance also included numerous recitals which provide the legislative history and emergency bases for the ordinance.

CONCLUSIONS OF LAW

I. Standing

As our Supreme Court has explained, "[s]tanding to sue is a fundamental requirement in instituting an action." *Bodman v. State of South Carolina*, 403 S.C. 60, 742 S.E.2d 363, 366 (2013). Under South Carolina law, "[f]or a plaintiff to possess standing three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. Second, a causal connection must exist between the injury and the challenged conduct. Third, it must be likely that a favorable decision will redress the injury." *Carnival Corp. v. Historic Ansonborough Neighborhood Association*, 407 S.C. 67, 753 S.E.2d 846, 850 (2014).

As to the Plaintiff's FOIA claim, the Defendant asserts that the Plaintiff Charleston Beach Foundation, LLC lacks standing because the Plaintiff was not even in existence at the time of the July 15, 2020 emergency meeting. This Court agrees. Charleston Beach Foundation, LLC was not

formed until August 25, 2020. Thus, Charleston Beach Foundation, LLC lacks standing to argue that it was denied proper notice of the July 15, 2020 emergency meeting.

As to the Plaintiff's excessive fines claim, the Plaintiff has failed to establish associational standing. The Supreme Court has held that "a plaintiff that is an association ... may possess standing by virtue of associational standing on behalf of its members. An association has associational standing if one or more of its members will suffer an individual injury by virtue of the contested act." *Carnival Corp.*, 753 S.E.2d at 850. "The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." 753 S.E.2d at 851. In *Carnival Corp.*, the Supreme Court found that the plaintiffs had not demonstrated associational standing because "they assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing." *Id.* Similarly, in the case at bar, the Plaintiff has not identified its members, has not shown that its members have sustained an injury-in-fact, and has presented no evidence to support its facial challenge to the parking fines as codified in Section 8-2-14(a) of the Code of Ordinances. The Plaintiff asserts only generalized grievances by the public as whole, as in *Carnival Corp.*, but such grievances are not sufficient to establish associational standing. For these reasons, the Court finds that the Plaintiff lacks standing and dismisses on that basis.

II. FOIA Claim

Nonetheless, even if the Court were to find that the Plaintiff has standing to sue for the alleged insufficiency of notice for the July 15, 2020 emergency meeting, the Defendant is still entitled to judgment on the FOIA claim. Specifically, the Plaintiff alleges that City Council violated FOIA's notice provisions during the emergency meeting held on July 15, 2020. South

Carolina law, however, explicitly provides that the requirements under FOIA do not apply to emergency meetings. Section 30-4-80, which is the FOIA notice statute, states that "[t]his requirement does not apply to emergency meetings of public bodies." S.C. Code Ann. § 30-4-80(A). Likewise, the emergency ordinance statute states: "An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or *public notice requirements*." S.C. Code Ann. § 5-7-250(d). (Emphasis added).

In *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785, the Supreme Court recognized that "the General Assembly appears to have identified three broad classes of meetings and set forth different notice requirements for each." 760 S.E.2d at 791. The Supreme Court noted that "[t]he General Assembly did not specifically define any of the foregoing types of meetings in FOIA." *Id.* Nonetheless, with respect to emergency meetings, the Supreme Court concluded: "*This requirement* [posting a notice including the agenda, date, time, and place not less than twenty-four hours before the meeting as required for called, special, or rescheduled meetings] does *not* apply to emergency *meetings* of public bodies." *Id.* (Bracketed language and emphasis in original). The July 15, 2020 meeting was noticed on the agenda as an "emergency meeting," and this Court finds that designation is supported by the State of Emergency declared by the federal, state, and local governments due to the COVID-19 pandemic which was unprecedented and in its early stages in July 2020. The record includes the Governor's Executive Orders which include recitals that provide factual support for the declaration of the State of Emergency. While the Court may certainly take judicial notice of the State of Emergency which was ongoing in July 2020, the record includes several Executive Orders of Governor Henry D. McMaster including the Executive Order in effect on July 15, 2020.

Moreover, by Executive Order, Governor McMaster delegated express authority to municipalities in 2020 to restrict access to its beaches and public facilities, including parking.

Pursuant to Executive Order No. 2020-28, issued April 20, 2020, the Governor rescinded his order closing all public beach access points but, in doing so, he authorized municipalities 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 it is determined that such action is necessary to preserve or protect public health. This authorization shall remain in effect for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded by subsequent Order." See, Executive Order No. 2020-28, § 1.A. In Executive Order No. 2020-48, issued July 26, 2020, the Governor extended the State of Emergency for an additional fifteen days. The Governor also confirmed that Executive Order No. 2020-28 remains "in full force and effect." See, Executive Order No. 2020-48, § 1, ¶ I. Thereafter, on August 2, 2020, the Governor issued Executive Order No. 2020-50 which includes the following:

> I hereby authorize any agency, department, county, municipality, or political subdivision of the State owning, operating, managing, or otherwise having jurisdiction and control over any 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 facilities, if it is determined that such action is necessary to preserve or protect public health. This authorization shall remain in effect for the duration of the State of Emergency, unless otherwise modified, amended, extended, or rescinded by subsequent Order.

Executive Order No. 2020-50, § 10.

Additionally, as an alternative basis for denying relief on the Plaintiff's FOIA claim, this Court finds that the Plaintiff's challenge to Emergency Ordinance 2020-11 is moot. In *Byrd v. Irmo High School,* 321 S.C. 426, 468 S.E.2d 861 (1996), the Supreme Court explained that "[a] justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." 468 S.E.2d at 864. "This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Id.* The Supreme

Court further ruled that "[a] case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant *effectual relief" Id.* In *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006), the Supreme Court addressed the issue of mootness as it pertained to a FOIA claim and affirmed the Circuit Court's ruling that the case was moot because the defendant provided the requested documents. In this case, there is no basis for this Court to issue declaratory or injunctive relief. The Plaintiff sought a preliminary injunction which was denied by Judge R. Kirk Griffin by Order filed August 19, 2020. As an emergency ordinance, Emergency Ordinance 2020-11 expired on the 61st day. S.C. Code Ann. § 5-7-250(d). Moreover, the "Beach Parking" provision which is challenged in this litigation was in effect only for thirty days based on the limiting language contained in Emergency Ordinance 2020-11. Because Emergency Ordinance 2020-11 is no longer in effect, and the "Beach Parking" provision expired within thirty days after enactment, there is no basis for the Court to grant any declaratory or injunctive relief.

III. Excessive Fines Claim

In its Fourth Cause of Action, the Plaintiff Charleston Beach Foundation, LLC alleges as follows: "The City's imposition of a one hundred ($100.00) dollar fine for parking on a state-owned, public right-of-way is excessive and violated Article § 15 [sic] of the South Carolina Constitution." *See*, Amended Complaint, ¶ 22. Although not specifically identified in the Amended Complaint, the Court has determined based on arguments at trial that the Plaintiff is challenging the constitutionality of parking fines that were adopted by City Council in Ordinance 2020-02, on May 29, 2020. The parking fines are codified in Section 8-2-14(a) of the Code of Ordinances which provides:

> (a) If the owner of a vehicle in violation of this article admits the violation and pays the penalty or appears before the Municipal

> Court pursuant to section 8-2-13 and is found guilty, the penalty shall be as follows:
>
> (1) Parking in violation of any regulation related to paid parking spaces, parking pay stations or kiosks along the public streets or in the public parking lots: $50.00.
> (2) Parking in violation of section 8-2-5(b) (loading zone regulation): $200.00.
>
> (3) Parking in violation of any other parking regulation: $100.00.

The Plaintiff is not challenging the $50 fine for "paid parking spaces, parking pay stations or kiosks along the public streets or in the public parking lots" or the $200 fine for parking in loading zones. The $100 fine, which is being challenged, applies to the "violation of any other parking regulation," which as discussed below, applies to a number of different parking offenses.

As a threshold issue, it is important to recognize that the Plaintiff has made only a facial challenge – and not an as-applied challenge – to the $100 fine. As our Supreme Court recently explained in *Richardson v. Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars*, 437 S.C. 290, 878 S.E.2d 868 (2022), "[b]ecause [the plaintiff] chose to assert a facial challenge and not an as-applied challenge, he must demonstrate this scheme is unconstitutional in all its applications." 878 S.E.2d at 871. *See, State v. Legg*, 416 S.C. 9, 785 S.E.2d 369, 371 (2016) ("[a] facial challenge is the most difficult … to mount successfully as it requires the challenger to show the legislation at issue is unconstitutional in all its applications"). Additionally, the Supreme Court explained that "[o]ur precedent imposes a high threshold for finding a statute unconstitutional. All statutes are presumed constitutional and will, if possible, be construed as to render them valid." *Richardson*, 878 S.E.2d at 871. The same is true with municipal ordinances. "A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." *Id.*

In *Richardson*, the Supreme Court recognized that the same standard or test is applied to an Excessive Fines claim under Article I, § 15 of the South Carolina Constitution as under the Eighth Amendment to United States Constitution. The Supreme Court also explained that an excessive fines claim is "inherently fact-intensive" because the proper test is one of proportionality: a fine violates the Excessive Fines Clause "if it is grossly disproportionate to the underlying criminal offense." *Richardson*, 878 S.E.2d at 877, *citing United States v. Bajakajian*, 524 U.S. 321, 334 (1998). Thus, our Supreme Court recognizes that because an Excessive Fines claim "is inherently fact-intensive, it fits well within the scope of an as-applied challenge, not within the scope of a facial challenge." *Id.*

In *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 414 S.C. 33, 777 S.E.2d 176 (2015), the Supreme Court ruled that "[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause ... is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." 777 S.E.2d at 205, *citing Bajakajian*, 524 U.S. at 334. The Supreme Court further explained that "legislative pronouncements regarding the proper range of fines represent the collective opinion of the American people as to what is and is not excessive. Given that excessiveness is a highly subjective judgment, the courts should be hesitant to substitute their opinion for that of the people." *Id.*

In that respect, this Court remains cognizant of the separation of powers doctrine as embodied in Article I, Section 8 of the South Carolina Constitution. As our Supreme Court has explained, "[i]n our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the 'judicial power.' Accordingly, courts are limited to resolving cases and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances." *Carnival Corp. v. Historic Ansonborough*

Neighborhood Association, 407 S.C. 67, 753 S.E.2d 846, 853 (2014). It is well settled that legislative power includes "the sole prerogative to make policy decisions." *Hampton v. Haley*, 403 S.C. 395, 743 S.E.2d 258, 262 (2013). The Supreme Court has similarly stated that "it is not within our province to weigh-in on the wisdom of legislative policy determinations." *Town of Hilton Head Island v. Kigre, Inc.*, 408 S.C. 647, 760 S.E.2d 103, 104 (2015). The Court is constrained by these principles in evaluating the Plaintiff's excessive fines claim and cannot substitute its judgment for that of the local legislators.

In reviewing the City's parking ordinances, the $100 fine, which is being challenged, applies to such violations as listed in Section 8-2-2, which include parking on a sidewalk, parking in front of a private or public driveway, parking within 15 feet of a fire hydrant, double parking (described as parking on the roadway side of any vehicle parked on the edge or curb of a street), parking on a cross-walk, parking in the opposite direction of the movement of traffic, parking in front of a beach access, parking in a resident parking district without a valid resident parking permit, and other offenses. The Plaintiff has not demonstrated that a $100 fine is grossly disproportionate to each and every parking offense, which is what the Plaintiff needs to demonstrate to prevail on its facial challenge. Clearly, some parking offenses are more egregious than others in terms of the impact on public safety. For instance, parking in front of a fire hydrant which detrimentally impacts the ability of firefighters to access a hydrant is likely more detrimental than parking in the opposite direction of the movement of traffic. Nonetheless, the Court also recognizes while some parking offenses appear to foster mere inconvenience, such as double parking or blocking beach access or blocking driveway, those offenses also create the opportunities for conflict and disputes among the affected citizens, which the law is designed to prevent or at least ameliorate. In short, it is for the local legislators, not this Court, to weigh the impact on the public safety and the general welfare, and to determine the need for a $100 fine to serve both as a

deterrent for the offending conduct and as punishment when the offense is committed. The Court cannot and will not second-guess the judgment of the local legislators.

With the evidence presented, the Plaintiff is clearly asking this Court to consider legislative motive.[1] The Plaintiff does not hide its animosity towards the members of City Council and suggests that the City is attempting to keep out non-residents or "day-trippers" with its institution of parking fines. In making those arguments, however, the Plaintiff is disregarding the well-developed body of law in South Carolina on the inadmissibility of legislative motive. For example, in *Horry County Telephone Cooperative, Inc. v. City of Georgetown*, 408 S.C. 348, 759 S.E.2d 132 (2014), the South Carolina Supreme Court held that the deposition and trial testimony of city council members as to their motivations in denying the plaintiff's application for a franchise to provide cable television services was improperly admitted into evidence. The Supreme Court ruled that "[t]estimony of individual council members as to their motivations for denying consent is not competent evidence." 759 S.E.2d at 135. The Supreme Court recognized that the plaintiff's argument "asks this Court to inquire into individual city council members' motives behind their legislative acts" and described that to be "a fundamentally inappropriate inquiry for a court." *Id.* Likewise, in *Pressley v. Lancaster County*, 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001), the Court of Appeals ruled that "[j]udicial inquiry into legislative motivation is to be avoided." 542 S.E.2d at 371. The Court observed that "[s]uch inquiries endanger the separation of powers doctrine, representing a substantial judicial intrusion into the workings of other branches of government." *Id. See also, South Carolina Dept. of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001) (courts should not inquire into subjective motivation behind a governmental body's decisions); *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428, 437 (2003) (recognizing that "[w]hat County Council members' motivations were

[1] At trial, the Defendant objected to any evidence that reflects upon legislative motive.

for passing the Ordinance simply is not a proper inquiry"); *Bear Enterprises v. County of Greenville*, 319 S.C. 137, 459 S.E.2d 883, 885, n.1 (Ct. App. 1995) ("[i]f individuals are not satisfied with decisions made by members of a municipal government within the limits of the law, their remedy is at the polls, not the courts").

Along those same lines, the Plaintiff has presented deposition testimony from SCDOT Secretary Christy Hall and a number of exhibits relating to Senate Bill 40, the City's opposition to the bill, and the SCDOT's approval of the City's Managed Beach Access Parking Plan. The Defendant contends that such evidence is not relevant to the issues pled in the Amended Complaint. This Court agrees. Senate Bill 40 does not prohibit a municipality from regulating parking along a state-owned highway. Indeed, the Home Rule Act explicitly authorizes municipalities to exercise "powers in relation to *roads, streets*, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it." S.C. Code Ann. § 5-7-30. (Emphasis added). Nonetheless, even if such evidence may be relevant to some degree, the Court notes that the Defendant presented the Court with a March 22, 2021 letter from Secretary Hall requesting the City to modify its Managed Beach Access Parking Plan to install "angled parking along the landside of SC 703 from 22nd Avenue to 40th Avenue." Secretary Hall further writes: "The balance of the Managed Beach Access Parking Plan reflecting other public and resident only parking areas which have been previously approved by SCDOT may remain in place." In short, while the Plaintiff makes Senate Bill 40 a focus of its case, it has no bearing on whether the $100 parking fine is constitutionally excessive. In fact, in her deposition, Secretary Hall testified that SCDOT has no position on the amount of parking fines. *See*, Hall Depo., p. 35, ll. 16-18.

In sum, to the extent that the Plaintiff may even assert a facial challenge to the imposition of a $100 fine for an array of parking offenses, this Court concludes that the $100 fine is not unconstitutionally excessive.[2] There are several cases from other jurisdictions where courts have examined whether parking fines of varying amounts are so grossly disproportionate as to violate the Excessive Fines Clause. Those cases generally show that parking fines do not meet that high standard. By way of example, in *Yagman v. Garcetti*, 2021 WL 1783144 (C.D. Cal. 2021), the federal district court found that a $93 parking fine was not grossly disproportionate to the offense. Similarly, the Ninth Circuit has held that a "$63 parking fine is sufficiently large enough to deter parking violations but is 'not so large as to be grossly out of proportion' to combatting traffic congestion in one of the most congested cities in the country." *Pimentel v. City of Los Angeles*, 974 F.3d 917, 924 (9th Cir. 2020). *See also*, *Torres v. City of New York*, 2022 WL 743926 (S.D.N.Y. 2022) (two $95 parking tickets given on same day are not grossly disproportionate to the offense). In the case at bar, the Plaintiff has not shown that a $100 parking fine is grossly disproportionate to the offenses alleged so as to violate the Excessive Fines Clause.

In addition to arguing that the Plaintiff cannot prevail on a facial challenge to the $100 fine, the Defendant also disputes whether the Plaintiff has even presented this Court with a justiciable claim under the Declaratory Judgments Act. This Court agrees. It is well settled that "[t]o fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy." *Tourism Expenditure Review Committee v. City of Myrtle Beach*, 403 S.C. 76, 403 S.E.2d 371, 373-374 (2013). As the Supreme Court has explained, "[t]he Uniform Declaratory Judgments Act is not an independent grant of jurisdiction." 403 S.E.2d at 374. *See also, Carolina Alliance for Fair Employment v. South Carolina Department of Labor,*

[2] Interestingly, state law, specifically Section 57-7-210(C) of the Code of Laws, allows for "a fine of not more than one hundred dollars per day" for obstructions along any highway, including shoulders and parking areas. *See*, S.C. Code Ann. § 57-7-210(C).

Licensing and Regulation, 337 S.C. 476, 523 S.E.2d 795, 800 (Ct. App. 1999) ("[t]he existence of an actual controversy is essential to jurisdiction to render a declaratory judgment").

This Court agrees with the Defendant that the Plaintiff's Fourth Cause of Action fails to present a justiciable claim because the Plaintiff's members may challenge any parking fine as unconstitutional not in the abstract but once such a fine has been levied. Our Supreme Court has explained that "[d]eclaratory relief should not be accorded to try a controversy by piecemeal, or to try particular issues without settling the entire controversy." *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d2d 576, 578 (1949). "Nor should [declaratory] relief be granted when the remedy is invoked merely to try issues or determine the validity of defenses in pending cases." *Id.* "The wholesome purposes of declaratory acts would be aborted by its use as an instrument of procedural fencing either to secure delay *or to choose a forum*." *Id.* (Emphasis added). Likewise, the Supreme Court has held that "ordinarily the Court will refuse a declaration where a special statutory remedy has been provided, or where another remedy will be more effective or appropriate under the circumstances." 56 S.E.2d at 578-579. "Gratuitous interference with the orderly processes of special statutory tribunals should be avoided." 56 S.E.2d at 579. In short, the Plaintiff's members may assert an as-applied challenge to any parking fine as excessive or unconstitutional in a municipal court proceeding adjudicating the specific parking violation, just as a criminal defendant may challenge the constitutionality of a sentence or fine in the specific criminal matter where it is levied. That tribunal may rule on that issue, and the Plaintiff's member would then have appellate rights -- first to the Circuit Court and then to the appellate courts -- to obtain a decision on the constitutionality of the fine for the particular parking offense at issue. That would be the appropriate forum for a proper constitutional adjudication determining the excessiveness of a specific fine for a specific parking offense. That is because, as

the Supreme Court has explained, an excessive fines claim is "inherently fact-intensive." *Richardson*, 878 S.E.2d at 877.

IT IS, THEREFORE, ORDERED that the Plaintiff's request for declaratory and injunctive relief is denied for the reasons stated herein. Judgment is hereby entered in the Defendant's favor as to all claims, and the Plaintiff's Amended Complaint is dismissed with prejudice.

AND IT IS SO ORDERED.

[*Electronic Signature Page to Follow*]

Charleston Common Pleas

Case Caption: Charleston Area Public Beach Access And Parking Group VS Isle Of Palms City Of

Case Number: 2020CP1003374

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134