



ALAN WILSON  
ATTORNEY GENERAL

August 27, 2021

The Honorable Larry Grooms  
Member  
South Carolina Senate  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Grooms:

We received your letter questioning whether the municipalities of Folly Beach and Isle of Palms are violating the U.S. Constitution by issuing excessive fines for parking violations. In your letter, you provided us with the following information:

Based on research that constituents provided to my office [which you provided to us], “the average of fines for the six municipalities of Beaufort, Charleston, Columbia, Greenville, Myrtle Beach and Pawleys Island is \$29.31. Using \$29.31 as the basis for a standard fine, the minimum fine on Folly Beach of \$60 is 204% of the standard fine and the ‘any other fine’ amount of \$100 for parking on Isle of Palms is 341% of the standard fine. Folly Beach also stands out with \$1,000 fine for parking on Isle of Palms is 341% of the standard fine. Folly Beach also stands out with a \$1,000 fine for parking in a handicapped zone. The next highest fine for this violation is \$400, and the average fine of the other municipalities is \$266.”

#### Law/Analysis

Both the United State Constitution and the South Carolina Constitution protect citizens from excessive fines. The Eight Amendment of the United State Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. Additionally, section 15 of article I the South Carolina Constitution (2009) states:

All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General

Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

Most of the jurisprudence in South Carolina relating to excessive fines comes to us through forfeiture cases. Citing to the United States Supreme Court, our Supreme Court stated: “The touchstone of the constitutional inquiry under the Excessive Fines Clause [of the U.S. Constitution] 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.” State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc., 414 S.C. 33, 88, 777 S.E.2d 176, 205 (2015) (quoting United States v. Bajakajian, 524 U.S. 321, 334 (1998)). That Court further explained, “[t]he Court will only find a violation of the Excessive Fines Clause if the penalty is ‘grossly disproportional to the gravity of a defendant’s offense.’” Id. at 88, 777 S.E.2d at 205 (quoting Bajakajian, 524 U.S. at 334). In Bajakajian, the United State Supreme Court considered several factors in determining whether the fine is grossly disproportional to the forfeiture, including:

(a) “the essence of the crime” of the respondent and its relation to other criminal activity, (b) whether the respondent fit into the class of persons for whom the statute was principally designed, (c) the maximum sentence and fine that could have been imposed, and (d) the nature of the harm caused by the respondent’s conduct.

United States v. Collado, 348 F.3d 323, 328 (2d Cir. 2003) (citing Bajakajian, 524 U.S. at 337-39).

Although we did not find any South Carolina cases applying this set of factors to parking fines, the Ninth Circuit Court of Appeals in Pimentel v. City of Los Angeles, 974 F.3d 917 (9th Cir. 2020), addressed whether fines and late fees levied against parking meter violator violated the Eight Amendment of the United States Constitution and its California counterpart. Initially, that court found the Eighth Amendment’s prohibition on excessive fines applied to municipal parking fines based on the Supreme Court’s decision in Timbs v. Indiana, 139 S. Ct. 682, 686, 203 L. Ed. 2d 11 (2019). In Timbs, the Supreme Court found the Eighth Amendment applicable to states through the Fourteenth Amendment. Accordingly, the Ninth Circuit found “the Timbs decision affirmatively opens the door for Eighth Amendment challenges to fines imposed by state and local authorities.” Pimentel, 974 F.3d at 922. The Ninth Circuit then proceeded to consider the four Bajakajian factors in relation to the municipal fines. Id. In regard to the nature and extent of the underlying offense, the Court cited to cases in which courts typically looks to the violator’s culpability or whether their behavior was reckless. Id. at 922-23. “So if culpability is high or behavior reckless, the nature and extent of the underlying violation is more significant.” Id. at 923. The Ninth Circuit found that while parking violations are minor and the culpability is low, the violations are “minimal but not de minimis.” Id.

The Ninth Circuit determined the next two Bajakajian factors, other illegal activities and whether other penalties may be imposed, did not advance the analysis because the record did not contain such information. Id. Lastly, the Court considered the extent of the harm caused by the violation. Id. The Court cited to other courts measuring the monetary harm caused by the defendant's conduct, but went further finding that courts also consider how the violation "erodes the government's purposes for proscribing the conduct." Id. "Here, there is no real dispute that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow. Without material evidence provided by appellants to the contrary, we must afford 'substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments.'" Id. at 924 (quoting Bajakajian, 524 U.S. at 336). The Court also noted in Bajakajian, the Supreme Court recognized legislatures' broad authority to fashion fines and the lack of a requirement for strict proportionality between the amount of a forfeiture and the gravity of the offense. In regard to the parking violation, the Court found "the \$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 county." Id. As such, the Court found the \$63 fine was not disproportional to the underlying offense. Id.

South Carolina courts, like the Ninth Circuit, recognize the Eight Amendment applies to South Carolina by virtue of the Fourteenth Amendment. State v. Harrison, 402 S.C. 288, 293, 741 S.E.2d 727, 729 (2013). Furthermore, while our courts have yet to apply the Eight Amendment or section 15 of article 1 of our state constitution to municipal fines, we believe they would likely employ a proportionality test to determine if a fine violates the prohibition on excessive fines. We also believe our courts would follow the four-factor analysis of Bajakajian. However, applying these factors to the fines levied by Folly Beach and Isle of Palms would involve a factual determinations, which are beyond the scope of an opinion of this Office. See Op. Att'y Gen., 2015 WL 4497734 (S.C.A.G. July 2, 2015) ("[A]s we have cautioned in numerous opinions, this Office does not have the jurisdiction of a court to investigate and determine facts."). While we are concerned as to the proportionality of a \$1,000 fine for a parking violation, application of the Bajakajian factors requires a finding of facts such as the violator's culpability, whether or not their behavior was reckless, and the extent of the harm caused by the violation, which we do not have the jurisdiction to address in an opinion. As such, we cannot not opine as to whether Folly Beach and the Isle of Palms are violating the Eighth Amendment, but only suggest a court would likely consider the proportionality of the fine to the violation by evaluating the factors laid out in Bajakajian.

### Conclusion

Based on our analysis above, we believe South Carolina courts would apply the Eighth Amendment excessive fines clause as well as a similar clause found in section 15 of article I the South Carolina Constitution to fines for municipal parking violations. We also believe a court would likely apply the factors in Bajakajian to determine whether the fine is grossly disproportional to the gravity of the offense. However, assessing the proportionality of the fines levied by Folly Beach and Isle of Palms for parking violations using these factors requires factual

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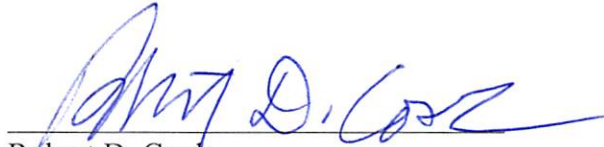
determinations, which are beyond the scope of an opinion of this Office. Therefore, the constitutionality of these fines would need to be determined by a court.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General