

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

BOOST a/k/a Business Owners Organized to
Save Tourism and Bart Viers, Petitioners,

v.

City of Myrtle Beach, Respondent.

PETITION FOR ORIGINAL JURISDICTION

RECEIVED

APR 13 2009

S.C. SUPREME COURT

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April 13, 2009

PETITION FOR ORIGINAL JURISDICTION

The Petitioners, BOOST a/k/a Business Owners Organized to Save Tourism and Bart Viers, respectfully request the Court entertain this action in its original jurisdiction pursuant to Article V, Section 5 of the South Carolina Constitution and Rule 229, SCACR. The Petitioners crave reference to the proposed Complaint for a full explanation of the facts and issues in this case.

The City of Myrtle Beach has adopted two ordinances that are clearly invalid. One, the “Helmet Ordinance,” requires that motorcyclists of all ages wear helmets and eyewear. Myrtle Beach had no authority to adopt this ordinance, however, because the Uniform Act Regulating Traffic on Highways, the “Uniform Traffic Act,” prohibits local governments from enacting motorcycle helmet regulations. The Uniform Traffic Act expressly designates areas of traffic control that local governments may regulate and forbids other local regulation. Motorcycle helmets are not one of the areas that local governments are allowed to regulate under the Uniform Traffic Act. The Helmet Ordinance is therefore invalid.

Further, the Helmet Ordinance is in conflict with state law in any event. State law empowers motorcycle riders 21 or older to decide whether or not to wear a helmet. The Helmet Ordinance is invalid for this reason as well. Finally, the helmet standards in the Ordinance are unintelligible and, to the extent they can be deciphered, also conflict with state law.

South Carolina law mandates uniformity among automobile equipment regulations, including motorcycle helmet regulations. Just as a municipality cannot be allowed to set its own lower DUI standards, local governments cannot make automobile

equipment regulations. Travel around the state would become practically impossible if the local governments began actively regulating vehicle equipment. As described in more detail in the Complaint, the general principle of law is that a local ordinance from one jurisdiction can certainly conflict with a local ordinance from another. If the Myrtle Beach Helmet Ordinance stands, it may very well come to be that automobiles travelling through South Carolina will need to be reconfigured at each county and municipality line to comply with the local vehicle equipment laws. Clearly this result was not intended by the Legislature and is absolutely proscribed by the prohibition on local government vehicle equipment regulation appearing in statute. The statewide uniformity provisions of Article VIII, Section 14, Subsection 6 of the South Carolina Constitution are also applicable.

The second ordinance being challenged, the “Administrative Courts Ordinance,” establishes administrative tribunals that are clearly outside the uniform judicial system mandated by Article V of the South Carolina Constitution. These administrative tribunals operate in a bizarre fashion—without any evidentiary rules and only skeletal procedural rules—pursuant to an ordinance that, by its own terms, appears to require that every alleged violator appearing before the tribunal be found guilty.

These ordinances are invalid for another reason as well. The City of Myrtle Beach adopted them as part of a package of ordinances designed to put an end to motorcycle festivals within the City. There is no factual dispute on this point; the City’s statements on this matter are unambiguous. Shutting down motorcycle festivals is an improper governmental objective. The City of Myrtle Beach has every right to

reasonably regulate motorcycle festivals, but it cannot constitutionally prohibit them outright.

Motorcycle festivals provide a substantial portion of Horry County's tourism revenues. These festivals are believed to bring a half million tourists and hundreds of millions of dollars to the community. And just as motorcycle festivals are a key component of Horry County's tourism revenues, they are a driver of the local economy. Many businesses are devoted, in whole or in part, to motorcycle tourists visiting Myrtle Beach. BOOST, a Petitioner in this case, is an organization of individuals owning such businesses and other businesses that depend on a healthy local economy.

The City of Myrtle Beach is admittedly working very hard to drive away the motorcycle festivals. The ordinances complained of in this action are centerpieces of that effort, an effort to make visiting Myrtle Beach less than enjoyable for motorcycle tourists. In the experience of BOOST, the vast majority of motorcyclists attending motorcycle festivals—even those who ordinarily wear helmets—are opposed to laws mandating helmet use for adults and view such laws as paternalistic and unnecessary. Further, most motorcyclists find riding along the beach without a helmet to be a substantially more enjoyable experience than riding with a helmet. Finally, practically every licensed motorcyclist is aware that riding without a helmet is more dangerous than riding with a helmet, and those choosing to ride helmetless knowingly assume that risk.

Given Myrtle Beach's newfound hostility toward motorcycle tourists as demonstrated through these new ordinances, nearly all events connected with the May 2009 motorcycle festivals have been cancelled. The economic impact on the businesses catering to motorcycle tourism cannot be understated. Some will go out of business

because of this, and others will have a very difficult time remaining solvent until 2010. Businesses that do not directly deal with motorcycle tourism but that service motorcycle-related businesses are also being severely impacted. Quite simply, given the nature of the problems facing the broader statewide economy, now is not the time to put a major component of tourism—South Carolina’s largest industry—at severe risk.

These are admittedly economic considerations, but such considerations are proper for the Court to consider in the context of whether to grant the Petition for Original Jurisdiction. If this case is required to percolate through the lower courts, a final adjudication in this Court might take two to three years. In this amount of time, most businesses depending on motorcycle tourism will be long gone, existing only as case names in bankruptcy proceedings.

Rule 229(a), SCACR, indicates that an analysis of material prejudice to the rights of the parties is appropriate with regard to an original jurisdiction petition. Here, if this case is not quickly heard and adjudicated, the material prejudice will be the near-complete destruction of the motorcycle tourism industry in and around Myrtle Beach. The owners of these businesses, practically all of which are properly considered to be “small businesses,” are a valuable and vital part of the economy that employs thousands of workers. The owners and their employees have budgets and debts, mortgages and college tuition, electricity bills and taxes, and being jobless in this economy is immeasurably destructive to lives and families.

These considerations have nothing to do with the merits of the case, but have everything to do with whether this petition should be granted. Rarely does a lawsuit have

an opportunity to protect or destroy the livelihood of potentially thousands of people, but this case certainly fits that mold.

While the Petitioners certainly do not know what the Respondent might argue on the merits if the Petition is granted, it is worth noting that the issues in this case are very straightforward. The Uniform Traffic Act either does—or does not—prohibit local governments from regulating outside of the enumerated areas. Further, the Helmet Ordinance either conflicts with the helmet statute, or not. The other issues in the case are, by and large, equally cut-and-dried. The Petitioners will be very surprised if there are any fact issues whatsoever in this matter. All facts appear to be undisputed and indisputable.

Judicial economy will certainly be served by this Court accepting the case and making a decision. Even if the ultimate decision is unfavorable to the Petitioners, knowing the result of this case sooner rather than later will certainly allow some business owners to modify their business models and perhaps continue in operation. Some businesses will still fail, but the overall outcome will be less drastic if this Court quickly provides certainty in this area of the law, even if the decision is unfavorable to the businesses.

Whatever the eventual outcome of this matter, a quick resolution is needed to best protect jobs and the economy. The Petitioners therefore respectfully request the Court grant this petition.



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AFFIDAVIT VERIFYING PETITION AND COMPLAINT

Personally appearing one Bart Viers who, being first duly sworn, deposes and says: I have carefully reviewed the Petition for Original Jurisdiction and the Complaint in this matter. I have personal knowledge regarding every fact in each document except those facts relating only to BOOST and economic matters. For all the facts of which I have personal knowledge, I know each such fact to be true. For all the facts relating only to BOOST and economic matters, I am informed and believe that each such fact is true.


BART VIERS

Sworn to and subscribed before me on
This 13th day of April, 2009


South Carolina Notary Public

My commission expires: _____

SHANDRA J. BORKERT
MY COMMISSION EXPIRES:
MAY 14, 2017

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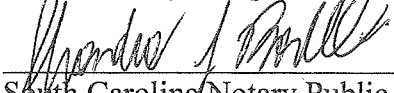
AFFIDAVIT VERIFYING PETITION AND COMPLAINT

Personally appearing one Tom Herron who, being first duly sworn, deposes and says: I have carefully reviewed the Petition for Original Jurisdiction and the Complaint in this matter. I have personal knowledge regarding every fact in each document except those facts relating only to Bart Viers. For all the facts of which I have personal knowledge, I know each such fact to be true. For all the facts relating only to Bart Viers, I am informed and believe that each such fact is true. I am a representative of BOOST authorized to sign this affidavit.



TOM HERRON
AUTHORIZED REPRESENTATIVE OF BOOST

Sworn to and subscribed before me on
This 13th day of April, 2009



South Carolina Notary Public
My commission expires: _____

SHANDRA J. BORKERT
MY COMMISSION EXPIRES:
MAY 14, 2017