

VIRGINIA:

IN THE CIRCUIT COURT FOR ROANOKE COUNTY

MARY ELIZABETH MINTER,

Plaintiff,

v.

THE COMMONWEALTH OF VIRGINIA,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 07-918

STEVEN A. MCGRAW  
CLERK - CIRCUIT COURT  
ROANOKE COUNTY, VA

2007 AUG 13 AM 8:59

RECEIVED & FILED  
COURT CLERK  
ROANOKE COUNTY

COMPLAINT

The above-referenced plaintiff brings this Complaint, by counsel, and in support of her claims asserts as follows.

FACTS

1. Plaintiff Mary Minter, a Roanoke resident, was charged under Code section 46.2-852, on July 29, 2007 in Roanoke County.
2. Upon conviction of these offenses, the plaintiff will fall within the provisions of Code section 46.2-206.1, under which the presiding court must immediately assess and the plaintiff must pay "civil remedial fees" to be paid in addition to other fines, costs, and fees assessed pursuant to a conviction of these charges. She is without the financial ability to pay these charges, and will immediately have her license suspended under the statute.

JURISDICTION

3. This Court has jurisdiction to hear this matter pursuant to Code sections 8.01-620, 8.01-184, 17.1-513 and Virginia common law.

COUNT I - DECLARATORY JUDGMENT

(Unconstitutionality of Code section 46.2-206.1)

4. The plaintiff hereby incorporates and realleges the foregoing paragraphs.

5. The plaintiff submits that Code section 46.2-206.1 violates the United States Constitution, Amendment XIV by violating her rights to Due Process and Equal Protection, in that:

a) Code section 46.2-206.1 penalizes and sanctions only Virginia residents for the listed offenses, discriminating against them; and/or

b) Code section 46.2-206.1 imposes discriminatory sanctions and penalties upon indigent defendants with no regard to their ability to pay.

6. The plaintiff submits that Code section 46.2-206.1 is also unconstitutional under the Virginia Constitution, in that:

a) Code section 46.2-206.1 violates Virginia Constitution, Article VIII, Section 8; in that the law actually charges punitive fines, but pays all proceeds therefrom into a destination other than the Literary Fund; and / or

b) Code section 46.2-206.1 violates Virginia Constitution, Article I, Section 5; and Article III, section 1; and Article X, Section 7; in that the law as drafted requires Virginia courts to collect a tax, in violation of the constitutional separation of powers and bearing no relation to the costs of the prosecutions.

7. For these reasons, the plaintiff requests this Court declare Virginia Code section 46.2-206.1 unconstitutional and void.

COUNT II – INJUNCTIVE RELIEF

8. The plaintiff hereby incorporates and realleges the foregoing paragraphs.

9. In light of the unconstitutionality of Code section 46.2-206.1, all payments assessed thereunder are likewise unconstitutional and illegal.

10. This Court should enjoin any future assessment or collection of these payments by Virginia courts and / or the Department of Motor Vehicles or other state entity.

11. This Court should also require the immediate and full disgorgement and return of all monies assessed or collected under the statute, and those assessed or collected in the future, to be paid into a common fund.

### COUNT III – DECLARATORY RELIEF

#### (Doctrine of Representation)

12. The plaintiff hereby incorporates and realleges the foregoing paragraphs.

13. The plaintiff sues as the virtual representative and party by representation of all Virginia citizens who have been assessed or will be assessed such charges under Code section 46.2-206.1.

14. There are numerous persons with an interest in this suit who cannot be joined by name and who can not sue individually, without undue multiplication of parties or suits.

15. The plaintiff is similarly situated to these individuals, as she asserts the same right and has no interests contrary to them. She is qualified as a fair representative of these people, considering the circumstances of this challenge, and seeks to protect their interests as their representative.

16. For these reasons, this Court should declare the plaintiff the virtual representative or representative party for all Virginia citizens charged or convicted of an offense listed in Code section 46.2-206.1 and assessed a fee, fine, charge, penalty or other monetary obligation under

that statute, since July 1, 2007, and establish a common fund for return of all money assessed and refunded under this complaint.

WHEREFORE, the plaintiff respectfully requests:

- A. Judgment declaring Code section 46.2-206.1 unconstitutional and void;
- B. Judgment declaring the plaintiff the representative of all unnamed persons to whom the Commonwealth has applied Code section 46.2-206.1 in order to assess payments of monies;
- C. An Order enjoining further enforcement of Code section 46.2-206.1, enjoining any further collection of any monies therefrom, and requiring the Commonwealth to disgorge and repay all monies it has assessed, acquired, or been paid under that statute, into a common fund;
- D. Attorney Fees and Costs incurred;
- E. Such other and further relief as is just and proper.

Respectfully submitted,  
MARY ELIZABETH MINTER,



---

By Counsel

John P. Fishwick, Jr. (State Bar #: 23285)  
John E. Lichtenstein (State Bar #: 27048)  
Devon J. Munro (State Bar # 47833)  
Lichtenstein, Fishwick & Johnson, P.L.C.  
101 S. Jefferson St., Suite 400  
Roanoke, VA 24011  
(540) 345-5890 (telephone)  
(540) 345-5789 (facsimile)

Charles Van Hoback (State Bar # 13112)  
115 N. Market Street  
Salem, VA 24153  
(540) 387-2699 (telephone)  
(540) 389-5488 (facsimile)