

VIRGINIA:

IN THE CIRCUIT COURT FOR ROANOKE COUNTY

MARY ELIZABETH MINTER,)
)
 Plaintiff,)
)
 v.)
)
 THE COMMONWEALTH OF VIRGINIA,)
)
 Defendant.)

Case No. 07-918

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

MOTION FOR PRELIMINARY INJUNCTION

The above-referenced plaintiff brings this Motion for Preliminary Injunction, by counsel, and in support asserts as follows.

FACTS

1. Plaintiff Mary Minter, a Roanoke resident, was charged under Code section 46.2-852, on July 29, 2007. Her hearing is scheduled for on or about September 12, 2007 in Roanoke County General District Court.
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, at the time of conviction, "civil remedial fees" to be paid in addition to other fines, costs, and fees assessed pursuant to a conviction of these charges. If she fails to pay these charges, her license will be immediately suspended.
3. The plaintiff has more than a substantial likelihood of prevailing on the merits of the claims in her Complaint that Virginia Code section 46.2-206.1 is unconstitutional under both the Virginia and United States Constitutions. Indeed, each of the plaintiff's claims are pure

questions of law based entirely upon undisputed facts, and lend easily to pretrial resolution by virtue of this motion.

4. Unless prevented by an injunction, these events will cause the plaintiff substantial, irreparable harm upon conviction. If she were able to pay, she would be immediately deprived of a large amount of money by virtue of the statute. However, because she will be unable to pay, she will have her license immediately and indefinitely suspended.

5. By contrast, temporary suspension of these assessments pending final resolution of the constitutionality of the statute does not cause the Commonwealth substantial or irreparable harm, because if the law ultimately proves constitutional, the payments will still be assessed according to the statute.

6. This injunction clearly serves the public interest, as the plaintiff is representative of similarly situated citizens throughout the Commonwealth being charged and assessed draconian penalties under the offending statute. Other courts in the state have already ruled the statute unconstitutional, and this injunction will remedy the lack of consistency afforded Virginia motorists throughout the state.

7. This Court has jurisdiction to enjoin unconstitutional enforcement of Code section 46.2-206.1 statewide.

WHEREFORE, pursuant to this Court's authority under Code section 8.01-620 and Virginia common law, the plaintiff requests a preliminary injunction 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, and/or such other and further relief as the Court

determines is just and proper.

Respectfully submitted,
MARY ELIZABETH MINTER,



By Counsel

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