

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

DAVID ALAN CARMICHAEL, et al.,)
)
 Plaintiffs,)
)
 v.) Case No.: CL08-2067
)
 THE COMMONWEALTH OF)
 VIRGINIA, et al.,)
)
 Defendants.)

**THE COMMONWEALTH'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR COMPLAINT AMENDMENT AND FOR
TEMPORARY INJUNCTION**

Defendant, the Commonwealth of Virginia (the "Commonwealth"), by counsel, respectfully states as follows for the Commonwealth's opposition to Plaintiff David A. Carmichael's ("Plaintiff") motion for complaint amendment and temporary injunction.

I. INTRODUCTION

On October 3, 2008 this Court dismissed with prejudice Plaintiff's First Cause of Action for "Temporary Injunction and/or Permanent Injunction Where Applicable." Oct. 3, 2008 Order. Only Counts Four and Five of the Complaint remain. *Id.* Nonetheless, Plaintiff has filed the instant motion to amend his Complaint and for temporary injunction. Plaintiff's motion to amend adds nothing new to the Complaint and should be denied. In addition, Plaintiff fails to establish he is entitled to a temporary injunction.

II. STANDARD OF REVIEW

Temporary injunctions are extraordinary remedies, and the facts of Plaintiff's case do not warrant injunctive relief. The various state circuit courts in Virginia apply the four-part

balancing test applied by the Fourth Circuit to determine whether a preliminary injunction is appropriate. *See Sch. Bd. v. Wilder*, 73 Va. Cir. 251, 253 (2007) (noting that the City of Richmond Circuit Court “has followed standards delineated in the four-part test used by the federal courts”).

In determining whether to grant or deny a request for a preliminary injunction, a court must consider: (1) the likelihood of irreparable harm to the plaintiff if its request for relief is denied; (2) the likelihood of harm to the defendant if the requested relief is granted; (3) the likelihood that the plaintiff will succeed on the merits of its claim; and (4) the public interest. *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 193 (4th Cir. 1977). The party seeking the preliminary injunction bears the burden of establishing that the court should grant a preliminary injunction. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1992).

In applying the four-part balancing test,

[t]he first step . . . is for the court to balance the likelihood of irreparable harm to plaintiff against the likelihood of harm to the defendant; and if a decided imbalance of hardship should appear in plaintiff’s favor, then . . . it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful, as to make them fair ground for litigation.

Blackwelder, 550 F.2d at 195 (internal citations and quotations omitted). But “if ‘the plight of the defendant [is] not substantially different from that of the plaintiffs,’ that is, if there is no imbalance of hardship in favor of the plaintiff, then ‘the probability of success begins to assume real significance,’ and interim relief is more likely to require a clear showing of a likelihood of success.” *Direx*, 952 F.2d at 808 (quoting *Blackwelder*, 550 F.2d at 195 n.3).

III. ARGUMENT

A. Plaintiff’s request for a temporary injunction should be denied.

This Court should deny Plaintiff's request for a temporary injunction. Initially, as to Plaintiff's request for an injunction preventing the Attorney General from prosecuting Plaintiff criminally for driving without a license, the Attorney General has no such authority. Va. Code § 2.2-511. Thus, there can be no showing of irreparable harm. Further, Plaintiff's request is improper given that on October 3, 2008, this Court dismissed Plaintiff's request for injunctive relief against the Attorney General.

As to Plaintiff's request for a temporary injunction permitting him to drive without a license or for the temporary award of a driver's license without providing a social security number, Plaintiff's request should be denied because (1) Plaintiff has not established the likelihood of irreparable harm, (2) the Commonwealth's interest will be greatly harmed by an injunction, (3) Plaintiff will not succeed on the merits, and (4) the public interest will be served by denying Plaintiff's request for an injunction.

1. Plaintiff has not established the likelihood of irreparable harm.

Plaintiff has not shown that he will be irreparably harmed in the event his request for a temporary injunction is denied. Plaintiff claims that he has a duty to "transport people and property in the ordinary course of [his] life and ministry." Plaintiff's Motion p. 9. Plaintiff then makes the conclusory statement without providing specific supporting facts that "there is a clear and present daily threat for [his] suffering greater damage to [his] property and liberty." *Id.* p. 7. Even assuming Plaintiff relies on the use of an automobile, he has not established that there are no alternative means to complete his duties. For instance, Plaintiff may use the telephone for ministering to parish members and he may rely upon family and/or friends for transportation.

A driver's license may play a role in securing a means of transportation; however, given the availability of public transportation, an individual is not isolated from the rest of society

simply because he does not have a valid driver's license. Persons without a license, by choice or otherwise, make arrangements every day in both urban and rural areas to conduct their business and personal affairs. Certainly, one may be inconvenienced by not having a license, but inconvenience does not amount to irreparable harm.

Plaintiff's own Complaint establishes that he has not had a valid driver's license since at least July 2002. Complaint p. 9, ¶ 26. During this period, he has obviously adopted means to accomplish his duties and a temporary injunction is not warranted.

2. The Commonwealth's interest will be greatly harmed by an injunction.

Virginia law mandates that all applications for driver's licenses contain the social security number of the applicant. Va. Code § 46.2-323. A social security number is necessary for various legitimate and compelling purposes, including verification of an individual's identity, law enforcement and collection of child support. The statutory requirement that an applicant for a driver's license provide his social security number is mandated by federal law under 42 U.S.C. § 666(a)(13)(A). In order to comply with this federal mandate, the Commonwealth must continue to obtain the social security number of applicants and would be greatly harmed by an injunction preventing such compliance.

3. Plaintiff will not succeed on the merits.

For the reasons previously stated in the Commonwealth's Demurrer and Motion to Reconsider Demurrer, Plaintiff will not succeed on the merits. The Commonwealth herein incorporates the arguments previously asserted in its Demurrer and in its pending Motion to Reconsider Demurrer and Memorandum in Support.

4. **The public interest will be served by denying Plaintiff's request for an injunction.**

As noted previously, the Department of Motor Vehicles is required by Va. Code § 46.2-323 to collect an applicant's social security number. The social security number is not displayed on one's driver's license and the public has absolutely no access to that information. *See* Va. Code § 46.2-208. Rather, the number is used to comply with federal law and for law enforcement identification purposes – uses which clearly furthers the public interest.

B. Plaintiff's request to amend his Complaint should be denied.

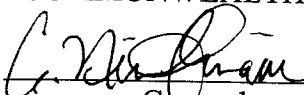
The decision to deny a request for leave to amend a complaint is a matter within the sound decision of the trial court. *Kole v. City of Chesapeake*, 247 Va. 51, 57, 439 S.E.2d 405, 409 (1994). On October 3, 2008, this Court dismissed Plaintiff's First Cause of Action against all Defendants and also dismissed the entire Complaint against the Attorney General. Now, Plaintiff seeks to amend his request for injunctive relief against the Attorney General, who is no longer a party. Clearly, the Attorney General would be prejudiced were the Plaintiff's request granted. Further, the request to amend adds nothing new to the Complaint. The issue as to whether injunctive relief is proper has already been decided and the request to amend should be denied.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commonwealth, respectfully requests that this Court deny Plaintiff's motion for complaint amendment and for temporary injunction.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January 2009, a true copy of the foregoing was mailed first class, postage prepaid to the following:

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C. Nicole Gilliam