

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
JAMES M. STAUDENRAUS,

Plaintiff,

-against-

ELIOT L. SPITZER, in his official capacity as Governor
of the State of New York, DAVID J. SWARTS, in his
official capacity as the Commissioner of the Department
of Motor Vehicles, and the NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES,

Defendants.
-----X

Index No. 07-33872

SUMMONS

Plaintiff designates Suffolk County
as place for trial since this is the county
where the parties reside and the claim arose.

Plaintiffs' Address:
See Schedule "A"

Defendants' Address:
See Schedule "A"

To the above named defendants:

YOU ARE HEREBY SUMMONED and required to appear in the Supreme Court of the County of Suffolk, 1 Court Street, Riverhead, County of Suffolk, State of New York, by serving an answer to the annexed complaint upon plaintiff's attorney, at the address stated below, or if there is no attorney, upon the plaintiff, at the address stated above, within the time provided by law as noted below; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, a copy of which was served upon you at the same time you were served with this summons.

Statement and nature of substance of plaintiffs' causes of action is for declaratory and injunctive relief.

Dated: Melville, New York
October 31, 2007

BOROVINA & MARULLO PLLC
Attorneys for Plaintiff

By: 

Anton J. Borovina
Member of the Firm
445 Broad Hollow Road, Suite 334
Melville, New York 11747
(631) 630-1101

Jason B. Aldrich, Esq.
James F. Peterson, Esq.
Attorneys for Plaintiff
501 School Street, S.W., Suite 500
Washington, D.C. 20024
(202) 646-5172

07 OCT 31 PM 4:33
JUDITH A. PASCALE
SUFFOLK COUNTY CLERK

FILED

NOTE: The law or rules of law provide that:

- (a) If the summons is served by its delivery to you, or (for a corporation) an agent authorized to receive service, personally within the County of Suffolk you must answer within 20 days after such service;
- (b) If this summons is served otherwise than as designated in subdivision (a) above, you are allowed 30 days to answer after the proof of service is filed with the Clerk of this Court.
- (c) You are required to file a copy of your answer together with proof of service with the clerk of the district in which the action is brought within ten days of the service of the answer.

SCHEDULE A

Plaintiff:

James M. Staudenraus
c/o Borovina & Marullo PLLC
445 Broad Hollow Road, Suite 334
Melville, New York 11747

Defendants:

Eliot L. Spitzers, Governor
State of New York
State Capitol
Albany, New York 12224

David J. Swarts, Commissioner
New York State Department of Motor Vehicles
Empire State Plaza
Albany, New York 12228

New York State Department of Motor Vehicles
Empire State Plaza
Albany, New York 12228

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
JAMES M. STAUDENRAUS,

Index No. 07-33872

Plaintiff,

COMPLAINT

-against-

ELIOT L. SPITZER, in his official capacity as Governor
of the State of New York, DAVID J. SWARTS, in his
official capacity as the Commissioner of the Department
of Motor Vehicles, and the NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES,

Defendants.
-----X

The plaintiff, James M. Staudenraus, by Borovina & Marullo Pllc and Judicial
Watch, Inc., of counsel, brings this complaint against the defendants, Eliot L. Spitzer, in his
official capacity as Governor of the State of New York, David J. Swarts, in his official capacity
as the Commissioner of the Department of Motor Vehicles, and the New York State Department
of Motor vehicles (collectively "defendants") alleging as follows:

07 OCT 31 PM 4:31
JUDITH A. PAROALTA
SUFFOLK COUNTY CLERK

FILED

The Parties

1. Plaintiff, James M. Staudenraus, is a taxpayer and citizen of the State of
New York, residing in the Town of Shelter Island, Suffolk County, New York and is a registered
voter in the State of New York.

2. Defendant Eliot L. Spitzer is Governor of the State of New York who is
being sued herein in his official capacity.

3. Defendant David J. Swarts is Commissioner of the New York State Department of Motor Vehicles (the “Commissioner”), who is being sued herein in his official capacity.

4. Defendant, New York State Department of Motor Vehicles (DMV”), is an agency of the State of New York.

5. The plaintiff commences this action seeking equitable and declaratory relief against the defendants who in the course of their official duties has caused, is now causing and is about to cause a wrongful expenditure, misappropriation, misapplication, and other illegal or unconstitutional disbursement of state funds as well as unlawful conduct in connection with their plan to issue driver’s licences to undocumented aliens in contravention of Vehicle and Traffic Law §§500 *et seq.* and the State Administrative Procedure Act §§101 *et seq.*

THE FACTS

6. The defendants’ authority to issue driver’s licenses to persons in this state is prescribed by Title V, Article 18 of the Vehicle and Traffic Law (“VTL”) §§500 *et seq.*

7. VTL §500 states that “[e]xcept as otherwise expressly provided in this chapter, this title shall be exclusively controlling.”(Emphasis added.).

8. VTL §501(1) states that “The commissioner shall issue classified drivers’ licenses as provided in this article.” (Emphasis added.).

9. Amongst other things, VTL §502(1) states that the Commissioner “shall require that the applicant provide his or her social security number.” (Emphasis added.).

10. There is no express language found anywhere in the VTL which dispenses with the requirement that an applicant for a driver's license provide his or her social security number.

11. Nevertheless, on September 21, 2007 and in contravention of the statutory scheme prescribed by the VTL, Defendants announced an "administrative policy change" that will "give all New Yorkers the opportunity to apply for driver's licenses without regard to immigration status." (Hereafter referred to as "Defendants' Program.")

12. Under the Defendants' Program, driver's license applicants will not be required to provide social security numbers.

13. In addition, the Defendants' Program allows all persons in New York, including those not legally present or residing in the United States, to apply for and receive driver's licenses.

14. The defendants intend to implement the Defendants' Program without state legislature approval.

15. The defendants intend to implement the Defendants' Program without complying with the rule-making requirements prescribed by the State Administrative Procedure Act.

16. The Defendants' Program, once implemented, will purposefully result in hundreds of thousands of persons previously ineligible to obtain driver's licenses to now obtain driver's licenses.

17. Significant taxpayer funds and taxpayer-financed resources have been and will be used to cover the cost and expense of implementing and administering the Defendants' Program.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANTS, THE PLAINTIFF ALLEGES:**

18. The plaintiffs repeat and reallege the allegations in paragraphs "1" through "17" of the complaint with the same force and effect as if more fully alleged herein.

19. The defendants lack the authority to adopt and implement the Defendants' Program in that it would allow the Commissioner to issue driver's licenses to persons who do not provide a social security number.

20. Accordingly, the plaintiff is entitled to a judgment, amongst other things, declaring the Defendants' Program unlawful and that the Defendants do not have the authority to adopt or to implement the Defendants' Program without requiring otherwise eligible and qualified persons to provide social security numbers and that the defendants' adoption and implementation of Defendants' Program is an unconstitutional usurpation of the legislative function and violates the Separation of Powers doctrine.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANTS, THE PLAINTIFF ALLEGES:**

21. The plaintiffs repeat and reallege the allegations in paragraphs "1" through "20" of the complaint with the same force and effect as if more fully alleged herein.

22. The DMV is an agency within the meaning of the State Administrative Procedure Act ("SAPA") §102(1).

23. The Defendants' Program, once adopted, constitutes a Rule within the meaning of SAPA §102(2) since it is a regulation or code of general applicability that implements or applies law, in this case VTL §502.

24. In adopting the Defendants' Program, the defendants have failed or refused to comply with the minimum procedures applicable to all state agencies regarding the promulgation of rules and as prescribed by SAPA §§201 *et seq.* as well as the N.Y.S. Constitution ART. IV, § 8.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST THE DEFENDANTS, THE PLAINTIFF ALLEGES:**

25. The plaintiffs repeat and reallege the allegations in paragraphs "1" through "24" of the complaint with the same force and effect as if more fully alleged herein.

26. For the above reasons, the plaintiff is entitled to an injunction permanently enjoining the defendants from taking any action to adopt or to implement the Defendants' Program.

REQUEST FOR RELIEF

WHEREFORE, the plaintiff, James M. Staudenraus, respectfully requests a judgment against the defendants, Eliot L. Spitzer, in his official capacity as Governor of the State of New York, David J. Swarts, in his official capacity as the Commissioner of the

Department of Motor Vehicles, and the New York State Department of Motor vehicles as follows:

1. on the first cause of action, declaring:
 - a. the rights of the parties;
 - b. that the defendants do not have the authority to adopt or to implement the Defendants' Program to the extent it dispenses with the requirement that an applicant for a driver's license provide a social security number;
 - c. that the Defendants' Program is unlawful in that it establishes a scheme to issue driver's licenses in a manner that is not prescribed by VTL §§500 *et seq.*;
 - d. that the Defendants' Program would result in the wrongful expenditure and misapplication of state funds;
2. on the second cause of action and in the alternative, declaring that:
 - a. the Defendants' Program constitutes rule-making within the meaning of the State Administrative Procedure Act §§ 201 *et seq.*; and
 - b. the Defendants' Program is unlawful, null and void unless and until there has been full compliance with respect to the State Administrative Procedure Act regarding the promulgation of rules;
3. on the third cause of action, an injunction permanently enjoining the defendants from adopting or implementing the Defendants' Program unless and until there has been:

a. approval given by the state legislature by its adoption of a law permitting the Defendants to dispense with the requirement that applicants for driver's licenses provide social security numbers; and

b. in the alternative, compliance with all procedural requirements prescribed by the State Administrative Procedure Act regarding the promulgation of rules; and

4. on all causes of action, such other and further relief as to the court seems just and appropriate, including an award of costs and disbursements.

Dated: Melville, New York
October 31, 2007

Borovina & Marullo PLLC
Attorneys for Plaintiff

By: 

Anton J. Borovina
A Member of the Firm
445 Broad Hollow Road, Ste. 334
Melville, New York 11747
(631) 630-1101

Jason B. Aldrich, Esq.
James F. Peterson, Esq.
Attorneys for Plaintiff
501 School Street, S.W., Suite 500
Washington, D.C. 20024
(202) 646-5172