

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

**GERALD M. CARBONE**  
Plaintiff,

VS.

C.A. NO: 10-

**THE STATE OF RHODE ISLAND;**  
**and SARA R. STRACHAN, in her**  
**Official Capacity as Administrator of**  
**Motor Vehicles**  
Defendants

**COMPLAINT**

Now comes the Plaintiff and hereby states for his cause of action as follows:

I. NATURE OF THE ACTION

This is an action for declaratory and mandatory injunctive relief to redress deprivation, under color of law, of rights, privileges, and immunities secured to the Plaintiff by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 2 of the Constitution of the State of Rhode Island.

II. JURISDICTION

The jurisdiction of this Court is invoked pursuant to 41 U.S.C. §§1983 and 1988 as well as this Court's jurisdiction over questions of state constitutional law.

III. PARTIES

1. Plaintiff, Gerald M. Carbone, is now and at all times pertinent hereto has been a citizen and resident of the State of Rhode Island and of the United States of America.

2. Defendant, The State of Rhode Island, is a body politic and a sovereign state within and among the United States of America.

3. Defendant, Sara R. Strachan, who is sued herein in her official capacity, is now and at all times pertinent hereto has been the Administrator of the Division of Motor Vehicles for the State of Rhode Island and, as such, is responsible for the administration and enforcement of Rhode Island General Laws, Title 31, entitled “Motor and Other Vehicles”.

4. The Defendants were at all times complained of herein acting under color of state law.

#### IV. FACTS

5. Plaintiff has been a resident of the State of Rhode Island continuously since 1989.

6. After moving to Rhode Island from Maine, Plaintiff obtained a Rhode Island driver’s license, which license has been renewed and reissued by the state several times since then.

7. On April 17, 2010, Plaintiff received a “Notice of Action” from the Defendants, which Notice indicated that Plaintiff’s license and registrations (he has two) will be suspended effective April 29, 2010.

8. The Notice (a copy of which is annexed hereto and marked as Exhibit A) indicates a date of incident as “00/00/0000”.

9. The Notice indicates no amount as due.

10. The Notice, under “Reason for Action”, states that Plaintiff is “not entitled to license issue“, but offers no indication as to why.

11. The Notice indicates a ten day window within which to request a hearing, but clearly indicates that the license and registrations must be surrendered by the suspension date, irrespective of whether any hearing has taken place.

12. On information and belief, Plaintiff incurred a ticket in 1989, contested the matter, filed a timely appeal, and never heard from the DMV again regarding the appeal. Plaintiff believes that this Notice has something to do with that twenty year old matter but is unable to glean that or anything else from the face of the Notice.

13. On information and belief, the Defendants have sent out several thousand of these facially unconstitutional notices, and have likely begun to suspend licenses without affording any constitutional safeguards.

14. In that the provisions of the Notice of Action are facially violative of the Due Process Clause of the United States Constitution as interpreted by this Honorable Court as well as the United States Supreme Court, Plaintiff is likely to succeed on the merits of his complaint.

15. Plaintiff has no adequate remedy at law insofar as the complete absence of any information in Notice renders Plaintiff unable to prepare a defense, even if a hearing is held.

16. Plaintiff has a cognizable property interest in the said motor vehicle license and the privilege to register a motor vehicle.

17. Plaintiff will suffer immediate irreparable harm as a consequence of Defendants' efforts to enforce the unconstitutional Notice.

## V. CAUSES OF ACTION

### FIRST CAUSE OF ACTION

18. For his first cause of action, Plaintiff adopts by reference the foregoing paragraphs 1 through 17, inclusive, and alleges that Notice of Suspension permits and/or requires the Defendant, Administrator of Motor Vehicles, to deprive Plaintiff of his property

without due process of law, in violation of the Fifth and Fourteenth Amendment of the United States Constitution by suspending the operator's license without affording a pre-suspension hearing.

#### SECOND CAUSE OF ACTION

19. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that the Notice of Suspension permits and/or requires the Defendant, Administrator of Motor Vehicles, to deprive Plaintiff of his property without due process of law, in violation of Article I, Section 2 of the Constitution of the State of Rhode Island by suspending the operator's license without affording a pre-suspension hearing.

#### THIRD CAUSE OF ACTION

20. For his third cause of action, Plaintiff adopts by reference the foregoing paragraphs 1 through 19, inclusive, and alleges that Notice of Suspension permits and/or requires the Defendant, Administrator of Motor Vehicles, to deprive Plaintiff of his property without due process of law, in violation of the Fifth and Fourteenth Amendment of the United States Constitution by suspending the operator's license without providing any meaningful information regarding the nature of the charge against him.

#### FOURTH CAUSE OF ACTION

21. Plaintiff adopts by reference the foregoing paragraphs 1 through 20, inclusive, and alleges that the Notice of Suspension permits and/or requires the Defendant, Administrator of Motor Vehicles, to deprive Plaintiff of his property without due process of law, in violation of Article I, Section 2 of the Constitution of the State of Rhode Island by suspending the operator's license without providing any meaningful information regarding the nature of the charge against him.

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Declare that the Notice of Suspension issued by the Defendant Administrator is unconstitutional to the extent that it permits and/or requires the deprivation of a property interest without due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution;

2. Declare that the Notice of Suspension issued by the Defendant Administrator is unconstitutional to the extent that it permits and/or requires the deprivation of a property interest without due process of law, in violation of Article I, Section 2 of the Constitution of the State of Rhode Island;

3. Preliminarily and permanently restrain and enjoin the Defendants, their agents, employees, and all persons acting under or in concert with them, from enforcing the said Order of Suspension;

4. Award Plaintiff reasonable attorneys fees and costs, pursuant to provisions of 42 U.S.C. §1988;

5. Award such other and further relief as this Court deems just and proper.

I have reviewed the foregoing information, and it is accurate and true to the best of my knowledge.

---

Gerald M. Carbone

Subscribed and sworn to before me this \_\_\_\_ day of April, 2010.

---

Notary Public  
My Commission Expires:

Plaintiff,  
Gerald M. Carbone  
By his attorneys

(4054)

James E. Kelleher, Esq.  
Rhode Island Affiliate,  
American Civil Liberties Union  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900  
Fax: (401) 826-3245

JAMES E KELLEHER IS DESIGNATED AS TRIAL COUNSEL