



Rhode Island (“Plaintiff” or “Rhode Island ACLU”) is a Rhode Island non-profit corporation and an affiliate of the ACLU with approximately 2,000 members.

4. Defendant Division of Motor Vehicles, Department of Revenue, State of Rhode Island (“Defendant” or “DMV”) is a governmental body subject to the rulemaking provisions of the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1, *et seq.* The DMV is responsible for the registration of motor vehicles and the maintenance of motor vehicle insurance information pursuant to Title 31 of the Rhode Island General Laws. The DMV is headquartered at 600 New London Avenue in the City of Cranston, in the County of Providence, in the State of Rhode Island.

5. This Court has declaratory judgment jurisdiction over this matter pursuant to R.I. General Laws § 9-30-1 and § 42-35-7. This Court has equity jurisdiction over this matter pursuant to R.I. Gen. Laws § 8-2-13.

#### **Facts Common to All Counts**

6. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 5 of this Complaint as if fully set forth herein.

7. In 2013 the Rhode Island General Assembly passed the Uninsured Motorist Identification Database Procedure Act, R.I. Gen. Laws § 31-47.4-1 *et seq.* (the “UMID Act”). Under the intended framework of the UMID Act, insurance companies are to submit to the Uninsured Motorist Identification Database information about the identities of their insureds, and the DMV is to submit to the Database the information that it has about registered motor vehicles. A third party contractor hired by the DMV is to then match the information submitted by the insurance companies and the DMV, in order to identify owners of registered motor vehicles who do not appear to have motor vehicle insurance. The third party contractor will be responsible to send notices to the owners who have been identified as having no motor vehicle insurance, using

the address information available in the Uninsured Motorist Identification Database. As will be stated in the notices, the registered owners must obtain insurance within a specified period of time or else their motor vehicle registration will be revoked.

8. The DMV has not promulgated any rules or regulations to use the Uninsured Motorist Identification Database. The General Assembly expressly required the DMV to do so. R.I. Gen. Laws § 31-47.4-2(h) requires that “[i]n accordance with chapter 42-35, ‘The Administrative Procedures Act,’ the division of motor vehicles shall make rules and develop procedures to use the database for the purpose of administering and enforcing this chapter.” R.I. Gen. Laws Ann. § 31-47.4-2(h). Additionally, R.I. Gen. Laws § 31-47.4-4.3(e)(1) requires the Defendant to undergo an APA rulemaking process before any fines can be levied against insurers for failure to comply with the UMID Act.

9. The Uninsured Motorist Identification Database will contain a wealth of information including individual names, birthdates, addresses, driver’s license numbers, and active motor vehicle registrations. Rhode Island General Laws § 31-47.4-2 provides that reports from the Database may be made available electronically or through the Internet if the DMV “determines that sufficient security is provided to ensure compliances regarding limitations on disclosure of information in that database.” R.I. Gen. Laws § 31-47.4-2. There are no statutory security requirements, indicating that all such security is to be established by the DMV in regulations. The DMV has established no system security regulations.

10. Related, the UMID Act appears to allow the use by the third party contractor, with the consent of the DMV and insurance companies, of any information contained within the database without the residents’ consent. The DMV has established no regulations governing those

circumstances in which the DMV can provide this consent to use information that would address this concern.

11. The UMID Act states that after a vehicle appears on the uninsured list for three consecutive months, the Defendant DMV shall “direct that the designated agent provide notice of the owner of the motor vehicle” that the owner has fifteen (15) days to provide proof of security or exemption. It is not stated whether that notice is to be done by mail, by email, over the telephone, via internet based application, or any other way. Further, the UMID Act does not specify what information the designated agent is to submit to the DMV in order to demonstrate that the owner has failed to provide proof of insurance, before the DMV may revoke the owner’s registration. Another concern is that the UMID Act allows the DMV to direct the designated agent to inform the owner of the revocation of registration and how to get registration reinstated. If the designated agent fails to so notify the owner, then the owner may inadvertently operate an unregistered, uninsured vehicle. There is no discussion in the statute as to when or by what means this notification takes place. The Defendant has established no regulations concerning these notices, including the time, means and method of proof of notice to the motor vehicle owner that the owner’s registration is jeopardized, revoked, or eligible for reinstatement.

12. Although the motor vehicle owner is required to show proof of responsibility or exemption from the law, there is no discussion in the UMID Act as to how they are to show proof, *i.e.*, a copy of a bill sent by mail, a copy of the vehicle’s bill of sale by fax, or by some other specific means of proof. There is also no discussion in the Act as to what is meant by “proof of exemption from the owner’s or operator’s security requirements.” These matters were supposed to be clarified and explained by DMV regulations, but the DMV has not made those regulations.

13. There is no statutory process for owners to appeal the fines and penalties associated with the revocation of registration, in the event that their registration is revoked in error. That process was supposed to be governed by DMV regulations that would make clear what the owners' rights are. The DMV has not made those regulations.

14. The DMV cannot implement the UMID Act without first making the regulations it was supposed to make, pursuant to the UMID Act and the Administrative Procedures Act, appropriately addressing these matters of public concern.

15. The DMV's third party contractor and designated agent cannot perform services for the UMID program until the DMV has made the appropriate rules and regulations intended by the UMID Act to guide and limit the third party contractor and designated agent's use of Rhode Island residents' personal information.

16. On December 17, 2014 the DMV first announced that it intends to put the Uninsured Motorist Identification Database into effect, and stated that that the system would go into effect on February 7, 2015. *See* Exhibit A, December 17, 2014 WPRI Article, "DMV to crack down on uninsured drivers across RI". The Rhode Island ACLU first became aware of the planned implementation of the UMID Program as a result of this article.

17. The DMV made another similar announcement in the Providence Journal on December 20, 2014, identifying "Motor Vehicle Solutions (MVS) of South Carolina" as the third party contractor and designated agent for the program. *See* Exhibit B, December 20, 2014 Providence Journal Article, "Ask the DMV: New law allows state to flag vehicles without insurance".

18. According to the records of the Rhode Island Secretary of State, Motor Vehicle Solutions, LLC ("MVS") is a Missouri limited liability company that registered on September 9,

2014 with the Rhode Island Secretary of State as a foreign limited liability company. MVS has a principal place of business at 4800 Mexico Road, Suite 201, St. Peters, Missouri.

19. On January 15, 2015 Plaintiff Davis and Rhode Island ACLU related their concerns to the DMV by letter, and requested that the DMV commit to refrain from implementing the UMID Database until appropriate regulations have been adopted in accordance with APA's rulemaking procedures. *See* Exhibit C, Letter from Hillary Davis, Policy Advocate, Rhode Island ACLU to Claire Sedlock, Interim Administrator, DMV.

20. On January 16, 2015 Marcy Coleman, Esq., Assistant General Counsel to the DMV, responded to the letter and stated that she would like to have a phone call regarding the issues raised in the letter attached as Exhibit C. Plaintiff Davis has told Attorney Coleman that she is available for her call.

21. On January 28, 2015 Plaintiff Davis received a response from John DiTomasso, DMV Assistant Administrator, who stated that the DMV is drafting rules and regulations for the UMID Program. He did not know when the DMV intends to hold an APA hearing on the rules and regulations that the DMV is drafting, and stated that Ms. Davis should speak with Attorney Coleman about that. Ms. Davis asked if they plan to hold a hearing on those regulations before the program goes into effect. Mr. DiTomasso responded that the UMID Program is already in effect.

22. Mr. DiTomasso stated that the UMID Database has already been established: insurance companies have already been sending personal information about Rhode Island policyholders to the third party contractor and designated agent (MVS).

23. Mr. DiTomasso also stated that on February 8, 2015, the third party contractor and designated agent (MVS) will begin sending letters to people who the third party contractor and

designated agent believes are not insured, telling them that they need to submit proof of insurance. He stated that a second letter is scheduled to go out a month later and that as early as April 2015, registrations will begin to be revoked.

24. As of the date of this filing the DMV has not commenced APA rulemaking procedure through notice and a public hearing on any proposed rules and regulations. DMV has not indicated an intention to suspend the creation of the UMID Database or the implementation of the UMID Program until APA rulemaking has been conducted. DMV is going forward without any regulations.

25. The Rhode Island ACLU had planned to testify at an APA hearing on any proposed regulations for the UMID Program on the basis of the concerns outlined in this complaint, in the expectation that the DMV would engage in APA rulemaking in advance of the implementation of the UMID Program. The Rhode Island ACLU intends to offer such testimony in the event that APA rulemaking is conducted.

#### **COUNT ONE – DECLARATORY JUDGMENT**

26. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. There exists an active and continuing controversy as to the validity of the UMID program given the lack of any regulations in compliance with the UMID Act and the Administrative Procedures Act.

WHEREFORE, Plaintiff prays that this Court will grant the following relief:

(1) That this Court issue a declaratory judgment that the UMID program cannot be validly implemented until such time as the DMV promulgates regulations pursuant to the APA;

(2) That this Court award Plaintiffs their reasonable attorney's fees and other litigation costs under the Equal Access to Justice Act, R.I. Gen. Laws § 42-92-1 *et seq.*; and

(3) That this Court grant such other relief as it deems just and proper.

**COUNT TWO – INJUNCTIVE RELIEF**

28. Plaintiffs incorporates by reference the allegations contained in paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Plaintiffs are apprehensive of imminent, irreparable harm as a result of the implementation of DMV's UMID program without rules and regulations to securely protect personal information of motor vehicle insureds and registered owners, such as individual names, birthdates, addresses, driver's license numbers, and active motor vehicle registrations. According to the DMV this information is already in the possession of the third party contractor MVS, without any rules and regulations in place to limit its use and disclosure. In addition the Plaintiffs are apprehensive of imminent irreparable harm from incorrect personal data in the UMID Database repository, incorrect revocation of motor vehicle registration, lack of procedures for proof of insurance, reinstatement, appeal of fines and revocations, and lack of penalties for insurance companies that fail to comply with the program. All of these risks were intended by the General Assembly to be guarded against by appropriate DMV regulations. The DMV has not made any rules and regulations for how it is going to implement the UMID Program, even though it was directed to do so by the General Assembly, in the UMID statute itself.

30. Plaintiffs have no adequate remedy at law.

31. The burden upon the DMV by the requested injunction is exceeded by the burden upon the Plaintiffs in the absence of the requested injunction.

32. The requested injunction does no harm to the public interest and promotes the public interest.

WHEREFORE, Plaintiff prays that this Court will grant the following relief:

(1) That this Court enjoin DMV from taking any further action to compile the UMID Database or to implement the UMID Program until further order of this Court;

(2) That this Court enjoin DMV to direct MVS as its third party contractor and designated agent to refrain from taking any further action to compile the UMID Database or implement the UMID Program until further order of this Court;

(3) That this Court award Plaintiffs' attorney's fees and other litigation costs under the Equal Access to Justice Act, R.I. Gen. Laws § 42-92-1 *et seq.*; and

(4) That this Court grant such other relief as it deems just and proper.

Plaintiffs,  
HARLAN KADISH, HILLARY DAVIS and  
AMERICAN CIVIL LIBERTIES UNION  
OF RHODE ISLAND,

By their Attorneys,

/s/ Albin Moser  
Albin Moser, Esq. (#6166)  
RHODE ISLAND AFFILIATE,  
AMERICAN CIVIL LIBERTIES UNION  
Law Offices of Albin Moser, P.C.  
127 Dorrance Street, 2nd Floor  
Providence, RI 02903  
(401) 861-2100  
[amoser@albinmoser.com](mailto:amoser@albinmoser.com)