

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND AFFILIATE,
AMERICAN CIVIL LIBERTIES UNION
and DIRECT ACTION FOR RIGHTS
AND EQUALITY

Plaintiff(s)

vs.

C.A. NO.

BEVERLY NAJARIAN, in her capacity
as Director of the RHODE ISLAND
DEPARTMENT OF ADMINISTRATION
and CHARLES DOLAN, in is capacity as
Administrator of the DIVISION OF MOTOR
VEHICLES OF THE STATE OF RHODE ISLAND
Defendants

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COUNT I

1. Plaintiff Rhode Island Affiliate, American Civil Liberties Union is the local chapter of the national public interest organization established for the purpose of promoting civil liberties and has a place of business in Providence, Rhode Island (“RICLU”). The RICLU has a membership of approximately two thousand five hundred (2,500) people. As an association of not less than 25 members, the RICLU is authorized by R.I. Gen. Laws §42-35-3(a)(2) to request oral hearings and substantive rule making proceedings. The RICLU is interested in and concerned with the rights of immigrants to obtain driver’s licenses, and with the Division’s policies and procedures governing entitlement to a driver’s license and the documentation required to obtain one. The RICLU is interested in substantive rule making proceedings that defendants should undertake. RICLU’s participation has been precluded by the lack of public notice of proposed rule making, required under R.I. Gen. Laws §42-35-3(a), and by defendant’s failure to adopt rules of procedure

and practice governing public petitions for rule making required under R.I. Gen. Laws §42-35-2(2).

2. Direct Action for Rights and Equality (“DARE”) is non-profit organization of not less than 25 members, organizing low-income families in communities of color to fight for economic, political and social justice. Approximately half of DARE’s members are immigrants. Although the majority of DARE’s immigrant members live in Providence, they often travel to Massachusetts or South County to work. In order to work, they need to drive. However, many face difficulties and arbitrary treatment at the defendant Division’s office when they seek to obtain a driver’s license. DARE is interested in substantive rule making proceedings that defendants should undertake.

3. Defendant Beverly Najarian is sued in her capacity as Director of the Rhode Island Department of Administration of which the Division of Motor Vehicles is a division. By statute the department operates the Division of Motor Vehicles and is authorized to promulgate regulations respecting eligibility for licenses, pursuant to the Administrative Procedure Act, R.I.G.L. §42-35-1, et seq. Rhode Island’s statutes contemplate that immigrants may obtain motor vehicle operator’s licenses.

4. Defendant Charles Dolan is sued in his capacity as Administrator of the Rhode Island Division of Motor Vehicles and, in that capacity has the responsibility to enforce Rhode Island civil law respecting motor vehicles operator’s licenses and is authorized to adopt regulations to implement the State’s motor vehicle laws. R.I.G.L. §31-2-4.

5. The Department of Administration is a department within the executive branch of government. R.I. Gen. Laws §42-56-2.

6. Section 42-56-12 of the Rhode Island General Laws, 1956, as amended, directs and

authorizes the director of the Department and the Division to make and promulgate necessary rules and regulations incident to the exercise of his powers and the performance of his duties as enumerated therein.

7. The Department and the Division are an “agency” within the meaning of R.I. Gen. Laws §42-35-1(a), which states:

“‘agency’ includes each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.”

8. The Department and the Division are required by the APA to follow the procedures contained in R.I. Gen. Laws §42-35-3(a) which requires the giving of notice of intended action prior to promulgation of rules and regulations, and the affording to all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, on such promulgated rules and regulations all as more fully provided therein.

9. In addition, R.I. Gen. Laws §42-35-2 directs the Department to perform certain acts with respect to availability of rules and orders and contains a requirement that the agency adopt a rule of description of its organization and rules of practice, all as more fully provided therein.

10. Defendant has failed to promulgate any regulations respecting the eligibility of immigrants to obtain Rhode Island motor vehicle operators licenses, the documentation required to obtain a driver’s license, the procedures for denying a license or hearing appeals of such denials, policies governing the confiscation of documents submitted by applicants for driver’s licenses, and similar matters governing the application process for driver’s licenses.

11. This court has jurisdiction of the matter pursuant to R.I.G.L. §9-30-1, et seq.

12. There are no administrative remedies available to plaintiffs.

COUNT II

13. Plaintiffs reallege the allegations of Paragraphs 1 through 12 of the complaint.

14. On information and belief, the Division of Motor Vehicles has instituted a policy of requiring applicants for a motor vehicle operators license to establish they had a Social Security number (hereinafter “the policy”). This policy constitutes de facto regulations.

15. The Department’s and the Division’s promulgation of rules and regulations without prior public notice and opportunity to comment violates R.I. Gen. Laws §42-35-3.

16. The policy is also contrary to Rhode Island’s statutes respecting eligibility for a motor vehicle operator’s license.

WHEREFORE, plaintiffs RICLU and DARE hereby demand judgment declaring that

1. The defendants’ unwritten policy of requiring applicants to have a Social Security number to obtain a Rhode Island motor vehicle operator’s license is ultra vires and requiring defendants to promulgate regulations pursuant to the Administrative Procedure Act, R.I.G.L. §42-35-1 respecting the applications of resident aliens for motor vehicles operator’s license;
2. That the Court order the Defendant to re-promulgate said rules and regulations in accordance with R.I. Gen. Laws §42-35-3, and in such a manner as to afford the public and other affected parties with reasonable notice of its intended action and to afford all interested parties with a meaningful opportunity to submit written or oral data, views or arguments;
3. That the Defendant be temporarily, preliminarily and permanently enjoined or restrained from promulgating any and all rules and regulations for the Department

and the Division in violation of the APA; and

4. That the Court order the Defendant to adopt as rules a description of the organization of the Department and the Division and its rules of practice, including, without limitation, rules and procedures whereby interested members of the public may petition the Defendant for adoption of particular rules, as more fully specified and required under R.I. Gen. Laws §42-35-2.
5. Awarding plaintiff's attorney's fees under the Equal Access to Justice Act.

PLAINTIFFS

By their attorney,

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