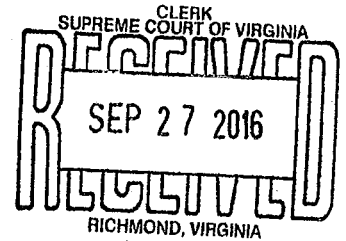


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IN THE

SUPREME COURT OF VIRGINIA



RECORD NO. 161291

**MICHAEL S. YOULEN
MANASSAS JUNCTION, LLC,**

Appellants,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

**ON APPEAL FROM
THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM
BRIEF IN OPPOSITION TO PETITION FOR APPEAL**

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The Commonwealth of Virginia (“Commonwealth”) submits this Brief in Opposition. For the reasons set forth below, the petition should be denied.

STATEMENT OF THE CASE

The Petition for Appeal arises from a final judgment entered against Michael S. Youlen (“Youlen”) and Manassas Junction, LLC (“MJLLC”) in the Circuit Court of Prince William County (“Circuit Court”) on June 3, 2016. (Record 41).

The Circuit Court dismissed with prejudice Youlen and MJLLC’s Complaint against the Commonwealth seeking declaratory judgment regarding the definition of “Private Police Department” in Code § 9.1-101. Youlen and MJLLC claimed that the definition of “Private Police Department” is unconstitutional as a special law under Article IV of the Constitution of Virginia. (Compl. ¶¶ 1 and 22). Youlen and MJLLC further claimed that the definition of “Private Police Department” violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (Compl. ¶¶ 1 and 23). Youlen and MJLLC ask this Court to reverse the Circuit Court’s Order and remand for further proceedings in the Circuit Court.

ASSIGNMENTS OF ERROR

Youlen and MJLLC assign the following errors:

1. The Circuit Court erred in sustaining the Demurrer by finding that the definition of "Private Police Department" in Code § 9.1-101 did not violate Article IV, § 14, (18) and Article IV, § 15 of the Virginia Constitution. As stated in paragraph 5 of the Written Statement of Facts, Testimony, and Other Incidents of Trial (entered August 12, 2016), the Circuit Court adopted the arguments set forth in the Commonwealth of Virginia's Memoranda supporting the Motion to Dismiss and rejected the arguments submitted by Plaintiffs in their opposition memorandum. The Commonwealth of Virginia's Arguments, which were adopted by the Circuit Court, were stated in the Commonwealth's Memorandum in Support of Motion to Dismiss, filed on February 24, 2016, and its Reply to Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss, filed on May 17, 2016.

2. The Circuit Court erred in sustaining the Demurrer by finding that there was a rational basis for the definition of "Private Police Department" in Code § 9.1-101 under the Fourteenth Amendment to the United States Constitution. As stated in paragraph 5 of the Written Statement of Facts, Testimony, and Other Incidents of Trial, the Circuit Court adopted the arguments set forth in the Commonwealth of Virginia's Memoranda supporting the Motion to Dismiss, and rejected the arguments submitted by Plaintiffs in their opposition memorandum. As stated in paragraph 6 of the Written Statement of Facts, Testimony, and Other incidents of Trial, the Circuit Court found that Plaintiffs were not similarly situated to those persons or entities recognized as a "Private Police Department" by Code § 9.1-101 because Plaintiffs did not own or operate a private police department that was in existence on January 1, 2013. The Circuit Court also found that there was a rational basis under the Virginia and Federal constitutions for the definition of "Private Police Department" in Code § 9.1-101 because of the public interest in regulating the delegation and exercise of police powers. The Commonwealth of Virginia's Arguments, which were adopted by the Circuit Court, were stated in the Commonwealth's Memorandum in Support of Motion to Dismiss, filed on February 24, 2016, and its

Reply to Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss, filed on May 17, 2016.

(Petition for Appeal at 4).

STATEMENT OF FACTS

Youlen is an adult resident of the Commonwealth of Virginia and is the 100% owner of MJLLC. Youlen is a Special Conservator of the Peace ("SCOP") appointed by the Prince William Circuit Court pursuant to Code § 19.2-13 to perform certain police duties within a defined area for private property owners in the City of Manassas and Prince William County. (Compl. ¶ 2).

MJLLC is a Virginia limited liability company with its principal place of business in the City of Manassas, employing SCOPs such as Youlen to provide security and police services. (Compl. ¶ 3). Formerly known as Manassas Junction Police Department, LLC, MJLCC was formed in part to be a private police force in Virginia. (Compl. ¶ 5).

In August 2013 and February 2014, Youlen and MJLLC applied to the Virginia Department of Criminal Justice Services ("DCJS") to be designated a private police force. (Compl. ¶ 6).¹ At that time, DCJS had previously

¹ Although not in the Record, DCJS declined to designate Youlen and MJLLC as a private police force citing a question of authority to issue such designations.

recognized some private police departments associated with entities that owned, leased, or controlled private property. (Compl. ¶ 7 and Rec. 16).

During the 2015 legislative session, the General Assembly amended Code § 9.1-101 by adding the definition of "private police department." Following the amendment, which became effective March 16, 2015 the definition is:

"Private police department" means any police department, other than a department that employs police agents under the provisions of § 56-353, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department or operated by such entity's successor in interest, provided it complies with the requirements set forth herein. No entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity that has been authorized pursuant to this section, provided it complies with the requirements set forth herein. The authority of a private police department shall be limited to real property owned, leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding with the private police department that addresses the duties and responsibilities of the private police department and the chief law-enforcement officer in the conduct of criminal investigations. Private police departments and private police officers shall be subject to and comply with the Constitution of the United States; the Constitution of Virginia; the laws governing municipal police departments, including the provisions of §§ 9.1-600, 15.2-1705

through 15.2-1708, 15.2-1719, 15.2-1721, and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable to private police departments. Any person employed as a private police officer pursuant to this section shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a “qualified law enforcement officer” or “qualified retired law enforcement officer” within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any locality. An authorized private police department may use the word “police” to describe its sworn officers and may join a regional criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private police department was recognized by the Department at that time is hereby validated and may continue to operate as a private police department as may such entity’s successor in interest, provided it complies with the requirements set forth herein.

(Compl. ¶ 8).

In October 2015, Youlen and MJLLC requested that DCJS designate MJLLC as a private police department. (Compl. ¶ 9). A month later, DCJS denied the request because Youlen and MJLLC did not meet the requirements of Code § 9.1-101. (Compl. ¶ 10).

Youlen and MJLLC claimed there was no procedure available by which they could seek to be recognized as a private police department. (Compl. ¶ 11). The Commonwealth argued that the procedure for

recognition as a private police department is found explicitly in Code § 9.1-101. (Rec. 15-16).

Youlen and MJLLC claimed that since Code § 9.1-101 was amended, they are not aware of any persons or business entities that have attained recognition by the Commonwealth of Virginia as private police departments. (Compl. ¶ 12). The Commonwealth argued that although no entities have been recognized since the amendment, the Shenandoah Valley Battlefields Foundation sought authorization from the General Assembly during the 2016 Session. (Rec. 16).²

Several private police departments were in existence on January 1, 2013, and received continuing recognition in the amendment to Code § 9.1-101. These departments included, but were not limited to, the Wintergreen Police Department, the Bridgewater Airpark Police Department, the Aquia Harbor Police Department, the Kings Dominion Park Police Department, the Kingsmill Police Department, and the Massanutten Police Department. (Compl. ¶ 14). In each case the sponsoring entity was an entity that owned, leased, or controlled property. (Rec. 16).

On January 21, 2016, Youlen and MJLLC filed a one-count Complaint, seeking a declaratory judgment against the Commonwealth that

² The bill was stricken at the request of the patron on January 18, 2016. <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=161&typ=bil&val=sb378>.

the “private police department” definition in Code § 9.1-101 was unconstitutional. (See Compl.). Youlen and MJLLC alleged that the 2015 amendment adding the definition of “private police department” in Code § 9.1-101 violated Article IV, § 14, ¶18, and Article IV, § 15 of the Virginia Constitution as a “special law” and violated the equal protection clause of the Fourteenth Amendment. (Compl., ¶ 1, 22, and 23).

Following briefing by the parties on the Commonwealth’s motion to dismiss, the matter was heard by the Circuit Court on June 3, 2016. During the hearing, the Circuit Court treated the Commonwealth’s motion to dismiss as a demurrer, without objection by the parties. (Written Statement of Facts, Testimony and Other Incidents of the Case, ¶ 3).

After argument on June 3, 2016, the Circuit Court dismissed Youlen and MJLLC’s Complaint with prejudice, issuing a dismissal Order granting the Commonwealth’s Demurrer and dismissing the complaint with prejudice. (Rec. 41). Youlen and MJLLC noted objections to the Order. (*Id.*).

STANDARD OF REVIEW

A circuit court’s decision on demurrer is reviewed *de novo*. *Ayers v. Shaffer*, 286 Va. 212, 217, 748 S.E.2d 83, 86 (2013). “A demurrer admits the truth of the facts contained in the [motion for judgment], as well as any

facts that may be reasonably and fairly implied and inferred from those allegations. A demurrer does not, however, admit the correctness of the pleader's conclusions of law." *Taboada v. Daly Seven, Inc.*, 271 Va. 313, 317-18, 626 S.E.2d 428, 429 (2006) (internal quotation marks omitted).

ARGUMENT

I. The Circuit Court correctly held that the definition of "Private Police Department" does not constitute a "Special Law."

Special laws are forbidden by the Constitution of Virginia. Article IV, § 14, ¶ 18 provides, in part: "[t]he General Assembly shall not enact any local, special, or private law . . . [g]ranted to any private corporation, association, or individual any special or exclusive right, privilege, or immunity."

And Article IV, § 15 of the Constitution of Virginia provides, in part:

In all cases enumerated in the preceding section . . . the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of enactment of, a special, private, or local law. . . . No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall a general law's operation be suspended for the benefit of any private corporation, association, or individual.

All statutes enacted by the General Assembly are presumed to be constitutional. *Pulliam v. Coastal Emergency Servs.*, 257 Va. 1, 9, 509

S.E.2d 307, 311 (1999); *King v. Virginia Birth-Related Neurological Injury Comp. Program*, 242 Va. 404, 408, 410 S.E.2d 656, 659 (1991). A litigant who challenges the constitutional validity of a statute has the burden of proving that the challenged legislation is unconstitutional, and any reasonable doubt as to the statute's constitutionality must be resolved in favor of its validity. *Pulliam*, 257 Va. at 9, 509 S.E.2d at 311; *King*, 242 Va. at 408, 410 S.E.2d at 659. Youlen and MJLLC face an uphill battle on this score, since "every possible presumption shall be indulged in favor of the validity of [the] legislative act." *Concerned Residents of Gloucester Cty. v. Bd. of Superv'rs*, 248 Va. 488, 493, 449 S.E.2d 787, 790 (1994).

The constitutional prohibition against special laws does not prohibit legislative classifications. *Holly Hill Farm Corp. v. Rowe*, 241 Va. 425, 430, 404 S.E.2d 48, 50 (1991). Rather, the prohibitions require that classifications be "natural and reasonable, and appropriate to the occasion." *Benderson Dev. Co. v. Sciortino*, 236 Va. 136, 140-41, 372 S.E.2d 751, 753 (1988); *Holly Hill Farm Corp.*, 241 Va. at 430, 404 S.E.2d at 50. Additionally, "the necessity for and the reasonableness of classification are primarily questions for the legislature. If any state of facts can be reasonably conceived, that would sustain it, that state of facts at the time the law was enacted must be assumed." *Etheridge v. Med. Ctr.*

Hosps., 237 Va. 87, 102, 376 S.E.2d 525, 533 (1989) (quoting *Martin's Ex'rs v. Commonwealth*, 126 Va. 603, 612-13, 102 S.E. 77, 80 (1920)).

Additionally, the fact that government action benefits a single entity is necessary, but not sufficient by itself, to constitute a "special law" under Article IV, § 14 of the Virginia Constitution. *Jefferson Green Unit Owners Ass'n v. Gwinn*, 262 Va. 449, 461, 551 S.E.2d 339, 346 (2001) (reversing trial court for focusing "only on the fact that . . . a private organization [was] receiving an economic benefit"). The test is not simply who benefits but whether the law bears "a reasonable and substantial relation to the object sought to be accomplished by the legislation." *Id.* at 459, 551 S.E.2d at 344 (quotations and citations omitted).

There is a two-part test for a "special law" analysis. First, does the law affect "all persons similarly situated or engaged in the same business throughout the State without discrimination," and second, the difference in effect "must bear a reasonable and substantial relation to the object sought to be accomplished." *Benderson Dev. Co.*, 236 Va. at 148-149, 372 S.E.2d at 757-758. As demonstrated below, Petitioners cannot succeed in showing that the "private police department" definition violates either prong.

In enacting the "private police department" definition, the General Assembly stated that any entity operating as a police department needed to

be "authorized by statute or an act of assembly." (See Code § 9.1-101). That classification is not arbitrary because it ensures that all police departments, private, municipal, and state police departments, are authorized by statute or an act of assembly.³ See e.g., Code §§ 4.1-105 (police powers of members, agents, and employees of Virginia Alcoholic Beverage Control Board), 15.2-1609 (authorizing voters of counties and cities to elect a sheriff), 15.2-1701 (locality may, by ordinance, provide for authorized police forces), 15.2-1731 (localities may establish auxiliary police forces), and 52-1 (establishing a Department of State Police).

A. Youlen and MJLLC are not similarly situated to other entities because they do not own, lease, or control real property.

The General Assembly made the rational decision to recognize the private police departments in existence on January 1, 2013, that were not otherwise established by statute or an act of assembly but whose status as a private police department was recognized by the DCJS. The General Assembly also made the rational decision to require that any future entities pursuing recognition as a private police department must seek specific authorization from the General Assembly. The basis behind this rationale

³ Town police departments are not authorized by a specific act of the General Assembly, but town police departments do require an ordinance from the local governing body to be established. See Code § 15.2-1701.

is that an entity that was in existence on January 1, 2013, and recognized by DCJS—the state agency tasked with the certification and training of law enforcement—had met the objectives that the General Assembly identified for private-police-department recognition. See Code §§ 9.1-102, and 15.2-1706.

At best, the earliest that Youlen and MJLLC sought recognition as a private police department was August 2013, well after the January 1, 2013, date. See Compl. ¶ 6. The Petitioners have been treated no differently than any other entity seeking to be recognized as a private police department. Although Petitioners assert that there is no mechanism to seek recognition, Code § 9.1-101 explicitly provides a mechanism. That is, the entity must seek authorization by statute or an act of assembly to establish a private police department and must comply with the Constitution of the United States, the Constitution of Virginia, the Code of Virginia, and regulations adopted by the Board for Criminal Justice Services. In fact, the Shenandoah Valley Battlefields Foundation sought such authorization this year from the General Assembly. (Rec. 16).⁴

⁴ The bill was stricken at the request of the Patron on January 18, 2016. <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=161&typ=bil&val=sb378>.

Moreover, Youlen and MJLLC do not meet the sponsoring requirements of a private police department because neither party is an entity that owns, leases, or controls real property. See Compl. ¶¶ 3, 5. Additionally, Youlen and MJLLC are not sponsored by an entity owning, leasing, or controlling real property. *Id.* Youlen and MJLLC's failure to satisfy the sponsoring requirements means that they are not similarly situated to other recognized entities and cannot meet the statutory definition.⁵ The statute is not designed to authorize private police departments for hire, but rather to authorize private police departments that will serve a sponsoring entity that owns, leases, or controls real property. See Code § 9.1-101.

The General Assembly made the rational decision that an entity must meet certain requirements and be recognized in a certain manner. In comparison to the recognized entities that own, lease, or control real property and operate an existing police force, Youlen and MJLLC are not similarly situated. Simply because certain entities meet the definition, while Youlen and MJLLC do not meet it, does not transform the law into a special law. Based on the foregoing, the Circuit Court was correct to find that

⁵ Youlen and MJLLC's failure to allege that it owns, leases, or controls real property may also present a standing or ripeness issue.

Code § 9.1-101 is not a special law. See e.g., *Holly Hill Farm Corp. v. Rowe*, 241 Va. 425, 404 S.E.2d 48.

B. The General Assembly's classification bears a reasonable and substantial relation to the object sought to be accomplished.

The definition of private police department accomplishes the object of ensuring that a private police department has been authorized by the General Assembly in a manner similar to the authorization afforded to municipal and state police departments. Delegating particular police powers to private entities and requiring that those entities meet certain requirements demonstrates the General Assembly's commitment to maintaining specific standards for private, as well as public, police departments.

In addition, the classifications in Code § 9.1-101 are "natural and reasonable, and appropriate to the occasion." *Benderson Dev. Co.*, 236 Va. at 140-41, 372 S.E.2d at 753; *Holly Hill Farm Corp.*, 241 Va. at 430, 404 S.E.2d at 50. "[T]he necessity for and the reasonableness of classification are primarily questions for the legislature. If any state of facts can be reasonably conceived, that would sustain it, that state of facts at the time the law was enacted must be assumed." *Etheridge*, 237 Va. 87, 102, 376 S.E.2d 525, 533 (1989) (quoting *Martin's Ex'rs*, 126 Va. at 612-13, 102

S.E. at 80). The General Assembly's classification of private police departments is natural, reasonable, and appropriate given the delegation of police powers to private entities and the General Assembly's legitimate interest in delegating such power only to authorized entities. Accordingly, the Circuit Court correctly held that the "private police department" definition is not a special law.

II. The Circuit Court correctly held that there was a rational basis for the definition of "Private Police Department" in Virginia Code § 9.1-101 under the Fourteenth Amendment to the United States Constitution.

The Equal Protection Clause states, in part, that no state shall "deny to any person . . . the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Because the challenged classification neither infringes upon a fundamental right nor creates a suspect class, this Court must apply the rational basis test to ascertain whether the statute can withstand an equal protection challenge. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 195-96 (1983); *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981); *Etheridge*, 237 Va. at 103, 376 S.E.2d at 534.

The rational basis test is satisfied "if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose." *Eagerton*, 462 U.S. at 196. Consequently, a classification is not unconstitutional merely because it causes some

inequality or some discrimination. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (if classification has some reasonable basis, it does not offend the Constitution); *Sheek v. City of Newport News*, 214 Va. 288, 290, 199 S.E.2d 519, 522 (1973) (if the question of reasonableness is fairly debatable, court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of deciding the question). As Chief Justice Warren aptly stated:

[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. . . . State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

McGowan v. Maryland, 366 U.S. 420, 425-26 (1961).

Youlen and MJLLC claim that the private police department definition applies unequally because those private police departments that were in existence on January 1, 2013, meet the definition, while Youlen and MJLLC do not. (Compl. ¶¶ 13, 14, 16, 17, and 18).

As discussed above, the General Assembly made the rational decision to require that any entity operating as a police department be “authorized by statute or an act of assembly to establish a private police department.” See Code § 9.1-101. The regulation of police powers and

the limitation that only certain entities can exercise those police powers is a legitimate state purpose. "When a legislative body exercises its police powers, every possible presumption shall be indulged in favor of the validity of its legislative act." *Concerned Residents of Gloucester Cty.*, 248 Va. at 493, 449 S.E.2d at 790. Accordingly, the "private police department" definition and requirements do not violate the Equal Protection Clause. Simply because Youlen and MJLLC fail to meet the definition does not render the 2015 amendment to Code § 9.1-101 unconstitutional.

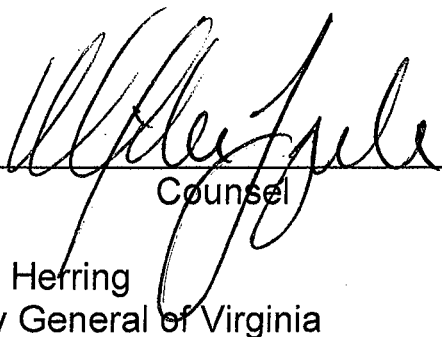
CONCLUSION

For the foregoing reasons, the Commonwealth respectfully asks this Court to refuse the petition for appeal and affirm the judgment of the Circuit Court.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
Appellee herein.

By: _____



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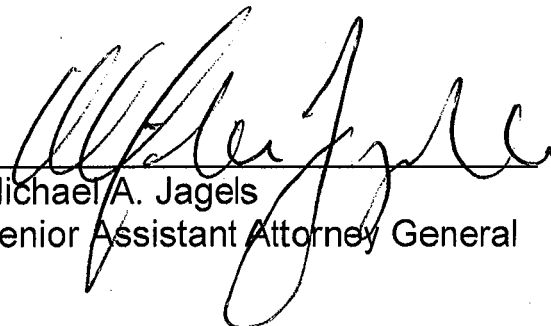
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CERTIFICATE OF TRANSMISSION AND SERVICE

On September 27, 2016, the required copies of this Brief in Opposition were hand delivered to the Clerk's Office of this Court for filing and a copy was mailed to Daniel A. Harvill, Esq., Daniel A. Harvill, PLLC, 9403 Grant Avenue, Suite 202, Manassas, Virginia, 20110.

Pursuant to Rule 5:18(b), the undersigned certifies that the brief, excluding the cover page, table of contents, table of authorities, and certificate is 23 pages long and contains 4,535 words.

In compliance with Rule 5:26(e), a digital copy of this brief in opposition was submitted to the Clerk of this Court.


Michael A. Jagels
Senior Assistant Attorney General