



# COMMONWEALTH of VIRGINIA

ARCHER L. YEATTS, III  
JUDGE  
L. NEIL STEVERSON  
JUDGE  
JOHN MARSHALL  
JUDGE  
JAMES S. YOFFY  
JUDGE

**HENRICO COUNTY**  
**GENERAL DISTRICT COURT**  
PARHAM AT HUNGARY SPRING ROAD  
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RICHMOND, VIRGINIA 23273-7032

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August 2, 2007

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**Re: Commonwealth v. Anthony Oladunmi Price**

Dear Lady and Gentlemen:

On July 26, 2007, the defendant appeared with counsel and pled nolo contendere to the charge of fifth offense in violation of Virginia Code Section 46.2-301, driving after his privilege to drive is revoked or suspended.

The facts, as summarized by the Commonwealth's Attorney, were that Officer Mack of the Henrico County Police Department, while in uniform with badge of authority displayed, observed a vehicle operated by the defendant in Henrico County, with both its left rear tail light and its license plate light inoperable. When Officer Mack approached the vehicle, he recognized the defendant, who promptly volunteered that he was still suspended. When the officer inquired as to "the number of times this would make," the defendant responded, "the fifth time."

At the conclusion of the evidence, the defendant was found guilty as charged. He was fined \$200.00 with \$50.00 suspended, given 12 months in jail with 10 months suspended for 3 years, 10 days of which was mandatory, and his privilege to drive was suspended for 90 days. He was granted work release if eligible under the Sheriff's criteria.

Prior to assessing the \$750.00 civil remedial fees as required by Virginia Code Section 46.2-206.1, argument was heard on the defendant's Motion To Dismiss Statute As Unconstitutional and the Commonwealth's Response thereto.

Paragraph A of Code Section 46.2-206.1 states:

The purpose of the civil remedial fees imposed in this section is to generate revenue from drivers whose proven dangerous driving behavior places significant financial burden upon the Commonwealth. The civil remedial fees established by this section shall be in addition to any other fees, costs, or penalties imposed pursuant to the Code of Virginia.

Paragraph B limits the assessment of any such fees to "any resident of Virginia operating a vehicle on the highways of Virginia."

Paragraph C states that "The Court" shall assess the entire fees set forth therein for the specified convictions, and paragraph E provides that the court shall collect the first annual payment of the fee imposed and order the person to pay the second and third annual payments to DMV within designated time frames.

The sole issue presented by the defendant is whether such assessment on residents of Virginia, but not on non-residents, violates the Equal Protection Clauses of the Constitutions of the United States and Virginia.

It should be noted at the outset that at oral argument it was agreed by both parties that the additional fees for excessive demerit points in paragraph G of the statute are not at issue. It was further agreed that the only issue to be decided by this Court was whether the statute bears a rational relationship to a legitimate legislative purpose, and thereby does not violate the Equal Protection Clauses.

Since it appears that the Response of the Commonwealth correctly sets forth the law applicable to this decision, the Court will set that forth **verbatim**.

The "rational basis" test is "highly deferential" and courts will "hold legislative acts unconstitutional under a rational basis standard in only the most exceptional circumstances." **Doe v. Moore**, 410 F.3d 1337, 1345 (11<sup>th</sup> Cir. 2005). In

elaborating on the rational basis standard, the United States Supreme Court has held that

Equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. Where there are plausible reasons for (legislative) action, our inquiry is at an end. This standard of review is a paradigm of judicial restraint. The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.

Those attacking the rationality of the legislative classification have the burden to negate every conceivable basis which might support it. Moreover, because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. Thus, the absence of legislative facts explaining the distinction on the record, has no significance in rational-basis analysis. In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative

branch its rightful independence and its ability to function.

[FCC v. Beach Comm., 508 U.S. 307, 313-15 (1993) (quotation marks and citations omitted.)]

It is somewhat unusual for the Virginia General Assembly to set forth the purpose of a statute within the body of the statute itself. Therefore, Virginia courts do not have the legislative history that accompanies Acts of Congress which Federal judges can refer to in interpreting such statutes and determining legislative intent.

However, one does not need to resort to any such determination in this case because the statute says its purpose is that of generating revenue from drivers whose proven dangerous driving places significant financial burden upon the Commonwealth.

Is there any rational speculation to support the distinction between residents and non-resident “dangerous” drivers where the stated purpose of the statute is to generate revenue?

The defendant argues that the costs and benefits of the construction and maintenance of public highways in Virginia are not limited to residents. The Commonwealth says that “abusive” (the Commonwealth conceded at argument that it meant “dangerous”) Virginia drivers, “by virtue of the fact that they constantly drive on Virginia roads, impose a greater burden on the Commonwealth’s resources than drivers who are merely passing through the Commonwealth.”

The Commonwealth cited Leonard v. Thornburgh, 489 A.3<sup>d</sup> 1349 (Pa. 1985) to support its argument regarding a greater burden on resources. However, in Leonard, it is easy to see that residents of Philadelphia who are there full-time are going to utilize city services more than non-residents, thus creating a rational basis for a higher tax on wages for residents than non-residents. No such rationale supports the distinction in Code Section 46.2-206.1.

A “dangerous” driver is a “dangerous” driver, whether he or she is a life-long resident of Virginia or simply passing through on his or her way to another state or country. If they are driving in a manner defined as “dangerous” under the statute, then the resources necessary to arrest and prosecute them are the same, or, if involved in an accident, the resources necessary to transport the injured, or repair the roads. Virginia does not limit the use of its roads or its rest stops to Virginia residents; they are for all to enjoy.

The Commonwealth further postulates that the General Assembly could have concluded that collecting these fees from non-residents would create severe administrative burdens. This argument is also without merit.

The statute requires courts to impose these fees and to order the payments of the second and third annual installments to D.M.V. The court is unaware of any statutes involving traffic and criminal offenses that draw a distinction between resident and non-resident offenders. For instance, Code Section 18.2-266 provides that it is unlawful for “any person” to drive under the influence and Section 18.2-270 provides for mandatory minimum fines, depending upon various factors set forth therein. These fines and attendant costs must be assessed on all violators, residents and non-residents alike.

The fact that fines and costs may not be collected has nothing to do with a court’s decision to impose them and certainly has not deterred the General Assembly from mandating them. In addition, were the defendant a non-resident, he would be subject to the same mandatory minimum jail sentence that defendant is facing.

It is interesting also to note that paragraph E of the statute, in addition to the language cited supra, provides that the court shall order suspension of the driver’s license “or privilege to drive” as provided in Code Section 46.2-395 of any person failing to pay the first installment. Under paragraph F, if a person fails to pay D.M.V. the second or third installments the Commissioner shall suspend his “driver’s license or privilege to operate a motor vehicle in Virginia.”

The ultimate collection remedy anticipated in the statute is the suspension of one’s privilege to drive, and that is applicable to all drivers, resident and non-resident alike. In other words, if a resident of Maryland is arrested for speeding in Virginia, is convicted either in person or in his or her absence, and does not pay the fines and costs within 15 days of the conviction after written notice to the offender, D.M.V. will suspend that person’s privilege to drive in Virginia.

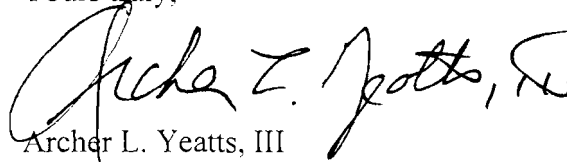
Thus, the procedures for collecting fines and costs by the courts are no different for residents and non-residents. If you don’t pay, you lose your privilege to drive in Virginia.

The court rejects the speculations postulated by the Commonwealth, and mindful of its obligation to do so, has exhausted its speculation quotient in trying to conceive of any others that would be a rational basis for the distinction between resident and non-resident “dangerous drivers.”

Therefore, Code Section 46.2-206.1 is hereby declared unconstitutional and its civil remedial fees will not be imposed on the defendant. The Order Staying Proceeding pursuant to Code Section 16.1-131.1 as endorsed by counsel will be held in abeyance until the court has had the opportunity to discuss with counsel exactly what papers will go to the Circuit Court if the court enters its already-announced decision finding the defendant guilty and imposing sentence.

The court thanks counsel for their professional demeanor and the excellent manner in which they have represented their clients.

Yours truly,

  
Archer L. Yeatts, III  
Judge

cc: John Marshall, Chief Judge  
L. Neil Steverson, Judge  
James S. Yoffy, Judge  
Lawrence G. Sprader, Clerk