

VIRGINIA:

IN THE CIRCUIT COURT FOR ISLE OF WIGHT COUNTY

COMMONWEALTH OF VIRGINIA)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
Plaintiff,)
v.)
TOWN OF WINDSOR,)
Serve:)
Fred Taylor, Town Attorney)
200 N Main St)
Suffolk, VA 23434)
)
Defendant.)

Case No.: CL 21 - _____

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of its Attorney General, Mark R. Herring (the “Attorney General” or the “Commonwealth”) brings this Complaint against the Defendant, Town of Windsor (the “Defendant” or the “Town”). For the reasons explained below, the Commonwealth asks the Court to declare that the activities engaged in by the Defendant are unlawful, enter judgment in its favor, award injunctive relief, and award civil penalties for the discriminatory and unlawful conduct of the Defendant.

PRELIMINARY STATEMENT

The Commonwealth brings this action against the Defendant, which has violated the Virginia Human Rights Act (“VHRA”) and the Virginia Public Integrity and Law Enforcement Misconduct Act (“VPLEM”) in its provision of law enforcement services through the Windsor Police Department (“WPD” or the “Department”). The Department lacks adequate policies to ensure that it is using force in a non-discriminatory manner, that it is performing traffic stops in a constitutional, non-pretextual, and bias-free manner, and that members of the public are able to

submit and have their complaints heard in a transparent way that upholds the principles of due process.

JURISDICTION AND VENUE

1. The Circuit Court for Isle of Wight County has authority to entertain this action and to grant the relief requested herein pursuant to the VHRA, Va. Code § 2.2.-3906, the VPLEM, Va. Code § 2.2-511.1 and Va. Code §§ 8.01-620 and 17.1-513.

2. The Attorney General further asserts its *parens patriae* authority to bring this action.

3. Venue is proper in this Court pursuant to Va. Code § 8.01-261, as the Defendant is a municipal entity located within Isle of Wight County, the witnesses and other facts relied upon by the Commonwealth in this Complaint are located within the Isle of Wight County, and the present cause of action arises within Isle of Wight County.

PARTIES

4. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

5. Defendant Town of Windsor is an incorporated municipal entity located wholly within Isle of Wight County, Virginia.

FACTS

6. Defendant Town of Windsor is an incorporated municipal entity.

7. Approximately 2,746 people reside within the Town.

8. Between nine and twenty-one percent of the residents of the Town are Black.

9. Approximately 38,606 people reside within Isle of Wight County.

10. Approximately twenty-two percent of the residents of Isle of Wight County are Black.

11. The Defendant created and currently maintains a municipal police department known as the Windsor Police Department.

12. The Department was established pursuant to Va. Code § 15.2-1701.

13. The Department is a law enforcement agency within the meaning of Va. Code § 2.2-511.1.

14. The Department is open to the public and performs executive and enforcement functions, to wit the provision of law enforcement services, on behalf of the Defendant as part of the Defendant's governmental structure.

15. The Defendant is a place of public accommodation as defined by the VHRA, Va. Code § 2.2.-3904.

16. The Department is a place of public accommodation as defined by the VHRA, Va. Code § 2.2.-3904.

17. As part of the services it provides, the Department authorizes its officers to stop and search vehicles and, if necessary, use force to effectuate those duties.

18. The Department does not have adequate policies or supervision to ensure consistent application of its policies, the laws of the Commonwealth, and the Constitution of the United States with regards to the stopping and searching of vehicles or the use of force to effectuate those duties.

19. As part of the services it provides, the Department conducts traffic enforcement operations, including, but not limited to, stopping drivers for traffic violations, issuing tickets for traffic violations, and attending court hearings.

20. From July 1, 2020 through September 30, 2021, the Department conducted approximately 1,907 traffic stops.

21. From July 1, 2020 through September 30, 2021, the Department conducted 810 traffic stop of Black drivers—representing approximately 42% of the stops conducted by the Department. Consequently, the Town stopped Black drivers between 200% and 500% more often than would be expected based on the number of Black residents in the Town or Isle of Wight County.

22. Based upon a review of a limited subset of traffic stops provided by the Department and accounting only for stops within that subset conducted on residents of the Town, approximately 40% of traffic stops are conducted on Black drivers, again indicating a stoppage rate of between 200% and 500% more than would be expected based on the number of Black residents of the Town or Isle of Wight County.

23. Based upon the disproportionate stopping of vehicles driven by Black motorists, the Department is performing its law enforcement activities in a discriminatory and biased manner.

24. From July 1, 2020 through September 30, 2021, the Department searched more vehicles driven by Black drivers than White drivers, even though Black residents do not constitute the majority of the population of the Town or the Commonwealth.

25. Based upon the disproportionate searching of vehicles driven by Black motorists, the Department is performing its law enforcement activities in a discriminatory and biased manner.

26. On or about December 5, 2020, the Department stopped a driver, Lieutenant Caron Nazario, in what the Department indicated was a “felony stop”.

27. The Department does not have a policy on what constitutes a felony stop.
28. Upon information and belief, the Department has executed other such felony stops.
29. During the stop of Lieutenant Nazario, officers of the Department pointed their firearms at Lieutenant Nazario and subsequently deployed aerosolized pepper spray repeatedly on the Lieutenant. At no time did Lieutenant Nazario use or attempt to use force against the officers.
30. Lieutenant Nazario is a Black, Latino man.
31. The Department has received and investigated other complaints in which force was allegedly improperly used against Black drivers.
32. The Department lacks adequate policies and supervision to ensure that its officers are using force in a non-discriminatory and unbiased manner.
33. The lack of such policies and supervision has led to the biased application and use of force on members of the public.
34. On August 11, 2020, the Department presented a report to the Windsor Town Council stating that the Department made 194 traffic stops and issued 151 summons or citations for the primary offense during the month of July 2020.
35. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 123 traffic stops and issued 110 summons or citations during the month of July 2020.
36. On September 8, 2020, the Department presented a report to the Windsor Town Council stating that the Department made 237 traffic stops and issued 210 summons or citations for the primary offense during the month of August 2020.

37. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 225 traffic stops and issued 211 summons or citations during the month of August 2020.

38. On October 13, 2020, the Department presented a report to the Windsor Town Council stating that the Department made 182 traffic stops and issued 158 summons or citations for the primary offense during the month of September 2020.

39. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 166 traffic stops and issued 154 summons or citations during the month of September 2020.

40. On November 10, 2020, the Department presented a report to the Windsor Town Council stating that the Department made 196 traffic stops and issued 142 summons or citations for the primary offense during the month of October 2020.

41. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 144 traffic stops and issued 111 summons or citations during the month of October 2020.

42. On December 8, 2020, the Department presented a report to the Windsor Town Council stating that the Department made 246 traffic stops and issued 158 summons or citations for the primary offense during the month of November 2020.

43. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 129 traffic stops and issued 90 summons or citations during the month of November 2020.

44. On January 12, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 177 traffic stops and issued 92 summons or citations for the primary offense during the month of December 2020.

45. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 131 traffic stops and issued 75 summons or citations during the month of December 2020.

46. On February 9, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 278 traffic stops and issued 173 summons or citations for the primary offense during the month of January 2021.

47. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 257 traffic stops and issued 155 summons or citations during the month of January 2021.

48. On March 9, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 229 traffic stops and issued 166 summons or citations for the primary offense during the month of February 2021.

49. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 225 traffic stops and issued 165 summons or citations during the month of February 2021.

50. On April 13, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 323 traffic stops and issued 226 summons or citations for the primary offense during the month of March 2021.

51. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 304 traffic stops and issued 233 summons or citations during the month of March 2021.

52. On May 11, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 59 traffic stops and issued 44 summons or citations for the primary offense during the month of April 2021.

53. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 34 traffic stops and issued 31 summons or citations during the month of April 2021.

54. On June 8, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 4 traffic stops and issued 2 summons or citations for the primary offense during the month of May 2021.

55. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 4 traffic stops and issued 0 summons or citations during the month of May 2021.

56. On July 13, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 35 traffic stops and issued 17 summons or citations for the primary offense during the month of June 2021.

57. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 10 traffic stops and issued 4 summons or citations during the month of June 2021.

58. On August 10, 2021, the Department presented a report to the Windsor Town Council stating that the Department made 60 traffic stops and issued 43 summons or citations for the primary offense during the month of July 2021.

59. Data reported by the Department through the Virginia State Police under the Virginia Community Policing Act states that the Department made 53 traffic stops and issued 39 summons or citations during the month of July 2021.

COUNT I

Unlawful Race Based Discrimination in a Place of Public Accommodation in Violation of the Virginia Human Rights Act, Va. Code § 2.2.-3904

60. The Commonwealth incorporates by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 59, above.

61. Va. Code § 2.2.-3904 makes it unlawful for any person to refuse, withhold from, or deny any individual, directly or indirectly, any of the services made available in any place of public accommodation on the basis of race, color, or national origin.

62. As alleged herein, the Defendant's discriminatory enforcement activity in disproportionately conducting traffic stops denies services to those seized on the basis of race, color, and/or national origin in the provision of municipal policing, which is a public accommodation.

Count II

Unlawful Pattern or Practice of Conduct by Law-Enforcement Officers of the Windsor Police Department that Deprives Persons of Rights, Privileges, or Immunities Protected by the Virginia Human Rights Act in Violation of Code of Virginia § 2.2-511.1

63. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 62, above.

64. Va. Code § 2.2-511.1 makes it unlawful for a locality, or any agent thereof, or any person acting on behalf of the locality, to engage in a pattern or practice of conduct by law-

enforcement officers of a locality that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth.

65. The Virginia Human Rights Act, Va. Code § 2.2-3900 *et seq*, protects the rights, privileges, or immunities of persons.

66. As alleged herein, the Defendant has engaged in a pattern or practice of repeatedly violating the Virginia Human Rights Act by regularly and routinely denying the services of a public accommodation to persons on the basis of their race, color, or national origin during traffic stops or seizures in violation of Va. Code § 2.2-511.1.

Count III

Unlawful Pattern or Practice of Conduct by Law-Enforcement Officers of the Windsor Police Department that Deprived Persons of Rights Protected by the Fourteenth Amendment in Violation of Code of Virginia § 2.2-511.1

67. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 66, above.

68. Defendant, its agents, and persons acting on its behalf have engaged in traffic stops, seizures, and other law-enforcement practices that unlawfully discriminate against Black or African American persons in Windsor on the basis of their race, color, or national origin.

69. As alleged herein, the discriminatory law-enforcement practices engaged in by Defendant, its agents, and persons acting on its behalf amounts to a pattern or practice by law-enforcement officers that denies persons of rights protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution in violation of Va. Code § 2.2-511.1.

Count IV

Unlawful Pattern or Practice of Conduct by Law-Enforcement Officers of the Windsor Police Department that Deprives Persons of Rights, Privileges, or Immunities Protected by the Virginia Community Policing Act in Violation of Code of Virginia § 2.2-511.1

70. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 69, above.

71. Va. Code §§ 15.2-1722.1 and 52-30.4 mandate the collection, submission, and right of public access of data pertaining to all investigatory motor vehicle stops conducted by law-enforcement officers of a locality.

72. By mandating the right of public access to such data, the General Assembly has created a privilege of the public to access such data.

73. Va. Code § 2.2-511.1 makes it unlawful for a locality, or any agent thereof, or any person acting on behalf of the locality, to engage in a pattern or practice of conduct by law-enforcement officers of a locality that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth.

74. As alleged herein, the Defendant has engaged in a pattern or practice of repeatedly violating the Virginia Community Policing Act by regularly and routinely failing to collect, report, or provide public access to data pertaining to all investigatory motor vehicle stops as mandated by the Act, thereby depriving the public of the privilege of accessing such data in violation of Va. Code § 2.2-511.1.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, respectfully prays that this Court:

A. Permanently enjoin the Defendant, their officers, employees, agents, successors, and all other persons in active concert or participation with it from engaging in the provision of

public accommodations, to wit law enforcement activities, in a discriminatory manner in violation of Va. Code § 2.2-511.1 and Va. Code § 2.2.-3904.

B. Require the Defendant, their officers, employees, agents, successors, and all other persons in active concert or participation with it to:

- a. Adopt policies and procedures that ensure that traffic stops are conducted in a constitutional bias-free, non-pretextual manner; and
- b. Adopt policies and procedures that ensure that the use of force is consistently applied and that use of force incidents are properly reported to the Department of State Police pursuant to the Virginia Community Policing Data Act, Va. Code § 52-30.2, and properly investigated by the WPD; and
- c. Adopt policies and procedures regarding the method by which a member of the public can file a complaint with the Department, have that complaint heard in a manner that upholds that principles of due process, and, if necessary, appeal the outcome of their complaint to a neutral third party.

C. Impose a reasonable period of monitoring to ensure that the Defendant complies with the requirements of the VHRA, the VPLEM, and the Constitution of the United States; and

D. During the period of monitoring, require the Defendant to contract, at its own expense, an independent monitor, approved by the Court and the Commonwealth, to ensure that the Defendant complies with the requirements of the VHRA, the VPLEM, and the Constitution of the United States; and

E. To vindicate the public interest, assess civil penalties against the Defendant for each proven violation of Va. Code § 2.2.-3904 in the amount of FIFTY THOUSAND DOLLARS

(\$50,000.00), pursuant to Code § 2.2-3906, the exact number of violations to be proven at trial;
and

F. Grant judgment against the Defendant, and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case, and its attorney's fees, pursuant to Va. Code § 2.2-3906, as well as post-judgment interest to the extent allowed by law;
and

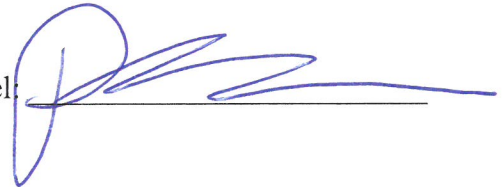
G. Order such other and further relief as may be deemed just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury as to all issues in this case.

Respectfully submitted,
COMMONWEALTH OF VIRGINIA
ex rel. MARK R. HERRING,
ATTORNEY GENERAL

By Counsel:



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