

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

EDWARD SIMONE
Plaintiff,

VS.

C.A. NO: 09-

THE TOWN OF JOHNSTON;
and RICHARD TAMBURINI, individually
and in his official capacity as Chief of Police
of the Town of Johnston
Defendants

COMPLAINT

Now comes the Plaintiff and hereby states for his cause of action as follows:

I. NATURE OF THE ACTION

1. This is an action for declaratory judgment as well as damages to redress deprivation, under color of law, of rights, privileges, and immunities secured to the Plaintiff by the First, Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 21 of the Constitution of the State of Rhode Island, as well as violations of federal law; specifically for violation of 18 U.S.C. §2721 et seq., the Drivers Privacy Protection Act.

II. JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 41 U.S.C. §§1983 and 1988 as well as 28 U.S.C. §1331, and this Court's ancillary jurisdiction.

III. PARTIES

3. Plaintiff, Edward Simone, is now and at all times pertinent hereto has been a citizen and resident of the Town of Johnston, State of Rhode Island and of the United States of America.

4. Defendant, The Town of Johnston, is a body corporate and politic and is a political subdivision of the sovereign state of Rhode Island, within and among the United States of America.

5. Defendant, Richard Tamburini, who is sued herein individually and in his official capacity, is now and at all times pertinent hereto has been the Chief of Police for the Town of Johnston.

6. The Defendants were at all times complained of herein acting under color of law.

IV. FACTS

7. At all times material hereto, Plaintiff has been an employee of the Town of Johnston, to wit, a firefighter.

8. In or about March, 2009, Plaintiff did affix a “bumper sticker” to his personal automobile, which sticker reflected Plaintiff’s position with respect to an ongoing dispute between the Johnston Town Council and the Johnston Fire Department and its members.

9. Town Council member Ernest Pitochelli (hereinafter “Pitochelli”) has been an outspoken critic of the Fire Department and its members on several occasions.

10. On or about March 15, 2009, Pitochelli observed the said bumper sticker and thereafter proceeded to the Johnston police headquarters.

11. At that time, Pitochelli, with the acquiescence and cooperation of Defendant Tamburini, did “run” the license plate, a blatant misuse of the RILETS system, in an effort to determine the name and address of the registered owner of the vehicle.

12. On or about April 2, 2009, The *Johnston Sunrise* did publish a letter to the editor, ascribed to Pitochelli, which letter referenced the bumper sticker and then proceeded to identify Plaintiff as a Johnston firefighter and as the owner of the vehicle. The letter further

identified the vehicle plate number, and also made an indirect reference to Plaintiff's status as a firefighter out of work on a work-related injury.

13. On or about April 3, 2009, Plaintiff awoke to find that the vehicle's windshield had been smashed while the vehicle sat in his driveway. Plaintiff filed a police report, and the perpetrator has yet to be identified.

14. The actions of the Defendants, taken under color of law, have violated provisions of 18 U.S.C. §2721 et seq., which makes unlawful the obtaining, using, or disclosing of personal information obtained from a motor vehicle record for a purpose not specifically permitted under the statute.

15. The actions of the Defendants, taken under color of law, have violated rights secured to Plaintiff by the United States Constitution, including equal protection under the law and due process of law.

16. The actions of the Defendants, taken under color of law, have violated rights secured to Plaintiff by the Constitution of the State of Rhode Island, including equal protection under the law and due process of law.

17. The actions of the Defendants, taken under color of law, have caused a chilling effect on the right to free speech secured to Plaintiff by the United States Constitution.

18. The actions of the Defendants, taken under color of law, have caused a chilling effect on the right to free speech secured to Plaintiff by the Constitution of the State of Rhode Island.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

19. For his first cause of action, Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants deprived Plaintiff of his civil rights without due process of law, in violation of the Fifth and Fourteenth Amendment to the United States Constitution.

SECOND CAUSE OF ACTION

20. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants deprived Plaintiff of his civil rights without due process of law, in violation of Article I, Section 2 of the Constitution of the State of Rhode Island.

THIRD CAUSE OF ACTION

21. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants deprived Plaintiff of his civil right to equal protection under the law, in violation of the Fifth and Fourteenth Amendment to the United States Constitution.

FOURTH CAUSE OF ACTION

22. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants deprived Plaintiff of his civil right to equal protection under the law, in violation of Article I, Section 2 of the Constitution of the State of Rhode Island.

FIFTH CAUSE OF ACTION

23. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants, by their acts and omissions, violated Plaintiff's rights secured to him by 18 U.S.C. §2721 et seq., the Drivers Privacy Protection Act.

SIXTH CAUSE OF ACTION

24. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants deprived Plaintiff of civil right of freedom of speech as secured to Plaintiff by the First Amendment to the United States Constitution.

SEVENTH CAUSE OF ACTION

25. Plaintiff adopts by reference the foregoing paragraphs 1 through 18, inclusive, and alleges that Defendants deprived Plaintiff of civil right of freedom of speech as secured to Plaintiff by Article I, Section 21 of the Constitution of the State of Rhode Island

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Declare that Defendants' acts and omission as set forth above were in violation of the Fifth and Fourteenth Amendments to the United States Constitution.
2. Declare that Defendants' acts and omission as set forth above were in violation of Article 1, Section 2 of the Constitution of the State of Rhode Island.
3. Declare that Defendants' acts and omission as set forth above were in violation of 18 U.S.C. §2721, the Drivers Privacy Protection Act.
4. Award Plaintiff damages for the constitutional and statutory violations as set forth above.
5. Award Plaintiff reasonable attorneys fees and costs, pursuant to provisions of 42 U.S.C. §1988 and 18 U.S.C. §2724 (b)(3)..

6. Award such other and further relief as this Court deems just and proper.

I have read the foregoing information and it is accurate and true to the best of my knowledge.

Edward Simone

Subscribed and sworn to before me this ____ day of December 2009.

Notary Public
My Commission Expires:

Plaintiff,
Edward Simone
By his attorney,

(4054)
James E. Kelleher, Esq.
Rhode Island Affiliate,
American Civil Liberties Union
946 Centerville Road
Warwick, RI 02886
(401) 822-2900
Fax: (401) 826-3245

JAMES E KELLEHER IS DESIGNATED AS TRIAL COUNSEL