

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

REGULUS BOOKS, LLC,

*Plaintiff,*

v.

Case No. CUA-380

CITY OF CHARLOTTESVILLE,  
VIRGINIA,

and

TODD D. DIVERS, in his official  
capacity as Commissioner of the  
Revenue,

*Defendants.*

SERVE:  
CITY OF CHARLOTTESVILLE  
605 East Main Street  
Charlottesville, VA 22902

SERVE:  
TODD D. DIVERS, in his official  
capacity as Commissioner of the  
Revenue  
605 East Main Street  
Room A-130  
Charlottesville, VA 22902

FILED  
7/24/19 @ 9:10am  
(Date & Time)  
City of Charlottesville  
Circuit Court Clerk's Office  
Lizelle A. Dugger, Clerk  
By [Signature]  
Deputy Clerk

**COMPLAINT AND APPLICATION FOR RELIEF  
FROM BUSINESS-LICENSE TAX ASSESSMENT**

Plaintiff Regulus Books, LLC ("Regulus") brings this Complaint and Application for Relief From Business-License Tax Assessment against Defendants City of Charlottesville, Virginia ("City") and Todd D. Divers, in his official capacity as the City's Commissioner of the Revenue ("Commissioner"), and states as follows:

## INTRODUCTION

1. This civil-rights lawsuit challenges the City of Charlottesville's unconstitutional assessment of business-license taxes against Plaintiff Regulus. Regulus's owner, Corban Addison Klug, is a novelist who lives and works in the City. A former lawyer, Klug has been writing for a living full time since 2011.

2. In 2018, Regulus unexpectedly received an assessment from the City for unpaid business-license taxes dating back to 2015, even though Regulus offers no business services to the public. Regulus is a holding company for managing Klug's work as a novelist. It has no storefront and no customers. Instead, Klug writes novels for a living from wherever he happens to be—sometimes in the City, sometimes thousands of miles away at the locations across the world that inspire his stories.

3. After receiving this assessment, Klug researched the tax and spoke to members of Charlottesville's large community of freelance writers. He was surprised to discover that the City does not apply the tax evenhandedly. Not all freelance writers have been taxed, and many speakers (including newspapers, magazines, other periodicals, radio, and television) are exempt.

4. Taxing freelance writers while exempting the institutional press is speaker-based discrimination that violates the First Amendment to the U.S. Constitution. Moreover, the City's business-license tax ordinance violates the Fourteenth Amendment to the U.S. Constitution because the tax's vague provisions do not give the public notice of what businesses are covered and vest City officials with unconstrained discretion to decide who must pay. This lawsuit seeks a refund of Regulus's business-license taxes and a declaration that the City's business-license tax is unconstitutional as applied to Regulus.

## **JURISDICTION AND VENUE**

5. This case arises from a tax assessment issued by Defendant Commissioner to Regulus under Section 14 of the Charlottesville City Code, which covers business-license fees and taxes (“Business-License Ordinance”).

6. This Court has original jurisdiction over taxpayer appeals of tax assessments made by the City under the Business-License Ordinance pursuant to Va. Code Ann. § 58.1-3984(A).

7. In addition, this Court has original and general jurisdiction over all civil cases arising under federal law and the U.S. Constitution, Va. Code Ann. § 17.1-513, and jurisdiction over cases in which a declaratory judgment is sought, *id.* § 8.01-184.

8. Venue lies in this Court pursuant to Va. Code Ann. § 58.1-3984(A) (requiring venue in “the circuit court of the county or city wherein [the tax] assessment was made”).

## **THE PARTIES**

9. Plaintiff Regulus Books, LLC, is a Virginia limited-liability company whose sole member and owner is the author Corban Addison Klug. Klug writes his books under the pen name “Corban Addison.” Regulus holds all rights to Klug’s works, published and unpublished, including all copyrights. As a literary holding company, Regulus is the vehicle through which Klug transacts his authorial career and receives all author-related income.

10. Defendant City of Charlottesville, Virginia, is a municipality chartered by the Commonwealth of Virginia and is authorized to impose business-license taxes upon certain persons and entities doing business within its boundaries, as provided by Va. Code Ann. §§ 58.1-3700, *et seq.* (“the Enabling Statute”).

11. Defendant Todd D. Divers is the City's Commissioner of the Revenue. He is the ministerial agent charged by the City with the duty of issuing and enforcing tax assessments under the Business-License Ordinance. The Commissioner is sued in his official capacity only.

#### **FACTUAL ALLEGATIONS**

##### *Klug Moves to Charlottesville, Attends Law School, and Begins His Writing Career.*

12. Klug has resided in the City since 2001, when he began attending the University of Virginia School of Law. After graduation, he completed a judicial clerkship with the Hon. B. Waugh Crigler at the U.S. District Court for the Western District of Virginia and practiced law for six years in the City.

13. While practicing law, Klug wrote novels on the side, hoping one day to get his work published.

14. In the spring of 2011, Klug landed his first publishing deal and left the practice of law to pursue writing full time. He created Regulus to serve as the legal vehicle for his writing.

15. Since 2012, Klug has published four novels in the United States and countries around the world. All of his works are between 350 and 450 pages in length, and all are grounded in the law and address contemporary issues in international human rights.

16. Klug's novels are about everything from human trafficking, to violence against women in Africa, to civil war and piracy in Somalia, to the underside of the consumer economy.

17. Along with his published works, Klug has two more novels and two co-authored books—one novel and one work of non-fiction—in various stages of production.

18. Since 2011, all of Klug's income has derived from his writing, whether from advances and royalties from publishers, contracts with other authors to write and publish co-authored works, and speaking, promotional, and advocacy work connected to his books.



19. In accordance with the advice of his tax advisor, Klug has included all such income on Schedule C of his federal tax returns.

20. Klug and Regulus have never had any employees, never offered any goods or services for sale in the City or elsewhere, and never advertised their presence in the City.

21. Klug has, however, worked from two offices and his home in the City.

*After Working as a Writer for Years, Klug Is Surprised by the City's Tax Assessment.*

22. Before July 2018, Klug did not believe that business licenses were required of authors who offer no goods or services for sale in the City.

23. Klug is acquainted with numerous novelists and authors in the Charlottesville area. At no point before July 2018 did he hear of an author being required to obtain a business license or pay business-license taxes.

24. In July 2018, the Commissioner sent Klug a letter, asserting that he might be subject to the business-license tax because he included income from Regulus on Schedule C of his 2017 federal tax return under the category "Independent Artists, Writers, and Performers."

25. The Commissioner requested that Klug confirm that such income arose from writing activity in the City and, if so, provide a statement of his gross receipts for 2015, 2016, and 2017, and a projection of his gross receipts for 2018.

26. On August 10, 2018, Klug replied to the Commissioner by letter, requesting that the City explain why a freelance writer must obtain a business license to write books within the City limits.

27. On August 13, 2018, the Commissioner replied to Klug by letter, setting forth the basis for his application of the business-license tax to authors and proposing that Regulus should be taxed as a "Miscellaneous Business/Personal Service" ("Commissioner's Opinion").

28. On September 12, 2018, the City sent Klug a Second Notice, demanding that he state Regulus's gross receipts for the past three years and projected receipts for 2018 by no later than September 21, 2018, or be subject to a statutory assessment with penalties and interest.

29. Klug called the Commissioner's office to express his reservations about the Commissioner's Opinion and to request an extension of time to complete a legal review of his situation. The Commissioner denied his request.

30. To avoid the imposition of penalties and interest, Klug replied to the Second Notice on September 21, 2018, providing the requested information while reserving his right to challenge any assessment the City might make.

31. On or about October 1, 2018, the Commissioner issued a business-license tax assessment to Regulus ("Assessment"). The Assessment imposed a tax of \$0.36 per \$100 on Regulus's gross receipts from 2015 to 2017 and on its projected receipts for 2018. The Commissioner demanded payment in the amount of \$2,177.22 by October 30, 2018. A copy of the Assessment, redacted of all confidential tax information, is attached as Exhibit A.

32. On October 23, 2018, Klug spoke to the Commissioner by phone and declared his intent to challenge the Assessment in court. Klug asked the Commissioner to suspend penalties and interest until the appeal could be adjudicated. The Commissioner initially agreed to suspend penalties and interest, upon receipt of a written statement of intent from Regulus. However, after reviewing the situation, the Commissioner informed Klug that the Business-License Ordinance mandated the imposition of penalties and interest if the Assessment was not paid by October 30, 2018.

33. On December 17, 2018, the City Treasurer sent Regulus a delinquency and collection notice indicating that it owed the City \$2,461.23, which included penalties and interest.

34. While believing the Assessment to be illegal and unconstitutional, but wishing to avoid additional penalties and interest, Klug, acting on behalf of Regulus, paid the City \$2,461.23. A copy of Regulus's payment and the related correspondence, redacted of all confidential tax information, is attached as Exhibit B.

35. Soon thereafter, the City sent Regulus an assessment for 2019 business-license taxes (based on an estimate of its 2019 gross receipts) in the amount of \$529.20. On March 1, 2019, Klug sent the Commissioner a letter stating that he chose not to pay the 2019 assessment.

*The City's Business-License Tax Has Injured Regulus and Will Continue to Do So.*

36. On January 16, 2019, Klug paid \$2,461.23 in business-license taxes dating back to 2015 on Regulus's behalf. The \$2,461.23 comprised \$2,177.22 in taxes and \$284.01 in penalties and interest.

37. Klug paid these taxes, penalties, and interest on Regulus's behalf under protest.

38. Klug believes that requiring freelance writers to pay business-license taxes while exempting other speakers such as newspapers, magazines, other periodicals, radio, and television is unconstitutional.

39. Klug wishes not to have to pay business-license taxes on Regulus's behalf in the future.

40. Persons or businesses who fail to obtain a required business license are guilty of a Class One misdemeanor. Charlottesville City Code ("City Code") § 14-3(d). Charlottesville's City Code does not specify a penalty, but in Virginia, Class One misdemeanors are punishable by up to 12 months imprisonment, a fine of up to \$2,500, or both. Va. Code Ann. § 18.2-11(a).



41. In addition to potential criminal prosecution, persons or businesses who fail to obtain a business license and pay the required taxes may be charged a ten percent penalty and interest at the rate of eight percent per annum. City Code § 14-12(d)–(e).

42. If Regulus does not pay future business-license tax assessments, it could be subject to civil penalties, interest, and even criminal penalties.

43. Paying an unconstitutional business-license tax under protest has injured Regulus, and having to pay the tax in the future would continue to injure it.

*The City's Business-License Tax Exempts the Institutional Press.*

44. The Enabling Statute requires the Commonwealth's municipalities to exempt certain speakers from their business-license fees and taxes:

No county, city, or town shall impose a license fee or levy any license tax . . . [u]pon the privilege or right of printing or publishing any **newspaper, magazine, newsletter or other publication issued daily or regularly** at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any **radio or television broadcasting station or service**.

Va. Code Ann. § 58.1-3703(C)(3) (emphasis added). The Enabling Statute does not mention writers, novelists, or other book authors.

45. In accordance with the Commonwealth's requirement, the City Code does not impose a business-license fee or tax requirement

[u]pon the privilege or right of printing or publishing any **newspaper, magazine, newsletter or other publication issued daily or regularly** at average intervals not exceeding three (3) months, provided the publication's subscriptions sales are exempt from state sales tax, or for the privilege or right of operating or conducting any **radio or television broadcasting station or service**[.]

City Code § 14-4(a)(3) (emphasis added).

46. Publishers of newspapers, magazines, and other periodicals, and radio and television operators are producers of speech.



47. Upon information and belief, the Commonwealth exempted them from business-license fees and taxes to protect their rights under the First Amendment to the U.S. Constitution.

48. Upon information and belief, the City does not impose business-license fees or taxes on newspapers, magazines, other periodicals, radio, or television operators.

49. Upon information and belief, the City exempts these speakers in order to protect their First Amendment rights.

50. Klug and Regulus are producers of speech just like newspapers, magazines, other periodicals, radio, and television operators.

51. However, the City has imposed business-license taxes upon Regulus.

*The City's Tax Officials Exploit the Business-License Tax's Vagueness to Sweep in Freelance Writers.*

52. The City imposes a business-license tax or fee on the basis of a business's "gross receipts." City Code § 14-15. In accordance with the Enabling Statute, no percentage tax may be imposed on any business with gross receipts less than \$100,000 per year. *Id.* § 14-15(a). Those smaller businesses pay an annual \$35–50 license fee. *Id.* § 14-15(b).

53. In all, the City's Business-License Ordinance contains over 130 businesses subject to licensure. Yet nowhere in the ordinance is any reference to "authors" or "writers." *See* City Code §§ 14-16–14-23; City of Charlottesville, Virginia website, Business License Tax, <https://www.charlottesville.org/departments-and-services/departments-a-g/commissioner-of-revenue/business-license-tax> (last visited July 22, 2019).

54. Some members of the print and visual media are explicitly taxed by the City, including photographers, graphic designers, book publishers, closed-circuit TV, and cable operators. *Id.*

55. The City's Business-License Ordinance contains a "catch-all" provision that, upon information and belief, was the basis for taxing Regulus.

56. The Commissioner issued the Assessment to Regulus under the classification "miscellaneous business/personal service." *See* Exhibit A. This classification does not exist in the Business-License Ordinance, only on the City's website, where tax rates are listed. *See* City of Charlottesville, Virginia website, Business License Tax, <http://www.charlottesville.org/departments-and-services/departments-a-g/commissioner-of-revenue/business-license-tax> (last visited July 22, 2019).

57. Under the "catch-all" provision, the Business-License Ordinance taxes "[a]ny other repair, personal or business service not specifically included in [the ordinance]" at a rate of \$0.36 per \$100 of gross receipts. City Code § 14-19(i)(12).

58. The Business-License Ordinance defines "business" to mean "a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit" and "services" to mean "services purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise." City Code § 14-2.

59. However, the Business-License Ordinance makes no attempt to define the terms "repair service," "personal service," or "business service" in the catch-all provision.

60. Upon information and belief, the Commissioner has targeted freelance writers irregularly, based on the amount of revenue he perceives that they could generate for the City.

61. In a November 2, 2016 article in *C-Ville* titled "Writer tax: County is all business in targeting freelancers," the Commissioner states the following about applying the business-license tax to artists and authors: "The juice has got to be worth the squeeze. I don't know how

much it's worth with our workload. We do check Schedule Cs occasionally." See <https://www.c-ville.com/writer-tax-county-business-targeting-freelancers/> (last visited July 22, 2019).

## **CLAIMS FOR RELIEF**

### **Count I**

*The City's Business-License Tax, as Applied to Regulus, Violates the First Amendment to the U.S. Constitution.*

62. All preceding allegations are incorporated here as if set forth in full.

63. Klug, through his literary holding company, Regulus, produces speech. The First Amendment to the U.S. Constitution (incorporated against Virginia via the Fourteenth Amendment) protects Klug's and Regulus's rights to free speech.

64. The City's business-license tax burdens freelance writers like Regulus while exempting other speakers such as newspapers, magazines, other periodicals, radio, and television. This constitutes impermissible speaker-based discrimination under the First Amendment.

65. Defendants do not have sufficient justification for discriminating against freelance writers in favor of newspapers, magazines, other periodicals, radio, and television.

66. Applying the City's business-license tax to freelance writers while exempting other speakers is not substantially related to any important government interest.

67. Upon information and belief, Defendants possess no evidence that applying the business-license tax to freelance writers while exempting other speakers is related to achieving any government interest.

68. Applying the City's business-license tax to freelance writers while exempting other speakers is not narrowly tailored to any compelling government interest.

69. Unless Defendants refund Regulus's business-license taxes, penalties, and interest in the amount of \$2,461.23 and declare the business-license tax unconstitutional as applied to Regulus, Regulus will suffer continuing and irreparable harm.

### **Count II**

*The City's Business-License Tax Is Unconstitutionally Vague as Applied to Regulus.*

70. All preceding allegations are incorporated here as if set forth in full.

71. The Business-License Ordinance is impermissibly vague as applied to Regulus in violation of the Fourteenth Amendment to the U.S. Constitution.

72. Knowledge of whether the Business-License Ordinance will be applied to a particular person or business depends on a proper understanding of the statutory definitions of "repair service," "business service," and "personal service."

73. The Business-License Ordinance does not define these terms, and the separate definitions of "business" and "service" are written in such a way that a reasonable person or business such as Regulus cannot tell from the statute whether they will be taxed.

74. These definitions are so malleable and standardless that they authorize or encourage seriously discriminatory enforcement.

75. Unless Defendants refund Regulus's business-license taxes, penalties, and interest in the amount of \$2,461.23 and declare the business-license tax unconstitutional as applied to Regulus, Regulus will suffer continuing and irreparable harm.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

A. A refund of Plaintiff's business-license taxes, penalties, and interest in the amount of \$2,461.23;



B. An entry of judgment declaring that Defendants' application of the Business-License Ordinance to Plaintiff violates the First Amendment to the U.S. Constitution;

C. An entry of judgment declaring that the Business-License Ordinance is unconstitutionally vague under the Fourteenth Amendment to the U.S. Constitution as applied to Plaintiff;

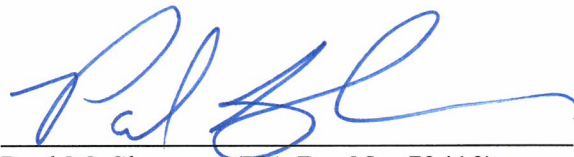
D. An award of Plaintiff's costs and expenses; and

E. Such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of July, 2019,

REGULUS BOOKS, LLC,

by counsel.



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