

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

REGULUS BOOKS, LLC,)

Plaintiff,)

v.)

CITY OF CHARLOTTESVILLE,)
VIRGINIA)

Defendant)

CL19000380-00

DEMURRER

Defendant City of Charlottesville, Virginia (“City”), by counsel and as permitted by Virginia Code § 8.01-273 and Rule 3:8 of the Rules of the Supreme Court of Virginia, demurs to the action filed against it because Plaintiff’s pleading fails to state facts upon which the relief demanded can be granted. The action is insufficient as a matter of law and should be dismissed on the following grounds:

1. The City’s statutory scheme for implementation of its business, professional, and occupational licensing (“BPOL”) tax, (*see* Charlottesville City Code §§ 14-1 *et seq.*), does not violate the Free Speech Clause of the U.S. Constitution’s First Amendment because the City’s ordinance merely exempts newspapers and other periodicals from this tax of general applicability, as required by Virginia law, and does not impose a tax that targets the press or a narrow subset of speakers, or that otherwise evinces any attempt to suppress the expression of any particular ideas or viewpoints. *See Leathers v. Medlock*, 499 U.S. 439, 440 (1991). The gravamen of Plaintiff’s complaint is that any measure that reflects “speaker-based discrimination” is subject to heightened scrutiny under the First Amendment, but that is not an accurate statement of the law.

On the contrary, heightened scrutiny under the First Amendment's Free Speech Clause is only applied to prevent government from restricting expression because of its message, its ideas, its subject matter, or its content. Accordingly, differential taxation of speakers is suspect under the First Amendment only in narrow circumstances in which the tax is structured or implemented in such a way as to give rise to fear that the government is engaging in content-based discrimination. *See Leathers* at 447 (“[T]he fear [that triggers heightened scrutiny under the First Amendment of a tax that targets a small group of speakers] is [that of] censorship of particular ideas or viewpoints.”). Plaintiff has not alleged any facts to suggest, however, that the City's BPOL tax ordinance in any way raises a suspicion of content-based discrimination and therefore the complaint fails to state a First Amendment violation.

2. The City's BPOL tax ordinance is not unconstitutionally vague under the U.S. Constitution's Fourteenth Amendment because the void-for-vagueness doctrine is inapplicable to measures, like the tax statute challenged by Plaintiff, that do not prohibit any conduct or speech. Moreover, even if the void-for-vagueness doctrine were applicable here, the City's BPOL tax ordinance is not vague because a reasonable author that consulted the statute would understand that he is required to pay business license tax upon reporting self-employment income. Finally, the City's statutory scheme for BPOL tax does not invite arbitrary or discriminatory enforcement because tax liability is uniformly imposed on authors that report self-employment income and the Commissioner of the Revenue merely retains permissible discretion to focus collection activity on cases where the tax revenue

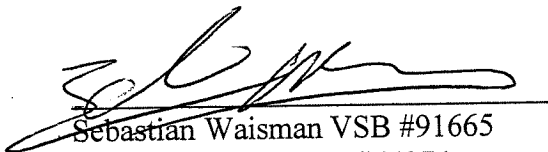
received would exceed the cost and inconvenience of collection, a practice that is required for efficient administration of the government and that does not raise concerns that the scheme of taxation is fundamentally standard-less and empowers local authorities to pursue their personal predilections.

Wherefore, the City, by counsel, states that, for the reasons cited herein, the Plaintiff has failed to allege facts upon which relief can be granted, even if the facts as alleged by the Plaintiff are assumed to be true; deny that the Plaintiff is entitled to the relief prayed for in the Complaint; and pray that this demurrer be granted and that this action be dismissed.

Respectfully Submitted,

CITY OF CHARLOTTESVILLE

By Counsel



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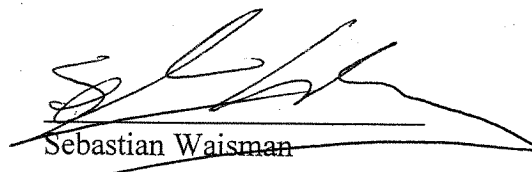
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Demurrer was sent by mail on September 11, 2019 to:

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