

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

BROADSTONE SECURITY, LLC, )  
 d/b/a NOVA ARMORY )  
 Plaintiff, )  
 v. )  
 JOHN DOE, *et al.*, )  
 Defendants. )

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RECEIVED AND FILED  
 CIRCUIT COURT  
 JUN 22 2016  
 EDWARD F. JEWETT, CLERK  
 BY \_\_\_\_\_ D.C.

Case No. CL16001861

**NON-PARTY LYON PARK CITIZENS' ASSOCIATION  
MOTION TO QUASH SUBPOENA *DUCES TECUM***

Non-party Lyon Park Citizens' Association (the "Citizens' Association"), an unincorporated association representing the community of Lyon Park and the neighbors who live there, by and through its undersigned counsel, pursuant to Rules 4:9A(c)(3) and 4:15 of the Rules of the Supreme Court of Virginia, respectfully submits its memorandum of points and authorities in support of its motion to quash a subpoena Plaintiff Broadstone Security, Inc. ("NOVA Armory") served on it, *see* Motion Exhibit A (the "Subpoena"), stating as follows:

**BACKGROUND**

**I. The Lyon Park Citizens' Association.**

The Citizens' Association is an unincorporated association that represents the community of Lyon Park and the neighbors who live there. *See Exhibit A* ("Goldener Decl.") ¶ 2.<sup>1</sup> The Citizens Association is a nonprofit, non-partisan organization established to promote the welfare

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<sup>1</sup> The Citizens' Association has no connection with a group known as "Act4LyonPark.org." *Id.* ¶ 3.

and advancement of the Lyon Park community in particular and Arlington County in general, *id.* ¶ 4, seeks to represent the interests of the Lyon Park community at public hearings and meetings, and to distribute information on issues of concern to the community. *Id.* ¶ 5. Specifically, the Constitution of the Citizens' Association defines its purpose as "promot[ing] the welfare and advancement of the Lyon Park Community in particular and of Arlington County in general." *Id.* ¶ 6 & Ex. A § 2. In order to advance that purpose, the Citizens' Association engages in the following activities:

- (a) Representation of the interests of the Lyon Park Community at public hearings and meetings and to the County and larger community in general.
- (b) Assisting in the maintenance and management of the Lyon Park Community Center and Park.
- (c) Conservation of and protection of the residential integrity and beauty of the Lyon Park Community.
- (d) Sponsorship of non-partisan educational, social, fundraising, and recreational activities for the community; [and]
- (e) Distribution of information on issues of concern to the community.

*Id.* ¶ 7 & Ex. A § 2. Membership in the Citizens' Association is open to any adult who owns or leases a residence within Lyon Park. *Id.* ¶ 8 & Ex. A Art. II.

The Citizens' Association's Policies and Procedures provide that the primary means of communication among the membership are through the conduct of general meetings and through the Citizens' Association's newsletter. *Id.* ¶ 9 & Ex. B §§ 2, 3(a). In addition, the Citizens' Association maintains a closed, internet-based "listserv." *Id.* ¶ 10 & Ex. B § 3(c). "Only residents of Lyon Park and Ashton Heights and commercial businesses and nonprofits located in Lyon Park may subscribe to the listserv." *Id.* Although the Citizens' Association encourages members who post messages to the listserv to identify themselves, *id.*, it also permits members to

post messages anonymously or under a pseudonym. *Id.* ¶ 12. Accordingly, the listserv serves as a forum where members of the Lyon Park community can communicate among themselves, anonymously if so desired. *Id.* Moreover, in order to protect the privacy of its members and “[t]o protect against unwanted use of the information, [the Citizens’ Association] does not publish members’ contact information without the agreement of the members[.]” *Id.* ¶ 13 & Ex. B § 3. Privacy.

Although individuals who happen to be members of the Citizens’ Association may take positions with respect to Broadstone Security LLC and the NOVA Armory, the Citizens’ Association itself has taken no position with respect to NOVA Armory’s business activities or its intentions in the Lyon Park community, and has actively attempted on multiple occasions to engage with the business and its owner, as it does with all new businesses in Lyon Park. *Id.* ¶ 14. The Citizens’ Association believes that this action has nothing to do with the Second Amendment. *Id.* ¶ 15. Indeed, Lyon Park has many residents who are responsible and proud gun owners—including many active duty military and law enforcement personnel—and the Citizens’ Association supports their rights. *Id.* The Citizens’ Association, however, does not believe that NOVA Armory can or should deprive its members of their First Amendment rights in order to make its own statement about the Second. *Id.*

In the context of this action, the Citizens’ Association received a subpoena that seeks “[c]opies of records showing the names, addresses, electronic mail addresses and telephone numbers of *all persons* who have been members of the Lyon Park Citizens’ Association from and after January 1, 2016 to the date of the response hereto.” Motion Ex. A (emphasis added).

Some members of the Citizens’ Association have, in their individual capacities, formed and expressed opinions on whether they want the NOVA Armory to be located in their

neighborhood. *Id.* ¶ 16. NOVA Armory “carries, or can acquire, all the latest handguns, rifles, Class III / NFA silencers / suppressors, Pre & Post 1986 machine guns, PDWs, ARs / AKs, ... bulk ammo, as well as a variety of high-end skeet, trap, and hunting arms!” NOVA Armory, Arlington, VA, *available at* <http://www.novaarmory.com/#!arlington-va> (last visited June 19, 2016), attached as **Exhibit B**. NOVA Armory displays many of the weapons it sells on its website, including the following:



NOVA Armory, Photos, *available at* <http://www.novaarmory.com/#!about-us/photos> (last visited June 19, 2016). Having voiced opposition to the location of the NOVA Armory in their neighborhood, the Citizens’ Association is aware that some of its members have been subjected to harassment and abuse as a result. Exhibit A (Goldener Decl.) ¶ 17. For example, the Citizens’ Association is aware that some of its members have reported threats of physical violence, verbal and online threats, anonymous harassment, physical aggression on private property by individuals from outside the neighborhood who were, open and concealed, carrying firearms, and direct aggression from the plaintiff’s counsel, who has accused residents of being “really

dangerous people” with a “morbid, neurotic fascination or obsession with guns.” *Id.* ¶ 18.

## **II. The First Amended Complaint Alleges No Conduct by the Citizens’ Association.**

The First Amended Complaint (“FAC”) in this matter is replete with lurid allegations that sixty-five named defendants and innumerable John and Jane Does coordinated as a “criminal gang,” communicated with one another over social media, and, through defamation, sought to destroy NOVA Armory’s business. FAC ¶¶ 8, 10, 40. Notably absent from the FAC, however, is *any* allegation regarding the conduct of the Citizens’ Association. NOVA Armory has not alleged that the Citizens’ Association made any defamatory statements. Nor has it alleged that the Citizens’ Association has taken any position with respect to the NOVA Armory or its business, or that any of the individual defendants were members of the Citizens’ Association.

The *sole* allegation in the FAC pertaining to the Citizens’ Association is that the individual defendants communicated with one another and that such communication occurred “among other ways, via email ‘listservs’ under the auspices of the Lyon Park Citizens’ Association.” FAC ¶ 53.

### **ARGUMENT**

In an apparent effort to harass and add additional defendants to this action, NOVA Armory seeks detailed, personally identifiable information, regarding *all* of the Citizens’ Association’s members. Enforcement of NOVA Armory’s grossly overbroad and harassing subpoena would have an unconstitutional chilling effect and violate the Citizens’ Association’s members’ First Amendment right to freedom of association and their First Amendment right to anonymous speech. To the extent NOVA Armory seeks to discover the identity of anonymous speakers, it has failed to comply with the service requirements and other procedural prerequisites set forth in Va. Code § 8.01-407.1 and Rule 4:9A(a)(2). Finally, the Citizens’ Association

believes that the Subpoena was served for the improper purpose of enabling NOVA Armory to harass its members.

**I. Enforcement of the Subpoena Would Violate the Citizens' Association's Members' First Amendment Right to Freedom of Association.**

Enforcement of the Subpoena would violate the Citizens' Association's members' First Amendment Right to freedom of association. *See* U.S. Const. Amend. 1; *see also* Va. Const. Art. 1 § 12. As the Supreme Court has explained, “[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] ... effective ... restraint on freedom of association[.]” *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958). “Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *Id.* Thus, in *Patterson*, the Attorney General of Alabama moved for and obtained an order requiring the NAACP to disclose the identity of its members. When the NAACP refused to comply, the Court held it in contempt. The Supreme Court reversed the contempt judgment, however, finding, among other things, that the production order “must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner’s members of their right to freedom of association.” *Id.* at 462. Moreover, the Supreme Court has held that “[t]he right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.” *NAACP v. Clairborne Hardware Co.*, 458 U.S. 886, 908 (1982).

The Supreme Court of Virginia reached the same conclusion when a Virginia legislative committee sought, through sworn interrogatories, to compel the NAACP to disclose the names and addresses of its donors. *NAACP Legal Defense & Educational Fund, Inc. v. Committee on Offenses etc.*, 204 Va. 693, 702 (1963) (“Virginia has here exceeded that power in intruding into

an area of constitutionally protected right of freedom and privacy of association, and has failed to show such an overriding and compelling state interest in obtaining correct income tax returns as to justify substantial abridgement of associational freedoms, which disclosure of names of donors to appellants' activities would effect.”).

The same analysis applies in the context of a subpoena issued in litigation between private litigants. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964) (“Although this is a civil lawsuit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press.”); *Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.*, 62 Va. App. 678, 695 (Va. Ct. App. 2014), *vacated on other grounds*, 770 S.E.2d 440 (Va. 2015) (“A court order, such as a subpoena duces tecum that is issued at the request of a private party, constitutes state action and is subject to constitutional limitations.”).

Here, the FAC does not allege that the Citizens' Association has engaged in *any* wrongful conduct. Nor does it allege that any of the individual defendants are, themselves, members of the Citizens' Association. Yet the Subpoena seeks the names, addresses, email addresses, and phone numbers of every single member of the Citizens' Association, without regard to the relevance of such information to the case. Enforcement of the subpoena would violate members' privacy interests, discourage participation in the Citizens' Association, and, based upon NOVA Armory's prior conduct, provide a list of members of the public to harass and intimidate. Enforcement of the subpoena would work a significant infringement on the members' First Amendment right to freedom of association.

NOVA Armory's interest in this information does not outweigh the stark threat that enforcement would pose for the Citizens' Association. Indeed, during a meet-and-confer with

NOVA Armory's counsel, NOVA Armory intimated that the purpose of the Subpoena was to discover the addresses of a limited number of additional defendants to be included in a forthcoming further amendment to the FAC. If that is the case, NOVA Armory should refer to publicly available sources of information, such as telephone books or LEXIS searches of public records, rather than compelling the Citizens' Association to turn over its entire membership roll, which would be an improper means to discover the information NOVA Armory seeks.

**II. NOVA Armory's Attempt to Discover the Identity of Anonymous Speakers Violates Those Individuals' First Amendment Right to Anonymous Speech.**

To the extent that NOVA Armory is attempting to discover the identities of "John or Jane Doe" defendants who may have used the Citizens' Association's listserv to post anonymous comments or comments under a pseudonym, enforcement of the Subpoena would violate those individuals' right to anonymous speech. As the Supreme Court has held, the First Amendment protects individuals' right to speak anonymously. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-343 (1995). The right to anonymous speech "may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *Id.* at 341-42. A threat of persecution is not necessary to protect a speaker's anonymity. *Id.* For example, "[a]nonymity ... provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent." *Id.* at 342; *see also In re Subpoena Duces Tecum to America Online, Inc.*, 52 Va. Cir. 26, 34 (Fairfax 2000), *rev'd on other grounds* 261 Va. 350 (2001) ("the right to communicate anonymously on the Internet falls within the scope of the First Amendment's protections.").

Here, the FAC alleges a wide-ranging conspiracy to destroy a business through defamatory statements. It fails, however, to plausibly state a claim. As explained more fully in



the Lyon Park Community Center's contemporaneously filed memorandum in support, the FAC's allegations of defamatory conduct rely solely on a variety of statements of opinion, and "statements of opinion are generally not actionable because such statements cannot be objectively characterized as true or false." *Jordan v. Kollman*, 369 Va. 569, 575 (2005). The Citizens' Association is not aware of any case where a court has countenanced unmasking of anonymous speakers on pleadings as deficient as the FAC that was not later reversed or vacated. *See Dendrite Int'l, Inc. v. Doe No. 3*, 775 A.2d 756, 771 (N.J. App. Div. 2001) ("although Dendrite's defamation claims would survive a traditional motion to dismiss for failure to state a cause of action, we conclude the motion judge appropriately reviewed Dendrite's claim with a level of scrutiny consistent with the procedures and standards we adopt here today and, therefore, the judge properly found Dendrite should not be permitted to conduct limited discovery aimed at disclosing John Doe No. 3's identity."). In light of First Amendment concerns, the court in *Dendrite* noted that the extraordinary act of unmasking anonymous speakers "will only be employed in cases where the plaintiff has in good faith exhausted traditional avenues for identifying a civil defendant pre-service, and will prevent the use of this method to harass or intimidate.") *Id.* (quoting *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 576 (N.D. Cal. 1999)).

With respect to the Citizens' Association, the FAC alleges only that some defendants may have, at some time, communicated through the listserv. *See* FAC ¶ 53. It does not allege that the listserv was used to distribute defamatory statements or that statements in anonymous or pseudonymous listserv postings were defamatory. Nor does it allege that every communication by every defendant through the listserv was defamatory or conspiratorial. Anyone who posted anonymously or under a pseudonym to the Citizens' Association's listserv has a First

Amendment right to maintain the anonymity of his or her speech. Moreover, if the goal is to discover the identities of anonymous or pseudonymous posters, having the Citizens' Association's membership roll will accomplish nothing. The very point of an anonymous post is that it cannot be traced back to the member who made it. Accordingly, the Court should quash the Subpoena in its entirety.

**III. NOVA Armory Has Failed to Comply with the Requirements of Va. Code § 8.01-407.1 and Rule 4:9A(a)(2).**

Even if there were sufficient grounds to force the disclosure of the Citizens' Association's membership roll, which there are *not*, to the extent NOVA Armory seeks the identity of anonymous speakers, it has failed to comply with the requirements of Va. Code § 8.01-407.1, which governs all subpoenas in civil actions "seeking information held by a nongovernmental person or entity that would identify the [anonymous] tortfeasor[.]"<sup>2</sup> While the statute contains a notice directed toward Internet service providers, nothing indicates that its scope is limited to subpoenas issued to Internet service providers. *See id.* The statute, a true and correct copy of which is attached hereto as **Exhibit C**, imposes significant substantive and procedural requirements before such a subpoena can issue. NOVA Armory has failed to comply with *any* of these mandatory requirements when attempting to discover the identity of persons communicating anonymously over the Internet.

NOVA Armory also failed to comply with the requirements of Rule 4:9A(a)(2), which requires service of an attorney-issued subpoena "upon counsel of record and to parties having no counsel." *Id.* This requirement is not limited to parties who have entered an appearance. *Id.*

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<sup>2</sup> To the extent the "good faith" standard set forth in Va. Code § 8.01-407.1(A)(1)(a) enabled unmasking of anonymous speakers on something less than a showing of *prima facie* evidence of defamatory conduct, or at a minimum, sufficient pleadings, it is inconsistent with the protections afforded by the First Amendment. *See U.S. Const. Amend. 1; McIntyre*, 514 U.S. at 347.

Yet NOVA Armory certified that the Subpoena was “not mailed, no person having noted an appearance[.]” Motion Ex. A at 2.

Because NOVA Armory has failed to comply with the substantive and procedural requirements of Va. Code § 8.01-407.1 and Rule 4:9A(a)(2), the Court should quash the Subpoena.

#### **IV. The Subpoena Is Overbroad.**

Rule 4:1(b)(1) limits the scope of discovery to matters “which [are] relevant to the subject matter involved in the pending action[.]” *Id.*; see also *Christ v. Flinthill Space Communs. Trust*, No. CL-2008-8220, 2013 Va. Cir. LEXIS 201, at \*30 (Fairfax 2013) (“a party’s use of the legal process as a means to embark on a fishing expedition, in order to develop unfounded suspicions, violates § 8.01-271.1”) (internal citations omitted).

The Subpoena seeks detailed identifying information for every single member of the Citizens’ Association, regardless of their possible connection to the subject matter of this action. Even assuming that NOVA Armory’s stated purpose for the Subpoena is correct, *i.e.*, obtaining contact information for a limited number of additional defendants for a forthcoming amendment to the Complaint, NOVA Armory has not disclosed who these potential defendants are, what they have allegedly done, or attempted in any way to connect them to the facts alleged in the FAC. Accordingly, the Subpoena is grossly overbroad, and the Court should quash it.

#### **IV. NOVA Armory Served the Subpoena for the Improper Purpose of Harassing the Citizens’ Association.**

The over-breadth of the Subpoena and the lack of any connection between the information it seeks and the allegations in the Complaint, show that NOVA Armory served the Subpoena to harass the Citizens’ Association and its members. See Rule 4:1(g) (discovery requests may not be “interposed for any improper purpose, such as to harass”).

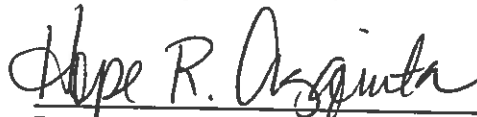
As set forth above and in Mr. Goldener's attached Declaration, supporters of NOVA Armory have *repeatedly* harassed members of the Citizens' Association who have expressed concerns with the location of the store in their neighborhood. Goldener Decl. ¶ 18. For example, members have received physical, verbal, and written threats, have had their addresses published on pro-gun websites, have been confronted by aggressive open and concealed carry individuals trespassing on private property, and have been portrayed as "dangerous people" by the plaintiff's counsel. *Id.* Through the Subpoena, NOVA Armory is attempting to discover the identities of all of the Citizens' Association's members. Based on the conduct that some of the Associations' members have experienced to date, the Citizens' Association reasonably believes and fears that a true purpose of the Subpoena is to identify still further targets for such harassment. Because the Subpoena was served for an improper purpose, it should be quashed.

**V. Conclusion**

WHEREFORE, for the foregoing reasons, the Citizens' Association respectfully requests that the Court grant its motion and quash the Subpoena.

Date: June 22, 2016

Respectfully submitted,



Benjamin G. Chew (VSB No. 29113)

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Email: hamezquita@acluva.org

*Counsel for Non-Party Lyon Park  
Citizens' Association*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 22nd day of June 2016, I caused a true and correct copy of the foregoing to be served via email and first class mail, postage prepaid, to the following:

Daniel L. Hawes, Esq.  
VIRGINIA LEGAL DEFENSE  
Post Office Box 100  
Broad Run, VA 20137  
Telephone: (540) 347-2430  
Facsimile: (540) 347-9772  
Email: info-01@virginialegaldefense.com

*Counsel for Plaintiff Broadstone Security, LLC*

and by first class mail only on the following:

All defendants whose mailing addresses are listed in the caption of the First Amended Complaint at the address listed therein.



Hope R. Amezquita (VSB No. 74629)  
American Civil Liberties Union Foundation of  
Virginia, Inc.  
701 E. Franklin Street, Suite 1412  
Richmond, VA 23219  
Telephone: (804) 523-2151  
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*Counsel for Non-Party Lyon Park  
Citizens' Association*

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

BROADSTONE SECURITY, LLC,	)	
d/b/a NOVA ARMORY	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL16001861
	)	
JOHN DOE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NON-PARTY LYON PARK CITIZENS' ASSOCIATION  
MOTION TO QUASH SUBPOENA *DUCES TECUM***

**EXHIBIT A**

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

BROADSTONE SECURITY, LLC,  
d/b/a NOVA ARMORY

Plaintiff,

v.

JOHN DOE, *et al.*,

Defendants.

Case No. CL16001861

DECLARATION OF JOHN GOLDENER

I, John Goldener, am over the age of eighteen and competent to testify to the facts set forth herein. I have personal knowledge of the facts set forth in this declaration, and they are true and correct.

1. I am the current president of the Lyon Park Citizens' Association (the "Citizens' Association").
2. The Citizens' Association is an unincorporated association that represents the community of Lyon Park and the neighbors who live there.
3. The Citizens' Association has no connection with a group known as "Act4LyonPark.org."
4. The Citizens Association is a nonprofit, non-partisan organization established to promote the welfare and advancement of the Lyon Park community in particular and Arlington County in general.
5. The Citizens' Association seeks to represent the interests of the Lyon Park community at public hearings and meetings and to distribute information on issues of concern to



the community.

6. Specifically, the Constitution of the Lyon Park Citizens' Association, a true and correct copy of which is attached hereto as **Exhibit A**, defines its purpose as "promot[ing] the welfare and advancement of the Lyon Park Community in particular and of Arlington County in general."

7. In order to advance these purposes, the Citizens' Association engages in the following activities:

(a) Representation of the interests of the Lyon Park Community at public hearings and meetings and to the County and larger community in general.

(b) Assisting in the maintenance and management of the Lyon Park Community Center and Park.

(c) Conservation of and protection of the residential integrity and beauty of the Lyon Park Community.

(d) Sponsorship of non-partisan educational, social, fundraising, and recreational activities for the community; [and]

(e) Distribution of information on issues of concern to the community.

8. Membership in the Citizens' Association is open to any adult who owns or leases a residence within Lyon Park.

9. The Citizens' Association's Policies and Procedures, a true and correct copy of which are attached hereto as **Exhibit B**, provide that the primary means of communication among the membership are through the conduct of general meetings and through the Citizens' Association's newsletter.

10. In addition, the Citizens' Association maintains a closed, internet-based "listserv."

11. Only residents of Lyon Park and Ashton Heights and commercial businesses and nonprofits located in Lyon Park may subscribe to the listserv.

12. Although the Citizens' Association encourages members who post messages to the listserv to identify themselves, it also permits members to post messages anonymously or under a pseudonym. Accordingly, the listserv serves as a forum where members of the Lyon Park community can communicate among themselves, anonymously if so desired.

13. Moreover, in order to protect the privacy of its members and “[t]o protect against unwanted use of the information, [the Citizens' Association] does not publish members' contact information without the agreement of the members[.]” Exhibit B § 3. Privacy.

14. Although individuals who happen to be members of the Citizens' Association may take positions with respect to Broadstone Security LLC and the NOVA Armory, the Citizens' Association itself has taken no position with respect to NOVA Armory's business activities or its intentions in the Lyon Park community. The Citizens' Association has actively attempted on multiple occasions to engage with the business and its owner, as it does with all new businesses in Lyon Park.

15. The Citizens' Association believes that this action has nothing to do with the Second Amendment. Indeed, Lyon Park has many residents who are responsible and proud gun owners—including many active duty military and law enforcement personnel—and the Citizens' Association supports their rights. The Citizens' Association, however, does not believe that NOVA Armory can deprive its members of their First Amendment rights in order to make its own statement about the Second.

16. Some members of the Citizens' Association have, in their individual capacities, formed and expressed opinions on whether they want the NOVA Armory to be located in their neighborhood.

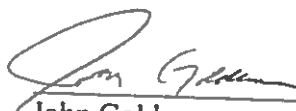
17. Having voiced opposition to the location of the NOVA Armory in their

neighborhood, the Citizens' Association is aware that some of its members have been subjected to harassment and abuse as a result.

18. For example, the Citizens' Association is aware that some of its members have reported threats of physical violence, verbal and online threats, anonymous harassment, physical aggression on private property by individuals from outside the neighborhood who were open and concealed carrying firearms, and direct aggression from the plaintiff's counsel, who has accused residents of being "really dangerous people" with a "morbid, neurotic fascination or obsession with guns."

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 20 JUNE 2016

  
\_\_\_\_\_  
John Goldener  
President, Lyon Park Citizens' Association

203598990.1

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

BROADSTONE SECURITY, LLC,  
d/b/a NOVA ARMORY

Plaintiff,

v.

JOHN DOE, *et al.*,

Defendants.

Case No. CL16001861

DECLARATION OF JOHN GOLDENER

**EXHIBIT A**

**CONSTITUTION OF THE  
LYON PARK CITIZENS ASSOCIATION**

**Adopted: April 2000  
Amended December 2007**

**ARTICLE I – NAME, PURPOSE, AND BOUNDARIES**

**Section 1 – Name.** The name of the association shall be the “Lyon Park Citizens Association” (the “Association”).

**Section 2 – Purpose.** The Lyon Park Citizens Association is a non-profit, non-partisan organization established to promote the welfare and advancement of the Lyon Park Community in particular and of Arlington County in general. This Association shall engage in the activities listed below and in other activities deemed appropriate to the fulfillment of the above goals:

- (a) Representation of the interests of the Lyon Park Community at public hearings and meetings and to the County and larger community in general.
- (b) Assisting in the maintenance and management of the Lyon Park Community Center and Park.
- (c) Conservation of and protection of the residential integrity and beauty of the Lyon Park Community.
- (d) Sponsorship of non-partisan educational, social, fundraising, and recreational activities for the community.
- (e) Distribution of information on issues of concern to the community.

**Section 3 – Boundaries.** Lyon Park is the community located between the following boundaries: Arlington Boulevard on the east and south; North 10<sup>th</sup> Street on the north; and North Irving Street on the west, in Arlington, Virginia.

**ARTICLE II – MEMBERSHIP**

Membership in the Association shall be open to all persons eighteen years of age or older who either own or lease a residence within the boundaries of the Association. Each person eligible for membership may have full voting privileges as long as his/her household is current in its dues. All voting shall be at the general meetings. To exercise voting privileges, a member must be present during the vote. No votes by proxy shall be permitted. Households may join the Association by paying annual dues. Annual memberships expire on September 30th of each year. Members who are behind in their

dues by more than three months shall be deemed no longer current and dropped from membership.

### **ARTICLE III – MEETINGS OF THE ASSOCIATION**

**Section 1 - Regular Meetings.** The Association shall hold a regular meeting each month, except no regular meetings shall be held in July and August.

**Section 2 – Meeting Place.** Regular meetings shall be at the Lyon Park Community Center located at 414 North Fillmore Street in Arlington, Virginia.

**Section 3 – Annual Meeting.** The September meeting shall be the Annual Meeting, at which time the election of officers shall be held.

**Section 4 – Special Meetings.** Special Meetings of the Association may be called by the Executive Committee and held after at least five days public notice of the special meeting date, place, and time. Public notice may be accomplished through any one or more of the following mechanisms: announcement in the Association newsletter; advertisement in one or more local newspapers; electronic posting on the LPCA website plus signage at the Community Center; or announcement at a regularly scheduled LPCA meeting.

**Section 5 - Quorum.** Fifteen members shall constitute a quorum for the transaction of business of the Association at any meeting.

### **ARTICLE IV – OFFICERS AND ELECTION**

**Section 1 – Officers.** The Officers of the Association are defined in the By-Laws. The Officers shall include but need not be limited to a President, Secretary, Treasurer, and Sergeant-at-Arms. A maximum of nine (9) Officers shall be identified in the By-Laws. These Officers shall constitute the Executive Committee. The Executive Committee shall exercise all of the power of the Association between Association meetings subject to the Constitution and By-Laws.

**Section 2 – Term.** Officers shall serve one-year terms. Officers may be re-elected for the same office.

**Section 3 – Nominating Committee.** A Nominating Committee of three members shall be appointed by the Executive Committee no later than the June general meeting and will be responsible for identifying and presenting nominees for office at the Annual Meeting in September. Members of the Association may contact the Nominating Committee directly or present themselves as candidates at the election.

**Section 4 – Election.** All Officers shall be elected at the Annual Meeting in September. If there is more than one candidate for an office, the election will be by written ballot. Separate votes will be held for each office.

**Section 5 - Mid-term Vacancies.** Vacancies in offices shall be filled by the Executive Committee in accordance with the By-Laws.

## **ARTICLE V – REPRESENTATIVES TO LYON PARK COMMUNITY CENTER BOARD OF GOVERNORS**

**Section 1 – Representatives.** The representatives from the Association to the Lyon Park Community Center Board of Governors shall be four elected members and one representative appointed by the President of the Association.

**Section 2 – Election.** The election of the Board of Governors representatives shall be at the Annual Meeting. The election and nomination process shall be consistent with the procedures for the election of Officers.

**Section 3 – Term.** The term of service of the Board of Governors shall be one year.

**Section 4 - Mid-term Vacancies.** If a representative misses three Board of Governors meetings, the Executive Committee may consider his/her position vacant by a majority vote. Vacancies in offices shall be filled by the Executive Committee in accordance with the By-Laws.

## **ARTICLE VI – ANNUAL DUES, DISBURSEMENT, AND AUDIT OF FUNDS**

**Section 1 – Annual Dues.** The Executive Committee shall propose the annual dues for membership in the Association, subject to approval by the Association at the regular June Meeting.

**Section 2 - Disbursement of Funds.** The President’s approval shall be necessary to disburse funds in excess of \$50. The majority vote of the Executive Committee shall be necessary to disburse funds in excess of \$500 in support of established policies or objectives of the Association. Disbursements in excess of \$1,000 shall require the authorization of the Association through a vote at a regularly scheduled meeting. The President and the Treasurer shall have signing authority to disburse funds.

**Section 3 – Financial Review Committee.** At the June Meeting, a Financial Review Committee shall be formed to review the financial records of the Association. In the event of a lack of interest, the Nominating Committee will be responsible for appointing the Financial Review Committee. The Financial Review Committee shall report its findings at the Annual Meeting. The Association will indemnify the Financial Review Committee of any potential liability.

**Section 4 – Fiscal Year.** The fiscal year of the Association shall end each June 30. The financial statements of the Association shall be published in the September newsletter.

#### **ARTICLE VII – BY-LAWS**

By-Laws that are not in conflict with this Constitution may be adopted and amended by a majority vote at a meeting of the Association.

#### **ARTICLE VIII – AMENDMENTS**

The Constitution may be amended by a two-thirds vote of members present at any regular meeting, provided that the amendment has been submitted by a member of the Association and has been read at the preceding regular meeting. Public notice at the Lyon Park Community Center and in the community newsletter is also required. Amendments to the Constitution shall take effect immediately upon passage of the motion to approve unless otherwise provided for in the motion.

#### **ARTICLE IX – GOVERNING RULES**

Robert's Rules of Order shall govern the organization where applicable and where not in conflict with the other articles of this Constitution.

#### **RECORD OF AMENDMENTS**

December 12, 2007 – Article III, Section I amended to remove detailed regular meeting requirements



**BY-LAWS OF THE  
LYON PARK CITIZENS ASSOCIATION**

**ARTICLE I – OFFICERS AND DUTIES**

**Section 1 – Officers.** The Officers of the Association shall consist of the following nine elected members:

President  
Vice President, Programs  
Vice President, Development  
Vice President, Neighborhood Conservation  
Secretary  
Treasurer  
Sergeant-at-Arms  
Two elected alternates (members-at-large)

These nine officers constitute the Executive Committee of the Association. Each Officer shall be prepared to serve as an Association representative to the Board of Governors if appointed by the President.

**Section 2 – Duties of the President.** The President shall be the chief executive official of the Association and shall take care that the Association's Constitution, By-Laws, and decisions are faithfully observed and executed. In addition, the President shall have the following specific duties:

- Preside over meetings of the Association or identify an Officer to preside over any Association or Executive Committee meeting at which the President will be absent.
- Preside over meetings of the Executive Committee as the Chairman and as a voting member.
- Appoint an Association representative to the Board of Governors.
- Represent the Association on occasion at any meetings that the President feels the interest of the Association is involved.
- Sign (or approve the signing of) all official communications, obligations, or contracts of the Association.
- Directly support, if necessary, all officers of the Association.
- Perform other duties as required by the nature of the office.

**Section 3 - Vice President, Programs.** The Vice President, Programs shall support the President with the administration of the Association with his/her primary responsibility for the social, fundraising, educational, and recreational programs of the Association. The Vice President, Programs shall identify programs to be offered for the approval of the Executive Committee and shall identify, support, and oversee chairpersons for all Association programs.

**Section 4 - Vice President, Development.** The Vice President, Development, shall support the President with the administration of the Association with his/her primary responsibility for the commercial and residential development issues directly affecting the Association. In addition, the Vice President, Development shall chair the Development Committee and oversee the Property, Maintenance, and Code Compliance Committee and the Clarendon Alliance Representative.

**Section 5 - Vice President, Neighborhood Conservation.** The Vice President, Neighborhood Conservation, shall support the President with the administration of the Association with his/her primary responsibility for promoting and maintaining the Lyon Park Neighborhood Conservation Plan. The Vice President, Neighborhood Conservation shall chair the Neighborhood Conservation Committee and oversee the Landscaping and Traffic Committees.

**Section 6 – Secretary.** The Secretary shall keep all record of the proceedings of the meetings of the Association and the Executive Committee and submit these minutes to the Executive Committee for comment and approval within seven (7) days following the recorded meeting. Minutes of the Executive Committee meetings shall record the names of the Officers and other attendees at the meeting. The Secretary shall make those records available upon request of a member of the Association. The Secretary shall be responsible for ensuring access to copies of the Constitution, By-Laws, Committee Roster, and any formal correspondence of the Association on a regular basis. In addition, the Secretary shall oversee the newsletter and website.

**Section 7 – Treasurer.** The Treasurer shall manage the funds of the Association and shall report on a monthly basis to the Executive Committee. The Treasurer shall publish the financial statements from the prior year in the September newsletter. In addition, the Treasurer shall oversee the Membership Committee and any fundraising efforts of the Association.

**Section 8 – Sergeant-at-Arms.** The Sergeant-at-Arms shall support the President in maintaining order at all meetings and shall advise the President on rules of order in accordance with the governing rules established in the Constitution. The Sergeant-at-Arms shall be responsible for preparing the Lyon Park Community Center for all general meetings and for assuring compliance with the rules established by the Lyon Park Community Center. The Sergeant-at-Arms shall oversee the Nominating Committee and COPPS representative.

**Section 9 – Two elected alternates (members-at-large).** The two elected alternates shall consist of two members at large of the Association. Alternates shall support the President with the administration of the Association and shall be prepared to be called upon by the Executive Committee to be substitute for an elected officer who is unable to complete his/her term.

**Section 10 – General Duties.** In addition to the specific duties listed above, all elected officials of the Association shall be responsible for maintaining any documentation of

Association business relating to their own area of responsibility and shall transfer their records to their succeeding officer. Additional responsibilities may be assigned to the Officers by the President.

**Section 11 – Attendance.** If an Officer misses three Executive Committee meetings or three Association meetings during the year, the position may be considered vacant and the vacancy shall be filled in accordance with the procedures outlined in the Constitution and By-Laws.

**Section 12 – Mid-Term Vacancies.** In the event the position of President becomes vacant mid-term, the Executive Committee shall approve, by majority vote, one of the three Vice Presidents to complete the term. In case of a mid-term vacancy of another elected official of the Association, the Executive Committee shall have the authority to appoint a replacement for the vacant position. The Executive Committee shall report to the Association at the following Association meeting the identity of the new official and the process followed to fill the vacancy.

## **ARTICLE II – EXECUTIVE COMMITTEE**

**Section 1 – Members.** The Officers of the Association shall be the voting members of the Executive Committee.

**Section 2 - Frequency of Meetings.** The President shall schedule Executive Committee meetings whenever, in her/his judgment, a need exists. Five or more members of the Executive Committee may also call a meeting.

**Section 3 – Meeting Place.** The President shall determine where the meetings of the Executive Committee will be held.

**Section 4 - Attendance at Meetings.** Members of the Executive Committee are expected to attend all scheduled meetings to the best of their ability. The President may also invite committee chairmen, Association representatives, or other members of the Association to attend any meeting.

**Section 5 - Quorum.** Five members of the Executive Committee shall constitute a quorum.

## **ARTICLE III – COMMITTEES AND REPRESENTATIVES**

**Section 1 – Standing Committees and Representatives.** The Executive Committee shall approve, by majority vote, the standing committees and Association representatives to outside organizations. The Executive Committee shall maintain a Committee Roster that lists all standing committees, their roles and responsibilities, and their chairmen. The

Committee Roster will also list all special committees and representatives to outside organizations and their roles and responsibilities.

**Section 2 – Appointments.** The Executive Committee shall appoint, by majority vote, all the chairmen of the committees and representatives to outside organizations at the Executive Committee meeting following the Annual Meeting. Committee chairmen shall serve until their successors have been selected. Committee chairmen and representatives to outside organizations shall serve in their roles at the will of the Executive Committee and may be replaced by majority vote of the Executive Committee.

#### **ARTICLE IV - STANDING RULES**

**Section 1 – Method of Voting.** The Presiding Officer shall select the manner of voting, except where a manner of voting is provided for by the Constitution, By-Laws, or an approved motion. Any member may request a show of hands after the voice vote. In the event of a written vote, the Secretary and the Sergeant-at-Arms shall be responsible for tallying the vote.

**Section 2 – Procedures for Discussion and Debate.** No member shall be allowed to speak until recognized by the presiding officer.

Furthermore, during any debate at a regular meeting, the presiding officer at his or her prerogative may invoke the following rules of conduct:

- No member shall speak more than twice on a pending matter until all others who desire to do so have been heard.
- No member shall consume more than five minutes consecutively, without unanimous consent.

The presiding officer may institute additional rules consistent with the objective of providing equitable access to the floor by all members of the Association. The presiding officer, with the assistance of the Sergeant-at-Arms, shall confine the members to the matter under discussion and shall rule out of order any discussion of libelous, sectarian or obscene nature.

#### **ARTICLE V - AMENDMENT TO THE BY-LAWS**

These By-Laws may be amended as provided for in the Constitution.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

BROADSTONE SECURITY, LLC,  
d/b/a NOVA ARMORY

Plaintiff,

v.

JOHN DOE, *et al.*,

Defendants.

Case No. CL16001861

DECLARATION OF JOHN GOLDENER

**EXHIBIT B**

## Policies and Procedures of the Lyon Park Citizens Association

Current as of Feb 21, 2008

The following policies and procedures collect, modify, and expand on the unwritten policies and procedures used in the past by the Lyon Park Citizens Association (LPCA). These represent the way we will conduct the affairs of the Association in implementing its Constitution and Bylaws. They will be posted on the web site, and the President will notify the membership of any changes.

1. General. We will follow the approved LPCA Constitution and Bylaws, interpreting them in some instances as specified below. The Constitution and Bylaws will be generally interpreted to allow activities not prohibited, rather than prohibit activities not specifically allowed. As a neighborhood association, LPCA should seek to allow expeditious action whenever possible. When appropriate, we will use the Executive Committee to act in the name of the membership more rapidly than if action is delayed for the general membership.

2. Conduct of general membership meetings.

a. Monthly general membership meetings will generally be scheduled on the second Wednesday of the month. The scheduled date for any meeting or meetings may be changed by the Executive Committee with adequate notification to the membership commensurate with the circumstances dictating the change.

b. The meeting Chairman (normally the President) will conduct meetings under Robert's Rules of Order but will apply them in as relaxed a manner as the situation allows. In his absence or when otherwise necessary, the President will designate a member of the Executive Committee to conduct the meeting.

c. The President is responsible for setting the meeting agendas. He will publish an advance agenda in the newsletter and then may publish a more detailed agenda on the listserv several days before the monthly general membership meeting. He will seek membership agreement at the meeting. Those wishing to make announcements or raise issues during a meeting should notify the President as soon as possible beforehand, to assist him in the orderly arrangement and conduct of the meeting.

d. Substantial issues requiring a formal vote of the membership normally must be advertised before the meeting in the LPCA newsletter in order to allow interested members to be present for the vote. This does not preclude consideration of other less substantial unadvertised administrative or procedural matters typically handled by acclamation or voice votes during a meeting. The Executive Committee may consider exceptions of the notification policy, particularly to allow publication through the listserv. The Chair will normally seek to defer action on unadvertised new substantial

items of business raised during a meeting until the following meeting in order to allow the members not initially present to be informed.

e. The Chair will generally direct management of the agenda and conduct of the meetings towards the provision of information and the discussion and consideration of issues of interest to the general membership. To that end, he may rule out of order discussion that narrowly focuses on details of interest to a relatively small number of meeting attendees.

f. Non-LPCA members, such as developers or supplicants, will be excluded from membership discussions and votes leading to decisions in which they have a vested interest.

## 2. Committees.

a. Individuals or groups of members functioning as committees often facilitate the Association's efforts to address specific issues. They collect information, meet with outside agencies, refine details, propose actions, and may reach agreements as authorized by the Executive Committee or general membership.

b. Committee membership will be generally open to Lyon Park residents. Committees and individuals acting for the Association, to include Association representatives to other organizations, should keep the membership fully informed by publicizing their efforts on the listserv and in the newsletter as appropriate. Formal committee meetings should be advertised in advance to allow for transparency and participation.

c. The Executive Committee will routinely meet on about the first of each month, with the schedule and venue notified to the Committee members. LPCA Members wishing to attend the meeting should inform the President by the 25<sup>th</sup> of the previous month, as seating may otherwise be limited. The Chairman will publish a summary of the meetings to the general membership within a week of their occurrence.

d. The Executive Committee takes decisions acting for the membership when it is more efficient or expeditious for the Committee to do so. Any such decisions are subject to membership review. The Executive Committee may take its decisions during a formal Committee meeting or by the Chairman polling the Committee, through a majority of those voting, with the Chairman included as a voting member. The Chairman is responsible for promptly notifying the membership of these decisions. Members may seek to review them at general membership meetings using the general established procedures, including prior advertisement and inclusion on the agenda. As the Executive Committee normally meets after the newsletter is sent to the printers each month, the Chairman of the Executive Committee (the President) will publish any decisions taken at those meetings on the listserv and will also report them during the monthly general membership meeting.

### 3. Communication.

- a. The primary means of communication of official LPCA information to the membership is the newsletter. The web site will be the official library for enduring publications such as the Constitution, Bylaws, and these and similar Policies and Procedures. The listserv is primarily used for conducting discussions, providing informal information to the membership, and announcing and reporting on activities.
  - b. When time does not permit use of the newsletter for publication of an impending action before a general membership meeting, it may be published on the listserv. Any subsequent consideration of action is subject to challenge if not enough members were notified in sufficient time as appropriate for the item under consideration.
  - c. Listsर्व. Only residents of Lyon Park and Ashton Heights and commercial businesses and nonprofits located in Lyon Park may subscribe to the listserv. Others may be granted permission to receive listserv messages at the discretion of the Executive Committee. The listserv is operated to enhance community communications, and content is monitored to ensure it is appropriate for the audience. Those posting messages to the listserv are encouraged to identify themselves in their posting. Commercial advertising or advertising of items for sale is not permitted, and SPAM, offensive remarks, or abusive language will not be tolerated. Those abusing these provisions and/or violating the spirit in which the listserv is operated may be denied the ability to post e-mails directly to the listserv. The listserv manager may verify the eligibility of those posting to it as required.
3. Privacy. To protect against unwanted use of the information, LPCA does not publish members' contact information without the agreement of the members, though it may publish names only. The Membership Chairman can provide appropriate contact information to any member needing it for legitimate noncommercial purposes.

### 4. Financial Management

- a. Disbursement. Specific approval by an authority other than the disbursing officer will be required, in accordance with the limits established in the Constitution, except for amounts less than \$50. The President will approve expenditures between \$50 and his Constitutional limit in writing, with e-mail deemed sufficient. The Treasurer will record in writing approvals granted by the Executive Committee or general membership. In the case of an income-producing activity such as the newsletter, the limits of authority to approve disbursements contained in the Constitution will be construed to mean amounts in excess of current income.
- b. Receiving. Invoices will be issued for accounts receivable, such as for newsletter advertising, and copies will be provided to the Treasurer. The Membership Chairman will quarterly reconcile membership lists and dues collections with the Treasurer.



c. Budget. The annual budget will be construed as allowing authorizations and expenditures within the total amount approved by the general membership, without specific line-item restrictions. Individual expenditures are subject to the approval limits specified in the Constitution. The President and Treasurer are responsible for reporting to the membership should total budget expenditures exceed the yearly approved amount.

#### 5. Development Issues

LPCA may decide to take a position on requests for zoning changes, variances, use permits, and similar matters when the request is made by a commercial or institutional entity. It does not normally take positions on such matters with respect to private homes.

#### 6. Supporting Events at the Community Center

LPCA will subsidize 50% of the rent of any event at the Lyon Park Community Center which the Executive Committee judges to be for the good of the Lyon Park community and which is open to the general public. LPCA will subsidize events only when any admission fees are used to offset costs for holding the event, and not for profit.

#### 7. Neighborhood Conservation

“Neighborhood conservation” projects are one method to accomplish County-funded improvements such as curbs, gutters, sidewalks, pedestrian lighting, mini-parks, beautification, and other capital projects. The County encourages neighborhoods such as Lyon Park to develop such projects and designate one of them as a neighborhood first priority. Assigning such a priority is a virtual prerequisite for County funding, and few projects are approved before being considered in four funding cycles by the County’s Neighborhood Conservation Advisory Committee. When LPCA designates a project as the LPCA first priority project, if it is not subsequently funded in six funding cycles, LPCA may review the project’s first priority designation.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

BROADSTONE SECURITY, LLC,	)	
d/b/a NOVA ARMORY	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL16001861
	)	
JOHN DOE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NON-PARTY LYON PARK CITIZENS' ASSOCIATION  
MOTION TO QUASH SUBPOENA *DUCES TECUM***

# **EXHIBIT B**

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Support

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

BROADSTONE SECURITY, LLC,	)	
d/b/a NOVA ARMORY	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL16001861
	)	
JOHN DOE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NON-PARTY LYON PARK CITIZENS' ASSOCIATION  
MOTION TO QUASH SUBPOENA *DUCES TECUM***

**EXHIBIT C**

West's Annotated Code of Virginia

Title 8.01. Civil Remedies and Procedure (Refs & Annos)

Chapter 14. Evidence (Refs & Annos)

Article 5. Compelling Attendance of Witnesses, Etc.

VA Code Ann. § 8.01-407.1

§ 8.01-407.1. Identity of persons communicating anonymously over the Internet

Currentness

A. In civil proceedings where it is alleged that an anonymous individual has engaged in Internet communications that are tortious, any subpoena seeking information held by a nongovernmental person or entity that would identify the tortfeasor shall be governed by the following procedure unless more expedited scheduling directions have been ordered by the court upon consideration of the interests of each person affected thereby:

1. At least thirty days prior to the date on which disclosure is sought, a party seeking information identifying an anonymous communicator shall file with the appropriate circuit court a complete copy of the subpoena and all items annexed or incorporated therein, along with supporting material showing:

a. That one or more communications that are or may be tortious or illegal have been made by the anonymous communicator, or that the party requesting the subpoena has a legitimate, good faith basis to contend that such party is the victim of conduct actionable in the jurisdiction where the suit was filed. A copy of the communications that are the subject of the action or subpoena shall be submitted.

b. That other reasonable efforts to identify the anonymous communicator have proven fruitless.

c. That the identity of the anonymous communicator is important, is centrally needed to advance the claim, relates to a core claim or defense, or is directly and materially relevant to that claim or defense.

d. That no motion to dismiss, motion for judgment on the pleadings, or judgment as a matter of law, demurrer or summary judgment-type motion challenging the viability of the lawsuit of the underlying plaintiff is pending. The pendency of such a motion may be considered by the court in determining whether to enforce, suspend or strike the proposed disclosure obligation under the subpoena.

e. That the individuals or entities to whom the subpoena is addressed are likely to have responsive information.

f. If the subpoena sought relates to an action pending in another jurisdiction, the application shall contain a copy of the pleadings in such action, along with the mandate, writ or commission of the court where the action is pending that authorizes the discovery of the information sought in the Commonwealth.

2. Two copies of the subpoena and supporting materials set forth in subdivision A. 1. a. through f. shall be served upon the person to whom it is addressed along with payment sufficient to cover postage for mailing one copy of the application within the United States by registered mail, return receipt requested.

3. Except where the anonymous communicator has consented to disclosure in advance, within five business days after receipt of a subpoena and supporting materials calling for disclosure of identifying information concerning an anonymous communicator, the individual or entity to whom the subpoena is addressed shall (i) send an electronic mail notification to the anonymous communicator reporting that the subpoena has been received if an e-mail address is available and (ii) dispatch one copy thereof, by registered mail or commercial delivery service, return receipt requested, to the anonymous communicator at his last known address, if any is on file with the person to whom the subpoena is addressed.

4. At least seven business days prior to the date on which disclosure is sought under the subpoena, any interested person may file a detailed written objection, motion to quash, or motion for protective order. Any such papers filed by the anonymous communicator shall be served on or before the date of filing upon the party seeking the subpoena and the party to whom the subpoena is addressed. Any such papers filed by the party to whom the subpoena is addressed shall be served on or before the date of filing upon the party seeking the subpoena and the anonymous communicator whose identifying information is sought. Service is effective when it has been mailed, dispatched by commercial delivery service, transmitted by facsimile, or delivered to counsel of record and to parties having no counsel.

5. Any written objection, motion to quash, or motion for protective order shall set forth all grounds relied upon for denying the disclosure sought in the subpoena and shall also address to the extent feasible (i) whether the identity of the anonymous communicator has been disclosed in any way beyond its recordation in the account records of the party to whom the subpoena is addressed, (ii) whether the subpoena fails to allow a reasonable time for compliance, (iii) whether it requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) whether it subjects a person to undue burden.

6. The party to whom the subpoena is addressed shall not comply with the subpoena earlier than three business days before the date on which disclosure is due, to allow the anonymous communicator the opportunity to object. If any person files a written objection, motion to quash, or motion for protective order, compliance with the subpoena shall be deferred until the appropriate court rules on the obligation to comply. If an objection or motion is made, the party serving the subpoena shall not be entitled to inspect or copy the materials except pursuant to an order of the court on behalf of which the subpoena was issued. If an objection or motion has been filed, any interested person may notice the matter for a hearing. Two copies of any such notice shall be served upon the subpoenaed party, who shall mail one copy thereof, by registered mail or commercial delivery service, return receipt requested, to the anonymous communicator whose identifying information is the subject of the subpoena at that person's last known address.

B. The party requesting or issuing a subpoena for information identifying an anonymous Internet communicator shall serve



along with each copy of such subpoena notices in boldface capital letters in substantially this form:

#### **NOTICE TO INTERNET SERVICE PROVIDER**

**WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THIS SUBPOENA CALLING FOR IDENTIFYING INFORMATION CONCERNING YOUR CLIENT, SUBSCRIBER OR CUSTOMER, EXCEPT WHERE CONSENT TO DISCLOSURE HAS BEEN GIVEN IN ADVANCE, YOU ARE REQUIRED BY § 8.01-407.1 OF THE CODE OF VIRGINIA TO MAIL ONE COPY THEREOF, BY REGISTERED MAIL OR COMMERCIAL DELIVERY SERVICE, RETURN RECEIPT REQUESTED, TO THE CLIENT, SUBSCRIBER OR CUSTOMER WHOSE IDENTIFYING INFORMATION IS THE SUBJECT OF THE SUBPOENA. AT LEAST SEVEN BUSINESS DAYS PRIOR TO THE DATE ON WHICH DISCLOSURE IS SOUGHT YOU MAY, BUT ARE NOT REQUIRED TO, FILE A DETAILED WRITTEN OBJECTION, MOTION TO QUASH OR MOTION FOR PROTECTIVE ORDER. ANY SUCH OBJECTION OR MOTION SHALL BE SERVED UPON THE PARTY INITIATING THE SUBPOENA AND UPON THE CLIENT, SUBSCRIBER OR CUSTOMER WHOSE IDENTIFYING INFORMATION IS SOUGHT.**

**IF YOU CHOOSE NOT TO OBJECT TO THE SUBPOENA, YOU MUST ALLOW TIME FOR YOUR CLIENT, SUBSCRIBER OR CUSTOMER TO FILE HIS OWN OBJECTION, THEREFORE YOU MUST NOT RESPOND TO THE SUBPOENA ANY EARLIER THAN THREE BUSINESS DAYS BEFORE THE DISCLOSURE IS DUE.**

**IF YOU RECEIVE NOTICE THAT YOUR CLIENT, SUBSCRIBER OR CUSTOMER HAS FILED A WRITTEN OBJECTION, MOTION TO QUASH OR MOTION FOR PROTECTIVE ORDER REGARDING THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, NO DISCLOSURE PURSUANT TO THE SUBPOENA SHALL BE MADE EXCEPT PURSUANT TO AN ORDER OF THE COURT ON BEHALF OF WHICH THE SUBPOENA WAS ISSUED.**

#### **NOTICE TO INTERNET USER**

**THE ATTACHED PAPERS MEAN THAT \_\_ (INSERT NAME OF PARTY REQUESTING OR CAUSING ISSUANCE OF THE SUBPOENA) HAS EITHER ASKED THE COURT TO ISSUE A SUBPOENA, OR A SUBPOENA HAS BEEN ISSUED, TO YOUR INTERNET SERVICE PROVIDER \_\_ (INSERT NAME OF INTERNET SERVICE PROVIDER) REQUIRING PRODUCTION OF INFORMATION REGARDING YOUR IDENTITY. UNLESS A DETAILED WRITTEN OBJECTION IS FILED WITH THE COURT, THE SERVICE PROVIDER WILL BE REQUIRED BY LAW TO RESPOND BY PROVIDING THE REQUIRED INFORMATION. IF YOU BELIEVE YOUR IDENTIFYING INFORMATION SHOULD NOT BE DISCLOSED AND OBJECT TO SUCH DISCLOSURE, YOU HAVE THE RIGHT TO FILE WITH THE CLERK OF COURT A DETAILED WRITTEN OBJECTION, MOTION TO QUASH THE SUBPOENA OR MOTION TO OBTAIN A PROTECTIVE ORDER. YOU MAY ELECT TO CONTACT AN ATTORNEY TO REPRESENT YOUR INTERESTS. IF YOU ELECT TO FILE A WRITTEN OBJECTION, MOTION TO QUASH, OR MOTION FOR PROTECTIVE ORDER, IT SHOULD BE FILED AS SOON AS POSSIBLE, AND MUST IN ALL INSTANCES BE FILED NO LESS THAN SEVEN BUSINESS DAYS BEFORE THE DATE ON WHICH DISCLOSURE IS DUE (LISTED IN THE SUBPOENA). IF YOU ELECT TO FILE A WRITTEN OBJECTION OR MOTION AGAINST THIS SUBPOENA, YOU MUST AT THE SAME TIME SEND A COPY OF THAT OBJECTION OR MOTION TO BOTH YOUR INTERNET SERVICE PROVIDER AND THE PARTY WHO REQUESTED THE SUBPOENA. IF YOU WISH TO OPPOSE THE ATTACHED SUBPOENA, IN WHOLE OR IN PART, YOU OR YOUR ATTORNEY MAY FILE A WRITTEN OBJECTION, A MOTION TO QUASH THE SUBPOENA, OR A MOTION FOR A PROTECTIVE ORDER OR YOU MAY USE THE FORM BELOW, WHICH MUST BE FILED WITH THE COURT AND SERVED UPON THE PARTY REQUESTING THE SUBPOENA AND THE INTERNET SERVICE PROVIDER BY**

**MAILING AT LEAST SEVEN BUSINESS DAYS PRIOR TO THE DATE SET IN THE SUBPOENA FOR DISCLOSURE:**

.....  
**Name of Court Listed on Subpoena**

.....  
**Name of Party Seeking Information**

**Case No.** \_\_\_\_\_

**OBJECTION TO SUBPOENA DUCES TECUM**

I object to the Subpoena Duces Tecum addressed to .....

for the following reasons:

[Name of Internet Service Provider to Whom the Subpoena is Addressed]

(Please PRINT. Set forth, in detail, all reasons why the subpoena should not be complied with, and in addition, state (i) whether the identity of the anonymous communicator has been disclosed in any fashion, (ii) whether the subpoena fails to allow a reasonable time for compliance, (iii) whether it requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) whether it subjects a person to undue burden.)

(attach additional sheets if needed)

.....  
Respectfully Submitted,

.....  
John Doe .....

.....  
Enter e-mail nickname or other .....

.....  
alias used in communicating via .....

.....  
the Internet service provider to .....

.....  
whom the subpoena is addressed. ....

CERTIFICATE

I hereby certify that a true copy of the above Objection to Subpoena Duces Tecum was mailed this \_\_\_\_ day of \_\_\_\_\_, (month, year), to

.....  
(Name and address of party seeking information) and

.....  
(Name and address of Internet Service Provider)

John Doe .....

.....  
Enter e-mail nickname or other .....

.....  
alias used in communicating via .....

.....  
the Internet service provider to .....

.....  
whom the subpoena is addressed. ....

**Credits**

Added by Acts 2002, c. 875.

**Notes of Decisions (5)**

VA Code Ann. § 8.01-407.1, VA ST § 8.01-407.1

The statutes and Constitution are current through the End of 2015 Reg. Sess. and includes 2016 Reg. Sess. cc. 1 to 4, 19, 55, 71, 79 to 80, 279, 290, 385 and 648.

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