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## IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA Richmond Division

BETTY J. OSTERGREN,	)
Plaintiff,	)
v.  ROBERT F. McDONNELL, in his official capacity as Attorney General of Virginia,	) Civil No. 3:08cv362
Defendant.	) ) )

## PLAINTIFF'S REPLY BRIEF ON INJUNCTIVE RELIEF

In his Brief on Injunctive relief, the defendant advocates an injunction that would prohibit enforcement of Virginia Code § 59.1-443.2 against Ms. Ostergren's website as it currently exists, but would allow the statute to be enforced as to any public records that she might post on the site in the future. However, the defendant fails to set forth any principled basis for distinguishing one set of public records from another, or any reason why the currently posted records should be constitutionally protected, while any records posted in the future should not.

The defendant also fails to respond meaningfully to the plaintiff's concern that, if only a narrow injunction is issued, she will be unable to use her website to advocate against government websites that may post records containing SSNs in the future. The defendant dismisses this concern as "without merit," because all Virginia circuit court clerks have already made their land records available on line. But this argument ignores the fact that Ms. Ostergren also advocates – often successfully – against websites

maintained by governments *outside* Virginia. (*See* Plaintiff's Brief on Injunctive Relief at 4, n. 1; Stipulation ¶¶ 3, 6; Ostergren Decl. ¶¶ 3, 6.)

The defendant continues to assert (without support from any evidence on the record), that the plaintiff's website contributes to identity theft. Plaintiff has addressed this contention in her principal Brief on Injunctive relief, as well has her briefs on the merits, and will not repeat those arguments here.

## **CONCLUSION**

The plaintiff respectfully requests that the Court issue a permanent injunction prohibiting the enforcement of Virginia Code § 59.1-443.2 against her for the posting of any public records on her website.

Respectfully submitted,

BETTY J. OSTERGREN

By:

/s/

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to the following:

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