

JASON AND FISCHER
ATTORNEYS AT LAW
47 WINTER STREET
BOSTON, MASSACHUSETTS 02108
TEL. (617)423-7904
FAX. (617)451-3413

LINDA GAYLE JASON
ANDREW M. FISCHER
ANDREW J. BRODIE III

February 1, 2010

Dennis Hukowicz, Chief
Hadley Police Department
15 East Street
Hadley, Massachusetts 01035

RE: Eli Damon
Right to bicycle on public roadways

Dear Chief Hukowicz

I write on behalf of Eli Damon, whose statutory right to use the public way has been questioned and threatened by your department, which has also violated his constitutional right to travel.

Mr. Damon informs me that he has been removed from state roads by officers from your department who have incorrectly told him that it was illegal to ride a bicycle on a state highway. To the contrary, Massachusetts law expressly states, at M.G.L., c. 85 §11B, that “[e]very person operating a bicycle upon a way, as defined in section one of chapter ninety, shall have the right to use all public ways in the commonwealth except limited access or express state highways where signs specifically prohibiting bicycles have been posted.” This right has been acknowledged by the United States District Court in the jury instructions given in *Rowinsky v. Walsh et al*, C.A. NO. 01-CV-11075-RCL, Dis. EMass.

Applying the clear language of M.G.L., c. 85 §11B to the statutory framework addressing the rights and obligations of vehicles on public roadways, it is also clear that a bicycle, like any other vehicle, is entitled to the whole lane of the road. This is made clear by the provision in Chapter 525 of the Acts of 2008, AN ACT PROVIDING FOR BICYCLE SAFETY that amends M.G.L., c.89 §2 to read “If it is not possible to overtake a bicycle or other vehicle at a safe distance in the same lane, the overtaking vehicle shall use all or part of an adjacent lane if it is safe to do so or wait for a safe opportunity to overtake.”

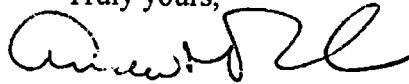
The clear intent of this provision is to afford a bicyclist the safety of the full lane, to which the cyclist is entitled to the same extent as any other vehicle operator. Thus, while a bicyclist, like any other vehicle operator, has an obligation to stay to the right, the cyclist has the right to the full lane when safety so requires and Massachusetts statutory law now codifies the obligation of other vehicle operators to respect this right.

The United States constitution guarantees a right to travel. [See, eg *Hodgson v. Minnesota*, 497 U.S. 417, 110 S.Ct. 2926, 111 L.Ed.2d 344 (1990)] It is implicit in this guarantee that there is an equal right to travel regardless of one's choice of mode of travel: one cannot, under color of law, discriminate against any citizen because he or she chooses to use a particular mode of travel.

Seizure of a bicycle without probable cause is also a violation of the Fourth Amendment to the Constitution and Article XVI of the Massachusetts Declaration of Rights. An officer of your department made such a seizure on September 12, 2009. In doing so, he exclaimed "I don't care about the law" to Mr. Damon, acknowledging that stopping Mr. Damon, taking his bicycle and threatening to single him out for arrest for using the public ways with a bicycle was harassment in violation of Mr. Damon's constitutional rights.

Please be advised that Mr. Damon has asked me to seek appropriate legal redress for any further interference with his rights to the roadway and right to travel.

Truly yours,

A handwritten signature in black ink, appearing to read "Andrew M. Fischer". The signature is fluid and cursive, with a large initial "A" and "F".

Andrew M. Fischer

AMF/ms

CC: Eli Damon