

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Seven Inc, d/b/a Smart Start MN,
Smart Start MN,

**ORDER GRANTING TEMPORARY
INJUNCTIVE RELIEF**

Plaintiffs,

vs.

Court File No. 27-CV-16-17034

Minnesota Department of Public Safety,
Ramona Dohman, Driver and Vehicle
Services, Dawn Olson,

Defendants.

The above-entitled matter came on for hearing before the Honorable M. Jacqueline Regis, Judge of District Court, on December 8, 2016 pursuant to Plaintiffs' Motion for Temporary Restraining Order.

Jack Y. Perry, Esq., and Jason R. Asmus, Esq., appeared on behalf of Plaintiff;
Noah Lewellen, Assistant Attorney General, appeared on behalf of Defendants.

Now, therefore, based upon all the files, records, and proceedings herein, including the arguments of counsel, the Court makes the following:

ORDER

1. Plaintiffs' Motion for temporary injunction is **GRANTED**.
2. Defendants are enjoined from enforcing the January 1, 2017 deadline requiring remaining Interlock Program participants to convert to real-time devices pending resolution of the constitutionality of the 2016-17 Certification Program requirements.

BY THE COURT:

Dated: December 29, 2016

M. Jacqueline Regis
Judge of District Court

MEMORANDUM

Procedural Background

Plaintiff Seven Inc., d/b/a Smart Start MN filed its Summons and Verified Complaint in this action on November 18, 2016 seeking a declaratory judgment against Defendants (1) Minnesota Department of Public Safety (“DPS”); (2) Ramona Dohman, in her official capacity as the Commissioner of DPS; (3) Driver and Vehicle Services (“DVS”); and (4) Dawn Olson, in her official capacity as the Director of DVS. Plaintiff also filed a Motion for Temporary Restraining Order requesting an order from this Court enjoining Defendants from implementing and enforcing new reporting requirements for the 2016-17 certification for Minnesota’s Ignition Interlock Program. The Court ordered Defendants to file their memorandum in response no later than December 2, 2016. Defendants filed their response on December 2, 2016 and Plaintiff filed its reply memorandum on December 6, 2014. The Court held a full hearing on the matter on December 8, 2016.

Factual Background

Ignition Interlock Program. The Minnesota Legislature authorized a breath alcohol ignition interlock device program (“Interlock Program”), which “*allows drivers with alcohol offenses and specified criminal vehicular offenses to drive safely while being monitored by [Defendant DVS].*” (Compl. Ex. 2, at 1 § I.) The Interlock Program prevents drivers from driving while impaired by preventing vehicles from starting if an installed Breath Alcohol Ignition Interlock Device (“BAIID”) detects an alcohol level greater than or equal to 0.02. (*Id.* at 4-6.) Minn. Stat. § 171.306, subd. 2 requires the Commissioner of DPS to “*establish performance standards and a process for certifying [BAIIDs] used in the [Interlock Program].*” Minn. Stat. § 171.306, subd. 2 further requires that manufacturers of BAIIDs to apply for certification annually by submitting the form prescribed by the Commissioner of DPS. DPS publishes its “*CERTIFICATION PROCESS FOR THE MINNESOTA [INTERLOCK PROGRAM]*” (“Certification Program”), including requirements for the 2016-17 Certification Program. (*See e.g.*, Compl. Ex. 1-2.)

In March 2015, Defendants issued guidelines informing BAIID manufacturers that the 2016-17 Certification Program would require the BAIIDs to have *real-time* reporting

requirements. Real-time is the “*instant transmission of ignition interlock data, including photos, to the manufacturer’s website for viewing by DVS without delay as cellular reception permits.*” (Compl. Ex. 2 at 3.) During an October 2015 meeting between Defendant DVS and BAIID manufacturers, DVS indicated that one of the real-time specifications would be that “*GPS will be available, if required.*” (See December 6, 2016 Cohen Aff. ¶ 4.) A1 Smart-Start, LLC (“Smart Start, LLC), a manufacturer of BAIIDs, continued development of a new wireless modem for its BAIIDs, including GPS capability.

On December 7, 2015, Plaintiff’s President, Michael Friedberg (“Friedberg”) sent a letter raising several issues Plaintiff had regarding the real-time requirements. Friedberg’s December 7, 2015 letter also indicated that they were in the process of designing and building a new modem specifically for Minnesota’s Interlock Program and that they anticipated, *inter alia*, “*GPS Data will be available, if required.*” (Compl. Ex. 5.)

In February 2016, DVS released its 2016-17 Certification Program. (See Compl. Ex. 2). The 2016-17 Certification Program sets the following minimum requirements for *real-time* BAIIDs:

- a. *There shall be constant communication between the manufacturer’s server and relay unit while the device is in use. All data, including photos, shall be available for Viewing on the website within 5 minutes from when the data was recorded on the device. This includes any last event data recorded after power off (e.g., skipped 10-minute rolling retest window data).*
- b. *Shall have the capability to periodically awaken the device for data retrieval when not in use.*
- c. *The date of the last upload shall be noted on the participant’s web account.*
- d. *A reliable cellular company shall be used as well as a cellular contract that includes roaming charges. In cases where there is no cellular reception, the device shall store the data and send it as soon as cellular reception is available.*
- e. *If a participant’s device has not transmitted data after 5 days, the manufacturer shall contact the participant to determine why data is not being transmitted. If the data cannot be transmitted after 10 days, the manufacturer shall contact the Department at dvs.iip.monitoring@state.mn.us to indicate why the data is not being transmitted.*

(*Id.* at 6 (emphasis added).) The 2016-17 Certification Program also requires BAIIDs to have a data storage system that “*has sufficient capacity to facilitate the recording and maintaining of all daily driving activities and all monitoring requirements for the period of time elapsed from one maintenance and calibrating check up to the next 70 days*” and “*records any attempt to start the vehicle without first taking a breath test . . .*” (*Id.*) The

2016-17 Certification Program further requires a DVS accessible “*website for [DVS] to review all participant data and photos.*” (*Id.* at 18.) Additionally, the following Interlock Program participant information is to be provided to DVS:

- *Participant’s first and last names, date of birth and driver’s license number*
- *Reference photo of the participant*
- *Date of installation*
- *Date of calibration*
- *Location of service center*
- *Something to indicate if the service was mobile service*
- *Date of removal*
- *Make, model and VIN of the vehicle on which the device is installed*
- *Device model and firmware version for the device and camera*
- *All data and photos recorded by the device*
- *Ability to search by name and driver’s license number*
- *For which state the device is configured*
- *Date and time of the last data upload*

(*Id.* at 18–19 (emphasis added).) Under the 2016-17 Certification Program “[a]ll new devices installed shall meet the 2016 Performance Standards by July 1, 2016. Devices in the field prior to July 1, 2016 shall meet the 2016 Performance Standards by January 1, 2017.” (*Id.* at 12.) The July 1, 2016 deadline was pushed back to September 1, 2016. The January 1, 2017 deadline remains in place at this time.

Smart Start BAIIDs. Smart Start, LLC is the manufacturer of Smart Start® BAIID devices certified by DVS, including its wireless modem (“SS Real-Time Device”). 1A Smart Start, Inc. (“Smart Start, Inc.”) entered into a franchise agreement with Plaintiff, a BAIID provider in Minnesota. Under said franchise agreement, Plaintiff is the exclusive provider in Minnesota for the DVS-certified Smart Start® BAIID, including the SS Real-Time Device. (December 6, 2016 Cohen Aff. at ¶¶ 2-3.) As an exclusive provider, Plaintiff is prohibited from providing any other BAIID to Interlock Program participants. (*Id.*) Plaintiff provides approximately 3,148 of all BAIIDS currently on the Interlock Program. (*See* December 2, 2016 Fruenwald Aff. at ¶ 9)

In a February 23, 2016 meeting that included DVS and Plaintiff, Field Supervisor, James Beauregard (“Beauregard”) of DVS stated that although the real-time reporting requirements did not explicitly require it, he wanted BAIIDS to have GPS capability and for the GPS to be activated and working. DVS representatives also indicated that it had been receiving GPS data from other BAIID devices from other manufacturers that had already implemented real-time reporting, but that it disregarded such data. DVS subjected the SS Real-Time Device to field testing in June

2016 to ensure compliance with the pending real-time reporting requirements. (Compl. ¶¶ 57-59.) During the certification process, Beauregard directed Plaintiff to improve the accuracy of the SS Real-Time Device's GPS capabilities before the DVS would certify it under the 2016-17 Certification Program. DVS certified the SS Real-Time Device with GPS capabilities.

Concerns Regarding GPS Data. In June 2016, DVS inquired whether the GPS data collection feature could be disabled from the SS Smart-Start Device or whether the GPS data could be removed from the web portal dashboard accessed by DVS. Smart Start LLC notified DVS that it could not disable the GPS or remove the data from the web portal dashboard. Regardless of the ability to remove the data from the web portal dashboard, the SS Real-Time Device collects and generates GPS location data. The modem necessary for the "real-time reporting" requirements creates location data, which is stored electronically on cellular providers' servers.

Also in June 2016, Senator Ron Latz, Chair of the Senate Judiciary Committee at the time, asked Plaintiff to provide information regarding the real-time reporting requirement for the 2016-17 Certification Program. Ed Cohen ("Cohen"), Plaintiff's Vice-President, Director of Marketing, responded that he had concerns about the 2016-17 Certification Program, including the GPS data, and that there were no public discussions regarding the policy ramifications of the requirements. Cohen indicated that GPS had been in the draft guidelines and that they needed to build a device that matched the guidance they were given and that worked with various Judicial District programs. Cohen further indicated that GPS data would have to be given to the State and that there was no way to turn it off or to hide it.

On July 23, 2016 Senator Latz and Senator Dibble, who was the Chair of the Senate Transportation & Public Safety Committee, submitted a letter to DVS requesting information regarding the real-time reporting requirement. The Senators specifically raised concerns regarding the GPS data in connection with the new reporting requirements. DVS responded on August 10, 2016. The response stated, *inter alia*, that DVS does not require GPS data, it does not collect GPS data, and that manufacturers have data protection systems in place. Plaintiff responded to DVS' letter, raising several concerns to DVS representations contained in the August 10, 2016 letter. Plaintiff's concerns included the fact that (1) GPS was a requirement at the time of the original announcement in March 2015 until the final standards were released in February 2016; (2) DVS required improvement of GPS location reporting prior to certification of the SS Real-Time Device;

(3) DVS is aware that the GPS data exists on the devices; and (4) DVS had not taken steps to protect the GPS data.

Plaintiff began installing the DVS certified SS Real-Time Devices for new Interlock Program participants on September 1, 2016. Per the Interlock Program requirements, Plaintiff is required to update its 3,000+ existing participants to DVS certified real-time devices by January 1, 2017. Existing devices not upgraded by the January 1, 2017 deadline will not be certified under the 2016-17 Certification Program.

On September 21, 2016 Senator Latz met with representatives of DVS to discuss the 2016-17 Certification Program. After that meeting, on September 29, 2016, Senators Latz and Dibble sent a letter and formally requested that DVS delay the 2016-17 Certification Program. The Senators specifically raised concerns regarding “*issues of privacy of the location-data of users . . .*” (Compl. Ex. 14.) The letter also stated that “*by DVS contemplating GPS technology for use in the future and relaying that expectation to vendors, [BAIID] device manufacturers began including GPS tracking technology in the updated devices that are provided going forward.*” (*Id.*) The letter went on to say that the Senators were “*made aware that GPS tracking technology has been incorporated in some vendors’ devices since as early as 2011*” and that “*[DVS staff] reported that the tracking technology cannot be turned off and information on the location of [Interlock Program participants] has been recorded by private third-party companies since that time.*” (*Id.*) The Senators stated that “*[w]hile DVS may not use the GPS data directly, the collection and storage of it by third parties raises serious privacy concerns.*” (*Id.*) The letter also raised concerns about the process by which DVS implemented the real-time reporting requirements. Specifically, the Senators wrote that they had concerns about the process for notice and for requesting public input.

On October 19, 2016, after news reports regarding the new real-time reporting requirement and the potential constitutional issues created by GPS tracking, Friedberg, contacted DVS via e-mail. Friedberg’s e-mail indicated that Plaintiff would hold off on beginning to retrofit units until the issue between the legislature and DVS was resolved. DVS did not respond to either Friedberg’s e-mail or to the September 29, 2016 request to delay implementation from Senators Latz and Dibble. In mid-October, Plaintiff ceased installing the SS Real-Time Devices in new installations.

On November 18, 2016, Plaintiff filed its Verified Complaint seeking a declaratory judgment that DVS had no authority to implement and enforce its real-time reporting requirement

against Defendants because the requirements violate constitutional and privacy rights of the Program participants. Plaintiff's Verified Complaint also seeks a TRO delaying implementation of the 2016-17 Certification Program.

After the Court heard the matter, the Minnesota House of Representatives issued a bipartisan press release announcing plans to introduce legislation that would "prohibit location tracking via [BAIID] systems and clarify DPS's customary rulemaking process." (December 14, 2016 Friedberg Aff. Ex. 29.)

Legal Standard

Because the Court heard the matter following notice and a full hearing attended by both sides, the Court will consider Plaintiff's motion as one for a temporary injunction and not one for a temporary restraining order. Minn. R. Civ. P. 65, governs temporary restraining orders and injunctions. A temporary injunction is an extraordinary equitable remedy, the purpose of which is to preserve the status quo until adjudication of the case on its merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). *Not every change in circumstances merits an injunction. Id. "Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held."* *Id.* The party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. *Medtronic, Inc. v. Advanced Bionics Corp.*, 317 N.W.2d 710, 713 (Minn. Ct. App. 2001); *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979).

Whether to grant a temporary injunction is left to the discretion of the court. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). In evaluating a motion for a temporary injunction, Minnesota Courts must analyze the five factors as set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). Those factors are: (1) the nature of the relationship between the parties before the dispute; (2) the balance of the harms between the parties; (3) the likelihood of success on the merits of plaintiff's claims; (4) the public interest; and (5) the administrative burden on the courts. *Id.*

Analysis

Standing. Defendants first argue that Plaintiff lacks standing to challenge the certification requirements because DVS certifies manufacturers and Plaintiff is not a manufacturer. Consequently, before addressing the merits of Plaintiff's motion, the Court must first address the question of standing.

“Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court.” *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). A plaintiff acquires standing by either suffering an injury-in-fact or by being the beneficiary of some legislative enactment granting standing. *Id.* *“The goal of the standing requirement is to ensure that issues before the courts will be vigorously and adequately presented.”* *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Channel 10, Inc. v. Independent Sch. Dist. No. 709, St. Louis County*, 298 Minn. 306, 314, 215 N.W.2d 814, 821 (Minn.1974); *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 346 (Minn.1977)) (internal quotations omitted). An injury in fact is *“a concrete and particularized invasion of a legally protected interest.”* *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). The injury must go beyond dissatisfaction with an interpretation of a statute. *Matter of Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 797 (Minn. 1992). A plaintiff must articulate a legally cognizable interest that differs from injury to the interests of other citizens generally. *Id.*

Minnesota's Declaratory Judgment Act provides that *“[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”* Plaintiff's Verified Complaint seeks a declaration regarding its rights or status under the 2016-17 Certification Program. Consequently, a declaratory judgment action is appropriate.

Plaintiff claims that it will be injured because the 2016-17 Certification Program requirement that all existing Interlock Program participants convert to *real-time* devices by January 1, 2017 exposes Plaintiff to risk of litigation. Defendants counter that only manufacturers are bound by the Interlock Program requirements and that any litigation risks Plaintiff faces with regard to the 2016-17 Certification Program are a result of Plaintiff's contracts and associations with the manufacturer, not a result of Defendants actions. The Court disagrees.

Plaintiff is the sole provider of Smart Start, LLC devices in Minnesota. Pursuant to its agreement with Smart Start, Inc., Plaintiff may not use another manufacturer's device. Plaintiff's Certified Complaint alleges that Defendants certified the SS Real-Time Device knowing that the device collects and records GPS data and that, because of DVS's own requirements and definitions, said GPS Data becomes government data that is publicly available. The Certified Complaint further alleges that these actions by Defendants have put Plaintiff at risk of being sued by Interlock Program participants because collecting GPS data and making it public is unconstitutional and violates the Interlock Program participants' right to privacy. As the only vendor of Smart Start, LLC devices in Minnesota, Plaintiff is a participant in these potential constitutional violations. Therefore, these allegations are more than dissatisfaction with the 2016-17 Certification Program requirements and go beyond the interests of other citizens generally. They are specific and unique to Plaintiff and other provider of BAIIDs that record GPS data. If true, Plaintiff's allegations create a risk that Plaintiff will incur both financial and reputational damages beyond what the average citizen will suffer in the event DVS is allowed to enforce the January 1, 2017 deadline. Consequently, Plaintiff has standing to bring the current action.

Dahlberg Factors.

As to the merits of Plaintiff's motion for an injunction, the Court begins by addressing the two most important factors to this case—Plaintiff's likelihood of success on the merits of its claims and the harm to be suffered by the parties if the Court denies the injunction.

Likelihood of Success on the Merits. Plaintiff's Verified Complaint asserts one cause of action against Defendants, a declaratory judgment finding that Defendants' real-time reporting requirement for the 2016-17 Certification Program is *ultra vires*, improper and unenforceable. For the reasons set forth below, this factor weighs in favor of granting an injunction based on the current record before this Court.

Defendants DVS and DPS are administrative agencies. As creatures of statute, Administrative Agencies have only the powers given to them by the legislature. *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). "***An agency's statutory authority may be either expressly stated in the legislation or implied from the expressed powers.***" *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). An agency may not enlarge its powers beyond that which was contemplated by the legislature. *In re Qwest's Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005). Courts generally resolve doubts about the existence of an agency's authority against the

existence of such authority. *In re Qwest's Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005). An agency's authority does not include violation of constitutional or privacy rights. *See* Minn. Stat. § 14.45.

Defendant DPS has the authority to establish standards for certifying BAIIDs for the Interlock Program. *See* Minn. Stat. § 171.306, subd. 2. However, Plaintiff argues that DPS exceeded that authority by creating potential constitutional and privacy violations in those standards. Plaintiff's Verified Complaint alleges that the SS Real-Time Device certified by DVS was certified with GPS capabilities. It further alleges that, not only were Defendants aware of this capability when it certified it, but Field Supervisor Beauregard required improvements to the GPS capabilities before DVS would certify the device. Defendants do not dispute these facts. Furthermore, the 2016-17 Certification Program requires that all data recorded on BAIIDs be made available to DVS. Plaintiff alleges that DVS requires GPS data to be provided to DVS because the SS Real-Time Device records GPS data. This is true even if Defendants claim no need or desire for GPS data.

The Minnesota Government Data Practices Act ("DPA), ***regulates the collection, creation, storage, maintenance, dissemination, and access to government data in state agencies, statewide systems, and political subdivisions.***" Minn. Stat. § 13.01, subd. 3. Under the DPS, "Government data" is ***all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.***" Minn. Stat. § 13.02, subd. 7 (emphasis added). A "Government entity" is ***a state agency, statewide system, or political subdivision.***" Unless otherwise provided for by statute, temporary classification, or federal law, ***[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public.***" Minn. Stat. § 13.03. Furthermore, Minn. Stat. §§ 168.346, subd. 2 and 171.12, subd. 7a require DVS to disclose personal information when the use is related to the operation or use a vehicle or to public safety.

Nothing contained within the 2016-17 Certification Program re-classifies Interlock Program participants' GPS data. Defendants point to no statute or 2016-17 Certification Program requirements that protect Interlock Program participants' GPS data. Consequently, under the plain reading of the DPA, Interlock Program participants' GPS data on the SS Real-Time Device would become government data and become public. Defendants concede that they have no need for the GPS location information and that the location of the device is not relevant to determining whether

a violation has occurred. This raises issues of whether the collection of Interlock Program participants' GPS data constitutes an unconstitutional search and whether the classification of that data as "government data" impermissibly violates the Interlock Program participants' right to privacy.

Fourth Amendment protects the right of a person ***"to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."*** *United States v. Jones*, 132 S. Ct. 945, 949 (2012). A Fourth Amendment violation occurs when the government violates a person's reasonable expectation of privacy. *Id.* The government's installation of a GPS tracking device on a vehicle without a search warrant, is an illegal search under the Fourth Amendment. *Id.*; *State v. Liebl*, 886 N.W.2d 512, 516 (Minn. Ct. App. 2016). A GPS device ***"generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations."*** *Jones*, 132 S. Ct. at 955. Furthermore, ***"[t]he Government can store such records and efficiently mine them for information for years into the future."*** *Id.* at 956. Finally, because of its nature, GPS ***"evades the ordinary checks that constrain abusive law enforcement practices. . . ."*** *Id.* Defendants imply that Interlock Program participants consented to such an intrusion by agreeing to be bound by the terms of the Interlock Program. However, Defendants offer no evidence to support a finding that the consent extends to GPS tracking and to making that data public. Therefore, the Court must conclude that any consent given by Interlock Program participants did not extend to GPS tracking and reporting.

"The right to privacy is an integral part of our humanity; one has a public persona, exposed and active, and a private persona, guarded and preserved. The heart of our liberty is choosing which parts of our lives shall become public and which parts we shall hold close." *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 235 (Minn. 1998). Minnesota recognizes a right to informational privacy. *See In re Agerter*, 353 N.W.2d 908, 913 (Minn.1984). This includes both the right to not divulge information to the government and the right to prevent the government from disclosing private information. *Id.* This right to privacy ***"depends on a balancing of the competing interests of the individual in keeping his or her intimate affairs private and the government's interest in knowing what those affairs are when public concerns are involved."*** *Id.* As discussed earlier, by requiring BAIID providers and/or manufacturers to make ***"[a]ll data and photos recorded by the device"*** available to the web portal for the 2016-17 Certification

Program, that data becomes government data. Absent some other protection, that must be made available to the public. Defendants have offered, and the Court can see, no valid governmental interest in disclosing Interlock Program participants' GPS data to the public. Therefore, Plaintiff has shown a likelihood that the 2016-17 Certification Program requirements, at least as applied to devices with GPS capabilities, infringe upon the constitutional and privacy rights of Interlock Program participants. If such an infringement exists, the 2016-17 Certification Program requirements are invalid. Consequently, this factor weighs in favor of granting Plaintiff's motion for an injunction.

Balance of Harms. Plaintiff has also established that the balance of harm weighs in favor of granting a temporary injunction pending resolution of the matter on the merits. For a court to grant an injunction, the moving party must show irreparable harm from the conduct of the opposing party. *Thompson v. Barnes*, 200 N.W.2d 921, 925 (Minn. 1972). To prove irreparable harm, a plaintiff must demonstrate (1) that it has no adequate legal remedy; and (2) that the injunction is necessary to prevent irreparable harm. *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Mere money injuries are generally not sufficient to show irreparable harm because the possibility of adequate compensatory or corrective relief will be available at a later date. *Miller v. Foley*, 317 N.W.2d 710, 713 (Minn. 1982). In balancing the relative harms, the moving party must demonstrate irreparable harm, while the opposing party need only show a substantial harm to bar an injunction. *Pac. Equip. & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. Ct. App. 1994). The failure to establish irreparable harm is a sufficient basis, standing alone, for a court to deny a preliminary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729–30 (Minn. Ct. App. 1990).

Adequate Legal Remedy. Defendants contend that Plaintiff's motion should be denied because Plaintiff must petition the Court of Appeals under Minn. Stat. § 14.44 if it wishes to challenge the validity of the 2016-17 Certification Program. Therefore, Defendants argue, § 14.44 provides plaintiff with an adequate and an exclusive remedy. Minn. Stat. § 14.44 provides that the validity of an agency rule "***may be determined upon the petition for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.***" Whether this is Plaintiff's exclusive remedy presents a question of statutory interpretation.

The purpose of statutory interpretation is to give effect to the legislative intent. *State v. Koenig*, 666 N.W.2d 366, 372 (Minn.2003). If the meaning of the statute is clear, courts may not engage in further construction or interpretation. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn.1996). They must apply the plain meaning of the words. *Id.* The use of “*may*” in the statute means that Minn. Stat. § 14.44 is a permissive remedy, not mandatory or exclusive. Compare Minn. Stat. § 645.44, subd. 15 (“‘May’ is permissive.”) with Minn. Stat. 645.44, subd. 15a (“‘Must’ is mandatory.”) and Minn. Stat. § 645.44, subd. 16 (“‘Shall’ is mandatory.”); see also, *In re Welfare of S.L.J.*, 782 N.W.2d 549, 558 (Minn. 2010) (noting that unless another intention clearly appears, courts are to interpret “*may*” as permissive and “*shall*” as mandatory). This is consistent with Minnesota Supreme Court rulings. See *Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480, 485 (Minn. 1995) (holding that review is not the sole means to challenge the validity of an agency rule). Because § 14.44 is not Plaintiff’s exclusive remedy, the Court must next determine whether it provides an adequate remedy at law.

The Court concludes that a petition to the Minnesota Court of Appeals does not automatically provide Plaintiff with an adequate remedy at law. See *Kramer v. Otter Tail Cnty. Bd. of Commr’s*, 647 N.W.2d 23, 26–27 (Minn. Ct. App. 2002) (holding that a writ of certiorari to the court of appeals is (1) more expensive; (2) more time consuming; and (3) more complicated than a petition to the district court for a writ of mandamus, thus a writ of mandamus to the Minnesota Court of Appeals is not an adequate remedy when compared to a writ of mandamus to the district court). In the current matter, Plaintiff has included a number of factual allegations in support of its declaratory judgment action. These facts are not a part of the administrative record. Defendant’s argument fails to address how these factual allegations could be raised in petition brought before the Minnesota Court of Appeals. Consequently, the Court finds that §14.44 is not an adequate remedy.

Irreparable Harm. Here, the record supports Plaintiff’s claim that it will suffer irreparable harm if the injunction is denied, and Defendants have failed to show substantial harm would result from a temporary injunction. As has already been discussed, Plaintiff has established that the 2016-17 Certification Program requirements, as applied to BAIIDs that collect and record GPS, may violate Interlock Program participants’ constitutional and privacy rights. As the only Smart Start BAIID provider in Minnesota, Plaintiff is an instrument in that potential violation. Therefore,

Plaintiff faces a risk of being sued by its Interlock Program participants if Plaintiff installs SS Real-Time Devices in the remaining Interlock Participants' vehicles. Plaintiff's agreement with Smart Start, Inc. does not provide for a refund for any devices it leases in the event the 2016-17 Certification Program requirements are found to be unconstitutional. Nor does it permit Plaintiff to install BAIIDs without GPS capabilities because it prohibits Plaintiff from using non-Smart Start, LLC BAIIDS and the SS Real-Time Device is the only Smart Start, LLC BAIID certified for real-time use. Although money damages are not generally sufficient to show irreparable harm, Defendants have indicated their intent to assert immunity. Therefore, Plaintiff is limited in its ability to recover damages from Defendants if the 2016-17 Certification Program requirements are found to be unconstitutional.

In addition to money damages, as a provider of BAIID devices for the Interlock Program, Plaintiff will likely suffer reputational damage in the event the 2016-17 Certification Program requirements are found to be unconstitutional or to violate Interlock Program participants' privacy rights. Defendants' argument that an injunction will not mitigate reputational damage because Plaintiff has already installed the SS Real-Time Device in some vehicles is not persuasive. The Court recognizes that Plaintiff may already have some exposure because it installed SS Real-Time Devices from September 1, 2016 through mid-October. However, that exposure will increase in the event Plaintiff is required to convert all of its remaining Interlock Program participants to the SS Real-Time Device before the constitutionality of the 2016-17 Certification Program requirements can be determined. Plaintiff's limited ability to recover money damages and the likely damage to Plaintiff's reputation compel the Court to conclude that an injunction is necessary to prevent irreparable harm to Plaintiff.

Defendants argue an injunction would hinder the ability to impose more immediate sanctions to participants who violate the Interlock Program guidelines. Specifically, Interlock Program participants could remain in the Interlock Program for up to 30 days after violating the Interlock Program guidelines, thereby posing a risk to the general public. Although this is a risk, the Court concludes that it does not outweigh the potential harms to Plaintiff in the event an injunction is denied. The BAIIDs themselves prevent an Interlock Program participant from driving a BAIID-equipped vehicle while intoxicated. An attempt to start a BAIID-equipped vehicle will still be reported when the vehicle is taken for calibration. Nor does this risk outweigh the risk that the collecting GPS data potentially violates the constitutional rights of the Interlock

Program participants. The proposed injunction would not put the Interlock Program on hold in its entirety, it would only put the January 1, 2017 retrofit deadline portion of 2016-17 Certification Program requirements on hold. It would keep the all other existing requirements until the constitutionality of the 2016-17 Certification Program requirements can be determined.

Defendants also argue that the injunction would cause hardship to the Interlock Program participants because they will have to bring their devices in for calibration every thirty days, instead of sixty as required by the 2016-17 Certification Program requirements. This burden is not one that Defendants must bear. While the Court acknowledges Defendants' concerns for the Interlock Program participants' time, the 30-day calibration schedule is the same schedule Interlock Program participants currently follow if they are not using a certified real-time device. Therefore, this harm to Defendants is non-existent and the harm to Interlock Program participants is minimal.

For the reasons discussed above, the Court finds this factor weighs heavily in favor granting the requested injunctive relief.

Relationship of the Parties. The next *Dahlberg* factor also weighs in favor of granting an injunction. “*A temporary injunction is issued to maintain the status quo pending a decision on the merits.*” *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 221 (Minn. Ct. App. 2002). This factor evaluates the parties' historical relationship and how that relationship may change in the absence of injunctive relief. *See Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 276, 137 N.W.2d 314, 322 (1965); *Lano Equip., Inc. v. Clark Equip. Co., Inc.*, 399 N.W.2d 694, 697 (Minn. Ct. App. 1987). Defendants contend that Plaintiff has no contractual duties to Defendants and Defendants have no contractual duties to Plaintiff. Therefore, Defendants argue, there is no relationship to maintain. Defendants also argue this factor weighs against a temporary injunction because it is an attempt to roll-back the status to one that existed months before litigation began. The Court disagrees.

Plaintiff is the exclusive provider of Smart Start, LLC BAIID devices in Minnesota and cannot use non-Smart Start LLC devices. As a BAIID provider or vendor, Plaintiff is bound by the Interlock Program rules in that it can only install DVS-certified devices. Therefore, Plaintiff has an indirect relationship with Defendants as a BAIID provider for the Interlock Program. Contrary to Defendants' arguments, Plaintiff does not seek to roll-back the Program requirements to 2015. Plaintiff's motion for an injunction only seeks to prevent Defendants from implementing

the January 1, 2017 real-time device requirement. This essentially maintains the status as of September 1, 2016, when the first real-time deadline passed and when Plaintiff began installing SS Real-Time Devices in new participants' vehicles. If the injunction is not granted, Plaintiff will be unable to provide BAIIDs to its remaining Interlock Program participants. Therefore, this factor weighs in favor of an injunction.

Public Policy. The next *Dahlberg* factor requires the Court to consider public policy implications. This also weighs in favor of granting an injunction. The Court agrees, as Defendants argue, that public policy favors holding Interlock Program participants accountable for their obligations under the Interlock Program. However, those policy concerns do not outweigh the potential constitutional and privacy violations connected with the recording, collecting, and reporting of Interlock Program participants' GPS data. Consequently, public policy favors granting Plaintiff's motion for an injunction.

Administrative Burdens. With regard to the final *Dahlberg* factor, the administrative burdens on the Court in enforcing the temporary relief requested would be minimal. Defendants argue that the proposed relief would impose significant administrative burdens on this Court because Plaintiff is asking the Court to monitor BAIIDs statewide to ensure compliance with the Interlock Program. Defendants' argument misunderstands the relief requested. Plaintiff is asking to delay the implementation of the January 1, 2017 real-time deadline for existing Interlock Program participants until the declaratory action claim has been adjudicated and/or the legislature has time to act and potentially moot the issue. Plaintiff is not asking the Court to roll-back the September 1, 2016 deadline that applies to new Interlock Program participants. Furthermore, based on the press release issued on December 12, 2016, the legislature has already indicated an intent to act on the matter. For this reason, the administrative burden to the Court is not significant.

Conclusion

For the reasons stated above, the Court grants Plaintiffs' motion for a temporary injunction.

MJR