

Brian Carr
11301 NE 7th St, Apt J5
Vancouver, WA 98684

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Brian P. Carr
Plaintiff

versus

The State of Oregon through Hardy Myers in
his official capacity as Attorney General of the
State of Oregon and the City of Portland
through Linda Meng in her official capacity as
City Attorney of the City of Portland
Defendants

Civil No. **CV'08 – 398 HA**

COMPLAINT

1 The Plaintiff, Brian P. Carr, appearing pro se in this matter, as and for his complaint allege the
2 following:

3 Introduction

4 1. Mr. Carr's rights to liberty and property were deprived without due process and Mr. Carr was
5 not provided equal protection under the law as required by the [Fourteenth Amendment](#) of the
6 U.S. Constitution as a result of the actions of the State of Oregon and its official officers. Mr.
7 Carr is seeking declaratory relief as well as damages.

9 2. Mr. Carr was arrested by the Portland Police Bureau on November 5, 2004 without probable
10 cause of any violation and incarcerated for over three days. No charges were ever filed against
11 Mr. Carr. The State of Oregon has continued to publish the record of Mr. Carr's arrest for
12 consideration in employment decisions because he was not arrested for any crime. Had he
13 been arrested for some crime, he could have had the record sealed under [ORS 137.225](#) and

1 restored his otherwise blemish free criminal record.

3 3. Mr. Carr's criminal record lists the arrest as being for trespass, domestic violence, and 'CIVIL
4 CMPLNT-VIOL OF R/O'. The Multnomah County District Attorney office described the
5 arrest as being for a violation of a civil restraining order but explained that no charges were
6 filed because of a lack of evidence that Mr. Carr was aware of the presence of his wife outside
7 the restaurant. There was not probable cause for any of the offenses listed in the criminal
8 record and there are questions concerning the alleged civil restraining order.

10 4. On November 28, 2005, Mr. Carr applied to the Multnomah County Circuit Court to have his
11 arrest record sealed, but on April 17, 2006 his request was denied without any trial based on
12 the court's conclusion that it did not have jurisdiction to go beyond the limits [ORS 137.225](#)
13 and set aside arrests in the absence of any crime. This summary decision was upheld by the
14 Oregon Court of Appeals in case A132012 on November 7, 2007 with 'AFFIRMED
15 WITHOUT OPINION' which is the entirety of their decision. Mr. Carr's Petition for Review
16 by the Oregon Supreme Court in case S055534 was denied on March 5, 2008.

18 5. The inaccurate Oregon criminal record has restricted Mr. Carr's ability to seek alternative
19 employment. In 1975, Mr. Carr graduated with honors with a B.E. from U.S.M.A., West
20 Point, NY. In 1977, Mr. Carr received a M.A. in Computer Science (Applied Mathematics)
21 from M.I.T., Cambridge, MA. Mr. Carr served in the Signal Corps with a Top Secret security
22 clearance until 1982 when Mr. Carr left the U.S. Army as a Captain. Mr. Carr has an
23 otherwise spotless record and the inaccurate Oregon criminal record has had a significant
24 detriment in his ability to seek employment.

26 6. On all job applications for permanent positions which Mr. Carr has completed in the last
27 decade he has been asked if he has ever been arrested. The job market is quite competitive in
28 the areas where Mr. Carr works and when a job application is declined there are only general
29 justifications such as 'another candidate was found to be more qualified for the position'; no
30 specific reason for the negative response is ever provided. In face of the highly competitive
31 nature of each position, the requirement that Mr. Carr explain his criminal history makes him

1 virtually unemployable in most of the positions to which he would otherwise be eligible.

- 3 7. While the framers of the constitution (both state and federal) could not have foreseen the
4 widespread dissemination of criminal records, they did provide the guarantee of certain rights
5 when they impacted a person's livelihood as criminal records do today. The state certainly has
6 the ability to impair a person's livelihood, but it can only do so within the constraints of due
7 process. This guarantees the right of the affected individual to be heard before an impartial
8 authority, presented with the evidence against them, given the opportunity to present evidence
9 on their own behalf, and the right to appeal.

12 **Jurisdiction and Venue**

- 13 8. This Court has subject matter jurisdiction over this action pursuant to [28 U.S.C. § 1331](#) and
14 [28 U.S.C. § 1367](#), as a case arising under [42 U.S.C. § 1981](#), [42 U.S.C. § 1982](#), [42 U.S.C. §](#)
15 [1983](#), [42 U.S.C. § 1985](#) (3), and [42 U.S.C. § 1986](#) as a case seeking to enforce rights and
16 privileges secured by the laws of the United States as authorized by [28 U.S.C. § 2201](#) (a) and
17 [28 U.S.C. § 2202](#) as well as under the [Fourteenth Amendment](#) of the U.S. Constitution
18 guarantees of Due Process and Equal Protection under the law. The damages sought are not
19 precluded by the Eleventh Amendment as the State of Oregon has authorized tort claims
20 against public bodies under [ORS 30.265](#)

- 22 9. Venue is proper in this district pursuant to [28 U.S.C. § 1391](#) (b) because a substantial part of
23 the events or omissions giving rise to the claim have occurred or will occur in this district and
24 all of the Defendants in this matter reside in this District.

- 26 10. Defendant Hardy Myers is sued in his official capacity as Attorney General of the State of
27 Oregon. His official residence is at 1162 Court Street NE; Salem, OR 97301-4096. The relief
28 sought in this action would apply to various officials in their official capacity on behalf of the
29 State of Oregon and it is Mr. Myer's and his office's duty to '*Appear for the state ... in any*
30 *court or tribunal in any cause in which the state is a party*' in accordance with ORS 180.060
31 (b).

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11. Defendant Linda Meng is sued in her official capacity as City Attorney for the City of Portland. The relief sought in this action would apply to various officials on behalf of the City of Portland and it is Ms. Meng's and her office's duty to 'Appear for, represent, and defend the City... in all appropriate legal forums and matters ' in the City of Portland Charter, [3.10.030](#) A.

12. Portland Police Bureau is a part of the Department of Public Safety under the City of Portland Charter, [2-301](#). The Charter for the City of Portland was approved by the legislature of the State of Oregon in accordance with the constitution of the State of Oregon which, in turn, was recognized by the legislature of the United States (making it one of the states) in accordance with the U.S. constitution. Similarly, the State of Washington and its constitution was recognized by the U.S. legislature in accordance with the U.S. constitution.

13. Plaintiff resides at 11301 NE 7th St., Apt J5; Vancouver, WA 98604 and is a resident of Clark County in the State of Washington.

Count I

Equal Protection, Absence Any of Crime

14. Plaintiff repeats and realleges paragraphs 1 through 13, as if fully set forth.

15. The Multnomah County Circuit Court relied on narrow interpretations of that court's jurisdiction in [ORS 137.225](#), [ORS 33.015-155](#), [ORS 181-555](#), and [OAR 257-010-0035 \(3\)](#) in denying the Motion to Set Aside (the arrest record) with the unfortunate effect of leaving gaps in the equal protection under the law required by the [Fourteenth Amendment](#) of the U.S. Constitution. The state court did not address relief under the [Fourteenth Amendment](#) of the U.S. Constitution with respect equal protection under the law.

16. The conclusion of the state courts was that under [ORS 137.225](#) state courts can expunge the record of convictions and arrests for certain crimes (generally less serious) and, but can not expunge the record of arrests which were not for any crime. Literally, 'an arrest for VRO can

1 not be considered an arrest for a crime so the court denies your motion to set aside.'

3 17.It is certainly true that the state of Oregon had no duty to expunge convictions and arrests as it
4 chose to do in [ORS 137.225](#). It is also true that Oregon can restrict these expunctions on
5 some rational basis to "what have been treated by legislation as less serious offenses, while
6 denying it for those which have been treated as more serious." State v. Thompson, 20 Or.App.
7 61, 65. 530 P.2d 532 (1975). However, a statute which discriminates against those who
8 committed no crime in favor of those who were convicted of actual crimes does not have any
9 rational basis and, as such, violates the equal protection under the law required by the
10 [Fourteenth Amendment](#) of the U.S. Constitution. This is comparable to allowing affirmative
11 action benefits for white males without any consideration of past discrimination. The absence
12 of any crime associated with an arrest is not justifiable discrimination for precluding the
13 sealing of the record of the arrest as would be permitted if there had been probable cause of
14 some crime.

16 **Count II**

17 **Equal Protection, Sexual Bias**

18 18.Plaintiff repeats and realleges paragraphs 1 through 13, as if fully set forth.

20 19.Portland Police Bureau has shown a definite sexual bias in arrests made for violations of
21 'domestic violence' restraining orders (annotated as 'CIVIL CMPLNT-VIOL OF R/O' in their
22 computer records) with the following total arrests:

23 2004: 583 total- 90 females (15%) and 493 males (85%)

24 2005: 617 total- 84 females (14%) and 533 males (86%)

25 2006: 614 total- 91 females (15%) and 523 males (85%)

26 as determined by the Portland Police Bureau Records Division, Captain Killinger.

28 20.These rates are what one would expect if men were about five times more likely to commit
29 domestic violence than women. However, peer reviewed studies have repeatedly shown that
30 men and women are about equally likely to commit acts of violence in domestic relations in
31 this country at this time. See [Change In Spouse Assault Rates From 1975 to 1992: A](#)

1 [Comparison of Three National Surveys in the United States, Murray A. Strauss and Glenda](#)
2 [Kaufman Kantor](#). Numerous other studies have found similar results. When U.S. Census
3 Bureau [figures](#) are used to compute the estimated number of eligible victims and assuming a
4 normalized distribution of applicants, the discrepancy between the rates of eligible victims
5 and arrests made clearly demonstrates deeply rooted sexual bias in the entire domestic
6 violence process in Oregon.

8 21. Over the last several decades there have been numerous portrayals in the media of the
9 scenario where 'Man says something which Woman finds offensive, Woman slaps Man, Man
10 is silenced by this justified response to his offensive behavior, and, later, through the typical
11 sort of karmic retribution, terrible things happen to Man for his prior offensive behavior'. The
12 problem with this scenario is that it has the effect of condoning and even encouraging criminal
13 physical abuse of men in domestic relations (with the inherent emotional abuse of such
14 physical abuse) while at the same time convincing men that any abuse they receive must be
15 justified and that they have no real alternative to accepting their abuse in silence. The reverse
16 scenario when a man strikes a woman is uniformly portrayed as a heinous act. This abhorrence
17 of abuse by men is consistent with the values of our society and the law itself. However, the
18 sexually discriminatory acceptance of the physical abuse of men is an example of the
19 inconsistencies in our society's values, but the law does not and should not reflect these
20 inconsistencies.

22 22. Over the last forty years there has been an almost hysterical concern with domestic violence
23 against women, presumably being fed by the inconsistent values of society as described above,
24 but also feeding these same inconsistencies. There are numerous serious publications where it
25 is stated that the primary cause of injury and death to adult women is domestic violence to
26 include the Bell Atlantic HR News before the merger to form Verizon. The claim is patently
27 absurd. A trivial check of the figures from the U.S. Center for Disease Control demonstrates
28 that the actual causes have been automobile accidents and cancer respectively. However, even
29 an otherwise scholarly work such as [A Process Evaluation of the Clark County Domestic](#)
30 [Violence Court](#) by Kleinhesselink and Mosher claims that domestic violence '*is the leading*
31 *cause of injury to women ages 15 to 44*'. Instead of listing the original source, though, it is just

1 a quote from Mills, L. (1998). *Mandatory arrest and prosecution policies for domestic*
2 *violence*. *Criminal Justice and Behavior* 25:306-318.

4 23. Ms. Mills made what appears to be an intentionally inaccurate quote from the Surgeon
5 General, Ms. Novello, U.S. Public Health Service, *JAMA*, 267(23), 3132 which states 'One
6 study found violence to be ... the leading cause of injuries to women ages 15 through 44 years
7 ([Am J Epidemiol. 1991;134:59-68](#)). That study, conducted for a 1-year period by the
8 Philadelphia Injury Prevention Program, examined injuries to women resulting in emergency
9 department visits or death.' While that study has numerous flaws, not the least of which is the
10 very limited and skewed sample (ghetto demographics and no correction for the endemic non
11 domestic violence in such areas), at no point did Ms. Novello imply that this very limited
12 result could be generalized to a much larger population as Ms. Mills did or that non domestic
13 violence could be ignored in these results. It appears that the truth was not extreme enough
14 for Ms. Mills and she found it necessary to knowingly publish false claims. Now those
15 attempting to generate additional hysteria concerning domestic violence against women
16 simply cite this and similar false sources ad nauseum.

18 24. While these academic fabrications may be of little interest outside of academic circles, their
19 repercussions extend far beyond the academic environment. For example, the very title of the
20 U.S. '[Violence Against Women Act of 1994](#)' encourages sexual bias by ignoring the plight of
21 men. By 1992 it was well established that men were victims of domestic violence as often as
22 women. However, in the hysterical environment created by these false claims there can be
23 little hope of equal protection under the law.

25 25. In particular, everyone involved with prosecuting domestic violence matters from police to
26 clerks and adjudicators is often given 'training' which has the effect of developing and
27 increasing this sexual bias. They are often taught that even if the woman and man both deny
28 that there is any abuse of any kind they should assume that the man is beating the woman and
29 look for evidence to support that conclusion. Until this needless sexual bias is removed from
30 the process, any findings which result are suspect.

1 26.The Plaintiff is deeply concerned about the seriousness of domestic violence and does not in
2 any way condone or encourage this criminal behavior. However, an extremely biased police
3 and judicial process can not effectively address this very complex and multi-faceted problem.
4 While there are no simple solutions to correct these biases which may well be innate to
5 humans, there is no need to extend the reach of these biases into the realm of property and, in
6 particular, employment decisions. The publication of the record of this arrest for 'CIVIL
7 CMPLNT-VIOL OF R/O' which is a type of arrest known to have illegal sexual bias should be
8 prohibited with respect to employment decisions.

10 **Count III**

11 **Due Process, Inaccurate Records**

12 27.Plaintiff repeats and realleges paragraphs 1 through 13, as if fully set forth.

14 28.In December of 2004, Mr. Carr obtained a copy of the arrest report from the Portland Police
15 Bureau and inquired how he could have the record corrected as the arrest was not proper. The
16 clerk referred him to <http://www.co.multnomah.or.us/da/> and the 'Articles' and then
17 'Expungement' links which referenced [ORS 137.225](#) procedures.

19 29.Plaintiff's criminal record report from the Portland Police Bureau indicates that the arrest was
20 for 'trespass' and 'domestic violence' as well as the violation of an alleged restraining order
21 which was inaccurately categorized as civil. Each of the earlier offenses would be eligible for
22 expungement were it determined that they were for crimes. However, this determination is
23 problematic in this case as there was not probable cause for any of the crimes listed and it can
24 only be concluded that the arrest was not for any crime or violation of a state law or local
25 ordinance (the arrest was completely without justification).

27 30.As to the claim of 'trespass', Mr. Carr was attending a social function in a restaurant at the
28 time of his arrest. While Mr. Carr was not the owner of the restaurant, the restaurant was
29 open for business and the proprietors of the restaurant appeared to welcome Mr. Carr as a
30 regular customer at the establishment. There is no basis for describing the arrest as being for
31 'trespass'.

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31. Similarly, there were no parties in the restaurant with whom Mr. Carr had ever had 'domestic relations' at the time of Mr. Carr's arrest. Further, Mr. Carr did not have any altercations with any party in the restaurant. While Mr. Carr's wife (hereafter referred to as Karyn), was present outside the restaurant (they were in the process of separating and, later, divorcing), Mr. Carr had had no contact with her and was unaware of her presence outside the restaurant. It appears that one of Karyn's friends at the gathering had called her to inform her of Mr. Carr's presence and that she then came to the restaurant and called the police without ever entering the restaurant.

32. As Mr. Carr was unaware of Karyn's presence outside the restaurant, even if the alleged civil restraining order were valid, Mr. Carr was not in violation of the order as it only prohibited him from 'knowingly' remaining within 300 feet of Karyn and he was not, in fact, aware of her presence.

33. The entries of 'trespass' and 'domestic violence' could have been improperly carried over from the alleged civil restraining order, but whether that is the case or not, there is no justification for their inclusion as part of the arrest record.

34. An accurate record of the arrest would instead be 'illegal warrantless arrest without any cause or justification' but such an entry is superfluous. There is no reason to include any entry in Mr. Carr's criminal record as the accurate entry is not a record of any criminal act related to Mr. Carr.

35. [ORS 181.555](#) requires the Department of State Police to maintain the accuracy of the Criminal Offender Information System and process requests for corrections and this is implemented through [OAR 257-010-0035](#) which says in paragraph (3):

If after review of the information concerning them as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, they must make application directly to the contributor of the questioned information, requesting the appropriate agency ... to correct it in accordance with its respective administrative rules and procedures.

1 and as Portland Police Bureau refers requests to correct their criminal records to [ORS 137.225](#)
2 procedures, then all of the abilities to correct these records required under [ORS 183.555](#) were
3 delegated to the state courts under [ORS 137.225](#). Mr. Carr's attempts to have these records
4 corrected via the state courts were unsuccessful due to the state courts conclusion that they did
5 not have jurisdiction to expunge or correct the records.

7 36.The Portland Police Bureau is required to maintain accurate records by both the statutes and
8 rules cited above as well as the due process requirements of the [Fourteenth Amendment of the](#)
9 [U.S. Constitution](#). They have failed in this regard and the record of the arrest should be sealed
10 with respect to any employment decision.

11 **Count IV**

12 **Due Process, No Evidence Considered**

13 37.Plaintiff repeats and realleges paragraphs 1 through 35, as if fully set forth.

15 38.While it is argued above that the Portland Police Bureau has not provided the required
16 procedures for maintaining accurate records, it could also be argued that those procedures
17 were provided by the state courts and that the records are accurate in accordance with the
18 conclusions of the state courts. However, this argument fails in that the procedures provided
19 do not on their face provide for the required elements of due process, in particular Mr. Carr's
20 ability to present evidence on his behalf.

22 39.In summarily denying Mr. Carr's request to the have the record of his arrest set aside, the
23 Multnomah County Circuit Court stated 'this court is confined to the statutory requirements
24 under 137.225 and is not legally entitled to look behind the arrest to determine whether the
25 arrest had probable cause or address the other points that you raised ' The conclusion that
26 statutory requirements of [ORS 137.225](#) were not met was based solely on the claim by the
27 Mutlnomah County Deputy District Attorney, Mr. Sewell, that the arrest was for a violation of
28 a civil restraining order. However, this determination requires a series of findings of facts
29 which were never made by the state courts and the evidence presented by Mr. Carr that there
30 was not a civil restraining order was never considered by the state courts.

31 **Criminal Order for Protection**

1 40. Oregon is one of the few states which has maintained domestic violence and their resolution
2 as a non criminal procedure. [Bachman v. Bachman, 171 Or App 665](#), 16 P3d 1185 (2000) . In
3 [Hathaway v. Hart, 300 Or 231](#), 708 P2d 1137 (1985):

4 The essence of [FAPA] is to prevent acts of family violence through restraining
5 orders and, if the court orders are disobeyed, to provide legal sanctions for the
6 violations of the orders because ordinary criminal actions at law were found to
7 be inadequate to achieve this desired legislative result.

8 The legislature intentionally avoided criminal procedures and the associated stigma to
9 encourage the use of FAPA by abuse victims who might be hesitant to invoke criminal
10 processes against a family member.

12 41. The state courts' conclusion that violating a court order is not a crime neglects those cases
13 where violations of court orders are defined to be crimes as in [ORS 163.750](#):

14 [ORS 163.750](#) Violating court's stalking protective order.

15 (1) A person commits the crime of violating a court's stalking protective order...

16 (2)(a) Violating a court's stalking protective order is a Class A misdemeanor.

17 which clearly falls within the requirements of [ORS 137.225 \(5\)](#) where misdemeanors are
18 specifically listed as eligible crimes.

20 42. In the state of Washington, domestic violence restraining orders are Orders for Protection
21 under [RCW 26.50](#) which are clearly delineated as crimes as in [RCW 26.50.110](#):

22 Whenever an order is granted under this chapter ... and the respondent or person
23 to be restrained knows of the order, a violation of the restraint provisions... is a
24 gross misdemeanor ... [or a more serious crime]

25 which also falls within the requirements of [ORS 137.225 \(5\)](#) where misdemeanors are
26 specifically listed as eligible crimes. While the state court may have considered Washington
27 [RCW 26.50](#) restraining orders as most similar to Oregon FAPA restraining orders, they are, in
28 fact, most similar to [ORS 163.750](#) stalking protective orders (SPO), violations of which are
29 clearly delineated as crimes and, as such, eligible for expungement under [ORS 137.225](#).

31 43. Had there been a valid Washington Order for Protection under [RCW 26.50](#) in this case, the
32 arrest would have been eligible for expungement under [ORS 137.225 \(5\)](#). When the state
33 courts simply accepted the District Attorney's conclusory description of the arrest as being for

1 a violation of a civil restraining order, their proceedings did not fulfill the requirements of
2 permitting the presenting of contrary evidence as provided for in the due process
3 requirements of the [Fourteenth Amendment](#).

5 44. While the state can certainly hold proceedings which do not comply with the requirements of
6 due process, they can not interfere with the livelihood of U.S. citizens without meeting the
7 requirements of due process. As such, the Portland Police Bureau should be precluded from
8 publishing Mr. Carr's arrest record in any manner which could be considered in employment
9 decisions.

11 **No Jurisdiction for Restraining Order**

12 45. While Mr. Carr has numerous complaints with the alleged restraining order, the only
13 complaint of relevance in this matter is the individual jurisdiction of the deciding authority for
14 the Clark County Superior Court Order of Protection in case 04-2-08824-4 which Mr. Carr
15 contends was invalid, and, hence, the order itself was void ab initio or void from the
16 beginning. As a result, everything resulting from the order to include the arrest itself is void
17 ab initio and can not be published.

19 46. In Clark County and Washington state there has been a surprising neglect of the requirements
20 of rule of law, in particular with respect to the processing of domestic violence complaints
21 under [RCW 26.50](#). In Washington, the District Court can process many [RCW 26.50](#)
22 requests, but in cases where there is a shared residence (as in case 04-2-08824-4), the Superior
23 Court must hold the hearing and issue the Order ([RCW 26.50.020](#) (5) (c)). However, rather
24 than dividing the [RCW 26.50](#) requests between the courts or having the Clark County
25 Superior Court hear all these requests, the Clark County Superior Court chose to attempt to
26 delegate authority to hear these matters to the District Court¹. Unfortunately there does not
27 appear to be any legal way to delegate these matters.

29 47. The Superior Court can appoint Superior Court Commissioners under the state constitution
30 (hereafter referred to as constitutional commissioners) who can legally process these [RCW](#)

1 See '[A Process Evaluation of the Clark County Domestic Violence Court](#)', Kleinhesselink and Mosher,
Department of Sociology, Washington State University, Vancouver.

1 [26.50](#) matters, but the constitutional commissioners are strictly limited in number (not to
2 exceed three in number) and there were already two (later three) and there were five District
3 Court Judges (later six). Rather comply with this restriction, the Clark County Superior Court
4 chose to simply ignore the limitations of the state constitution.

6 48. Superior Court Judge Harris signed orders in 2004 appointing the District Court Judges
7 [Anders](#), [Eiesland](#), [Melnick](#) and [Schreiber](#) as Clark County Superior Court Commissioners in
8 2004 in addition to orders appointing three other constitutional commissioners. These orders
9 violated the [Washington State Constitution, Article IV, Section 23](#) which states

10 There may be appointed in each county, by the judge of the superior court having
11 jurisdiction therein, one or more court commissioners, ***not exceeding three in***
12 ***number***, who shall have authority to perform like duties as a judge of the superior
13 court at chambers....²

14 These particular appointment orders were included in the record of case 04-2-08824-4.

16 49. A reasonable person could easily conclude the numeric limit placed on the appointment of
17 Superior Court Commissioners in the [Washington constitution \(Article IV, Section 23\)](#) is
18 arcane, ineffective and even counter productive. However, enough reasonable people did not
19 reach that conclusion when the issue was presented to the voters in 1981, [Ordell v. Gaddis, 99](#)
20 [Wn.2d 409](#), (1983). As long these numeric limits are held to be valid, it is not reasonable to
21 simply ignore the limits. The danger of placing of expediency over legality is that once it
22 becomes the norm in our society (as it must once we start down that slippery slope), within a
23 decade we would no longer have a government of law, but, in all likelihood, a military
24 dictatorship.

26 50. While the Washington Supreme Court found in [Ordell v. Gaddis, 99 Wn.2d 409](#) that Family
27 Court / Law Commissioners (hereafter referred to as family court commissioners) and Pro
28 Tempore Commissioners do not count in the numerical limit, the orders cited above do not
29 contain any such reference. Further, [Ordell](#) makes it clear that the constitutional numeric limit
30 on constitutional commissioners is a valid limit and that the courts may not otherwise exceed
31 that limit. While family court commissioners are not limited in number, they do not have the

2 Italics and bold added by Plaintiff.

1 broad jurisdictional powers of constitutional commissioners and are not relevant to the matter
2 at hand.

4 51. On October 27, 2004 District Court Judge Melnick signed a Superior Court Order for
5 Protection in case [04-2-008824-4](#), which, amongst other things, precluded Mr. Carr from
6 knowingly remaining within 300 feet of Karyn. However, the record in that case did not
7 identify the deciding authority for that order; the practice of the District Court processing
8 Superior Court matters was to only sign orders and leave it to the clerks to informally
9 determine who the deciding authority was.

11 52. The offending appointment orders violated Mr. Carr's and numerous other residents of Clark
12 County right to have matters heard by a Judge rather than a constitutional commissioner as too
13 many matters were heard by these alleged commissioners in Clark County. These orders
14 further violated Mr. Carr's right to due process under [Fourteenth Amendment, U.S.](#)
15 [Constitution](#) as the alleged commissioners hearing these matters did not have jurisdiction to
16 hear said matters because their appointment orders were invalid.

18 53. The law is clear on the effect of orders made when the court did not have jurisdiction. An
19 order can be 'declared void for the reason that the ... court did not have jurisdiction to enter
20 such decree.' [Barker v. Barker, 31 Wn. \(2d\) 506](#). It is also well established that all subsequent
21 actions based on the void order are void ab initio or void from the beginning [Beyerle v.](#)
22 [Bartsch, 111 Wash. 287](#). Any Orders for Protection, arrests and convictions based on these
23 invalid orders are similarly void.

25 54. On May 10, 2005, Mr. Carr appealed to the Washington Court of Appeals in [case 32671-0-II](#)
26 which raised the question of:

27 Can the Superior Court in any given county make more than three valid simultaneous
28 appointments of Commissioners who aren't Family Court Commissioners? The trial
29 court answered in the affirmative.

30 with, as evidence, copies of orders appointing four constitutional commissioners.

1 55. On May 9, 2006, the Washington Court of Appeals denied the appeal in an [unpublished](#)
2 [opinion](#) which stated in part:

3 Carr argues that his due process rights and his right to have a judge adjudicate his
4 case were violated because Clark County allegedly appointed more than three court
5 commissioners. However, a family law commissioner is not a "commissioner" within
6 the meaning of the constitutional provision limiting the number of court
7 commissioners in counties...

8 The Court of Appeals misconstrued the question before them and answered a well understood
9 question which was not relevant to the case at hand. Further, while the question of individual
10 jurisdiction was before the court, at no time did the Court of Appeals identify any of the
11 deciding authorities. Individual jurisdiction was not resolved as there was no finding of facts
12 of the identity of the deciding authority which is required to support that legal conclusion.

14 56. On June 2, 2006, Mr. Carr submitted a Petition for Review to the Washington Supreme Court
15 in case [78768-9](#) which raised the same issue. On January 31, 2007, the Washington Supreme
16 Court [denied](#) the Petition.

18 57. On May 23, 2007, Mr. Carr filed a [Complaint](#) in Western Washington Federal District Court
19 (Civil No. 3:07-cv-5260 Judge Robert J Bryan) which alleged that the Order for Protection in
20 case 04-2-08824-4 was invalid as described above. On November 5, 2007, Judge Bryan
21 dismissed the Complaint, but also identified District Judge Melnick as the deciding authority
22 for the Superior Court Order for Protection dated October 27, 2004 in case [04-2-008824-4](#).
23 Further, Judge Bryan noted that District Judge Melnick had been appointed as a constitutional
24 commissioner, but did not comment on the validity of the appointment in light of the obvious
25 violation of the numeric limit of such constitutional commissioners. The same four
26 appointment orders were included in the record in that case.

28 58. On November 5, 2007, Mr. Carr filed a [Notice of Appeal](#) to the U.S. Ninth Circuit Court
29 which was [perfected](#) on December 31, 2007 in Case No. 07-35962. This matter has not been
30 assigned to a panel to the knowledge of the Plaintiff. Mr. Carr is seeking, amongst other
31 things, clarification of the implications of appointments made in violation of the restrictions of
32 the state constitution.

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59. However, while the Washington matter is pending before the U.S. Ninth Circuit Court, there is no reason to delay a decision in this matter. Washington state law is quite clear in these matters. Any orders or actions which are based on void ab initio orders are themselves invalid and void. The Portland Police Bureau can not publish records of an arrest which is itself void.

Count V
Damages, No Probable Cause

60. Plaintiff repeats and realleges paragraphs 1 through 59, as if fully set forth.

61. Prior to Mr. Carr's arrest, he informed Officer Lindsay of the Portland Police Bureau that he was familiar with the restraining order which Karyn had received but that he was permitted to be at that function and was not in violation of the order. Officer Linday informed Mr. Carr that he should have known better and escorted him outside the restaurant. On leaving the restaurant Mr. Carr saw Karyn for the first time that evening. Shortly thereafter, Officer Lindsay arrested Mr. Carr. Mr. Carr was incarcerated before 8PM on November 5, 2004.

62. As Mr. Carr was arrested on a Friday evening, he was not arraigned until Monday, November 8, 2004 and was not released until after 9PM that evening. He was incarcerated for more than 72 hours. As Mr. Carr could not be arraigned within 24 hours, Officer Lindsay asked Mr. Carr to sign a statement saying that he did not object to being incarcerated without arraignment. Mr. Carr declined to sign the statement and at that time notified Officer Lindsay that further litigation was likely concerning this matter. It is possible that Officer Lindsay did not understand that he was being notified of a likely suit for damages and did not notify the appropriate officials.

63. As a result of the incarceration, Mr. Carr missed work on Monday, November 8, 2004. Further, Mr. Carr's ability to seek alternative employment has been greatly decreased because of the impact of needing to notify potential employers of his erroneous criminal record.

64. Officer Lindsay on behalf of the Portland Police Bureau denied Mr. Carr's right to freedom

1 without due process as provided for by the [Fourteenth Amendment](#). There was not the
2 required probable cause of a violation which is required to justify a warrantless arrest.

4 PRAYER FOR RELIEF

5 WHEREFORE, Plaintiff asks this Court to enter an Order:

7 1. Ordering the records of the arrest of Mr. Carr on November 5, 2004 by Portland Police Bureau
8 sealed;

10 2. Awarding Plaintiff damages in the amount of \$5,000 or such other amount as the court finds
11 reasonable;

13 3. Awarding Plaintiff any attorney fees and costs in accordance with [42 U.S.C. § 1988](#); and

15 4. Granting Plaintiff such additional relief as the interests of justice may require, together with
16 his costs and disbursements in maintaining this action.

18 Respectfully submitted, March 31, 2008 (Portland, OR).

Signature of Plaintiff
Brian Carr
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