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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. 3:08-CV-398-HA Plaintiff's Combined Reply to Defendants' Motions to Dismiss

In this reply, plaintiff urges the Court to deny the defendants' Motions to Dismiss dated June 3, 2008.

Argument 1

Rooker-Feldman and *res judicata* Do Not Apply to Sealing Arrest Record

Both the state and city claim relief from Count I and the need to seal the arrest record based on Rooker-Feldman, *res judicata*, and preclusion. However, this misconstrues both the decision of the state court as well as the basis for the relief sought. In its decision of April 17, 2006, the Multnomah County Circuit Court stated in its entirety:

> On April 13, 2006, this matter came before the court on defendant's motion for expungement of the record pursuant to ORS 137.225, the State of Oregon appearing by Travis T. Sewell, Deputy District Attorney, and the defendant appearing pro se, and being fully advised in the premises, the court finds that:
>
> Defendant's Motion to Set Aside record of arrest, under ORS 137.225, is denied.
>
> IT IS ORDERED that defendant's motion to set aside conviction/arrest is hereby DENIED.

This court is not asked to abrogate this decision in any way as the basis for the request to have the arrest record sealed by this court is not ORS 137.225, but rather the Fourteenth Amendment. The defendants ignore the claim of equal protection under the law which is not provided by ORS 137.225. The defendants do not contest the fact that if Mr. Carr had been convicted of misdemeanor trespass (e.g. refusing to leave the restaurant at the request of the proprietors) he could have had the record of the arrest sealed under ORS 137.225. However, as a law abiding citizen who violated no law, his career is permanently marred. As stated in the complaint, the state is allowed to discriminate against groups of individuals, e.g. convicted criminals, but there must be some rational basis[1]. Giving preferential treatment to convicted criminals over law abiding citizens is not justifiable discrimination and is precluded under equal protection of the law of the Fourteenth Amendment.

While the city and state might wrongly argue that the state court considered Fourteenth Amendment issues, this is contradicted by the record. The decision of the state court deals exclusively with ORS 137.225. Further, the entirety of the courts decision from the transcript of the hearing on April 13, 2006 is:

> Mr. Carr this court is confined to the statutory requirements under 137.225 and is not legally entitled to look behind the arrest to determine whether the arrest had probable cause or address the other points that you raised. The court must adhere to the statutory language and criteria that is set out under ORS 137.225. It can not look to the Washington law or any errors that you allege may have occurred in the process there. The cases have been cited by the state are on point: State ex el ..., ex rel *Hathaway versus Hart*, and State versus... ex ...ex rel *Dwyer versus Dwyer*. The violation of a restraining order simply does not fall under ORS 137.225 as an action whether it be an arrest or otherwise that can be expunged. Contempt of Court is not a criminal conviction. So an arrest for VRO can not be considered an arrest for a crime so the court denies your motion to set aside.[2]

The Multnomah County Circuit Court claimed that it did not have jurisdiction to consider any issues beyond ORS 137.225. As the Oregon Circuit Courts are creations of the Oregon legislature (they are not in the current state constitution), statutory restrictions on the jurisdiction of those courts can be considered binding even though the Oregon Circuit Courts are the only courts of general jurisdiction of the State of Oregon. However, a decision of a state court that it does not have jurisdiction to consider matters such as Fourteenth Amendment issues does not in

1 See Complaint in this matter dated March 31, 2008, ¶ 17
2 See Declaration of Plaintiff associated with this Reply, Exhibit 7, Page 6.

any way preclude other courts from having jurisdiction over those matters. Clearly the federal District Courts have jurisdiction over Fourteenth Amendment issues and the decision of the state courts that the state courts can not consider such issues does not invoke Rooker-Feldman, *res judicata*, or preclusion to restrict that jurisdiction with respect to federal courts.

Argument 2

Equal Protection and Sexual Bias

The city claims that Count II is precluded by *res judicata*, (doc 19 and 20) but this count is based on the Fourteenth Amendment right of equal protection under the law and the state court cited a lack of jurisdiction to address these matters. The lack of jurisdiction by the state court to address this matter does not preclude this court from addressing the matter under *res judicata* or any other doctrine.

From the studies of domestic violence and the extreme sexual bias demonstrated in enforcement procedures by the city (associated declaration, ¶ 20-28), it is clear that Mr. Carr was only arrested because he was male; had Mr. Carr been a woman he would not have been arrested under these circumstances.[3] While it is not possible to unring this bell, future damages from this past discriminatory behavior on the part of the city can be corrected by preventing the city and state from publishing the record of this arrest with respect to employment decisions. Sexual bias may well be an innate aspect of humanity, but it is not necessary to extend this discriminatory bias into the realm of property and employment decisions.

Argument 3

Published Records Are Inaccurate

It is disappointing that the city is reduced to misstating the contents of the complaint with the claim in Doc 20 on page 6 just before the last paragraph:

> Plaintiff acknowledges, however, that "the records are accurate in accordance with the conclusions of the state courts", id[4], ¶ 38.

3 While Mr. Carr did not actually state this conclusion in his allegations in the complaint (Doc 1), there are allegations which support this conclusion in ¶ 19-26 and Mr. Carr has now stated this conclusion in the Declaration associated with this reply (¶ 28) and in this reply. However, if the court or city feels this needs to be included in the complaint, Mr. Carr would be happy to amend the complaint and add this conclusory allegation.

4 This refers to Doc 1, ¶38.

A more accurate synopsis of ¶ 38 of the complaint (Doc 1) is 'the claim that the records are accurate is false', which, while it certainly contains the phrase 'the records are accurate', can not be considered as acknowledging that conclusion, but rather refuting it. The city should remember that 'acknowledges' is not a synonym with 'denies', but rather the antonym, an important difference.

This is of relevance as the findings of the court at the hearing of April 13, 2006 included ' *The violation of a restraining order simply does not fall under ORS 137.225... an arrest for VRO can not be considered an arrest for a crime so the court denies your motion to set aside*' which is in complete alignment with the claims of the state in its memorandum of law[5] and at the hearing[6]. While the state presented no evidence and the court made no findings of fact, it is clear that the Multnomah County Circuit Court held that the arrest was for a civil violation of a restraining order and not any crime such as trespass or domestic violence.

However, the actual arrest record as provided by the Portland Police Bureau lists '*1: TRESPASS 2: DOMESTIC VIOLENCE 3: CIVIL CMPLNT-VIOL OF R/O*' as the offenses on which the arrest was based[7]. In particular the references to domestic violence and trespass clearly refer to crimes. The state contended to the court that the arrest was for a VRO and no crimes[8] when it came to having the arrest record sealed and the court agreed, but when the city publishes information concerning the arrest and the state distributes the information, the arrest record includes crimes. Clearly the city and state are publishing information which they know is inaccurate to Mr. Carr's detriment, preventing him from fully pursuing his livelihood as he would be able were these inaccurate entries not listed. It is this deliberate indifference to the livelihood of law abiding citizens which requires correction.

Argument 4

Fourteenth Amendment Applies to Employment

The city cites *Paul v. Davis*, 424 U.S. 693 (1976), but the city misconstrues the conclusions reached there. In Paul the U.S. Supreme Court stated:

5 See Declaration of Plaintiff associated with this Reply, Exhibit 5.
6 See Declaration of Plaintiff associated with this Reply, Exhibit 7, Page 2.
7 See Declaration of Plaintiff associated with this Reply, Exhibit 1.
8 See Declaration of Plaintiff associated with this Reply, Exhibit 5 and Exhibit 7, Page 2.

> The words "liberty" and "property" as used in the Fourteenth Amendment do not in terms single out reputation as a candidate for special protection over and above other interests that may be protected by state law. While we have in a number of our prior cases pointed out the frequently drastic effect of the "stigma" which may result from defamation by the government in a variety of contexts, this line of cases does not establish the proposition that reputation alone, apart from some more tangible interests such as employment, is either "liberty" or "property" by itself sufficient to invoke the procedural protection of the Due Process Clause.

While the respondent in Paul did raise issues of employment, they did not amount to anything more than defamation (his supervisor warned him it had better not happen again) and the record of the arrest was accurate, the respondent had been arrested for shoplifting. Since 1976 when Paul was decided, it has become mandatory to check the criminal records for large numbers of positions throughout all industries and, in particular, those for which Mr. Carr would otherwise be eligible. It is clear that a criminal record listing arrests for crimes which never occurred does impact employment.

The entire history of ORS 137.225 demonstrates the belief by the Oregon legislature that a person's criminal record has a significant impact on their livelihood and the sealing of the record of convictions and, later, arrests was justified to allow them to to "bury the past." (*Springer v. Oregon*, 50 Or App 5, 621 P2d 1213 (1981)). Mr. Carr is not arguing that the state can not publish criminal records with respect to employment decisions or that the state can not selectively seal records with respect to employment decisions for the purpose of allowing people to resume a more normal life. Mr. Carr is arguing that the state must put in place due process procedures to insure that published criminal records are accurate and that if the state selectively seals records it must do so in such a way to provide equal protection under the law with a rationale basis for the selection, not discriminating based on sex or irrational criteria such as against those who are innocent of any crime.

While the city boldly makes the claim that I was never denied employment because of the inaccurate arrest record[9], this is hardly an assertion that can be supported by the facts. It is well understood that a criminal record decreases a persons earning potential and livelihood; it is this more tangible interest which invoke the procedural protection of the due process clause as listed

9 Doc 20, top of page 15.

in Paul. Indeed, the employment records of both the city and the state could be most revealing as to the impact of a person's criminal record on their livelihood by considering those positions where a criminal history check is made and the relative number of job offers made to applicants who have criminal convictions, arrests but no convictions, and clean records. Further, the reason the city is reduced to making these bold and unfounded conclusory statements is because these are exactly the facts which need to be determined by the trier of fact, this court. It is the lack of support for this conclusion which requires the motions to dismiss to be denied.

Argument 5

Preclusion Does Not Apply, Issues Not Considered

There is no doubt that the offenses of trespass and domestic violence listed in the arrest record are false; even the state claimed that the arrest was for a violation of a civil restraining order (VRO) and not for any crime[10]. However, the claim of a VRO is also false, though this argument must address Rooker-Feldman, *res judicata*, and preclusion as cited by the defendants. The state cited:

> Disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law. The Full Faith and Credit Act, 28 U.S.C. § 1738, originally enacted in 1790, ch. 11, 1 Stat. 122, requires the federal court "to give the same preclusive effect to a state-court judgment as another court of that State would give."

from *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, at 1527. In Oregon,

> If a claim is litigated to final judgment, the decision on a particular issue or determinative fact is conclusive in a later or different action between the same parties if the determination was essential to the judgment.

North Clackamas School Dist. v. White, 305 Or 48, 53 (1988) and

> Issue preclusion is a jurisprudential rule that promotes judicial efficiency, [Nelson v. Emerald People's Utility Dist., 318 Or 99, 103, 862 P2d 1293 (1993)]. (citing State v. Ratliff, 304 Or 254, 257, 744 P2d 247 (1987)). In Nelson, the court identified five requirements essential to the application of issue preclusion: (1) "the issue in the two proceedings is identical"; (2) the issue actually was "litigated and was essential to a final decision on the merits in the prior proceeding"; (3) "the party sought to be precluded has had a full and fair opportunity to be heard on that issue"; (4) "the party sought to be precluded was a party or was in privity with a party to the prior proceeding"; and (5) "the prior proceeding was the type of proceeding to which this court will give preclusive effect."

Barackman v. Anderson, 338 Or 365, 368 (2005). The key point is that facts which were

10 See Declaration of Plaintiff associated with this Reply, Exhibit 5 and Exhibit 7, Page 2

litigated and essential to a final decision can not normally be overturned by the federal district courts. However, the actual decision of the Multnomah County Circuit Court had no findings of fact and only a conclusion that sealing the arrest record under ORS 137.225 was denied. The Oregon Court of Appeals and Oregon Supreme Court provided no further insights with 'Affirmed without opinion'. However, the relief Mr. Carr seeks is not under ORS 137.225, but rather the Fourteenth Amendment due process and equal protection clauses. Further, it is clear that the Multnomah County Circuit Court did not consider any Fourteenth Amendment issue with:

> Mr. Carr this court is confined to the statutory requirements under 137.225 and is not legally entitled to look behind the arrest to determine whether the arrest had probable cause or address the other points that you raised. The court must adhere to the statutory language and criteria that is set out under ORS 137.225. It can not look to the Washington law or any errors that you allege may have occurred in the process there.[11]

Clearly the circumstances of the arrest and the validity of the order from Washington was not considered by the state courts and no determination of facts was possible.

Argument 6

No Due Process for Published Arrest Record

ORS 183.555 requires the Oregon 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.

but the Portland Police Bureau refers requests to correct their criminal records to ORS 137.225 procedures[12]. However, the Multnomah County Circuit Court declared that it does not have jurisdiction to correct these records so that there is no process to correct them. Of course Mr. Carr does not ask for this court to order the city and state to correct their orders based on state law, but rather on the Fourteenth Amendment as criminal records have a substantial impact on a person's livelihood and, hence, must be maintained within the requirements of due process.

11 See Declaration of Plaintiff associated with this Reply, Exhibit 7, Page 6.
12 See Declaration of Plaintiff associated with this Reply, ¶ 29.

Argument 7

No Evidence of Any of the Offenses Listed

While the state has repeatedly claimed Mr. Carr's arrest on November 5, 2004 was not for any crime (e.g. trespass or domestic violence), both the city and state have claimed it was for a violation of a civil restraining order (VRO)[13]. However, the alleged civil restraining order only precluded Mr. Carr from *knowingly* remaining in the vicinity of Karyn[14]. Mr. Carr was not aware of Karyn's presence outside the restaurant[15], and, logically enough, there is no evidence that he was. This is identical to the offenses of trespass and domestic violence as while there are some of the required elements of the listed offense (e.g. presence in a restaurant which Mr. Carr did not own) there is no evidence at all of at least one required element of the offense (e.g. the restaurant was open for business and there was no request by the proprietor of the restaurant that Mr. Carr leave the restaurant). Given the complete absence of evidence that: 1) Mr. Carr knew of Karyn's presence, 2) the proprietors had asked Mr. Carr to leave, and 3) that there was any form of altercation with any party[16], then none of three offenses listed should be published with respect to employment decisions[17]. While it might be possible for the city and state to publish that Mr. Carr was arrested for no reason at all, this information is not useful to potential employers and so the entire record of the arrest should be sealed with respect to employment decisions.

Argument 8

Alleged Restraining Order is Criminal in Nature

At the hearing of April 13, 2006, the Multnomah County Circuit Court did not rely on any evidence in denying the motion to seal the arrest record under ORS 137.225 but instead just accepted the state's contested claim that the arrest was for a violation of a civil restraining order (VRO). This conclusion was not stated in the findings of facts (so that it would be subject to preclusion) but instead is an underlying assumption of the decision. Further, the Multnomah County Circuit Court specifically stated it did not consider any questions as to whether the alleged restraining order was civil or criminal in nature or whether the restraining order was valid

13 See Declaration of Plaintiff associated with this Reply, Exhibit 1, Exhibit 5, and Exhibit 7 Page 2.
14 See Declaration of Plaintiff associated with this Reply, Exhibit 3, Page 2, ¶ 5.
15 See Declaration of Plaintiff associated with this Reply, ¶ 9-12.
16 See Declaration of Plaintiff associated with this Reply, ¶ 9-12.
17 To hold to the contrary is absurd. Every arrest could be classified as being for murder or the most heinous of sex crimes if there was not requirement of at least some evidence for every element of the offense.

at all. Mr. Carr asks this court to consider whether the alleged restraining order was criminal or civil in nature and on that basis insist that the city and state accurately describe the nature of the restraining order listed in the arrest record.

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

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

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

The state's conclusion that violating a court order is not a crime neglects those cases where violations of court orders are defined to be crimes as in ORS 163.750:

> ORS 163.750 Violating court's stalking protective order.
> (1) A person commits the crime of violating a court's stalking protective order...
> (2)(a) Violating a court's stalking protective order is a Class A misdemeanor.

which clearly falls within the requirements of ORS 137.225 (5) where misdemeanors are specifically listed as eligible crimes.

In the state of Washington, domestic violence restraining orders are Orders for Protection under RCW 26.50 which are clearly delineated as crimes as in RCW 26.50.110:

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

which also falls within the requirements of ORS 137.225 (5) where misdemeanors are specifically listed as eligible crimes. While the state may have considered Washington RCW 26.50 restraining orders as most similar to Oregon FAPA restraining orders, they are, in fact, most similar to ORS 163.750 stalking protective orders (SPO), violations of which are clearly delineated as crimes.

Had there been a valid Washington Order for Protection under RCW 26.50 in this case, the arrest should have been listed as a criminal violation of a restraining order. This is of relevance as once the city and state correctly identify the record as being for a criminal violation of a restraining order, then Mr. Carr can reapply to have the arrest record sealed under ORS 137.225 to have the arrest record sealed.

Argument 9

Alleged Restraining Order Not Valid

As in the previous argument, the Multnomah County Circuit Court did not consider the validity of the alleged restraining order and made no findings of fact as to its validity so that this issue can be addressed by this court. However, in this case the Washington Court of Appeals, Division II did address aspects of this question (Doc 21-5) but they only confirmed that Family Law / Court Commissioners do not count against the constitutional restriction on constitutional commissioners of the Superior Court 'not exceeding three in number' (Washington State Constitution, Article IV, Section 23). The orders submitted by the city as Doc 21-3 and Doc 21-4[18] have only signatures and do not clearly identify the deciding individual as is the norm with Clark County Superior Court decisions concerning domestic violence (RCW 26.50)[19]. While it is clear that the Clark County Superior Court has jurisdiction to issue such orders, it has not been determined whether the signing individual had jurisdiction to issue these orders. The Washington Court Appeals did not identify the individual responsible for any of the contested decisions. The Western Washington Federal District Court and Judge Bryan also addressed aspects of this issue in his decision (Doc 21-2, pages 3-4) noting that it was District Court Judge Eiesland who signed the Temporary Order for Protection (Doc 21-3) and District Court Judge Melnick who signed the Order for Protection (Doc 21-4) of relevance in this matter.

As to the question of how two District Court Judges could sign two orders of the Superior Court, Judge Bryan also noted that they each were appointed as constitutional commissioners for the Superior Court (Doc 21-2, page 3) by the orders which are attached as Exhibit 4 of the Declaration of Plaintiff associated with this reply. However, Judge Bryan only confirmed their jurisdiction as District Court judges (granting judicial immunity therefrom), but did not confirm

18 These documents have been sealed (Doc 24) as they were not properly redacted, but redacted versions of these documents have been submitted as Exhibits 2 and 3 of the Declaration of Plaintiff associated with this Reply.

19 See Declaration of Plaintiff associated with this Reply, ¶ 32.

their jurisdiction to issue Superior Court orders. The problem is that the appointment orders appoint four constitutional commissioners in Clark County while the Washington State constitution strictly limits them to 'not exceeding three in number'. If their appointment orders as constitutional commissioners violated the constitutional limits, then the appointment orders are themselves not valid and any orders and decisions based on those appointment orders are also invalid.[20]

As no other court has addressed the issue of individual jurisdiction for the Washington 'restraining order' (Doc 21-4), this court is asked to hold the restraining order as invalid and direct the city and state to remove all references to this order from the arrest record with respect to employment decisions.

Argument 10

Statute of Limitations Not Dispositive

While the city argues that Oregon law requires a personal injury action to be commenced within two years in accordance with ORS 12.110(1), the reality is that most of the damages which Mr. Carr has incurred has been from the continued publishing of false information in his criminal record with respect to employment decisions. These damages are on-going with, arguably, all of these damages in the two years before this suit was filed starting on April 17, 2006. Further all of the monetary damages which Mr. Carr incurred could be considered negligent injury[21] which is covered by ORS 12.115(1) with a ten year statute of limitations. In addition, no statute of limitations apply to the declaratory relief which is sought in this matter.

Argument 11

Eleventh Amendment Does Not Apply

While the state cites the Eleventh Amendment as precluding the damages sought, the state also noted '*Under the Eleventh Amendment, a state is immune from private suits for damages in*

20 An order can be 'declared void for the reason that the ... court did not have jurisdiction to enter such decree.' *Barker v. Barker*, 31 Wn. (2d) 506. It is also well established that all subsequent actions based on the void order are void ab initio or void from the beginning *Beyerle v. Bartsch*, 111 Wash. 287. Any Orders for Protection, arrests and convictions based on these invalid orders are similarly void.

21 As Mr. Carr has not alleged that the city or state intentionally violated his rights with malice, 'deliberate indifference' to the rights of broad classes of individuals such as men and law abiding citizens is more closely akin to negligence rather than direct personal injury for those damages with a direct monetary value.

federal court unless it has consented to suit' citing *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 114 L. Ed. 2D 605 (1999) and other cases[22]. However under ORS 30.265,

> every public body is subject to action or suit for its torts and those of its officers, employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function or ...

which is Oregon consenting to suits for damages and shielding government officials from suit for damages if the actions they took met certain criteria (later in the statute). Under these circumstances all claims for damages are against the City of Portland and State of Oregon, not the officials representing them (i.e. Mr Hardy and Ms. Meng).

As to injunctive relief, it is well established that federal courts have jurisdiction to grant such relief. In *Ex parte Young*, 209 U.S. 123 (1908) the Supreme Court stated '*the circuit court had jurisdiction in the case before it, because it involved the decision of Federal questions arising under the Constitution of the United States*.' This was stated more clearly in *Pennhurst State School & Hosp. v. Halderman* , 465 U.S. 89 (1984) with '*The Court in Ex parte Young, supra, recognized an important exception to this general rule: a suit challenging the federal constitutionality of a state official's action is not one against the State*.' In short, federal courts can direct city and state officials to comply with the federal constitution and statutes (as that is a part of their oath of office in any case) which provides the relief required without actually directing the state to comply. In this regard, Mr. Hardy and Ms. Meng are listed to represent those city and state officials who may be directed to comply with any injunctive relief which this court may decide to provide.

Conclusion

The defendants have raised numerous arguments against the Complaint, but none of them can withstand careful review, they are all defective. Mr. Carr is seeking two reliefs, one is declaratory relief to seal the record of his arrest. The defendants misconstrue this relief as being sought under state law, ORS 137.225 which would be improper (and that is probably the reason why the defendants misconstrue the basis for this request). The actual justification for this relief is the Fourteenth Amendment and the equal protection under the law and due process

22 See Doc 23, at the top of page 6.

requirements. The city and state are discriminating against law abiding citizens through illegally sealing the records of convicted criminals while ruining the careers and livelihood of law abiding citizens without any rationale or basis for this discrimination. Further, publishing records of arrests for VRO's which are known to be extremely sexually biased with 4 out of 5 arrests of men being simply because they are men (a woman would not be arrested under similar circumstances) needlessly harms the livelihood of men and should be prohibited. It is under these equal protection clauses that Mr. Carr seeks having his arrest record sealed, not ORS 137.225, so preclusion, Rooker-Feldman, and *res judicata* do not apply. In addition, the state has repeatedly categorized the arrest as being for a violation of a civil restraining order (VRO) and the state courts have agreed, but the city and state have persisted in publishing for employment purposes that the arrest was for trespass and domestic violence, neither of which is supported by any evidence. Under the Fourteenth Amendment due process requirements this justifies sealing the inaccurate record with respect to employment decisions.

The second relief sought by Mr. Carr is damages for the city and state arresting Mr. Carr without any cause and knowingly publishing inaccurate information concerning the arrest. While some portions of the damages could be excluded under Oregon's statute of limitations (in particular injuries not related to property or where there was intentional malice against Mr. Carr and which occurred more than two years before this suit was filed), there are certainly damages which do not fall under these limitations. Further the inaccurate criminal record and the deliberate indifference to broad classes of individuals justifies declaratory relief and damages under 42 U.S.C. § 1981, 42 U.S.C.§ 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986.

For the reasons set forth above, Plaintiff respectfully requests that the defendants' Motions to Dismiss be denied.

Respectfully submitted, June 25, 2008 (Portland, Oregon).

s/ Brian P Carr
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CERTIFICATION

I hereby certify that when this declaration is filed with the court, notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system as all parties are listed for electronic notice on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

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