

Brian Carr  
11301 NE 7<sup>th</sup> St, Apt J5  
Vancouver, WA 98684  
brian@brian.carr.name

**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 Memorandum of Law  
In Support of  
Motion To Amend Complaint

OPPOSED

1. The parties and the issues raised in the Proposed Supplement to the Complaint are the same as in the original complaint. Mr. Myer in his official capacity represents state officials who would be the subject of the requested injunctive relief (the Multnomah County Circuit Court, Parking Unit, [ORS 1.001](#)). Further, any damages for negligence which this court might award as a result of the supplement would be against the City of Portland, which was previously cited for damages from negligent behavior.
2. Further, the general complaint of the state not providing due process in matters impacting property is consistent across both causes of action. Were Mr. Carr to file the original complaint today, it would be completely consistent to include both causes of action and all the counts in the complaint.
3. [FRCP 15](#) (a) states that a motion for leave to amend a complaint, "*shall be freely given when justice so requires.*"

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies

by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

*Foman v. Davis*, 371 U.S. 178. None of the events in the new cause of action had occurred at the time when the original complaint was filed on March 31, 2008. Further, it was not apparent that the intervention of the federal courts was required until July 27, 2008 when the state court claimed that it would only accept a police report from the City of Portland and that the state court would not require the service of required documents through any form of discovery. Further, it was also apparent that the city was not going to assist in the resolution of the dispute without an order to do so.

4. Were Mr. Carr to be required to file a second complaint, there would be the additional expense and delay of filing and service. The delay is particularly problematic as the damages incurred by Mr. Carr has the potential of increasing substantially if his vehicle is impounded without him ever have been afforded the opportunity to be heard.
  
5. The new causes of action are closely related to the original causes of action. In the original causes of action it was established that the Oregon state circuit courts do not have jurisdiction to consider questions of either due process or equal protection under the law under certain circumstances.<sup>1</sup> In the new causes of action there is the related question of whether the Oregon circuit courts have the authority to implement due process (can the court require disclosure of documents by the municipalities and state in parking citation cases) and are they required to implement the elements of due process (can the Oregon circuit courts require bail before permitting the defendant to appear or present evidence, in particular evidence relevant to the need and amount of bail). Similarly, a central issue for all causes of actions is the question of whether the state is bound by the requirements of due process: 1) can the state publish inaccurate information about the plaintiff relevant to employment decisions without any concerns for due process and 2) can the state seize the plaintiff's vehicle without any concerns for due process. These are closely related issues and it would be an undue burden on both the plaintiff and the court to establish the common elements in separate actions.

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<sup>1</sup> See Declaration of Plaintiff, [Doc 29-1](#), Page 6. While these striking conclusions were affirmed by the Oregon Court of Appeals ([Doc 21-5](#)) and Oregon Supreme Court chose not to review this decision ([Doc 21-6](#)), they are to date relatively restricted in scope. The restrictions on their scope has not been determined as yet.

6. The requested additions to the Complaint are in the attached Supplement to Complaint. If leave to amend the Complaint is granted, a amended Complaint will be filed with the court adding the paragraphs in the attached Supplement to Complaint.

#### CONCLUSION

For the reasons set forth above, plaintiff respectfully requests that leave to file an amended Complaint, submitted pursuant to [FRCP 15](#) (a), be granted and that the temporary restraining order be granted.

Respectfully submitted, August 7, 2008 (Vancouver, WA).

*s/ Brian P Carr*  
Signature of Plaintiff  
Brian Carr  
11301 NE 7th St., Apt J5  
Vancouver, WA 98684  
503-545-8357