

TG/HK
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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 Response
In Support of
Motion to Amend
Complaint

1. Both the state and city argue that granting the of the Motion to Amend the Complaint would cause undue delay and prejudice against the defendants (doc37 and doc38). However, this argument just echoes the requirements established by the U.S. Supreme Court without addressing the underlying situation, these arguments are specious and deceptive.
2. Both the city and the state note that there are pending motions to dismiss the unamended complaint and note that were the court to deny the motion to amend, Mr. Carr could simply file a separate complaint. What is not explained is how the granting of the motion to amend the complaint would cause any delay or prejudice to any party.
3. In the event that this court grants the motions to dismiss, those issues would be resolved in any case. Were the court to grant the motion to amend, the new causes of action and issues could be addressed promptly without delay or prejudice of any kind. If the motion to amend were to be denied there would be the delay of filing the new complaint and the required

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service of the complaint to establish jurisdiction of this court in the matter. The only effect of denying the motion to amend would be a substantial delay with prejudice against Mr. Carr as his vehicle could well be impounded with substantial impact due to the lack of due process by the Multnomah County Circuit Court parking unit. Further, were this court to grant the motion to amend, it would not be completely proper for the defendants to raise new motions to dismiss as they already had a chance to raise any arguments about the futility of the new issues in the amended complaint (the essence of a motion to dismiss) and would need to justify why their arguments were not raised and resolved in the motion to amend.

4. In the event that the court denies the motions to dismiss, if the motion to amend is granted Mr. Carr could submit and serve an amended complaint in days (the parties are all well aware of what the content of the amended complaint would be as they were served with the proposed supplement to the complaint) and the defendants could answer the amended complaint promptly with no delay or prejudice. If the court denies the motion to amend, Mr. Carr would need to file a new complaint resulting in two separate actions and needless confusion as there are underlying questions of due process and Oregon circuit courts responsibilities in that area. Further, as before, the filing of a new complaint would result in substantial delay and prejudice for Mr. Carr. There is also the risk of further litigation with a new complaint as the defendants could raise new motions to dismiss with arguments which should have been raised in opposition to the motion to amend.
5. Neither the city nor the state addressed the request for an order to prevent the Oregon circuit court or the city from seizing Mr. Carr's vehicle without providing him with an opportunity to heard at a meaningful time and in a meaningful manner as required by the decisions of the U.S. Supreme Court. As such, this court is asked to grant that relief even if the motion to amend is otherwise denied.
6. The state incorrectly argues that the new causes of action do not apply to the state. However, this ignores the fact that injunctive relief is sought which would apply to as a minimum to all the judges of the Multnomah County Circuit Court Parking Unit (and potentially all circuit court judges in Oregon). However, it would be untenable with injunctive relief to include

every government official who would be impacted by the order. Just as Mr. Hardy is listed in the original complaint to represent all the various government officials who handle the maintenance and distribution of arrest records for the state of Oregon, similarly Mr. Hardy would be listed in the amended complaint to represent all the government officials who process parking citations on behalf on the state, and the circuit courts of Oregon are created and funded directly by the state of Oregon.

7. The city argues that the motion to amend the complaint should be denied as it would not simplify or clarify the original issues, but this is hardly a criteria established or reviewed by the U.S. Supreme Court. The city cites only recent district court decisions and one decision of the 8th Circuit Court, none of which have been reviewed by the 9th Circuit Court or the U.S. Supreme Court. In the case of Wishon v. Gammon, 978 F 2d 446 (8th Cir 1992), it was the sixth amendment to the complaint which was denied, it would have added two new defendants to an already complex complaint with numerous defendants and it was for a case which had progressed much further in the process than the matter at hand. There was also no substantial impact to the plaintiff, a prisoner of that state of Missouri, from filing a separate complaint in Wishon, but in this case there would be a substantial delay which could be highly prejudicial to Mr. Carr due to the time line of Oregon courts.
8. Further, the underlying issue of due process and the independence of the Oregon circuit courts is common to all the causes of action. In the matter of Mr. Carr's arrest, the Oregon courts simply accepted the state's contention that Mr. Carr was arrested for a violation of a civil restraining order. No evidence was presented by the state, it was simply an unsupported assertion which the court accepted without question. The court did not consider any evidence to the contrary by Mr. Carr. Similarly, Oregon parking unit does not consider any evidence but simply relies on the state prior to setting bail and, potentially, issuing final judgment.

Respectfully submitted, August 18, 2008 (Portland, OR).



s/ Brian P. Carr

Signature of Plaintiff

Brian Carr

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CERTIFICATION

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 have elected electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.



s/ Brian P. Carr

Signature of Plaintiff

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