

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DIVISION OF TEXAS
HOUSTON DIVISION**

JOHN STRANGMEIER,)(
INDIVIDUALLY, and on behalf of a		
Class of All Similarly Situated Persons,)(
Plaintiff,)(CIVIL ACTION NO.: 4:11-cv-3463
V.)(
THE CITY OF HOUSTON, TEXAS,)(JURY TRIAL
and MAYOR ANNISE PARKER,		
INDIVIDUALLY;)(LEAVE TO FILE COMPLAINT SUPP.
Defendants.)(

PLAINTIFF’S MOTION FOR LEAVE TO FILE:

PLAINTIFF’S 1ST SUPPLEMENT TO: PLAINTIFF’S 1ST AMENDED ORIGINAL COMPLAINT & REQUEST FOR CLASS CERTIFICATION

NOW COMES Plaintiff JOHN STRANGMEIER and moves the Court for leave to file a supplements his Plaintiff’s 1st amended original complaint & request for class certification pursuant to FRCP 15(d) and will show the Court the following:

Plaintiff requests leave to file the following supplement:¹

SUPPLEMENT TO “FACTS” SECTION

26a. Strangmeier lost the September 20, 2011, hearing challenge and set his RLC ticket for the last appeal possible under City ordinance² on October 28, 2011, in Houston Municipal

¹ See **Exhibit B** supplemental pleading which plaintiff requests be filed.

² Said ordinance being totally void as the November 2, 2010 City certified election nullified it.

Court #1. Strangmeier attended-by driving about 50 miles and using up two and half hours--and presented arguments, however, lost the October 28, 2011, hearing. See **Exhibit 1**, filed brief on RLC ticket appeal (further argument was offered orally). That judgment was final there being no further appeals possible.

26b. On January 24, 2012, the U.S. Fifth Circuit Court of Appeals overturned the denial of the Kuboshes' motion to intervene and for new trial in Civil Action No.: 4:10-cv-4545 and the issue of the November 2, 2010, election validity was again before the court.³⁴ Presently, the June 17, 2011, interlocutory order is void so Strangmeier's RLC ticket and the 15,000 or so other RLC tickets which were received after the City certified the November 2, 2010, election are wholly unwarranted under the law. The City of Houston participates in a program with the State of Texas whereby the owners of the vehicles which have received RLC tickets which remain unpaid cannot register those cars to renew their license plates or get registration stickers making the thousands up to over 10,000 vehicles illegal to drive. As of February 3, 2012 approximately \$1,176,000 of RLC citation has been put into the Registry of the court in Civil Action No.: 4:10-cv-4545 the majority illegally obtained from Strangmeier and the class of individuals who received RLC tickets after the City certified the November 2, 2010, majority vote and City

³ Strangmeier has filed a motion to intervene February 2, 2012, and to consolidate with the instant case.

⁴ The City of Houston filed a declaratory judgment lawsuit against Houston's RLC vendor American Traffic Solutions Inc. (ATS), Civil Action No.: 4:10-cv-4545. ATS countersued claiming the November 2, 2010, election was invalid. Randall and Francis Kubosh (The Kuboshes) who were the charter amendment petitioners and organizers attempted to intervene November 30, 2010, but such motion was denied December 12, 2010, as was a motion to reconsider with request for new trial filed January 7, 2011. The Kuboshes filed appeal of the intervention and new trial denial to the U.S. Fifth Circuit Court of Appeals (Case No.: 11-20068). On June 17, 2011, the Court ruled on a summary judgment motion and entered an interlocutory order that the Houston charter amendment outlawing RLCs in Houston was void opining the November 2, 2010, City-approved and certified majority vote was void.

policymaker Mayor Parker unilaterally *ultra-vires* turned the RLC cameras back.

26c. On February 2, 2012 Strangmeier filed a motion to intervene in Civil Action No.: 4:10-cv-4545 as the issue of the November 2, 2010 election validity is back before that Court (also Hon. Lynn N. Hughes) and because of the funds in the Court's registry therein are the rightful property of Strangmeier and similarly situated individuals of the purported class and to consolidate with the instant case.

ARGUMENT

This case was filed September 23, 2011. October 13, 2012, the defendants filed a motion to dismiss. October 14, 2012, the Court entered an Order limiting plaintiff's right to amend as a matter of course under FRCP 15 by only allowing 8 days to amend (rather than 21) and threatening monetary sanctions if the amendment was not "useful."⁵ See **Exhibit 1**.

Plaintiff filed an amended complaint October 21, 2011. October 27, 2011, the defendants filed an amended motion to dismiss. November 17, 2012, plaintiff filed a response to the motion to dismiss.

FRCP 15d provides that:

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

The federal practice is to liberally allow supplemental pleadings. *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons*, 257 F.2d 162 (5th Cir. 1958). The events described in the supplement

⁵ Plaintiff objects to the limiting of his right to amend under FRCP 15 and the sanctions caveat for amendment which is not "useful."

occurred after the last allowed amended complaint. The facts show that the U.S. Fifth Circuit of Appeals has allowed intervention in a case (Civil Action 4:10-cv-4545, the Hon. Lynn N. Hughes, presiding) which previously had disposed of the issue of the validity of the November 2, 2010 election, the main issue in the instant case.

Also, Strangmeier completed all the City processes and appeals to challenge his RLC ticket October 28, 2012 (even though the ticket was issued *ultra-vires* with no statutory or other authority). While Strangmeier asserts he does not have to exhaust his administrative remedies to maintain this action the defendants differ and say he does so Strangmeier sets forward these facts that occurred after the court-ordered plaintiffs amended complaint deadline.

PRAYER

Plaintiff respectfully requests this motion be Granted and the supplement be filed and for all other relief in law and equity to which plaintiff shows himself entitled.

RESPECTFULLY SUBMITTED,
LAW OFFICE OF RANDALL L KALLINEN PLLC

/s/ Randall L. Kallinen

Randall L. Kallinen
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CERTIFICATE OF CONFERENCE

I certify that I have attempted to confer by e-mailing counsel for defendants on February 5, 2012, about the relief requested. As a motion to dismiss is pending, plaintiff assumes opposing counsel will be OPPOSED and feels as such motion is pending plaintiff must file the instant motion immediately. If opposing counsel is found to be unopposed then plaintiff shall amend this certificate.

/s/ Randall L. Kallinen

Randall L. Kallinen

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served in accordance with the Federal Rules of Civil Procedure and the ECF system of the U.S. Southern District of Texas on this the 5th day of February, 2012.

Elizabeth L. Stevens, atty.
Andrea Chan, atty.
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

/s/ Randall L. Kallinen

Randall L. Kallinen