

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

**JOHN STRANGMEIER,**

**Plaintiff,**

v.

**CITY OF HOUSTON, ET AL.**

**Defendants.**

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**Civil Action No.: 4:11-CV-3463**

**CITY OF HOUSTON’S AND MAYOR ANNISE PARKER’S  
RESPONSE TO PLAINTIFFS MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL PLEADING**

Strangmeier’s motion for leave to file a supplement to the “Facts” section of Plaintiff’s First Amended Complaint should be denied because the proposed amendments are futile. Plaintiff brought this 42 U.S.C. Section 1983 suit alleging constitutional violations arising out of his receipt of a civil citation for running a red light. The defendants have filed a Rule 12(b) motion to dismiss Plaintiff’s claims which is pending. The proposed additional facts do not serve to address any of the fatal deficiencies in Strangmeier’s First Amended Complaint, and thus the proposed amendments are futile.

**I. Argument and Authorities**

Under Rule 15 of the Federal Rules of Civil Procedure, leave to amend should be freely granted “when justice so requires.” However, denial may be warranted when the proposed amendment is futile. *McAfee v. 5th Circuit Judges*, 884 F.2d 221, 222 (5th Cir. 1989), *cert. denied*, 493 U.S. 1083 (1990). A proposed amendment is futile if “the amended complaint would fail to state a claim upon which relief can be granted.” *Stripling v. Jordan*

*Production Co., LLC*, 234 F.3d 863, 873 (5th Cir. 2000). In *The Estate of C.A. v. Grier*, 2012 WL 423389 (S.D. Tex. Feb. 8, 2012) (slip copy), the district court relied, in part, on the futility doctrine to deny a motion to supplement a complaint with additional facts and legal theories. The court held that the proposed amendments failed to support either a due process or equal protection claim as a matter of law.

Here, Strangmeier seeks to amend his complaint to add allegations that he completed the appeals process in place for challenging his ticket (proposed paragraph 26(a))<sup>1</sup> and to detail the events of Civil Action No.: 4:10-cv-4545, also pending before this Court, in which Strangmeier has sought to intervene. (proposed paragraphs 26(b) and (c)). Strangmeier argues in his motion for leave to amend that:

[t]he 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, presided) which previously had disposed of the issue of the validity of the November 2, 2010 election, the main issue in the instant case.

(DE 24, p. 4). The proposed supplemental allegations do not relate to any of the infirm claims Strangmeier has made in this lawsuit or serve to cure their infirmity. As the defendants have set out in their pending motion to dismiss, Strangmeier's receipt of a civil citation (and the City's issuance of citations following this Court's interlocutory order finding that the Charter Amendment was void) simply do not implicate Strangmeier's First,

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<sup>1</sup> This supplemental fact is not necessarily objectionable, but it does not address the failure to seek redress for a Fifth of Fourteenth Amendment claim in the state courts before filing claims in federal court as required under *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed.2d 126 (1985).

Fourth, Fifth, or Fourteenth Amendment rights, and the events of Civil Action No.:4:10-cv-4545, do not transform Strangmeier's receipt of the citation into a cognizable claim of constitutional dimensions or cure the lack of standing and subject matter jurisdiction as to the other claims asserted by Strangmeier in this case.

## **II. Conclusion**

Because Strangmeier's First Amended Complaint fails to state any viable claims and the proposed supplemental facts do not provide a basis for any viable legal theory of a constitutional deprivation or other claim, the motion for leave to supplement should be denied on the basis of futility.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response was served in accordance with the Federal Rules of Civil Procedure on this the 27th day of February, 2012.

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Via e filing

/s/ Elizabeth Stevens  
Elizabeth Stevens