

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MOLLY GIBBS, WILLIAM HAMILTON,  
LINDA JANSEN, and THOMAS  
JOHNSON,

Plaintiffs,

v.

CITY OF TACOMA and PIERCE  
COUNTY,

Defendants.

Case No. C09-5310 RBL

ORDER ON SUMMARY JUDGMENT  
[Dkt. #27]

THIS MATTER is before the court on Defendants' Motion for Summary Judgment [Dkt. #27]. The case arises from the Plaintiffs' participation in a March 11, 2007 protest at the Port of Tacoma. Plaintiffs were arrested for disobeying Tacoma Police Department officers' orders to stay within the designated protest area. They were detained in the Pierce County jail before being released early in the morning of March 12, 2007.

Plaintiffs' Complaint [Dkt. #1] asserts claims under 42 U.S.C. § 1983, alleging that Defendants violated their First, Fifth, Sixth, and Fourteenth Amendment rights. In its earlier order [Dkt. #32], this court granted summary dismissal of Plaintiffs' Fifth, Sixth, and Fourteenth Amendment claims against both Defendants. Defendants now seek dismissal of all remaining claims against them, namely Plaintiffs' First and Fourth<sup>1</sup> Amendment claims.

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<sup>1</sup> Plaintiffs do not expressly bring a Fourth Amendment claim in their complaint, but both parties have briefed the viability of such a claim.

1 Plaintiffs claim that the City of Tacoma<sup>2</sup> violated their First Amendment rights by  
2 imposing unreasonable restrictions on where they could protest, and that TPD officers arrested  
3 them without probable cause in violation of their Fourth Amendment rights. Plaintiffs claim  
4 that Pierce County violated their Fourth Amendment rights by detaining them for an  
5 unnecessarily long period of time after their arrest. They also claim that the detention was  
6 intended to prevent Plaintiffs from returning to the protest, in violation of their First  
7 Amendment rights.

8 Defendants seek summary judgment on all claims. They argue that the TPD's  
9 restrictions on the protest were valid because the restrictions were content-neutral, were  
10 narrowly tailored to serve a significant government interest, and left ample alternatives for  
11 communication. Defendants argue that the TPD officers had probable cause to arrest Plaintiffs  
12 for obstruction of justice. Defendants also argue that Pierce County is not liable for any alleged  
13 constitutional violations, because they were not caused by any municipal custom or policy.

14 For the reasons that follow, Defendants' Motion for Summary Judgment [Dkt. #27] is  
15 GRANTED. All of Plaintiffs' remaining claims against both Defendants are DISMISSED with  
16 prejudice.

17 **I. FACTS**

18 In March 2007, the U.S. Army shipped military equipment and vehicles through the  
19 Port of Tacoma en route to the wars in Iraq and Afghanistan. Over the course of eleven days,  
20 many people came to the port to protest the military activities. For several days of the protest,  
21 while the military equipment was staged on port property and moved to the ship, a block-sized  
22 section of East 11<sup>th</sup> Street was closed to vehicles and reserved for the protest activity. This  
23 designated protest area was adjacent to and within earshot of the military activity occurring on  
24 restricted port property<sup>3</sup>. The western boundary of the protest zone was defined by bike rack  
25 barricades. Sections of East 11<sup>th</sup> Street and Milwaukee Way immediately west of the protest  
26 zone were closed to all vehicular and pedestrian traffic during the protest. The closed-off area

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27 <sup>2</sup> Plaintiffs' claims against the City of Tacoma all arise from actions by the Tacoma Police Department.  
28 Accordingly, Tacoma will hereafter be referred to as the ("TPD").

<sup>3</sup> "Restricted" port property refers to areas of the port that are not open to the public.

1 encompassed train tracks, a bridge (under which the military vehicles were passing), and an  
2 entrance to restricted port property<sup>4</sup>.

3 On March 11, 2007, Plaintiffs participated in the Port of Tacoma protest. Plaintiffs  
4 intended to deliver their “Citizen’s Injunction to Halt the Shipment of Military Material to Iraq”  
5 to the port administrative offices. Those offices are located inside the port entrance that was  
6 blocked off to the public. The offices were not within sight or sound of the protest zone. There  
7 is another port entrance that was unaffected by the police presence, which is staffed by security  
8 personnel at all times.

9 During the March 11, 2007 demonstration, Plaintiff Johnson spoke to the TPD sergeant  
10 in charge of the scene. Johnson advised the sergeant that several protestors were going to climb  
11 over the barricades on the western boundary of the protest zone. The sergeant told the  
12 protestors that if they climbed over the barricades, they would be arrested. Plaintiffs and 22  
13 other protestors climbed over the barricades, and were promptly arrested for disobeying the  
14 officers’ orders.

15 Plaintiffs and the other arrestees were taken to the Pierce County jail. Plaintiffs were  
16 booked between 10:00 p.m. and 12:00 a.m. They were released around 3:00 a.m. on March 12,  
17 2007. Plaintiff Hamilton testified that a prison employee told him that a higher authority had  
18 ordered the prison guards to release the arrestees in small groups over the course of many  
19 hours. Hamilton claims he was told that the release plan was intended to prevent the protestors  
20 from returning to the port.

21 Plaintiffs claim that the TPD’s and Pierce County’s actions on March 11 and 12, 2007  
22 violated their civil rights. Defendants seek summary dismissal of all possible claims against  
23 them.

## 24 **II. DISCUSSION**

### 25 **A. Summary Judgment Standard**

26 Summary judgment is appropriate when, viewing the facts in the light most favorable to  
27 the nonmoving party, there is no genuine issue of material fact which would preclude summary

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28 <sup>4</sup> The restrictions on where the demonstrators could protest were imposed and enforced by the Tacoma  
Police Department.

1 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to  
2 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers  
3 to interrogatories, or admissions on file, “specific facts showing that there is a genuine issue for  
4 trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). “The mere existence of a scintilla of  
5 evidence in support of the non-moving party’s position is not sufficient.” *Triton Energy Corp.*  
6 *v. Square D Co.*, 68 F.3d 1216, 1221 (9<sup>th</sup> Cir. 1995). Factual disputes whose resolution would  
7 not affect the outcome of the suit are irrelevant to the consideration of a motion for summary  
8 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words,  
9 “summary judgment should be granted where the nonmoving party fails to offer evidence from  
10 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d  
11 at 1220.

## 12 **B. Claims Against The City of Tacoma**

### 13 **1. Municipality Liability**

14 A plaintiff bringing a 42 U.S.C. § 1983 claim against a municipality for civil rights  
15 violations must prove three elements: (1) a violation of his/her constitutional rights, (2) the  
16 existence of a municipal policy or custom of the municipality, and (3) a causal nexus between  
17 the policy or custom and the constitutional violation. *Monell v. New York City Dept. of Social*  
18 *Services*, 436 U.S. 658, 691 (1978).

19 For the purposes of this order, the court will assume, without deciding, that the TPD’s  
20 restrictions on the port demonstration and the consequent arrests were part of a municipal  
21 policy. This assumption does not apply to actions by Pierce County.

### 22 **2. First Amendment Claim against City of Tacoma**

23 Plaintiffs claim that the TPD’s restrictions on the location of their protest violated their  
24 First Amendment rights. Plaintiffs assert that the TPD did not impose reasonable time, place,  
25 and manner restrictions on the March 11, 2007 demonstration. The TPD argues that its  
26 restrictions were valid because they were content-neutral, were narrowly tailored to serve a  
27 significant government interest, and left ample alternatives for communication.  
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1 It is undisputed that Plaintiffs were protesting on public grounds. “[W]hen expressive  
2 conduct occurs on public grounds...the government can impose reasonable time, place, and  
3 manner restrictions.” *U.S. v. Griefen*, 200 F.3d 1256, 1259-1260 (9<sup>th</sup> Cir. 2000) (*quoting*  
4 *United States v. Johnson*, 159 F.3d 892, 895 (4<sup>th</sup> Cir.1998)). “Such restrictions are  
5 constitutionally valid if they are (1) content-neutral, (2) narrowly tailored to serve a significant  
6 governmental interest, and (3) leave open ‘ample alternatives for communication.’” *Id.* at 1260  
7 (*quoting United States v. Linick*, 195 F.3d 538, 543 (9<sup>th</sup> Cir.1999)).

8 **a. Content Neutrality**

9 Plaintiffs claim that the TPD’s restrictions were not content neutral. They argue that the  
10 TPD’s actions were motivated by disagreement with the demonstrators’ anti-war views.  
11 Plaintiffs also argue that the TPD’s placement of barricades favored those protestors intending  
12 to communicate with longshoremen and military personnel over those trying to communicate  
13 with port administrators. Defendants argue that the TPD’s restrictions were content neutral  
14 because they were imposed solely to ensure public safety and were applied equally to all  
15 demonstrators.

16 “The principal inquiry in determining content neutrality, in speech cases generally and  
17 in time, place, or manner cases in particular, is whether the government has adopted a  
18 regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock*  
19 *Against Racism*, 491 U.S. 781, 791 (1989) (*citing Clark v. Community for Creative Non-*  
20 *Violence*, 468 U.S. 288, 295 (1984)). “The government's purpose is the controlling  
21 consideration.” *Id.* Restrictions on where individuals may protest are not based on disagreement  
22 with the message conveyed if those restrictions “apply equally to all demonstrators, regardless  
23 of viewpoint.” *Hill v. Colorado*, 530 U.S. 703, 719 (2000).

24 The TPD is responsible for maintaining public order and ensuring the safety of its  
25 citizens. *See, e.g., Menotti v. City of Seattle*, 409 F.3d 1113, 1130-32 (9<sup>th</sup> Cir. 2005).  
26 Defendants provide evidence that the TPD’s restrictions were imposed to maintain public order  
27 and safety. [*See Dkt. #29, Barrett Aff.*]. Defendants point to the train tracks, bridge, military  
28 convoy, and port entrance just west of the protest area. They argue that, given the

1 circumstances, allowing public access to those nearby hazards presented dangers to the  
2 protestors, longshoremen, and military personnel. Defendants assert that preventing those  
3 dangers from materializing was the underlying purpose for the TPD's restrictions. Plaintiffs  
4 provide no evidence that the TPD bound the protest area because it disagreed with the views  
5 being expressed. They baldly assert that the restrictions were based on disagreement with the  
6 protestors' anti-war views. This does not satisfy Plaintiffs' burden of showing a content-based  
7 purpose behind the TPD restrictions.

8 Plaintiffs similarly provide no evidence that any demonstrator was treated differently  
9 than any other based on their views or the message conveyed. All members of the public were  
10 treated the same and the rules imposed by the TPD were applied uniformly and consistently.  
11 [Dkt. #29, Barrett Aff.]. There is no evidence showing, for example, that pro-war  
12 demonstrators were or would have been treated any differently than the anti-war protestors. The  
13 fact that some parts of the port were within sight and earshot of the designated protest area,  
14 while others were not, does not mean the TPD's restrictions were applied unequally. The  
15 evidence shows that the location of the protest area was based on safety concerns and proximity  
16 to the military activity, not favored versus disfavored views. *See Id.*

17 Plaintiffs have not and cannot show that the TPD's restrictions were content-biased.  
18 The restrictions were content neutral as a matter of law.

19 **b. Narrowly Tailored to Serve a Significant Government Interest**

20 Plaintiffs claim that the TPD's restrictions were not narrowly tailored to serve a  
21 significant government interest. Plaintiffs argue that the TPD closed off larger sections of  
22 public road than was necessary to ensure public order and safety. Defendants contend that the  
23 TPD imposed the least restrictive measures possible to ensure public safety while allowing the  
24 demonstrators to express their opinions.

25 “[T]he government has a significant interest in maintaining public order; indeed this is a  
26 core duty that the government owes its citizens. The Supreme Court has declared that “[i]t is a  
27 traditional exercise of the States' police powers to protect the health and safety of their  
28 citizens.” *Menotti*, 409 F.3d at 1131 (quoting *Hill*, 530 U.S. at 715). “A narrowly tailored

1 requirement need not be the least restrictive means of furthering the [government's] interests,  
2 but the restriction may not burden substantially more speech than necessary to further the  
3 interests." *U.S. v. Baugh*, 187 F.3d 1037, 1043 (9<sup>th</sup> Cir. 1999) (*citing Ward*, 491 U.S. at 799).

4 As discussed above, the TPD has shown that its restrictions were imposed to ensure  
5 public safety and order. In deciding where to locate the protest zone, the TPD made sure the  
6 demonstrators could be as close as safely possible to the activity they were protesting. [Dkt.  
7 #29, Barrett Aff.]. The protestors were immediately adjacent to restricted port property. *See Id.*  
8 at Ex. 3. They were within audible and visible range of the military vehicles and loading  
9 activities. [Dkt. #29]. The closed sections of road presented public safety concerns. *Id.* The  
10 TPD's restrictions did not burden more speech than necessary to ensure public order and safety,  
11 and thus were narrowly tailored to serve a significant government interest as a matter of law.

12 **c. Alternative Channels of Communication**

13 Plaintiffs do not dispute that the TPD's restrictions left ample alternatives for  
14 communication. "In the 'ample alternatives' context, the Supreme Court has made clear that the  
15 First Amendment requires only that the government refrain from denying a 'reasonable  
16 opportunity' for communication." *Monetti*, 409 F.3d at 1141 (*citing City of Renton v. Playtime*  
17 *Theatres, Inc.*, 475 U.S. 41, 54 (1986)). The designated protest area provided Plaintiffs a  
18 reasonable opportunity to communicate their message. The TPD blocked off the port entrance  
19 where Plaintiffs wished to deliver a citizens injunction, but Plaintiffs had various alternative  
20 ways to deliver their injunction. For example, Plaintiffs could have utilized the other port  
21 entrance which was unaffected by the police restrictions. Defendants provided Plaintiffs ample  
22 alternatives for communication as a matter of law.

23 The TPD's restrictions on Plaintiffs' speech were content-neutral, were narrowly  
24 tailored to serve a significant government interest, and left open ample alternatives for  
25 communication. Therefore, those restrictions were valid as a matter of law. Plaintiffs' First  
26 Amendment claim against the City of Tacoma is DISMISSED.

1           **3. Fourth Amendment Claim against City of Tacoma**

2           Plaintiffs claim that they were arrested in violation of their Fourth Amendment rights.  
3 They argue that the TPD officers did not have probable cause to arrest Plaintiffs for obstruction  
4 of justice without a warrant. Defendants argue that the arrests were valid because Plaintiffs  
5 disobeyed TPD officers' lawful orders immediately in front of those officers.

6           “Probable cause to arrest exists when officers have knowledge or reasonably  
7 trustworthy information sufficient to lead a person of reasonable caution to believe that an  
8 offense has been or is being committed by the person being arrested.” *U.S. v. Lopez*, 482 F.3d  
9 1067, 1072 (9<sup>th</sup> Cir. 2007) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)).

10           Tacoma has the power to “regulate,” “control,” and “vacate” its “streets, alleys,  
11 avenues, sidewalks, wharves, parks, and other public grounds.” RCW 35.22.280. Under these  
12 powers, the TPD has the authority to close portions of public streets to vehicular and pedestrian  
13 traffic. *See, e.g., Schoenfeld v. Seattle*, 265 F. 726 (W.D. Wash. 1920).

14           Under RCW 9A.76.020, “Obstructing a law enforcement officer,” “[a] person is guilty  
15 of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any  
16 law enforcement officer in the discharge of his or her official powers or duties.” Washington  
17 courts have consistently held that disobeying an officer's lawful orders constitutes obstruction  
18 of justice. *See, e.g., State v. Little*, 116 Wash.2d 488 (1991) (holding that defendant's flight  
19 from officers and refusal to stop when ordered to do so constituted obstruction); *State v.*  
20 *Contreras*, 92 Wash. App. 307 (Div. 2, 1998) (upholding warrantless arrest of defendant who  
21 disobeyed officer's commands to raise his hands and get out of the car).

22           Obstruction is a gross misdemeanor. RCW 9A.76.020. “A police officer may arrest a  
23 person without a warrant for committing a misdemeanor or gross misdemeanor only when the  
24 offense is committed in the presence of the officer...” RCW 10.31.100.

25           The TPD had the authority to impose restrictions on where Plaintiffs could protest.  
26 Plaintiffs knew of the restrictions in place on March 11, 2007. TPD officers ordered Plaintiffs  
27 to abide by those restrictions. Plaintiffs all admit that they knew they would be arrested for  
28 crossing the TPD barricades onto a closed section of street. [*See* Dkt. #31, Homan Aff., at Ex.



1 #s 1, 2, 3, 4]. Indeed, Plaintiffs admit that getting arrested was part of their intended political  
2 speech<sup>5</sup>. *Id.*

3 Plaintiffs disobeyed the TPD's restrictions in the immediate presence of TPD officers  
4 and against the officers' express orders. Thus, those officers had probable cause to arrest  
5 Plaintiffs for obstruction of justice as a matter of law. Plaintiffs' Fourth Amendment claim  
6 against the City of Tacoma is DISMISSED.

7 **C. Claims against Pierce County**

8 Plaintiffs claim that Pierce County violated their First and Fourth Amendment rights.  
9 Plaintiffs allege that they were held in county jail longer than necessary, in violation of their  
10 Fourth Amendment rights. They also allege that the detention was intended to prevent them  
11 from returning to the demonstration, violating their First Amendment rights. Defendants assert  
12 that Pierce County cannot be liable for Plaintiffs' § 1983 claims because no policy or custom of  
13 the county caused the alleged constitutional deprivations. Plaintiffs respond that a "higher  
14 authority" told the prison guards when, how, and why to release Plaintiffs. They assert that this  
15 higher authority could be a decisionmaker possessing final authority to implement county  
16 policies or customs.

17 A plaintiff asserting a § 1983 claim for municipal liability must show the constitutional  
18 violation he or she allegedly suffered resulted from an official policy, practice, or custom of the  
19 county. *See Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986) (citing *Monell*, 436 U.S. 658).  
20 "Municipal liability attaches only where the decisionmaker possesses final authority to  
21 establish municipal policy with respect to the action ordered." *Pembaur*, 475 U.S. at 481. "The  
22 fact that a particular official-even a policymaking official-has discretion in the exercise of  
23 particular functions does not, without more, give rise to municipal liability based on an exercise  
24 of that discretion." *Id.* at 481-82 (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 822-24 (1985)).  
25 "The official must also be responsible for establishing final government policy respecting such  
26 activity before the municipality can be held liable." *Id.* at 482-83.

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<sup>5</sup> Plaintiffs intended to get arrested. [See Dkt. #31, Homan Aff., at Ex. #s 1, 2, 3, 4]. Now they are seeking damages from the officers who arrested them: "protesting for profit."

1           In *Gillette v. Delmore*, 979 F.2d 1342 (9<sup>th</sup> Cir. 1992), the Ninth Circuit held that a fire  
2 chief’s discretionary decision to fire the plaintiff (a firefighter) could not be attributed to the  
3 municipality. The court reasoned that “[m]unicipal liability could be imposed on the basis of  
4 [the fire chief’s] actions only if he was responsible for establishing the City’s employment  
5 policy.” *Id.* at 1350.

6           The determination of whether an official is a final decisionmaker for *Monell* purposes is  
7 a legal question to be resolved by the trial judge. *Jett v. Dallas Independent School Dist.*, 491  
8 U.S. 701, 737 (1989). “[T]he trial judge must identify those officials or governmental bodies  
9 who speak with final policymaking authority for the local governmental actor concerning the  
10 action alleged to have caused the particular constitutional or statutory violation at issue.” *Id.*

11           Plaintiffs claim that an agent for the Pierce County Sheriff’s Office told Hamilton that  
12 he “had been told from a higher authority that [the arrestees] were to be held until and released  
13 in small groups...half an hour or so apart from one another over the course of the whole  
14 morning so that [the arrestees] wouldn’t have time to get back to the port.” [Dkt. #33, Response  
15 (citing Dkt. #34, Taylor Dec., at Ex. D)]. Plaintiffs provide no evidence demonstrating that the  
16 “higher authority” was responsible for establishing Pierce County jail policies. Plaintiffs do not  
17 provide the authority’s name, his position, or anything else that would allow the court to  
18 identify him. At most, Plaintiffs demonstrate that the unnamed authority had discretion to  
19 determine when and how that particular group of arrestees would be released. This is  
20 insufficient to establish municipality liability as a matter of law.

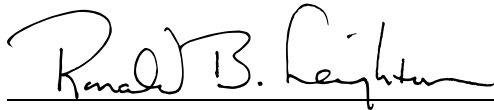
21           Plaintiffs provide no other evidence of a Pierce County custom or policy linked to their  
22 alleged constitutional deprivations. Therefore, Plaintiffs’ First and Fourth Amendment claims  
23 against Pierce County are DISMISSED.

1 **CONCLUSION**

2 Defendants' Motion for Summary Judgment [Dkt. #27] is GRANTED. All of Plaintiffs'  
3 remaining claims against both Defendants are DISMISSED with prejudice.

4 **IT IS SO ORDERED.**

5 Dated this 16<sup>th</sup> day of September, 2010.

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11 RONALD B. LEIGHTON  
12 UNITED STATES DISTRICT JUDGE  
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