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KING COUNTY  
SUPERIOR COURT

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8 IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

9 KIRK ROBINSON; JEAN ROBINSON; )  
10 PATRICIA CARLISLE; OSCAR EASON, )  
11 JR.; KAREN JENSEN; JOHN JUNKER; )  
12 DON MORELAND; CHARLES ROYER; )  
13 and AMERICAN CIVIL LIBERTIES )  
14 UNION OF WASHINGTON, taxpayers, )

15 Plaintiffs,

16 v.

17 CITY OF SEATTLE,  
18 a municipal corporation,

19 Defendant.

NO. 97-2-22567-1 SEA

AMENDED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF

20 I. INTRODUCTION

21 1.1 This lawsuit challenges the City of Seattle's mandatory preemployment drug  
22 testing policy. (SMC 4.77.040, hereinafter referred to as "the Policy".) Specifically, this suit  
23 seeks to enjoin enforcement of the Policy and asks for a declaratory judgment that the Policy  
24 violates both the Washington Constitution and the United States Constitution. The City of  
25 Seattle ("the City"), through the Policy, requires drug testing of all successful job applicants  
26 without regard to the nature of the position for which employment is sought. Thus, the Policy  
27 does not focus on safety-sensitive jobs or other jobs with respect to which there might exist  
28 some special need to test for drug use, but mandates that every person selected for employment  
undergo drug testing. Less intrusive and more effective means could be utilized to achieve the

1 same desired result. In short, the City's drug testing Policy is not only illegal, but it is ineffective  
2 and wasteful of public funds.

## 3 II. PARTIES

4 2.1 Plaintiffs Kirk Robinson, Jean Robinson, Patricia Carlisle, Oscar Eason, Jr., Karen  
5 Jensen, John Junker, Don Moreland, and Charles Royer are residents of the City of Seattle.  
6 Plaintiff American Civil Liberties Union of Washington is a non-profit membership organization  
7 with its principal place of business in City of Seattle. During all relevant times, Plaintiffs have  
8 paid and continue to pay taxes to the City of Seattle, including local sales and use taxes.  
9 Plaintiffs have standing as taxpayers to challenge implementation of the City's unconstitutional  
10 Policy.

11 2.2 The City of Seattle is a municipal corporation. Effective July 1, 1996, the City of  
12 Seattle implemented a mandatory drug testing policy requiring all persons offered City  
13 employment to submit to a urine test as a precondition of hire. SMC 4.77.040 (Ord. 117418).  
14 The only exception is for the City's youth employment program.

## 15 III. FACTUAL BACKGROUND

16 3.1 The Policy was approved by the City Council without adequate notice to permit  
17 the public debate that was appropriate to such a measure. In approving the Policy in 1996, the  
18 Council purported to rely upon Ordinance 117418. Ordinance 117418, in fact, had been  
19 passed by the Council in December 1994 in response to specific federal regulations of the U.S.  
20 Department of Transportation which required drug and alcohol testing for drivers of  
21 commercial motor vehicles. Ordinance 117418 referred only to these employees, and to the  
22 fact that federal regulations required the drug testing of this limited group of employees.

23 3.2 In July 1996, without any advance public notice and hidden in the context of a  
24 Budget Proposal, the City adopted the Policy, and applied it to all prospective employees on a  
25 City-wide basis. The City now incorrectly asserts that Ordinance 117418 authorized this broad-  
26 based Policy.

27 3.3 The Policy requires that all City departments engage in preemployment drug  
28 testing of external job applicants following a conditional job offer. The Policy excepts only

1 summer youth enrollees and high school interns. The Policy also extends to intermittent  
2 employees who have not worked consecutively for six months or more.

3 3.4 While the City pays for testing costs, the applicant is responsible for  
4 transportation to the testing site and the time required for the test.

5 3.5 A job applicant is disqualified from employment for 12 months if he/she: (a) tests  
6 positive for drugs; (b) fails two integrity checks of the urine sample; (c) fails to provide adequate  
7 urine for drug testing without a valid medical explanation; (d) engages in conduct that clearly  
8 obstructs the testing process; or (e) fails to appear for a drug test within 12 hours after  
9 consenting to the test. SMC 4.77.040.

10 **IV. THE PRIVACY INTERESTS OF THE**  
11 **PROSPECTIVE EMPLOYEES ARE SUBSTANTIAL**

12 4.1 Government-ordered collection and testing of urine intrudes upon expectations of  
13 privacy that society has long recognized as reasonable. The Policy involves an invasion of  
14 personal privacy in at least two regards, in the collection of urine samples and the subsequent  
15 chemical analysis of the urine.

16 4.2 The process of collecting the sample to be tested, which may involve visual or  
17 aural monitoring of the act of urination, itself implicates privacy interests. There are few  
18 activities in our society more personal or private than the passing of urine. Most people  
19 describe it by euphemisms if they talk about it at all. It is a function traditionally performed  
20 without public observation; indeed, its performance in public is generally prohibited by law as  
21 well as social custom.

22 4.3 The process of testing urine involves a second level of intrusion into the  
23 prospective employees' private affairs. Chemical analysis of urine can reveal a host of private  
24 medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic.

25 **V. THERE IS NO SPECIAL NEED THAT JUSTIFIES**  
26 **A MANDATORY DRUG TEST OF ALL PROSPECTIVE**  
27 **CITY EMPLOYEES WITHOUT ANY REASON TO**  
28 **SUSPECT DRUG USE ON THEIR PART**

5.1 The City has not demonstrated a significant City-wide problem of drug abuse  
among its employees.



1           6.3    The Policy is a suspicionless search of all job applicants, which is particularly  
2 inimical to Constitutional privacy rights.

3           6.4    Plaintiffs ask for an injunction requiring the cessation of said unlawful acts.

4                           **SECOND CAUSE OF ACTION: FOURTH AMENDMENT OF THE**  
5                           **UNITED STATES CONSTITUTION**

6           Plaintiffs reallege and incorporate by reference the allegations contained in  
7 Paragraphs 1.1 through 6.4.

8           6.5    The Fourth Amendment to the United States Constitution protects individuals  
9 against unreasonable searches and seizures conducted by government officials. The Fourth  
10 Amendment's protections apply when government officials act in their capacity as employers.

11           6.6    The Policy's mandatory urine testing of job applicants for evidence of drug use  
12 constitutes a search or seizure within the meaning of the Fourth Amendment.

13           6.7    There is no special need for drug testing all City job applicants. The Policy does  
14 not provide adequate procedures to protect against deprivations of liberty. The Policy violates  
15 the Fourth Amendment.

16           6.8    Plaintiffs ask for an injunction requiring the cessation of said deprivations and  
17 unlawful acts.

18                           **THIRD CAUSE OF ACTION: 42 U.S.C. § 1983**

19           Plaintiffs reallege and incorporate by reference the allegations contained in  
20 Paragraphs 1.1 through 6.8.

21           6.9    The Policy has been implemented and enforced by the City under color of State  
22 law.

23           6.10   The Policy has subjected and continues to subject job applicants to deprivations of  
24 rights, privileges and/or immunities secured by the U.S. Constitution and the Washington  
25 Constitution.

26           6.11   Plaintiffs ask for an injunction requiring the cessation of said deprivations and  
27 unlawful acts.

28                           **FOURTH CAUSE OF ACTION: DECLARATORY RELIEF**

1 Plaintiffs reallege and incorporate by reference the allegations contained in  
2 Paragraphs 1.1 through 6.11.

3 6.12 Plaintiffs seek a declaration that the Policy is unconstitutional and violates the  
4 United States Constitution and/or the Washington Constitution.

5 6.13 There is a justiciable controversy between the parties arising out of the Policy. An  
6 actual dispute exists between the parties as they have genuine and opposing interests that are  
7 direct and substantial. A judicial determination of this dispute will be final and conclusive.  
8 Under CR 57 and RCW 7.24.120, a declaratory judgment as to the constitutionality of the  
9 Policy is appropriate and necessary.

10 **VII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for the following relief:

12 A. An injunction, both preliminary and permanent, requiring cessation of the Policy.

13 B. A declaratory judgment that the Policy is unconstitutional under the Washington  
14 Constitution and/or the United States Constitution.

15 D. An award of Plaintiffs' costs and expenses, including reasonable attorneys' fees,  
16 pursuant to 42 U.S.C. § 1988 and any other applicable law.

17 E. Such other relief as the Court may deem just, equitable and appropriate.

18 DATED this 9 day of April, 1998.

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Michael E. Kipling (#7677)  
Alexander J. Higgins (#20868)

22 COOPERATING ATTORNEYS FOR THE AMERICAN  
23 CIVIL LIBERTIES UNION OF WASHINGTON

24 On behalf of the Plaintiffs  
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JR.; KAREN JENSEN; JOHN JUNKER; )  
DON MORELAND; CHARLES ROYER; )  
and AMERICAN CIVIL LIBERTIES )  
UNION OF WASHINGTON, taxpayers, )  
Plaintiffs, )  
v. )  
CITY OF SEATTLE, )  
a municipal corporation, )  
Defendant. )

NO. 97-2-22567-1 SEA  
SUMMONS

TO THE DEFENDANT:

A lawsuit has been started against you in the above-entitled court by plaintiffs above-named. Plaintiffs' claims are stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the person signing this Summons within 20 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what

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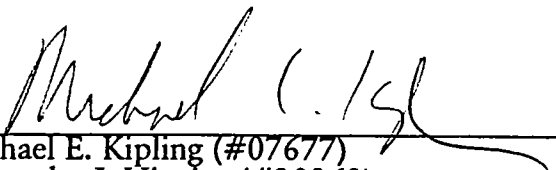
1 it asks for because you have not responded. If you serve a notice of appearance on the  
2 undersigned person, you are entitled to notice before a default judgment may be entered.

3 You may demand that the plaintiff file this lawsuit with the Court. If you do so, the  
4 demand must be in writing and must be served upon the person signing this Summons. Within  
5 14 days after you serve demand, the plaintiff must file this lawsuit with the court, or the service  
6 on you of this Summons and Complaint will be void.

7 If you wish to seek the advice of an attorney in this matter, you should do so promptly  
8 so that your written response, if any, may be served on time.

9 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
10 of Washington.

11 DATED this 9 day of April, 1998.

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Michael E. Kipling (#07677)  
Alexander J. Higgins (#20868)

COOPERATING ATTORNEYS FOR THE AMERICAN  
CIVIL LIBERTIES UNION OF WASHINGTON

On behalf of the Plaintiffs