

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

Dyanna Black, <i>individually and on behalf of</i>)	
<i>similarly situated individuals,</i>)	
)	
Plaintiff,)	
)	
v.)	No. 18-333
)	
City of Kansas City, Missouri,)	
)	
Nathan Garrett,)	
<i>in his official capacity as Member of the</i>)	
<i>Kansas City Board of Police Commissioners,</i>)	
)	
Sly James,)	
<i>in his official capacity as Member of the</i>)	
<i>Kansas City Board of Police Commissioners,</i>)	
)	
Leland Shurin,)	
<i>in his official capacity as President of the</i>)	
<i>Kansas City Board of Police Commissioners,</i>)	
)	
Mark Tolbert,)	
<i>in his official capacity as Member of the</i>)	
<i>Kansas City Board of Police Commissioners,</i>)	
)	
Don Wagner,)	
<i>in his official capacity as Member of the</i>)	
<i>Kansas City Board of Police Commissioners,</i>)	
)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Dyanna Black, alleges as follows:

INTRODUCTION

1. Although Plaintiff Dyanna Black was parked lawfully, her vehicle was ticketed, towed, and impounded at the direction of a Kansas City police officer. After her parking ticket was dismissed, Black attempted to recoup the hefty towing fee she was required to pay in order to regain possession of her vehicle. But neither the City nor the Kansas City Board of Police Commissioners provides *any*—much less adequate—due-process protections to ensure that a mistaken impoundment does not result in the permanent deprivation of an innocent person’s private property. In this civil-rights action brought on behalf of a similarly situated class of individuals, Black seeks judgment against Defendants for violating her Fourteenth Amendment rights by failing to provide any procedure whatsoever by which a person whose vehicle is subject to impoundment can get their money back.

PARTIES

2. Plaintiff, Dyanna Black, is a United States citizen who resides in Kansas City, Missouri.
3. Defendant City of Kansas City is a political subdivision and a municipality of the state of Missouri.
4. Defendant Nathan Garrett is a Member of the Kansas City Board of Police Commissioners. He is sued in his official capacity only.
5. Defendant Sly James is a Member of the Kansas City Board of Police Commissioners. He is sued in his official capacity only.
6. Defendant Leland Shurin is President of the Kansas City Board of Police Commissioners. He is sued in his official capacity only.

7. Defendant Mark Tolbert is a Member of the Kansas City Board of Police Commissioners. He is sued in his official capacity only.
8. Defendant Don Wagner is a Member of the Kansas City Board of Police Commissioners. He is sued in his official capacity only.

CLASS ACTION ALLEGATIONS

9. Plaintiff brings her claim for prospective relief against Defendants as a class action on behalf of herself and all others similarly situated pursuant to Rules 23(a) and 23(b)(2).
10. Plaintiff seeks to represent the following class on claims for injunctive relief: individuals who have had, or in the future will have, a vehicle towed and impounded at the direction of the Kansas City Police Department.
11. Because of Defendants' failure to institute adequate protections within the impoundment procedural scheme that they have created, members of the class have been or will be subjected to a violation of their procedural due process rights protected by the Fourteenth Amendment of the United States Constitution. Plaintiff seeks injunctive relief to remedy Defendants' illegal and unconstitutional policies and customs.
12. The information as to the precise size of the class and the identity of the persons who are in the class is in the exclusive control of the Defendants. The Class encompasses hundreds, and possibly thousands, of individuals geographically dispersed throughout the Kansas City metropolitan area and elsewhere. It also includes future members, whose identities are not yet known. The number of persons who are members of the class described above are so numerous that joinder of all members in one action is impracticable.

13. Because the Class seeks prospective relief only, questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein are generally applicable to the entire class. These legal and factual questions include, but are not limited to:
 - whether Defendants have denied procedural-due-process protections to the Class such that members of the Class have been erroneously and permanently deprived of personal property without the opportunity to be heard.
14. Plaintiff's claim for prospective relief is typical of the claims of the members of the Class because Plaintiff and all Class members are subject to the harm caused by the same wrongful policy and custom of the Defendants. Plaintiff's claim arises from the same course of conduct that gives rise to the claims of the Class members, and they are based on the same legal theory.
15. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interest that is contrary to or in conflict with those of the Class she seeks to represent. Plaintiff is represented by competent and skilled counsel whose interests are fully aligned with the interest of the Class.
16. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. Defendants have acted or refused to act on grounds that apply generally to the Class, and final injunctive relief is appropriate respecting the Class as a whole.

JURISDICTION AND VENUE

17. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution.

18. This Court has jurisdiction under 28 U.S.C. § 1331 over Plaintiff's claim because it arises under the Constitution of the United States.
19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) because Defendants are located in Jackson County, Missouri, and their actions giving rise to the claim in this suit occurred in Jackson County.
20. Divisional venue is proper in the Western Division pursuant to Local Rule 3.2(a)(1)(A).

FACTS

21. On February 2, 2016, Plaintiff lawfully parked her vehicle on 16th Street, near Wyandotte Street, in Kansas City, Missouri.
22. 16th Street is a public street.
23. When Plaintiff returned to the place she had parked her vehicle, she was shocked to find her vehicle missing.
24. Upset, Plaintiff assumed her vehicle had been stolen and contacted friends, one of whom drove her to a warm place so she could figure out her next steps.
25. A friend advised her that vehicles in Kansas City are often towed and suggested she check the City's tow website.
26. Plaintiff pulled up the Kansas City Tow Services Division website on her mobile phone, where she confirmed that her vehicle had been towed and impounded.
27. The City of Kansas City operates the Tow Services Division.
28. The Tow Services Division stores vehicles impounded by the Kansas City Police Department at the Tow Lot.
29. Plaintiff had to scramble to find a ride to the Tow Lot, which is more than 10 miles away and takes more than 25 minutes by car from the location where she had parked.

30. Plaintiff was forced to pay \$265.00 to retrieve her vehicle from the impoundment lot.
31. At the impound facility, Plaintiff determined that a police officer named “Hakes,” of the Kansas City Police Department, had authorized the impoundment of Plaintiff’s vehicle, and Plaintiff retrieved the physical copy of an illegal-parking citation from the impound facility.
32. Officer Hakes or his designee unlocked and opened the vehicle and accessed the interior.
33. Plaintiff did not consent to this intrusion into her effects and did not know about it until after the fact.
34. Plaintiff had not, in fact, parked illegally. Her vehicle was parked in compliance with all regulations and ordinances of Kansas City and all applicable state and federal laws.
35. On May 23, 2016, Plaintiff went to Kansas City Municipal Court to contest her citation, spending 6 hours in court.
36. Plaintiff won her case on the merits.
37. The presiding judge dismissed the illegal-parking citation.
38. After Plaintiff’s citation was dismissed, Plaintiff requested that the judge order reimbursement of the fee she had to pay to retrieve her vehicle from the City Tow Lot.
39. The Kansas City Municipal Court judge disclaimed any power to issue such an order.
40. Consequently, Plaintiff has been permanently deprived of \$265.00 she had to pay to retrieve her vehicle from the impound facility, even though her vehicle should not have been impounded in the first instance.
41. Neither the Kansas City Police Department nor the City of Kansas City has any process by which a person who must pay money to retrieve their vehicle after it has been

improperly towed and/or impounded—by order of the Kansas City Police Department—
can seek reimbursement.

42. Plaintiff's deprivation is not the result of an unauthorized failure of officials to follow established procedure, whereby an action against officers' individual malfeasance might be appropriate, but instead, it is a direct result of a deficiency in the established procedure itself: namely, that there is no procedure whatsoever.

COUNT I

42 U.S.C. § 1983 – Due Process

43. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.
44. Defendants' policies and customs regarding the impoundment of vehicles required Plaintiff to pay \$265.00 to have her vehicle released from the Tow Lot.
45. Class members are, or will be, required to pay a variable tow fee based on the weight of the vehicle (from \$265.00 to \$440.00) and variable storage fees based on weight and length of time stored (between \$30.00 and \$70.00 per day) before a Class member can secure the funds and alternative transportation to the Tow Lot and reclaim his or her vehicle.
46. Defendant provide no process or procedure by which Plaintiff might recover her fee, even though her vehicle was in compliance with all regulations and ordinances and her illegal-parking citation was dismissed in Kansas City Municipal Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- a. Grant a permanent injunction requiring Defendants to institute an adequate process whereby persons whose vehicles are improperly towed and

impounded can recover the fees they were required to pay to secure the return of their vehicles;

- b. Award Plaintiff's costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- c. Allow such other and further relief as this Court finds just.

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony E. Rothert, #44827
Jessie Steffan, #64861
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114
arothert@aclu-mo.org
jsteffan@aclu-mo.org

Gillian R. Wilcox, #61278
ACLU of Missouri Foundation
406 West 34th Street, Suite 420
Kansas City, Missouri 64111
Phone: (816) 470-9938
gwilcox@aclu-mo.org

Attorneys for Plaintiff