

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
PADUCAH DIVISION

**FILED**  
VANESSA L. ARMSTRONG, CLERK  
AUG 10 2018

U.S. DISTRICT COURT  
WEST'N. DIST. KENTUCKY

GARY S. VANDER BOEGH, )  
)  
Plaintiff, )

Civil Action No. 5:18 CV 123-TBR

v. )  
)

BRANDI HARLESS, MAYOR OF PADUCAH, )  
KENTUCKY; BRANDON BARNHILL, CHIEF, )  
PADUCAH POLICE DEPARTMENT; CITY )  
OF PADUCAH, KENTUCKY; PADUCAH )  
POLICE DEPARTMENT, OFFICER JANE )  
DOE; OFFICER JOHN DOE; OFFICER JACK )  
DOE; OFFICER JOE DOE; CITY )  
COMMISSIONER SARAH STEWART )  
HOLLAND; CITY COMMISSIONER )  
RICHARD ABRAHAM; CITY )  
COMMISSIONER ALLAN RHODES, JR.; )  
AND MAYOR PRO TEM SANDRA WILSON )

Defendants. ) TRIAL BY JURY REQUESTED

COMPLAINT

1. Plaintiff Gary Vander Boegh for his Complaint of a 42 U.S.C. §1983 Civil Rights violation, of a violation of his Fourth and Fourteenth Amendment rights, and of false arrest and false imprisonment, against the above named Defendants hereby states as follows.

**JURISDICTION AND VENUE**

2. Subject matter jurisdiction is conferred upon this Court by 42 U.S.C. § 1983 and 28 U.S.C. §1331.

3. Plaintiff Vander Boegh alleges herein that officers from the Paducah police Department, acting pursuant to policies and orders established and approved by their superiors including the Chief of Police, without cause or legal justification arrested him, detained him, and used unreasonable force against him causing him physical injury and emotional distress. Consequently, This Court has jurisdiction to hear this action pursuant to 42 U.S.C. § 1983.

4. This Court has jurisdiction to hear this action pursuant to 28 U.S.C. § 1331 because this matter involves one or more federal questions relating to alleged violations of 42 U.S.C. § 1983, and the Fourth and Fourteenth Amendments to the United States Constitution.

5. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1)(2) as the defendants reside in this district and the events at issue occurred in this district.

## **PARTIES**

### **Plaintiff**

6. Plaintiff Gary S. Vander Boegh is a resident and citizen of the United States of America and of the Commonwealth of Kentucky. Mr. Vander Boegh currently resides and works in Paducah, Kentucky.

### **Defendants**

7. Defendant Brandi Harless, is Mayor Of Paducah, Kentucky and was in that position at the time of the August 10, 2017 incident at issue in the instant Complaint, with

an office at City Hall, 300 South 5th Street, P.O. Box 2267, Paducah, Kentucky 42002-2267 (zip code 42003 if not using P.O. Box).

8. Defendant Brandon Barnhill is Chief of the Paducah Police Department in Paducah, Kentucky with an office at the Paducah Police Department, 1400 Broadway Paducah, KY 42001. Chief Barnhill was Chief of the Paducah Police Department during all times relevant to the instant Complaint.

9. Defendant City of Paducah, Kentucky is a municipal corporation which includes and controls the Paducah Police Department.

10. Defendant Paducah Police Department employs the police officers who took the actions against Plaintiff alleged in the instant Complaint, and is a component of and controlled by the City of Paducah, Kentucky.

11. Defendants Officers Jane, John, Jack, and Joe Doe were police officers employed by the Paducah Police Department at the time of the August 10, 2017 incident that is the subject of this Complaint, and were directly involved in the actions taken against Plaintiff at issue in the instant Complaint.

12. City Commissioner Sarah Stewart Holland; City Commissioner Richard Abraham; City Commissioner Allan Rhodes, Jr.; and Mayor Pro Tem Sandra Wilson are members of the Paducah Board of Commissioners and were so at the time of the August 10, 2017 incident that is the subject of the instant Complaint.

**COUNT I: DEFENDANTS CONDUCTED AN UNREASONABLE SEIZURE AND USED EXCESSIVE FORCE AGAINST PLAINTIFF GARY VANDER BOEGH IN VIOLATION OF 42 U.S.C. § 1983 AND THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

13. Plaintiff re-alleges and hereby incorporates by reference each and every allegation contained in the preceding and succeeding paragraphs.

14. On August 10, 2017, at approximately 9:45 am., in a public parking lot at the Paducah-McCracken County Julian Carroll Convention Center, Plaintiff Gary Vander Boegh was arrested by officers employed by the Paducah Police Department.

15. There was no legal justification or probable cause for this arrest which violated the Fourth Amendment's prohibition against unreasonable seizures and the Fourteenth Amendment's Due Process guarantee.

16. Approximately one year prior to the August 10, 2017 arrest incident, in July of 2016, Plaintiff attended a publicly noticed meeting sponsored by an organization called the Cold War Patriots that was open to the public. During this meeting, a female representative of this organization confronted Plaintiff and forcibly took his cell phone from him without his permission because Plaintiff was (legally) recording the meeting and statements of participants in the meeting. Plaintiff made an effort to retrieve his cell phone which prompted this female representative or another member of the Cold War Patriots organization to call the Paducah Police. The Paducah Police responded and made no arrests but advised Plaintiff that the Cold War Patriots would not consider Plaintiff welcome at their future events.

17. Two days prior to the August 10, 2017 arrest incident, on August 8, 2017, Plaintiff made a public presentation before the Paducah City Commission, which was made available to the public on the internet via YouTube. Two other individuals, George Johnson and Steve Davis, were present with Plaintiff at this time. The Paducah Mayor and City Commissioners afforded Plaintiff an opportunity to speak without interruption. At the end of Plaintiff's presentation, Plaintiff noted that some claimants under the federal Energy Employees Occupational Illness Compensation Program Act (EEOICPA) who are represented by Plaintiff's company Commonwealth Environmental Services (CES) and some nuclear workers would be peacefully attending a publicly advertised meeting of the Cold War Patriots organization scheduled for August 10, 2017 to ask federal Department of Energy (DOE) and Department of Labor (DOL) representatives anticipated to be present questions regarding these workers' claims and coverage under the EEOICPA. The meeting at the City Council on August 8, 2017 ended without further comment. Plaintiff and his two companions left City Hall without incident.

18. On August 10, 2017, several nuclear workers agreed to meet Plaintiff either at his office or outside the Paducah Convention center before entering the building. At approximately 9:30 am on August 10, 2017, Plaintiff was preparing to leave his office when CES EEOICPA claimant David Nelson arrived at my office. He agreed to follow Plaintiff to the Convention Center.

19. Plaintiff decided at the last minute to contact the Paducah Police dispatch out of an abundance of caution, remembering the prior incident that had occurred in July of the previous year. The Paducah Police answered Plaintiff's call and a dispatch officer

spoke to Plaintiff on his cell phone as he entered the public parking lot. As Plaintiff entered the parking lot he slowed down to find a parking spot. As Plaintiff approached the side access entrance, while still on the cell phone with Paducah Dispatch, a Paducah Police officer waved at him and Plaintiff rolled down the right passenger window and told the officer that he would park and come over to talk with him.

20. As Plaintiff ended his call with Paducah Police dispatch, he stepped out of his car, and Mr. Nelson, the nuclear worker who was accompanying Plaintiff, stepped out of his car. Plaintiff's line of sight was west looking at Mr. Nelson, and Plaintiff said, "I need to go talk with the officer at the entrance to the Convention Center." Mr. Nelson then replied, "You won't have to, here they come!" As Plaintiff turned, he saw three to four Paducah Police officers running towards him.

21. As the running officers got within approximately 30 feet of Plaintiff, Plaintiff then sensed a threat and said to them, "fellows please keep your body cams rolling." An officer replied to the effect that the body cams were on.

22. Plaintiff asked the police officers what was happening and the officers replied that Plaintiff was not allowed to be on the "private parking lot." They also said "you've been served notice!" Plaintiff replied, "I thought this was a public parking lot?" These words had barely left Plaintiff's mouth when 3 male police officers grabbed him and his right arm was twisted behind his back by the officers, while at the same time throwing Plaintiff against the side and top of the top of the car he was driving.

23. At no time during this incident did Plaintiff resist the officers or his arrest or pose or communicate any threat to the officers.

24. At no time during this incident did Plaintiff violate any law or court order, or give the officers any probable cause to believe he had done so.

25. During this incident, Plaintiff's arm was twisted by the police officers into a painful and unnatural position. Plaintiff has had limited motion in his right arm since this incident and believes he suffered a rotator cup injury as a result of the officers' use of excessive force.

26. As the three officers were placing Plaintiff in handcuffs, a female officer pulled up and Plaintiff was placed in the police car.

27. Plaintiff was transported to the McCracken County jail garage where he was forced to wait inside the cramped police car for approximately 20 minutes while the Black police officer waited for information on the charges to be brought against Plaintiff to be received inside her police car.

28. Mr. Nelson, the nuclear worker who had accompanied Mr. Vander Boegh to on August 10, 2017, and who had driven his own car into the same parking lot as Mr. Vander Boegh at the same time, was told by the Paducah Police present that he should move his car or risk arrest. He moved his car and was not arrested. Mr. Vander Boegh was not provided any such option to avoid arrest on August 10, 2017.

29. After the female officer received a fax, Plaintiff was removed from the back seat and taken inside the McCracken County Jail for booking. Plaintiff was forced to disrobe and provided orange clothing, and he was placed inside a holding cell for approximately 4 hours and then released on his own recognizance.

30. As a result of the conduct of the Paducah Police during this incident, Plaintiff suffered physical injury and emotional distress.

31. The charges against Plaintiff were later dropped on condition that Plaintiff agree to remain a certain distance away from meetings of the organization that had sponsored the meeting on August 10, 2017.

**COUNT II: DEFENDANTS CONDUCT IN PREVENTING HIM FROM ATTENDING A PUBLIC MEETING TO PRESENT INFORMATION TO AND ASK QUESTIONS OF FEDERAL GOVERNMENT OFFICIALS VIOLATED PLAINTIFF GARY VANDER BOEGH'S FIRST AMENDMENT RIGHT OF FREEDOM OF SPEECH AND HIS RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES IN VIOLATION OF 42 U.S.C. § 1983**

32. Plaintiff re-alleges and hereby incorporates by reference each and every allegation contained in the preceding and succeeding paragraphs.

33. Plaintiff had announced in advance of the August 10, 2017 meeting that he and associated others intended to attend the August 10, 2017 meeting for the purposes of presenting information to and asking questions of federal Department of Labor and Department of Energy officials.

34. Plaintiff had committed no crime or violated any law or court order in driving into the parking lot of the Convention Center on August 10, 2017 nor would he have done so by proceeding to attend the meeting on that date which was attended by federal government officials and City of Paducah officials.

35. The irregular and unlawful procedure Defendants used to prevent Plaintiff



from attending that meeting provide circumstantial evidence that Defendants engaged in the wrongful actions against Plaintiff described above in order to prevent him from exercising his First Amendment rights to speak on matters of public importance in this meeting with federal officials (including regarding the rights of his claimants, who have become ill as a result of their work as DOE contractors during the cold war, to benefits under the EEOICPA program) and to prevent him from petitioning the federal officials present for corrective actions in the EEOIPCA program (to correct illegalities, unjust practices, and potential corruption).

**COUNT III: DEFENDANTS SUBJECTED PLAINTIFF TO A FALSE ARREST AND IMPRISONMENT, ASSAULT AND BATTERY, AND MALICIOUS PROSECUTION**

36. Plaintiff re-alleges and hereby incorporates by reference each and every allegation contained in the preceding and succeeding paragraphs.

37. The Paducah Police had no justification or probable cause for the arrest of Plaintiff on August 10, 2017.

38. The Paducah Police had no justification or probable cause for detaining Plaintiff at the county jail for 4 hours on August 10, 2017.

39. As a result of the conduct of the Paducah Police during his arrest and detainment, Plaintiff suffered physical injury and emotional distress.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests:

A. The Court declare, adjudge and decree that plaintiff was illegally arrested and imprisoned by Defendants and treated by Defendants with excessive force in violation of 42 U.S.C. § 1983;

B. That judgment be entered against Defendants, jointly and severally, and in favor of Gary Vander Boegh for compensatory damages in an amount to be determined after trial;

C. That judgment be entered against Defendants, jointly and severally, and in favor of Gary Vander Boegh for appropriate injunctive relief to prevent Defendants from repeating their wrongful conduct in regard to Plaintiff;

D. That judgment be entered against Defendants, jointly and severally, and in favor of Gary Vander Boegh for exemplary damages of approximately \$500,000;

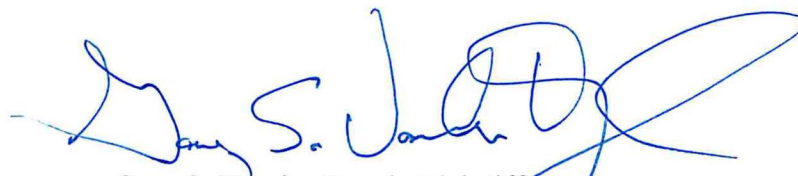
E. That judgment be entered against Defendants, jointly and severally, and in favor of Gary Vander Boegh for attorneys' fees, costs, and expenses reasonably incurred;

F. The Court award plaintiff pre-judgment and post-judgment interest as provided by law;

G. That this Court grant such other and further relief, in law or in equity, as to which Plaintiff may be entitled; and

H. That Plaintiff be granted a jury trial.

Respectfully submitted,



Gary S. Vander Boegh, Plaintiff, *pro se*  
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