

CENTER FOR JUSTICE  
BREEAN BEGGS, WSBA 20795  
35 West Main, Ste. 300  
Spokane, WA 99201  
(509) 835-5211  
Attorney for Plaintiffs

HON. FRED VAN SICKLE

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

SHAWN HUSS, a single man, and )  
others similarly situated, )

Case No.: CV-05-180-FVS

Plaintiffs, )

SECOND AMENDED COMPLAINT FOR  
VIOLATIONS OF CIVIL RIGHTS

vs. )

CLASS ACTION

SPOKANE COUNTY, a municipal )  
corporation, )

Defendant. )

**I. INTRODUCTION**

1.1 This class action seeks declaratory and injunctive relief and monetary damages against Defendant SPOKANE COUNTY for violations of the Plaintiff's, and others similarly situated, civil rights guaranteed under the due process clause of the Fourteenth Amendment, through their jail intake booking fee policy pursuant to 42 U.S.C. §§ 1983 and 1988. Spokane County's policy regarding the collection and reimbursement of jail intake fees is illegal in that it violates Mr.

1 Huss's, and others similarly situated, clearly established constitutional rights under  
2 the Fourteenth Amendment, not to be deprived of property without due process of  
3 law. Further, RCW 70.48.390 is facially unconstitutional.  
4

## 5 **II. JURISDICTION AND VENUE**

6 2.1 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§  
7 1331 and 1361, 28 U.S.C. § 2201, and 5 U.S.C. § 702.  
8

9 2.2 Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (2), (e)  
10 (2)-(3).  
11

12 2.3 This action is brought pursuant to the Fourteenth Amendment to the  
13 United States Constitution, RCW 70.48.390, 42 U.S.C. §§ 1983 & 1988.  
14

15 2.4 All acts complained of herein occurred in Spokane County, Washington  
16 and/or in the Eastern District of Washington.

## 17 **III. PARTIES**

18 3.1 Plaintiff SHAWN HUSS is a single man residing in Spokane County,  
19 which is within the Eastern District of Washington and he has been a resident of  
20 Spokane County at all times relevant herein. He is a real party in interest in this  
21 case.  
22

23 3.2 Defendant SPOKANE COUNTY is a political subdivision and/or  
24 municipal corporation and is located within the Eastern District of Washington.  
25

#### IV. FACTS

4.1 On or about May 14, 1999 the Washington legislature passed RCW 70.48.390, amending RCW 70.48, which authorized city, county, and regional jails to take a \$10.00 booking fee from the person of each individual booked. (S.H.B. 1143, (1999)).

4.2 On or about May 7, 2003 the 58<sup>th</sup> legislature of Washington amended RCW 70.48.390 to allow counties to collect “jail’s actual booking costs or one hundred dollars, whichever is less.” (S.H.B. No 1232 (2003)).

4.3 On or about November 19, 2003 Lt. Edee Hunt and Tim O’Brien, Deputy Prosecuting Attorney sent a memorandum to the Spokane Board of County Commissioners regarding the collection of booking fees.

4.4 On or about February 24, 2004 the Spokane County Board of Commissioners passed resolution 04-0160 authorizing the Spokane County Jail to develop and implement a procedure to collect a booking fee from persons booked in the Spokane County Jail in accordance with RCW 70.48.390.

4.5 The Spokane County Jail adopted a policy which authorizes the collection of an intake fee. Federal inmates are charged the federal daily rate, while non-federal inmates are charged the jail intake fee—\$89.12 as of May, 2004.

4.6 The official policy allows fees to be collected from the inmate’s

1 person at the time of booking. If the person does not have adequate fees on their  
2 person at the time of booking, a charge is assessed to the person's account.

3 4.7 All cash contained on the individual's person or effects is collected by  
4 the County and placed into a bank account owned and controlled by the County  
5 Jail that is used to benefit Spokane County.

6 4.8 The policy authorizes the County to convert the money collected as a  
7 booking fee for the County's use and benefit without a hearing.  
8

9 4.9 The policy does not provide for a pre-deprivation hearing or any other  
10 opportunity for the inmate to contest the seizure and conversion of his/her money.  
11

12 4.10 Spokane County adopted a reimbursement policy which places the  
13 burden on the inmate to prove that criminal charges were dropped or that he was  
14 acquitted in order to redeem his funds. Specifically, the policy states "*it is your*  
15 *responsibility to provide the proof from the Courts that your charges have been*  
16 *dismissed or you have been acquitted*" and that only upon an investigation by the  
17 Spokane County Jail Staff may the individual receive his funds back.  
18

19 4.11 Captain Collins announced the implementation of this official policy,  
20 as described above, effective on or about May 5, 2004.  
21

22 4.12 On or about October 31, 2004, the Plaintiff was arrested based on a  
23 frivolous domestic violence complaint.  
24

1 4.13 He was taken to the Spokane County Jail.

2 4.14 Upon being booked, his wallet was inventoried as personal property to  
3 be returned to him upon release. Unbeknownst to Mr. Huss, Spokane County  
4 seized \$39.30 from Mr. Huss's wallet and deposited it into a checking account for  
5 the County's use and benefit.  
6

7 4.15 At the time of the property seizure, Spokane County did not inform  
8 Mr. Huss that it was charging him a booking fee, that the statute mandated return  
9 of the fee upon dismissal of charges, nor did they explain to him the process for  
10 obtaining a refund.  
11

12 4.16 While in jail Mr. Huss was informed by other inmates that he should  
13 not expect to get any money back from his wallet back when he was released.  
14

15 4.17 Mr. Huss was subsequently released from the Spokane County Jail  
16 after all charges were dropped.  
17

18 4.18 Upon release, his funds were not returned to him.

19 4.19 At the time of his release, Mr. Huss was not provided with Spokane  
20 County Jail's Reimbursement Form or any other means to get his funds back.  
21

22 4.20 Mr. Huss lives on a limited income and was dependant on the  
23 \$39.30 taken from his wallet to feed and provide for his family until his next  
24 paycheck.  
25

1 4.21 Pursuant to Spokane County's reimbursement policy, Mr. Huss must  
2 waive his rights to due process and other damages in order to redeem his property.

3  
4 4.22 Only after being served with Plaintiff's notice of claim letter outlining  
5 the violations of his federal rights did Spokane County refund Mr. Huss's \$39.30.

6 4.23 To date, Defendant Spokane County has not refunded the actual or  
7 constructive interest on Mr. Huss's seized money, nor has it compensated him for  
8 the consequences of leaving him without sufficient funds to support himself after  
9 his release from jail.  
10

11 4.24 Upon belief, since May 5, 2004 Spokane County has seized and  
12 converted to its own use thousands of dollars from hundreds of inmates at the  
13 Spokane County Jail under the same procedures used with Mr. Huss; including  
14 failure to provide adequate notice and an adequate pre-deprivation hearing.  
15

16 4.25 Upon belief, dozens, if not hundreds, of those inmates were entitled  
17 to receive reimbursement of their seized monies and interest after the criminal  
18 proceedings against them were terminated in their favor.  
19

20 4.26 All actions taken in regard to the seizure and conversion of cash  
21 described in the foregoing paragraphs were undertaken according to official  
22 County practice and policy as approved by the County Commissioners and other  
23 policy makers.  
24

**V. CLASS ACTION ALLEGATIONS**

5.1 Plaintiff realleges all matters set forth above.

5.2 Mr. Huss brings this action on behalf of himself and all others similarly situated pursuant to Fed. R. Civ. P. 23(a) and 23(b) (2), (3). The Plaintiff provisionally proposes the following class definition:

All individuals whose funds have been seized and converted to the County's use under the Spokane County Jail's booking fee policy without a adequate notice and/or hearing, in violation of their due process rights under the law.

5.3 This is an appropriate class action because the proposed class is so numerous that joinder of all members is impracticable.

5.4 There are questions of law and fact common to the class, including whether Defendant's actions violate Plaintiff's procedural due process rights under the Fourteenth Amendment of the U.S. Constitution.

5.5 The claims of the Plaintiff are typical of the claims of the class.

5.6 The named Plaintiff will fairly and adequately protect the interest of the class.

5.7 The named Plaintiff has available competent counsel with experience in civil rights and prisoners' rights who is willing and able to protect the interests of the class.

1       5.8 The Defendants have acted or refused to act on grounds generally  
2 applicable to the class, thereby making appropriate final declaratory and injunctive  
3 relief and monetary damages with respect to the class as a whole.  
4

## 5                                   **VI. CAUSES OF ACTION**

### 6       **CIVIL RIGHTS — VIOLATION OF THE FOURTEENTH AMENDMENT**

7       6.1 Plaintiff realleges all matters set forth in paragraphs 8 through 41,  
8 above.  
9

10       6.2 The actions of Defendant Spokane County, complained of above were  
11 taken under color of state law. These actions constitute clearly established  
12 violations of the Fourteenth Amendment right to be free from the deprivation of  
13 property without due process of law.  
14

15       6.3 The Defendant's official intake fee collection policy violates Plaintiff's  
16 rights under the Fourteenth Amendment of the U.S. Constitution for several  
17 reasons:  
18

- 19       • It does not provide him with adequate notice of the seizure and conversion  
20       of his property and his attendant rights;
- 21       • It does not provide an opportunity to object to the seizure and conversion of  
22       his property, and to assert a reason, such as indigent status or exempt source  
23



1 of funds, that may prevent the County from taking and converting his  
2 money;

- 3 • It does not provide any type of hearing prior to the deprivation of the  
4 property; and
- 5 • It impermissibly places the burden on Mr. Huss to get his money back.  
6

7 Furthermore, there are no procedural safeguards guaranteeing that Mr. Huss's  
8 property (or anyone else's) will be returned in the event that he is not charged, or if  
9 he is acquitted. Therefore, Spokane County has violated Mr. Huss's procedural  
10 due process rights under the Fourteenth Amendment.  
11

12 6.4 Plaintiff is entitled to declaratory relief pursuant to 28 U.S.C. § 2201  
13 that Defendant's Resolution 04-0160 and RCW 70.48.390 are unconstitutional.  
14

15 6.5 Plaintiff is entitled to a preliminary and permanent injunction under the  
16 traditional equitable criteria: 1) there is a strong likelihood that Plaintiff will  
17 succeed on the merits, 2) there is a possibility of irreparable injury to the plaintiff,  
18 and others similarly situated, if injunctive relief is not granted, and 3) the hardship  
19 placed on the Plaintiff by Defendant's Resolution 04-0160 and RCW 70.48.390  
20 outweigh the public interest of maintaining the Defendant's policy.  
21

22 6.6 Defendants acted intentionally, knowingly, and/or with reckless or  
23 careless disregard and/or deliberate indifference to Plaintiff's constitutional rights.  
24

1 6.7 Defendants are liable for damages, costs and attorneys' fees under 42  
2 U.S.C. §§ 1983, 1988.

3  
4 6.8 Neither Plaintiff nor other class members were required to exhaust their  
5 administrative remedies for these 42 U.S.C. §§ 1983 & 1988 claims.

### 6 **MUNICIPAL LIABILITY**

7 6.9 Plaintiff realleges all matters set forth above.

8  
9 6.10 Defendant Spokane County explicitly adopted and implemented a  
10 policy, custom, or practice permitting its employees to collect booking fees from  
11 the person of individuals at the time they are booked without a pre-deprivation  
12 hearing pursuant to Spokane County Resolution 04-0160 and RCW 70.48.390.  
13 These policies, customs, or practices explicitly allow, condone, ratify, and afford  
14 the reckless, careless, and erroneous field decisions by its personnel so as to make  
15 mistakes or act willfully, wantonly and/or recklessly.  
16

17 6.11 Defendant Spokane County, individually or through its agencies, is a  
18 "person" within the meaning of 42 U.S.C. § 1983. All actions taken by Spokane  
19 County in relation to the Plaintiff were taken under the color of law.  
20

21 6.12 In violation of the Fourteenth Amendment to the United States  
22 Constitution, Defendant Spokane County's illegal actions have deprived Plaintiff  
23  
24

1 of his Constitutionally-protected rights against deprivation of Property without due  
2 process of law.

3  
4 6.13 By its conduct as described herein, Spokane County proximately  
5 caused the constitutional violations described above.

6 6.14 By this conduct, Spokane County violated Plaintiff's federal  
7 constitutional and statutory rights under 42 U.S.C. § 1983.  
8

## 9 **VI. DAMAGES**

10 7.1 Spokane County's illegal seizure and conversion of money from Mr.  
11 Huss and other class members proximately caused special damages in the amount  
12 of money taken, pre-judgment interest in an amount to be proven at trial,  
13 consequential damages in an amount to be proven at trial, and nominal damages.  
14

## 15 **VII. REQUEST FOR RELIEF**

16 WHEREFORE, the Plaintiff asks this Court to grant the following relief:

- 17 1. Certify this case as a class action under FRCP 23(b)(2), (3);  
18  
19 2. Issue a declaratory judgment that Defendant's Resolution 04-0160 and RCW  
20 70.48.390 violate Plaintiff's due process rights under the Fourteenth  
21 Amendment and are unconstitutional;  
22  
23  
24

3. Issue preliminary and permanent injunctions prohibiting the collection of inmate booking fees at the Spokane County Jail pursuant to either Spokane County Resolution 04-0160 and/or RCW 70.48.390;
4. Award Plaintiff and the class all special and general damages resulting directly and proximately from Defendant's conduct, as set forth above, in an amount to be determined at trial;
5. Award Plaintiff and the class all prejudgment and post judgment interest as allowed by law;
6. Award Plaintiff and the class all reasonable costs and attorney's fees incurred in connection with this lawsuit, pursuant to 42 U.S.C. § 1988, or any other applicable law; and
7. Award any further or additional relief which the Court finds equitable, appropriate, or just.

Respectfully submitted this 21st day of December, 2005.

CENTER FOR JUSTICE

s/Breean L. Beggs

WSBA 20795

35 W. Main, Suite 300

Spokane, WA 99201

E-Mail: [Breean@cforjustice.org](mailto:Breean@cforjustice.org)

Attorney for Plaintiff Shawn Huss

**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2005, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

Breean Lawrence Beggs [breean@cforjustice.org](mailto:breean@cforjustice.org), [dbacot@cforjustice.org](mailto:dbacot@cforjustice.org),  
[jrasler@cforjustice.org](mailto:jrasler@cforjustice.org)

James H. Kaufman [jkaufman@spokanecounty.org](mailto:jkaufman@spokanecounty.org)

Frank Conklin [fjconklin@yahoo.com](mailto:fjconklin@yahoo.com)

s/Breean L. Beggs  
WSBA # 20795  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867  
E-Mail: [Breean@cforjustice.org](mailto:Breean@cforjustice.org)  
Attorney for Plaintiff