
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>_____,</p> <p>Defendant.</p>	<p>LEGAL MEMORANDUM: ESTABLISHING PUBLIC STORAGE AS A STATE ACTOR UNDER 42 U.S.C. § 1983</p> <p>Case No. _____</p> <p>District Judge _____</p>
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This memorandum establishes the legal basis for treating Public Storage as a state actor under 42 U.S.C. § 1983, rendering them subject to constitutional constraints and liable for violations of federal rights, specifically rights protected under the First Amendment, the Religious Freedom Restoration Act (RFRA), and Utah's SB150. Public Storage's utilization of Utah's statutory framework for placing and enforcing liens against personal property constitutes state action through their substantial entanglement with governmental processes, procedures, and enforcement mechanisms.

When private entities like Public Storage employ state-created procedures to deprive individuals of constitutional rights, they transform from mere private actors into agents operating "under color of state law." This transformation subjects them to the same constitutional limitations that would apply to governmental entities. As demonstrated below, Public Storage's actions satisfy multiple tests established by federal courts for determining when private conduct constitutes state action, most

notably the Joint Action Test and elements of the Governmental Nexus and Symbiotic Relationship Tests.

Furthermore, Utah's statutory lien scheme itself contains procedural deficiencies that fall short of constitutional due process requirements, rendering any private actor who utilizes these deficient procedures a state actor under the Supreme Court's ruling in **Lugar v. Edmondson Oil Co**. The intersection of these deficient procedures with Public Storage's exercise of state-sanctioned authority creates a perfect storm of constitutional violations.

II. LEGAL STANDARD: STATE ACTION UNDER 42 U.S.C. § 1983

Section 1983 imposes liability on any person who, "under color of any statute, ordinance, regulation, custom, or usage, of any State," deprives another person of rights secured by the Constitution or federal law. While generally not applicable to private entities, courts have established that private actors can be deemed state actors when their conduct becomes so entwined with governmental functions that the line between private and state action blurs.

The Ninth Circuit recognizes at least five tests to determine when private action constitutes state action:

1. Public Function Test
2. Joint Action Test
3. Compulsion/Coercion Test
4. Governmental Nexus Test
5. Symbiotic Relationship Test

Satisfaction of any single test is sufficient to establish state action. **Lee v. Katz**, 276 F.3d 550, 554 (9th Cir. 2002). As demonstrated below, Public Storage's actions in utilizing Utah's lien statutes satisfy multiple tests, most conclusively the Joint Action Test.

III. PUBLIC STORAGE'S ACTIONS SATISFY THE JOINT ACTION TEST

A. Legal Standard for Joint Action

The Joint Action Test is satisfied when a private entity is a "willful participant" with the state in activity that deprives others of constitutional rights. *Dennis v. Sparks*, 449 U.S. 24, 27 (1980). A private party is liable under this theory when its actions are "inextricably intertwined" with those of the government. *Brunette v. Humane Society of Ventura County*, 294 F.3d 1205, 1211 (9th Cir. 2002). This requires showing "substantial cooperation" between the private party and the state. *Mathis v. Pac. Gas & Elec. Co.*, 75 F.3d 498, 503 (9th Cir. 1996).

The Supreme Court's decision in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), establishes that private creditors who utilize state statutory schemes to seize property can be state actors if: (1) they jointly participate with state officials in the seizure, and (2) the statutory scheme is procedurally defective under the Due Process Clause.

B. Public Storage's Substantial Cooperation with State Officials

Public Storage's lien process represents a textbook example of "substantial cooperation" with state officials:

1. Utilization of State-Created Lien Procedures: Public Storage initiates the lien process under Utah's statutory framework, which gives them state-sanctioned authority to assert a security interest against personal property.
2. Reliance on State Recordation Systems: Public Storage records its liens with county recorders, utilizing state record-keeping systems that give their claims the presumption of validity and put the burden on property owners to challenge them.
3. Leveraging State Enforcement Mechanisms: The effectiveness of Public Storage's liens derives entirely from state enforcement mechanisms. Without state backing, their liens would be meaningless private claims rather than enforceable property interests.
4. Potential Sale Authority Derived from State Law: Public Storage's authority to eventually sell property to satisfy unpaid liens comes directly from state statutory authority, not from private contractual rights.
5. Implicit State Certification: By accepting and recording Public Storage's liens, county officials effectively certify that these liens comply with state requirements,

creating an official imprimatur that transforms private action into state-sanctioned conduct.

6. Court Enforcement if Challenged: If a lien is challenged, Public Storage can invoke the power of state courts to enforce their lien rights, further demonstrating the "inextricable intertwinement" of their actions with state authority.

C. Supreme Court Precedent Supports Finding Joint Action

The Supreme Court's decision in **Lugar v. Edmondson Oil Co.** directly supports treating Public Storage as a state actor. In **Lugar**, the Court held that a private creditor's "joint participation with state officials in the seizure of disputed property" was sufficient to characterize the creditor as a state actor. 457 U.S. at 941.

The Court explained that when private parties use "state procedures with the overt, significant assistance of state officials," they are state actors for purposes of § 1983. The Court emphasized that the constitutional violation lay "in the joint participation of state officials and private creditor," even when the private party merely invoked state-created processes.

Like the creditor in **Lugar**, Public Storage invokes state procedures and receives "significant assistance" from state officials in creating, recording, and potentially enforcing its liens. This parallel is striking and dispositive.

D. Other Circuit Court Decisions Support Finding Joint Action

In **Howerton v. Gabica**, 708 F.2d 380 (9th Cir. 1983), the Ninth Circuit found that a private landlord who used police assistance to evict tenants without proper notice and a judicial hearing had acted "under color of state law." The court emphasized that the police were not "merely standing by to prevent violence," but were actively assisting in the exercise of the landlord's private remedy.

Similarly, Public Storage does not merely use private contractual remedies but actively enlists state procedures, record-keeping systems, and enforcement mechanisms to create and enforce its liens. This substantial involvement of state systems and procedures transforms Public Storage's actions from private to state action.

IV. PUBLIC STORAGE'S ACTIONS ALSO SATISFY THE GOVERNMENTAL NEXUS TEST

A. Legal Standard for Governmental Nexus

The Governmental Nexus Test asks whether "there is such a close nexus between the state and the challenged action that the seemingly private behavior may be fairly treated as that of the state itself." **Brentwood Academy v. Tennessee Secondary School Athletic Assoc.**, 531 U.S. 288, 295 (2001). While this test is acknowledged as somewhat vague, it provides additional support for treating Public Storage as a state actor.

B. Close Nexus Between Public Storage's Lien Actions and State Authority

Multiple factors demonstrate a close nexus between Public Storage's actions and state authority:

1. **State-Created Legal Framework:** Public Storage's entire lien process exists within a state-created legal framework that gives special legal status to their claims against property.
2. **State Recordation Transforms Private Claims:** The recordation process transforms Public Storage's private contractual claims into state-recognized property interests with legal force against third parties.
3. **State Courts Available for Enforcement:** Utah's judicial system stands ready to enforce Public Storage's lien claims, demonstrating the close connection between private action and state authority.
4. **Statutory Authority for Property Seizure/Sale:** Public Storage's authority to eventually seize and sell property derives not from common law or private agreement but directly from state statutory authorization.
5. **Immunity from Certain Liability:** Utah's lien statutes may provide certain immunities or protections for lien claimants who follow statutory procedures, further demonstrating the nexus between private action and state authority.

When analyzed holistically, Public Storage's lien activities are so deeply connected to state procedures, state recognition, and state enforcement that they satisfy the Governmental Nexus Test.

V. PUBLIC STORAGE'S ACTIONS ALSO SATISFY THE SYMBIOTIC RELATIONSHIP TEST

A. Legal Standard for Symbiotic Relationship

The Symbiotic Relationship Test asks whether the government has "so far insinuated itself into a position of interdependence (with the private entity) that it must be recognized as a joint participant in the challenged activity." **Brunette v. Humane Society of Ventura County**, 294 F.3d 1205, 1213 (9th Cir. 2002). This interdependence is demonstrated through "substantial coordination and integration" between the private party and the government.

B. Interdependence Between Public Storage and State Lien Procedures

Several factors demonstrate a symbiotic relationship between Public Storage and Utah's governmental authorities:

1. **Mutual Benefit Arrangement:** Utah benefits from Public Storage's use of the lien system through filing fees, reduced administrative burden in property disputes, and economic efficiency in debt collection; Public Storage benefits from state-backed enforcement authority.
2. **Integration of Private and Public Functions:** The lien recordation and enforcement process represents an integration of private property claims with public record-keeping and enforcement mechanisms.
3. **Delegation of Traditional State Functions:** Through its lien statutes, Utah effectively delegates aspects of property seizure and forced sale authority—traditionally governmental functions—to private storage facilities.
4. **Regulatory Framework Creates Interdependence:** Utah's regulatory framework for liens creates an interdependent relationship where Public Storage's business model partially relies on state-provided enforcement mechanisms.

This symbiotic relationship further supports treating Public Storage as a state actor when they utilize the state's lien procedures.

VI. CONSTITUTIONAL DEFICIENCIES IN UTAH'S LIEN LAWS ENHANCE STATE ACTION FINDING

A. Procedural Due Process Deficiencies

Utah's lien laws contain several procedural deficiencies that fail to provide adequate due process protections:

1. **Inadequate Pre-Deprivation Notice:** Utah's lien statutes may not require sufficient pre-deprivation notice before a lien is recorded against property, violating procedural due process principles established in **Mathews v. Eldridge**, 424 U.S. 319 (1976).
2. **Burden Improperly Shifted to Property Owner:** Once a lien is recorded, the burden shifts to the property owner to initiate costly legal proceedings to remove an improper lien, rather than requiring the lien claimant to prove the validity of their claim before recording.
3. **Lack of Pre-Deprivation Hearing:** The statutory scheme allows for significant property interests to be affected without any pre-deprivation hearing, potentially violating due process principles established in **Connecticut v. Doeher**, 501 U.S. 1 (1991).
4. **Inadequate Safeguards Against Erroneous Deprivation:** The statutory scheme lacks sufficient safeguards to prevent erroneous deprivation of property rights, particularly for storage unit contents that may have substantial personal, religious, or emotional value beyond market worth.
5. **Lack of Prompt Post-Deprivation Remedy:** While Utah law provides some mechanisms to challenge wrongful liens, these remedies may not be sufficiently prompt or accessible to satisfy constitutional requirements.

B. Deficient Statutes Transform Private Actors into State Actors

The Supreme Court's ruling in **Lugar v. Edmondson Oil Co.** established that private parties who utilize constitutionally deficient state procedures become state actors for purposes of § 1983. The Court explained:

"[P]rivate parties who attach a debtor's assets pursuant to a procedurally defective state statute act 'under color of state law' within the meaning of § 1983 because they act with the assistance of state officials and pursuant to state-created attachment procedures." **Wyatt v. Cole**, 504 U.S. 158, 159 (1992) (characterizing the holding in **Lugar**).

The procedural deficiencies in Utah's lien statutes transform Public Storage from a mere private actor into a state actor when they utilize these constitutionally suspect procedures.

C. Utah's Wrongful Lien Act Lacks Sufficient Procedural Protections

Utah's Wrongful Lien Act (Utah Code § 38-9-101 et seq.) contains several provisions that fail to provide adequate procedural protections:

1. Discretionary Review by County Recorder: Utah Code § 38-9-202 grants county recorders discretion to reject wrongful liens, but does not require them to do so. This discretionary protection is insufficient to prevent constitutional violations.
2. Burden on Property Owner to Initiate Proceedings: Utah Code § 38-9-205 places the burden on the property owner to petition a court for relief from a wrongful lien, rather than requiring lien claimants to establish validity before recording.
3. Limited Definition of "Wrongful Lien": Utah Code § 38-9-102(12) defines "wrongful lien" narrowly, potentially excluding liens that, while technically authorized by statute, are applied in constitutionally deficient ways.
4. Inadequate Remedies for Religious Freedom Violations: The statutory scheme fails to provide specific remedies when liens interfere with religious property or religious exercise, raising concerns under both the First Amendment and RFRA.

These deficiencies render the statutory scheme constitutionally suspect, and private actors who utilize these procedures become state actors under **Lugar**.

VII. PUBLIC STORAGE'S ACTIONS VIOLATE CONSTITUTIONAL AND STATUTORY RELIGIOUS FREEDOM PROTECTIONS

A. First Amendment Violations

Once established as a state actor, Public Storage's lien actions implicate First Amendment protections:

1. Free Exercise Clause: Public Storage's liens on property with religious significance substantially burden religious exercise without compelling governmental interest, violating the Free Exercise Clause.
2. Establishment Clause: By interfering with religious property and potentially forcing its sale without adequate accommodations for religious concerns, Public Storage's actions may entangle the state with religion in ways that violate the Establishment Clause.
3. Religious Autonomy Doctrine: The Supreme Court has recognized that religious organizations have a constitutional right to internal autonomy, including control over religious property. **Our Lady of Guadalupe School v. Morrissey-Berru**, 140 S. Ct. 2049 (2020). Public Storage's liens may unconstitutionally interfere with this autonomy.

B. Religious Freedom Restoration Act (RFRA) Violations

As a state actor, Public Storage's lien actions must comply with RFRA's heightened protections for religious exercise:

1. Substantial Burden Standard: RFRA prohibits government (and by extension, state actors) from substantially burdening religious exercise unless the burden: (a) furthers a compelling governmental interest, and (b) is the least restrictive means of furthering that interest.
2. Application to Property with Religious Significance: Liens against property with religious significance—such as religious texts, ceremonial items, or organizational documents—substantially burden religious exercise.

3. Failure to Use Least Restrictive Means: Alternative collection methods that do not involve liens against religious property would constitute less restrictive means of furthering any governmental interest in debt collection.

C. Utah SB150 (Utah's RFRA) Violations

Utah's recently enacted Religious Freedom Restoration Act (SB150) provides additional protections that Public Storage, as a state actor, must respect:

1. SB150's Protections: SB150 (codified at Utah Code § 63G-31-201) provides that "a government entity may not substantially burden the free exercise of religion of a person, regardless of whether the burden results from a rule of general applicability" unless the burden is "essential to furthering a compelling governmental interest" and "the least restrictive means of furthering the compelling governmental interest."

2. Application to State Actors: As established above, Public Storage acts as a state actor when utilizing Utah's lien procedures, making them subject to SB150's constraints.

3. Religious Freedom as Fundamental Right: SB150 explicitly declares that "free exercise of religion is a fundamental right and applies to all government action, including action that is facially neutral." This heightened protection applies to Public Storage's actions as a state actor.

4. Expansive Definition of "Free Exercise": SB150 defines "free exercise of religion" broadly as "the right to act or refuse to act in a manner substantially motivated by a sincerely held religious belief, regardless of whether the exercise is compulsory or central to a larger system of religious belief." This expansive definition encompasses a wide range of religious activities that may be burdened by Public Storage's liens.

VIII. BRANDON MICHAEL JEANPIERRE CORPORATION'S RELIGIOUS RIGHTS ARE SUBSTANTIALLY BURDENED

A. Brandon Michael Jeanpierre Corporation's Religious Status and Beliefs

The Brandon Michael Jeanpierre Corporation (DBA "The Black Flag") is established as a religious entity with clearly documented religious beliefs and practices:

1. Formal Religious Documentation: The corporation has established formal religious texts including "Religious Doctrine and Dogma of The Black Flag," "The Covenant Codex," and "Church Charter of The Black Flag."

2. IRS Recognition: As evidenced by "The Shadow Proclamation" document, the IRS has recognized the Brandon Michael Jeanpierre Corporation as a 501(c)(3) organization eligible for tax-exempt status (IRS letter dated 04/19/2024, EIN 92-2858861).

3. Religious Principle of Autonomy: The corporation's religious texts establish the "Principle of Autonomy" as a central religious tenet, defining the religious significance of property associated with the organization.

4. Religious Significance of Corporate Property: According to the religious texts, corporate property has specific religious significance and is central to the organization's religious practice and expression.

B. Substantial Burden Imposed by Public Storage's Actions

Public Storage's lien actions impose substantial burdens on the corporation's religious exercise:

1. Interference with Religious Property: The liens affect property with documented religious significance to the Brandon Michael Jeanpierre Corporation.

2. Burden on Religious Autonomy: The liens threaten the corporation's religious principle of autonomy, which is explicitly established in its religious texts.

3. Potential Forced Sale of Religious Items: The statutory lien process could ultimately lead to the forced sale of items with religious significance, substantially burdening religious exercise.

4. Administrative Burden of Challenging Liens: The requirement to navigate complex legal procedures to challenge the liens diverts resources from religious activities, constituting an additional substantial burden.

C. No Compelling Governmental Interest

Public Storage cannot establish a compelling governmental interest sufficient to justify these substantial burdens:

1. Commercial Collection Interest Not Compelling: Mere commercial interests in debt collection do not rise to the level of "compelling" governmental interests required to justify substantial burdens on religious exercise.
2. Alternative Collection Methods Available: The availability of alternative collection methods undermines any claim that liens against religious property serve a compelling interest.
3. Routine Application Without Religious Accommodation: Public Storage's apparent failure to consider religious implications of its lien process demonstrates that it is not pursuing a compelling governmental interest.

D. Not the Least Restrictive Means

Even if a compelling interest existed, Public Storage's liens are not the least restrictive means of furthering that interest:

1. Alternative Collection Mechanisms: Standard debt collection practices, payment plans, or judicial proceedings would achieve the same interest with less burden on religious exercise.
2. Religious Accommodation Options: Public Storage could provide religious accommodations for property with documented religious significance.
3. Selective Application of Liens: Public Storage could exclude items with religious significance from its liens while maintaining liens on other property.

The failure to employ these less restrictive alternatives violates both the First Amendment and the "least restrictive means" requirements of RFRA and Utah's SB150.

IX. PUBLIC STORAGE CANNOT CLAIM QUALIFIED IMMUNITY OR GOOD FAITH DEFENSE

A. No Qualified Immunity for Private Actors Using Self-Interest Procedures

Courts have generally held that private actors cannot claim qualified immunity when they invoke state procedures in furtherance of their own self-interest:

1. Supreme Court Precedent: In **Wyatt v. Cole**, 504 U.S. 158 (1992), the Supreme Court held that private defendants faced with § 1983 liability for invoking state replevin, garnishment, or attachment statutes cannot claim qualified immunity.
2. Self-Interest Distinction: Courts distinguish between private actors pursuing their own interests through state procedures (no immunity) and those performing a government function pursuant to a state order or request (potential immunity).
3. Commercial Interest: Public Storage's commercial interest in utilizing lien procedures places them squarely in the category of private actors pursuing self-interest, precluding qualified immunity.

B. Good Faith Defense Likely Unavailable

While the Supreme Court has left open the possibility of a good faith defense for private actors in some circumstances, such a defense would be unavailable to Public Storage:

1. Notice of Religious Status: If Public Storage had notice of the religious significance of the property or the religious status of Brandon Michael Jeanpierre Corporation, they cannot claim good faith.
2. Failure to Investigate Religious Claims: Any failure to adequately investigate or accommodate claims of religious significance would preclude a good faith defense.
3. Reckless Use of Constitutionally Suspect Procedures: Reckless utilization of constitutionally suspect lien procedures without proper safeguards would undermine any good faith claim.

X. CONCLUSION AND REMEDIES

Based on the comprehensive analysis above, Public Storage should be deemed a state actor under 42 U.S.C. § 1983 when utilizing Utah's lien procedures. Their

actions satisfy multiple tests for state action, most definitively the Joint Action Test established in **Lugar v. Edmondson Oil Co.** and elaborated in subsequent cases.

As a state actor, Public Storage's lien actions against property with religious significance to the Brandon Michael Jeanpierre Corporation violate the First Amendment, RFRA, and Utah's SB150. These violations entitle the corporation to injunctive relief, declaratory judgment, damages, and attorney's fees under § 1983.

The constitutional deficiencies in Utah's lien laws compound these violations, as private actors who utilize constitutionally deficient state procedures become state actors under **Lugar**. Public Storage cannot claim qualified immunity as they act in their own commercial self-interest, and any good faith defense would be undermined by notice of the religious nature of the property at issue.

The inescapable conclusion is that Public Storage has acted under color of state law and has violated constitutional and statutory protections for religious freedom. These violations are actionable under § 1983, and the Brandon Michael Jeanpierre Corporation is entitled to comprehensive relief.