

United States Department of Justice



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May 23, 2007

John D. Lee, II  
8604 Spangler Road  
Knoxville, TN 37920

Re: *John D. Lee, II, Pro Se, v. Social Security Administration*, 3:05-cv-512  
United States District Court for the Eastern District of Tennessee

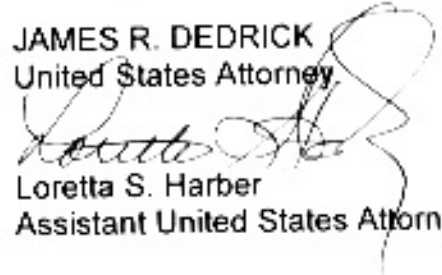
Dear Mr. Lee:

Please find enclosed a copy of a Defendants' Opposition to Plaintiff's Motion to Amend, filed this day in the above-styled case.

Sincerely,

JAMES R. DEDRICK  
United States Attorney

By:

  
Loretta S. Harber  
Assistant United States Attorney

Enclosure

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

JOHN D. LEE, II, <i>Pro Se</i> ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIV. NO. 3:05-CV-512
	)	(VARLAN/SHIRLEY)
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendants.	)	

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT

Michael Astrue, Commissioner of Social Security, and the United States<sup>1</sup>, (collectively, "Defendants") by and through James R. Dedrick, United States Attorney for the Eastern District of Tennessee, hereby file this Opposition to Plaintiff's Motion to Amend Complaint. On April 9, 2007, Plaintiff *pro se*, John D. Lee, II, filed a document entitled, "Amended Complaint and Response to Answer by Defendants with Motion for Summary Judgment." It appears from the Electronic Case Filing docket that the Court will give this document bifurcated treatment insofar as the docket reflects that, on April 9th, Plaintiff filed a Motion to Amend Complaint and Response to Answer [Ct. Doc. 16]<sup>2</sup>, and also on April 9th, through the same document, Plaintiff

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<sup>1</sup> The United States appears as a defendant in so far as Plaintiff is attempting to add the President of the United States as a defendant. Proper service on the President has not been effectuated, as reflected by the Court's docket. As will be argued, *infra*, there is no subject matter jurisdiction in this case, and Plaintiff's attempt to amend by both adding the President as a defendant and his wife as a plaintiff must fail.

<sup>2</sup> It must be pointed out that various paragraphs of Plaintiff's amended pleading are, confusing, argumentative, frivolous, and immaterial, flaws which indicate Plaintiff has failed to  
(continued...)

filed a Motion for Summary Judgment [Ct. Doc. 17]. The instant opposition applies only to Plaintiff's Motion to Amend Complaint and Response to Answer [Ct. Doc. 16]. This Court should deny the motion because Plaintiff has not complied with Fed. R. Civ. P. 15 and the claims contained in the amended complaint are futile.

## I. INTRODUCTION

### Procedural History

On November 8, 2005, Plaintiff filed a Complaint and Ex Parte Motion for Protective Order to Seal Records against the Commissioner of Social Security [Ct. Doc. 1]. On November 23, 2005, Magistrate Judge Clifford Shirley denied Plaintiff's motion for a protective order but granted Plaintiff's request to use only the last four digits of his social security number, a procedure which complies with LR7.3A [Ct. Doc. 2]. After several months during which the case lay dormant, the Court, on December 1, 2006, entered an Order to Show Cause why the case should not be dismissed and directed Plaintiff to provide proof of service within thirty days [Ct. Doc. 3]. Although still contesting the sufficiency of process and service, Defendant Commissioner filed an answer on March 9, 2007 [Ct. Doc. 12]. On April 9, 2007, some seventeen months after filing his original complaint and without seeking leave to file an amended pleading, Plaintiff filed an amended complaint and response to answer [Ct. Doc. 16], which Defendants hereby oppose.

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<sup>2</sup>(...continued)

follow the requirement of Rule 8(a)(2), Federal Rules of Civil Procedure, which is to present claims in "short and plain statements." Coupled with the fact that Plaintiff neglected to follow Rule 15(a) by seeking leave to amend through a clearly distinct motion, the Court would be justified in denying Plaintiff the opportunity to amend.

## II. STANDARD OF REVIEW FOR AMENDED PLEADINGS

Rule 15(a), Federal Rules of Civil Procedure, allows a party to "amend the party's pleading once as a matter of course at any time before a responsive pleading is served. . . ." In this case, however, the record reflects that Plaintiff failed to attempt to amend before a responsive pleading was served because Defendant Commissioner filed his answer one month before Plaintiff filed his Motion to Amend Complaint. In such a situation, where a plaintiff is precluded from amending his pleading as a matter of right, Rule 15(a) further states that "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." In this case, Plaintiff neither obtained leave of Court nor written consent from the Defendant to amend. It appears from the Court's docket, however, that Plaintiff's filing is to be treated and construed as a Motion to Amend. *See* Ct. Doc. No. 16.

As Rule 15(a) states, the standards under which courts consider motions to amend must take into account that leave shall be freely given when justice so requires, but, as firmly established by case law, courts must deny leave to amend where amendment would be futile and would not withstand a motion to dismiss. *See Stohler v. Menke*, 998 F. Supp. 836, 838 (E.D. Tenn. 1997) (Edgar, J.); *Tennessee Clean Water Network v. Kempthorne*, No. 3:05-CV-214, 2006 WL 3007367, at \*1 (E.D. Tenn. Oct. 20, 2006) (Varlan, J.) (unpub.). Thus, this Plaintiff's amended complaint may not be allowed if proceeding with the amended pleading would be futile. The amended complaint that Plaintiff proffers is replete with a variety of allegations and argument, but viewed in any light, the pleading must fail because there is no jurisdictional basis alleged that can confer subject matter jurisdiction on this Court. Therefore, Plaintiff's amended

complaint is futile, and construed as it may be as a motion to amend, said motion should be denied.

### III. ARGUMENT

- A. The Court lacks subject matter jurisdiction because Plaintiff has failed to assert any proper jurisdictional basis for claims alleged in his amended complaint and, on this basis, the amended complaint would be subject to dismissal.

Subject matter jurisdiction is an essential element of a plaintiff's case. When a defendant challenges subject matter jurisdiction, the burden of proving jurisdiction is on the plaintiff. If the plaintiff fails to meet his burden, a motion to dismiss on jurisdictional grounds must be granted. See *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1130 (6th Cir. 1996); *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). Here, this Court lacks subject matter jurisdiction over Plaintiff's amended complaint because, as discussed below, Plaintiff has failed to assert a proper jurisdictional statement that would confer subject matter jurisdiction upon the Court.

It is well settled that "the United States, as sovereign, is immune from suit save as it consents to be sued . . . , and the terms of its consent to be sued in any court define that court's jurisdiction to entertain suit." *U.S. v. Mitchell*, 445 U.S. 535, 538 (1980) (quotation omitted); See also, *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994); *U.S. v. Sherwood*, 312 U.S. 584, 586 (1941); *Lundstrum v. Lyng*, 954 F.2d 1142, 1145 (6th Cir. 1991). When the United States consents to be sued through legislation, such consent, and necessarily the court's jurisdiction, is limited to the conditions imposed by Congress under which suits will be permitted. *Sherwood*, 312 U.S. at 587-88; *Ashbrook v. Block*, 917 F.2d 918, 922 (6th Cir. 1990). The waiver of sovereign immunity cannot be implied, it must be unequivocally expressed, *U.S. v. Testan*, 424

U.S. 392, 399 (1976), *Ardestani v. U.S. Department of Justice*, 1*N.S.*, 904 F.2d 1505, 1509 (11th Cir. 1990), and strictly construed in the United States' favor. *Library of Congress v. Shaw*, 478 U.S. 310, 318 (1986); *Phillips v. U.S.*, 260 F.3d 1316, 1318 (11th Cir. 2001), *Means v. U.S.*, 176 F.3d 1376, 1378 (11th Cir. 1999).

Although Plaintiff's amended complaint asserts a variety of claims through thirty-four paragraphs that are confusing and often difficult to understand<sup>3</sup>, Plaintiff's amended complaint is futile because he fails to assert any proper jurisdictional basis to support his pleading. In Paragraph 1, Plaintiff states that:

Subject matter jurisdiction for this Court arises from Social Security Act Title II (Title 42, Chapter 7, Subchapter II Section 423, U.S. Code); Social Security Act Title XVI (Title 42, Chapter 7, Subchapter XVI, U.S. Code); and common law.

Pl.'s Amended Complaint, ¶ 1. However, 42 U.S.C. § 423 does not set forth a jurisdictional basis for this case or provide for judicial review of any type of decision or action by the Defendants. Rather, it sets forth the definitions and provisions that relate to Social Security

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<sup>3</sup> A review of the following the paragraphs listed below clearly reveals the confusing, argumentative and immaterial nature of much of Plaintiff's amended complaint.

¶ 2 (Plaintiff complains about the Court's briefing schedule.)

¶¶ 3 - 11, 22, 25 -31 (Plaintiff presents statements in the form of argument that he maintains support his claim of disability.)

¶¶ 18 - 21 (Plaintiff complains that Social Security Disability Insurance is an unconscionable, void contract.)

¶¶ 32 - 34 (Plaintiff complains about the payments of Social Security Insurance benefits to "illegal alien felons" (¶ 32); states that these payments constitute a crime of treason (¶ 33); and accuses Defendants of having overthrown the United States of America in order to merge with Mexico and Canada (¶ 34).)

¶ 43 (Plaintiff expresses fear that Defendants can unfairly extort the unconfirmed magistrate in this case.)

disability insurance benefit payments. And, as to Plaintiff's reference to Title XVI of the Social Security, he has failed altogether to cite any specific statutory provision that establishes the Court's jurisdiction. Accordingly, Plaintiff has failed to establish any jurisdictional basis for his amended complaint, and because the complaint would necessarily be dismissed for lack of subject matter jurisdiction, granting Plaintiff leave to amend would be futile, and therefore his motion to amend should be denied.

#### IV. CONCLUSION

For the foregoing reasons, Defendants request that the Court deny Plaintiff leave to amend his complaint in this case.

Respectfully submitted,

JAMES R. DEDRICK  
United States Attorney

By: s/Loretta S. Harber  
LORETTA S. HARBER (BP #007221)  
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Attorney for Defendant  
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Of Counsel for the Defendant Commissioner:

Donna L. Calvert  
Regional Chief Counsel

John L. Martin, Assistant Regional Counsel  
Office of the General Counsel  
Social Security Administration  
200 West Adams Street-30th Floor  
Chicago, Illinois 60606

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2007, a true and correct copy of the foregoing Opposition to Plaintiff's Motion to Amend Complaint was electronically filed. Plaintiff *pro se*, John D. Lee, II, who is not a registered user of the Electronic Filing System, was served with said document by placing the same in the United States Mail, First Class, postage prepaid, on this 23rd day of May, 2007, to the following:

John D. Lee, II  
[REDACTED]  
Knoxville, TN 37902

s/Loretta S. Harber  
LORETTA S. HARBER  
Assistant United States Attorney

## Responses and Replies

3:05-cv-00512 Lee v. Social Security Administration, Commissioner of  
ISSUE\_JOINED, PRO\_SE, SOC, TV1

### U.S. District Court (Live Database)

#### U.S. District Court - Eastern District of Tennessee

### Notice of Electronic Filing

The following transaction was entered by Harber, Loretta on 5/24/2007 at 0:00 AM EDT and filed on 5/23/2007

**Case Name:** Lee v. Social Security Administration, Commissioner of  
**Case Number:** 3:05-cv-512  
**Filer:** Social Security Administration, Commissioner of  
**Document Number:** 24

#### Docket Text:

RESPONSE in Opposition re [16] MOTION to Amend/Revise [1] Complaint filed by Social Security Administration, Commissioner of. (Harber, Loretta)

#### 3:05-cv-512 Notice has been electronically mailed to:

Loretta S Harber loretta.harber@usdoj.gov, USATNE.ECFKnoxSS@usdoj.gov

John J Lee ch.ilogc.edtenn@ssa.gov

#### 3:05-cv-512 Notice has been delivered by other means to:

John D Lee, II  
8604 Spangler Rd  
Knoxville, TN 37920

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

#### Electronic document Stamp:

[STAMP deecfStamp\_ID=1062680380 [Date=5/24/2007] [FileNumber=719020-0]  
[46f10a01e3c6a248dbc9a5b113511ba0092376fc651354dd2ef3ab6a906a06fa1cb3  
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