

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHA RICHARD,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. A-07-CA-946-LY
	§	
HONORABLE SHARON KELLER,	§	
Individually, and in an official capacity,	§	
and JOHN DOES, individually, and in	§	
an official capacity,	§	
<i>Defendants.</i>	§	

**DEFENDANT KELLER’S MOTION TO DISMISS UNDER FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6) FOR FAILURE TO STATE A CLAIM
AND 12(b)(1) FOR LACK OF JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

I. Introduction

The Court should grant Judge Sharon Keller’s¹ Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), because Plaintiff fails to state a claim upon which relief can be granted. Richard, through his counsel, failed to avail himself of Tex. R. APP. P 9.2 (a) (Vernon 1997) which allows the filing of pleadings at any time directly with a judge on the Court of Criminal Appeals (CCA). Although the clerk’s office closed in keeping with TEX. GOV’T CODE ANN. § 658.005(a) (Vernon 1999) without any action on the part of Judge Keller, the CCA remained open. Plaintiff admits that judges remained at the courthouse to accept any motions. Thus, Plaintiff fails to present a claim upon which relief can be granted.

¹ Judge Keller is the Presiding Judge of the Texas Court of Criminal Appeals.

Moreover, Plaintiff's allegations are barred by judicial immunity or, alternatively, by sovereign and Eleventh Amendment immunity. Additionally, Plaintiff's other claims lack merit as set forth herein. Judge Keller asks the Court to dismiss Plaintiff's claims for failure to state a claim or based on the immunities asserted.

II. Plaintiff's Claims

Marsha Richard, Plaintiff, alleges that she is the surviving spouse of Michael Richard ("Richard"), who was executed by lethal injection pursuant to a valid state court judgment on September 25, 2007. All claims Plaintiff asserts stem from Richard's execution. Under federal law, Plaintiff alleges a violation under 42 U.S.C. § 1983 of Richard's due process rights, as well as violations of the Fourth and Eighth Amendments and a conspiracy claim under 42 U.S.C. § 1985. Under state law, Plaintiff alleges ratification by the State of Texas, violations of the open courts provision of the Texas Constitution, wrongful death and survival actions, assault and battery, mental anguish, and intentional infliction of emotional distress. She seeks punitive damages, declaratory judgment, injunctive relief, and attorneys' fees.

III. Standard of Dismissal

Under Federal Rule of Civil Procedure 12(b)(1), a defendant may seek dismissal of a suit if the Court lacks the authority to hear the dispute or the plaintiff lacks standing to bring the claim.² Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss an action for "failure to state a claim upon which relief can be granted."³ "[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief, 'this basic deficiency should . . . be exposed at the

² *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

³ FED. R. CIV. P. 12(b)(6).

point of minimum expenditure of time and money by the parties and the court.”⁴

IV. Plaintiff Fails to Allege Facts Stating Federal or State Law Claims

Plaintiff makes two misstatements of law in her complaint. First, she contends that Judge Keller, “without any authority to do so, or, in the alternative, in her administrative function, prevented a death penalty appeal . . . to be filed with the Texas Court of Criminal Appeals, thereby causing the death of [Richard].”⁵ To the contrary, Texas statutory law provides that the normal office hours of a state agency are from 8 a.m. to 5 p.m., Monday through Friday.⁶ It also authorizes, but does not require, the chief administrator of a state agency to keep offices open during other hours if the administrator “considers it necessary or advisable.”⁷ Thus, under Texas Law, the CCA closes at 5 p.m. unless Judge Keller exercises her discretion in her capacity as Presiding Judge to keep the court open.

Second, Plaintiff argues that “at least three CCA judges waited after 5:00 p.m. for an appeal to be filed as was the custom and practice and which had occurred on occasions prior to September 25, 2007.”⁸ The Texas Rules of Appellate Procedure permit filing by delivery to either (1) the clerk of the relevant court or (2) a judge of that court who is willing to accept delivery.⁹ Richard, however,

⁴ *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (citing *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1995, 1966 (2007) (quotations omitted)).

⁵ Pl.’s Orig. Compl., para. 1.

⁶ TEX. GOV’T CODE ANN. § 658.005(a) (Vernon 1999).

⁷ *Id.* § 658.005(c).

⁸ Pl.’s Orig. Compl., para. 13.

⁹ TEX. R. APP. P 9.2 (a) (Vernon 1997).

never attempted to file any motion with the three judges to whom Plaintiff refers.

Plaintiff's argument that allowing the CCA clerk's office to close harmed Richard is a red herring. As set out above, Texas law provides a clear and unambiguous avenue for litigants to file documents with the CCA directly through any of its judges, so Richard did not need the CCA clerk's office to stay open after hours to file his motion. Thus, there was no reason for Judge Keller to exercise her authority in her official capacity as the Presiding Judge of the CCA to keep the clerk's office open after 5 p.m. This is particularly true since Plaintiff has not pleaded that Richard actually filed any motion with the C.C.A., nor did Richard ever do so. Moreover, Richard had the option of filing his motion with other courts.¹⁰

When viewed against the backdrop of existing Texas law, Plaintiff's argument must take one of two tracks: Judge Keller should have (1) granted a stay (a judicial act), or (2) kept the clerk's office open past the statutorily-mandated time (an official, discretionary act). Neither theory states a claim against Judge Keller and both are barred by immunity.

A. Judge Keller is Entitled to Judicial Immunity for Any Judicial Acts

Despite Plaintiff's attempts at creative pleading, the substantive relief Richard sought late on September 25, 2007 was a stay. Because the grant or denial of a stay is a judicial act, not an administrative one, Judge Keller is entitled to judicial immunity. It is well-settled in this Circuit and in the U.S. Supreme Court that "[a]bsolute judicial immunity extends to all judicial acts which are not performed in clear absence of all jurisdiction."¹¹ Courts should consider four factors to

¹⁰ See *Raby v. Livingston*, Civil Action No. H-05-CV-765, So. Dist. of Texas, Houston Division (action brought under 42 U.S.C. § 1983).

¹¹ *Adams v. McIlhany*, 764 F.2d 294, 297 (5th Cir. 1985) (citing *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978)).

determine whether an act is judicial for purposes of absolute judicial immunity:¹² (1) whether the act complained of is a normal judicial function; (2) whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the act arose directly out of a visit to the judge in his official capacity. These factors "relate to the nature of the act itself, i.e. whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."¹³ Courts broadly construe these factors in favor of immunity, even if not all of them apply to the particular case.¹⁴ Absolute judicial immunity is designed to protect the "need for independent disinterested judicial decision-making."¹⁵ In *Johnson v. Kegans*, the Fifth Circuit stated that "[i]t is well established that judges are absolutely immune from liability for judicial acts that are not performed in clear absence of all jurisdiction..."¹⁶ Judge Keller had no obligation to act on what effectively was an oral request for a stay of execution. Texas law is clear that the CCA required a motion (typed or hand written) to act. For the reasons stated above, her actions were clearly judicial and protected by judicial immunity.

B. Judge Keller is Entitled to Sovereign and Eleventh Amendment Immunity for Any Administrative Acts

Alternatively, if Plaintiff complains that Judge Keller, in her capacity as Presiding judge and

¹² *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972).

¹³ *Stump*, 435 U.S. at 361.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 870 F.2d 992, 995 (5th Cir. 1989); *see also Mitchell v. McBryde*, 944 F.2d 229 (5th Cir. 1991).

chief administrator of a state agency, failed to keep the clerk's office open later than state-mandated hours, such an act would be one taken in her official capacity. Again, this allegation would not state a claim since Richard retained the option of filing pleadings directly with the judges. He wanted judicial action taken on his filings. According to Plaintiff's pleadings, had Richard chosen to contact them, at least three judges were prepared to accept and act upon his filings.

Only Presiding Judge Keller had the authority to keep the clerk's office open beyond the state-mandated hours.¹⁷ However, as discussed above, she was under no duty or obligation to do so since any CCA judge could have accepted the filing. Richard did not need the clerk's office to remain open because he could file his motion with the judges that Plaintiff admits remained at the CCA past 5 p.m. However, even if this Court accepts these allegations, these claims are barred by sovereign and Eleventh Amendment immunity. Judge Keller's authority to extend the office hours of the clerk's office derives from her capacity as chief administrator of a state agency, *not* from her individual capacity. Thus, any claim against her would necessarily be based upon her official capacity. Under Texas law, a suit against a state employee in her official capacity is a suit against the State.¹⁸ When a public employee of a state agency acts in her official capacity, those actions are protected by sovereign immunity.¹⁹ "Sovereign immunity, unless waived, protects the State of Texas, its agencies and its officials from lawsuits for damages, absent legislative consent to sue the

¹⁷ TEX. GOVT. CODE 658.005 (b) (Vernon 1999).

¹⁸ *See De Mino v. Sheridan*, 176 S.W.3d359, 366 (Tex. App.–Houston [1st Dist.] 2004, no pet.); *Estate of Terrell v. Sisk* 111 S.W.3d 274, 280 (Tex. App–Texarkana 2003, no pet.).

¹⁹ *Tex. Parks & Wildlife Dep't v. E.E. Lowrey Realty, Ltd.*, 155 S.W.3d 456, 458 (Tex.App.–Waco 2004).

State.”²⁰

As a State agency, the CCA is immune from suit and cannot be liable for damages unless Plaintiff’s claims fall squarely within the Texas Tort Claim Act’s limited statutory waiver of sovereign immunity.²¹ Plaintiffs have the obligation to allege facts that affirmatively demonstrate the Court’s jurisdiction to hear the cause.²² Plaintiff has not—and cannot—allege a claim against Judge Keller in her official capacity sufficient to invoke the Tort Claims Act or any other statutory waiver of sovereign immunity. When a plaintiff brings a statutory claim, the statutory provisions are mandatory and exclusive and must be complied with in all respects to maintain subject-matter jurisdiction.²³ Because Plaintiff cannot establish a waiver of sovereign immunity, her state law claims are barred.

Further, the applicability of sovereign immunity interposes an Eleventh Amendment immunity bar to Plaintiff’s constitutional claims. “Federal court jurisdiction is limited by the Eleventh Amendment and the principles of sovereign immunity that it embodies.”²⁴ Eleventh Amendment immunity extends to suits brought in federal court against a state by its own citizens as well as citizens of another state or foreign country.²⁵ Absent a State waiver of sovereign immunity

²⁰ *Fed. Sign v. Tex. So. Univ.*, 951 S.W.2d 401, 405 (Tex. 1997); *Dir. of the Dep’t of Agric. v. Env’t Printing Indus. Ass’n of Tex.*, 600 S.W.2d 264, 265 (Tex. 1980).

²¹ *See Salcedo v. El Paso Hosp. Dist.*, 659 S.W.2d 30, 31 (Tex. 1983).

²² *City of Austin v. Ender*, 30 S.W.3d 590, 593 (Tex. App.—Austin 2000, no pet.).

²³ *Grounds v. Tolar Indep. Sch. Dist.*, 707 S.W.2d 889, 891 (Tex. 1986); *Gregg County v. Farrar*, 933 S.W.2d 769, 777 (Tex. App.—Austin 1996, no writ).

²⁴ *Vogt v. Bd. of Comm’rs of the Orleans Levee Dist.*, 294 F.3d 684, 688 (5th Cir. 2002).

²⁵ *See Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 446 (2004).

or a valid congressional override, the Eleventh Amendment bars suits in federal court against a state or state agency.²⁶

Under federal law, a suit against a public official in her official capacity is not a suit against the official but, rather, is a suit against the official's office. It is no different than a suit against the state itself.²⁷ Eleventh Amendment immunity is jurisdictional and deprives the court of subject-matter jurisdiction.²⁸ Moreover, in a 42 U.S.C. § 1983 claim, a state is not considered a "person" against whom a claim may be asserted.²⁹ Since Plaintiff cannot show any waiver of sovereign immunity, her state claims must be dismissed for want of subject-matter jurisdiction. Similarly, her federal claims must be dismissed for subject matter jurisdiction because sovereign immunity creates an Eleventh Amendment bar which has not been overridden by Congress.

V. Plaintiff Fails to State a 42 U.S.C. § 1985 Conspiracy Claim

Plaintiff states she is suing under subsection 3 of 42 U.S.C. §1985.³⁰ To establish liability for conspiracy under § 1985, a plaintiff must establish 1) a conspiracy; 2) that the purpose of the conspiracy was to deprive a person of equal protection of the laws, or to deprive a person of his privileges and immunities under the laws; 3) that an act was committed in furtherance of the conspiracy; and 4) that an injury occurred as a result.³¹ A viable § 1985 claim requires an underlying

²⁶ *Ky. v. Graham*, 473 U.S. 159, 169 (1985).

²⁷ *Printz v. United States*, 521 U.S. 898, 930–31(1997).

²⁸ *McDonald v. Bd. of Miss. Levee Comm'rs*, 832 F.2d 901, 906 (5th Cir. 1987).

²⁹ *Lapides v. Bd. of Regents of the Univ. Sys. of Ga.*, 535 U.S. 613, 617 (2002).

³⁰ Pl.'s Orig. Compl. para. 38.

³¹ *Griffin v. Breckenridge*, 403 U.S. 88, 101–03 (1971).

violation of constitutional rights or privileges secured elsewhere, or at least, an attempt to do so.³² Plaintiff fails to explain how Judge Keller acted in conjunction with others to deprive Richard of his rights, nor does she articulate any overt act taken in furtherance of the alleged conspiracy. Moreover, for the reasons above, Plaintiff cannot establish the violation of an underlying constitutional right, mandating dismissal of these claims.

VI. Plaintiff's Remaining Claims Lack Merit

A. No Monetary Damages for Texas Constitutional Claims

No private right of action for damages exists for violations of the Texas Constitution.³³

Thus, Plaintiff is not entitled to monetary damages insofar as she claims such violations.

B. Open Courts Provision

The open courts provision includes at least three separate guarantees: (1) courts must actually be operating and available; (2) the Legislature cannot impede access to the courts through unreasonable financial barriers; and (3) meaningful remedies must be afforded, "so that the legislature may not abrogate the right to assert a well-established common law cause of action unless the reason for its action outweighs the litigants' constitutional right or redress."³⁴

A claim of unconstitutionality under the open courts provision will only succeed if the claimant (1) has a common-law cause of action being restricted by a statute and (2) the restriction is unreasonable

³² *Id.*; see also *United Bhd. of Carpenters v. Scott*, 463 U. S. 825,832 (1983).

³³ *City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex.1995).

³⁴ *Howell v. Tex. Worker's Comp. Comm'n*, 143 S.W.3d 416,444 (Tex. App.–Austin 2004, pet. denied) (quoting *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 520 (Tex. 1995) (internal citations omitted)).

or arbitrary when balanced against the purpose and basis of the statute.³⁵ In applying this test, a court considers both the statute's general purpose and the extent to which the claimant's right to bring a common-law cause of action is affected.³⁶ As set out above, Plaintiff has not pleaded a cause of action under this section.

C. Wrongful Death and Survival Actions

Both survival and wrongful death actions are derivative causes of action.³⁷ The elements of these claims are set out in §71.001 *et seq.* of the Texas Civil Practice and Remedies Code, which states, in pertinent part:

(a) An action for actual damages arising from an injury that causes an individual's death may be brought if liability exists under this section.

(b) A person is liable for damages arising from an injury that causes an individual's death if the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness or default.³⁸

The specific section discussing the elements of a survival cause of action are set out in § 71.021:

(a) A cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person or because of the death of the person liable for the injury.

(b) A personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person. The action survives against the liable person and the person's legal representative.³⁹

³⁵ *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 843 (Tex. 1990); *Sax v. Votteler*, 648 S.W.2d 661, 666 (Tex. 1983).

³⁶ *Howell*, 143 S.W.3d at 444; *see Sax*, 648 S.W.2d at 666.

³⁷ *Russell v. Ingersoll-Rand Co.*, 841 S.W.2d 343, 345 (Tex. 1992).

³⁸ TEX. CIV. PRAC. & REM. CODE ANN. § 71.002 (Vernon 1997).

³⁹ *Id.* § 71.021 (Vernon 1997).

It is undisputed that Richard's death resulted from lethal injection in Huntsville and that Judge Keller was not involved in the lethal injection process.⁴⁰ Under both current federal and state law, Texas has the right to execute inmates by lethal injection. As already noted, Plaintiff has only one of two arguments: that Judge Keller should have (1) granted a stay, a judicial act, or (2) kept the clerk's office open past the statutorily-mandated time, an official, discretionary task. In the first alternative, Judge Keller is entitled to judicial immunity. In the second, she is entitled to sovereign immunity. Judge Keller was never presented any document on which to rule and had no legal obligation to grant the stay or keep the court open. Finally, the Texas Rules of Appellate Procedure allowed the Richard to file his documents after hours with any judge of the CCA

Plaintiff's efforts to sue Judge Keller for failing to act are analogous to suits for a lost chance of survival or cure, which have been soundly rejected in medical malpractice cases. In *Kramer v. Lewisville Memorial Hospital*, the Texas Supreme Court stated:

The principal issue presented in this case is whether Texas permits recovery for lost chance of survival or cure in medical malpractice cases; that is, whether there is liability for negligent treatment that decreases a patient's chance of avoiding death or other medical conditions in cases where the adverse result probably would have occurred anyway. We hold that such recovery is not authorized by the Texas Wrongful Death Act, [CPRC] §§ 71.002 & 71.004, and should not be permitted under the Texas Survivorship Statute, [CPRC] §71.021, or under a separate common law cause of action.⁴¹

⁴⁰ TEX. CODE CRIM. PROC. ANN. art. 43.15 (Vernon 1981) ("Whenever any person is sentenced to death . . . the clerk of the court . . . shall . . . issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, the time fixed for his execution, and directed to the Director of the Department of Corrections at Huntsville, Texas, commanding him to proceed, at the time and place named in the order of execution, to carry the same into execution . . .").

⁴¹ 858 S.W.2d 397, 398 (Tex. 1993).

Because a cause of action does not exist against Judge Keller under either of the above statutes, these claims should be dismissed.

D. Mental Anguish and Intentional Infliction of Emotional Distress

The tort of intentional infliction of emotional distress was judicially recognized by the Texas Supreme Court to permit recovery in situations involving egregious behavior for which the victim would otherwise be unable to obtain redress.⁴² When the legislature provides a statutory cause of action for the same conduct, or a separate common-law remedy exists, a plaintiff may not also sue for intentional infliction of emotional distress.⁴³ Further, a plaintiff may not assert a claim for intentional infliction of emotional distress merely due to inability to prevail on another theory of relief designed to address the gravamen of his complaint.⁴⁴ Because Plaintiff is pursuing multiple state and federal claims against Judge Keller for the same alleged conduct, she is precluded from suing for intentional infliction of emotional distress. Moreover, Judge Keller's acts are protected by immunity and were not egregious.

⁴² See *Hoffmann-La Roche, Inc.*, 144 S.W.3d 438, 447 (Tex. 2004).

⁴³ See *id.*; *Johnson v. Blue Cross/Blue Shield of Tex.*, 375 F. Supp.2d 545, 549 (N.D. Tex. 2005).

⁴⁴ See *Creditwatch, Inc. v. Jackson* 157 S.W.3d 814, 816 (Tex. 2005).

E. Assault and Battery Claims

In Texas, the elements of a cause of action for assault and battery are the same in civil and criminal law.⁴⁵ A person commits an assault if he (1) intentionally, knowingly or recklessly causes bodily injury to another; (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other person will regard the contact as offensive or provocative.⁴⁶ Judge Keller had no physical contact with Richard. Plaintiff's entire allegations of assault and battery are contained in a single, conclusory sentence in paragraph 42 of her complaint. She alleges no specific facts addressing the elements of assault and battery in her claim and thus fails to state a claim under Texas law.

VII. Plaintiff Cannot Recover Any Relief Other Than Monetary Relief.

Plaintiff asks this Court to grant declaratory relief. A suit for declaratory relief is to establish existing rights, status, or other legal relations; it cannot be used to revise, alter or reform the parties' rights, status or relations.⁴⁷ A declaratory judgment action should be entertained when the judgment will serve a useful purpose in clarifying and settling legal relations in issue and when it will terminate and afford relief from the uncertainty, insecurity and controversy giving rise to the proceeding.⁴⁸ Under state law, a declaratory judgment is appropriate only if a justiciable controversy

⁴⁵ See *Hall v. Sonic Drive-In of Angelton, Inc.*, 177 S.W.3d 636, 649 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

⁴⁶ See TEX. PENAL CODE ANN. § 22.01(a) (Vernon 2007).

⁴⁷ *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995).

⁴⁸ *State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979, 983 (10th Cir. 1994).

exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought.⁴⁹ However, where a party brings a suit for declaratory judgment *but seeks monetary damages*, sovereign immunity bars such a suit.⁵⁰ Additionally, Plaintiff seeks injunctive relief to prevent Defendants from unlawfully interfering with the due process rights of other “condemned” inmates.⁵¹ Plaintiff lacks standing to seek this relief, as Article III standing requires plaintiffs to allege that their “particular freedoms are infringed.”⁵²

VIII. Conclusion

Defendant respectfully prays that this Honorable Court will dismiss all claims against her and deny any and all relief Plaintiff requests.

Respectfully submitted,

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⁴⁹ *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex.1995).

⁵⁰ *Tex. Natural Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 855, 861 (Tex. 2002).

⁵¹ Pl.’s Orig. Compl. at 13, “E.”

⁵² *Sch. Distr. of Abington v. Schempp*, 374. U.S. 203, 224 n.9 (1963).

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NOTICE OF ELECTRONIC FILING

I, **DAVID A. HARRIS**, Assistant General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing in accordance with the Electronic Case Files System of the Western District of Texas, on the 13th day of December, 2007.

/s/ DAVID A. HARRIS
DAVID A. HARRIS
Assistant Attorney General

CERTIFICATE OF SERVICE

I, David A. Harris, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of **Defendant Keller's Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) for Failure to State a Claim and 12(b)(1) for Lack of Jurisdiction** has been served by placing same in the United States mail on this the 13th day of December, 2007, addressed to:

Randall L. Kallinen
American Rights Association
1406 Castle Court
Houston TX 77006

/s/ DAVID A. HARRIS
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