

Please Read Instructions on Reverse Side of Yellow copy

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MAY 27, 2009

B3

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

- ☐ Mr.  
☐ Mrs.  
☐ Ms.  
☒ Miss

AMENDMENT ATTACHED

SALLY BRYAN, Claimant

VS.

State of Arkansas, Respondent

DHS/Children & Family Services

Do Not Write in These Spaces	
Claim No.	09-0334-CC
Date Filed	October 7, 2008 (Month) (Day) (Year)
Amount of Claim \$	38,213.68
Fund	DHS/CFS

Wrongful Termination

COMPLAINT

Sally Bryan, the above named Claimant, of 2700 Hwy. 71, South Huntington  
(Name) (Street or R.F.D. & No.) (City)  
AR 72940 County of Sebastian represented by Clayton Blackstock  
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claimant)

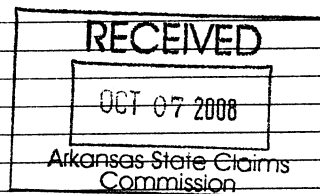
of 1010 West Third St. Little Rock, AR 72201 501-378-7870 501-37549  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: AR Dept. of Human Services Amount sought: \$20,000.00

Month, day, year and place of incident or service: August 17, 2006

Explanation: Sally Bryan ("Bryan") was an 18 year veteran bus driver for the Mansfield School District ("Mansfield"). She lost her job in October of 2006 and has been unable to secure employment since that time. She lost her job as a result of DHS's premature determination that she was guilty of child maltreatment. She is bared by sovereign immunity from suing DHS for damages.

(Continued on attached page)



As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

(Yes or No) ; when? (Month) (Day) (Year) ; to whom? (Department)  
: and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)  
and that the nature thereof is as follows:

: and was acquired on , in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Clayton Blackstock  
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

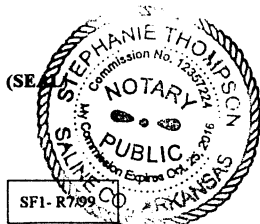
SWORN TO and subscribed before me at Little Rock AR  
(City) (State)

on this 7<sup>th</sup> day of October 2008  
(Date) (Month) (Year)

Stephanie Thompson

(Notary Public)

My Commission Expires: 10/25/2016  
(Month) (Day) (Year)



**BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**ARKANSAS STATE  
CLAIMS COMMISSION**

**MAY 27 2009**

**RECEIVED  
CLAIMANT**

**SALLY BRYAN**

**VS.**

**CLAIM #09-0334-CC**

**STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES**

**RESPONDENT**

**AMENDED COMPLAINT**

Comes the Claimant, Sally Bryan, by and through her attorneys, Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC, for her Amended Complaint states:

1. Claimant, with the assistance of her counsel, has updated and calculated her damages through the date that she secured full time employment.
2. Claimant hereby amends her damage claim to request \$38,213.68 in lost wages.
3. The details of the calculations are as follows.
4. The Claimant was terminated on October 23, 2006 from her position as a bus driver with the Mansfield School District.
5. For the 2006 calendar year, from January 2006 through her termination at the end of October 2006, the Claimant received \$16,053.64 in wages from the Mansfield School District.
6. As a bus driver at Mansfield, the Claimant earned a base wage for her regular bus route which was \$8,972.00 for the 2005-2006 school year and \$9,222.00 for the 2006-2007 school year. The Claimant also earned extra pay by driving additional routes and driving students to school sponsored events (such as sporting events, field trips etc.).

7. When the Claimant's husband had a heart attack in the spring of 2005, and as a consequence could no longer drive a bus himself, the Claimant started taking on as many extra bus runs as she could to supplement the family income. Thus, the Claimant started to earn much more than her base pay because of these extra bus runs.

8. The \$16,053.64 on the Claimant's W-2 for 2006 was for 10 months work. This translates into an average for 2006 of \$1,605.36 per month.

9. The Claimant searched for but was unable to secure employment in November and December of 2006.

10. The Claimant lost \$3,210.72 in pay for two months in 2006 (2 x \$1,605.36).

11. For the 2007 calendar year, the Claimant looked for employment constantly but was unable to secure gainful employment.

12. The Claimant received \$5,250.00 in unemployment compensation in 2007 but, under Arkansas law, unemployment compensation is not to be deducted from an award of lost wages. Green Forest Pub. Schs. v. Herrington, 287 Ark. 43, 696 S.W.2d 714 (1985) ("In the context of employment cases, an award of back pay cannot be reduced by unemployment compensation benefits because they are considered a collateral source.").

13. Had the Claimant remained employed as a bus driver with the Mansfield School District in 2007, based on her compensation in 2006, she would have earned \$19,264.00 in combined base pay and extra runs (\$1,605.36 per month x 12 months).

14. The Claimant lost \$19,264.00 in pay for 2007.

15. In 2008, the Claimant was able to find part time employment working two days a week at a bakery at approximately \$40.00 per day for about six months. Thus, the Claimant earned approximately \$1,920.00 working for the bakery (\$40.00 x 2 days x 24 weeks).

16. In December of 2008, the Claimant was finally able to secure full time employment.

17. Had the Claimant remained employed by the Mansfield School District in 2008, based on her compensation in 2006, she would have earned \$17,658.00 in combined base pay and extra bus runs (\$1,605.36 per month x 11 months).

18. The Claimant lost \$15,738.96 in pay for 2008 (\$17,658.00 for 11 months - \$1,920 bakery pay).

19. Thus, the Claimants damages are \$3,210.72 for 2006, \$19,264.00 for 2007 and \$15,738.96 for 2008, for a total of \$38,213.68.

WHEREFORE, Sally Bryan prays for the relief requested.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

By: 

Clayton Blackstock, ABN 84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 27 day of May, 2009, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

Mr.  
Mrs.  
Ms.  
Miss

SALLY BRYAN, Claimant

vs.

State of Arkansas, Respondent  
DHS/Children & Family Services

Do Not Write in These Spaces

Claim No. 09-0334-CC

Date Filed October 7, 2008  
(Month) (Day) (Year)

Amount of Claim \$ 20,000.00

Fund DHS/CFS

COMPLAINT Wrongful Termination

Sally Bryan, the above named Claimant, of 2700 Hwy. 71, South Huntington  
(Name) (Street or R.F.D. & No.) (City)

AR 72940 County of Sebastian represented by Clayton Blackstock  
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

1010 West Third St. Little Rock AR 72201 501-378-7870 501-375-4949  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: AR Dept. of Human Services Amount sought: \$20,000.00

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Explanation: Sally Bryan ("Bryan") was an 18 year veteran bus driver for the Mansfield School District ("Mansfield"). She lost her job in October of 2006 and has been unable to secure employment since that time. She lost her job as a result of DHS's premature determination that she was guilty of child maltreatment. She is bared by sovereign immunity from suing DHS for damages.

(Continued on attached page)

RECEIVED

OCT 07 2008

Arkansas State Claims Commission

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

\_\_\_\_\_; when? \_\_\_\_\_; to whom? \_\_\_\_\_  
(Yes or No) (Month) (Day) (Year) (Department)

\_\_\_\_\_; and that the following action was taken thereon: \_\_\_\_\_

and that \$ \_\_\_\_\_ was paid thereon: (2) Has any third person or corporation an interest in this claim? \_\_\_\_\_; if so, state name and address

\_\_\_\_\_  
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: \_\_\_\_\_; and was acquired on \_\_\_\_\_, in the following manner: \_\_\_\_\_

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Clayton Blackstock  
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

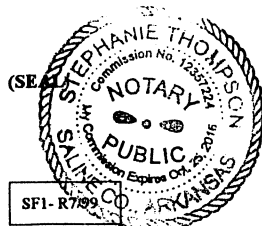
SWORN TO and subscribed before me at Little Rock AR

on this 7th day of October, 2008

(Date) (Month) (Year)

Stephanie Thompson  
(Notary Public)

My Commission Expires: 10/25/2016  
(Month) (Day) (Year)



SF1-R789 CD

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(continued from Claim Form, pg. 1)

Unbeknownst to Sally Bryan, a 15 year old male student on her bus route was subject to a court order requiring him to stay away from female students. In late 2005 and early 2006, this boy surreptitiously molested or attempted to molest some of the girls on the bus. In late February 2006, the girls reported this to Bryan's husband, an aide on the bus, and Bryan reported this to their supervisor at Mansfield.

The boy had been generally disruptive on the bus even before the girls reported the boy's surreptitious conduct. As a result of the disruptive conduct, Bryan had placed the boy in a separate seat on the bus. Also before the girls reported the boy's conduct, Bryan had separated all the boys on the bus from the girls because of allegations that some older students were kissing on the bus. By the time the surreptitious conduct was reported, the boy had already been separated from all the girls on bus. The boy was arrested and no longer in school by the end of March 2006.

On July 21, 2006 a complaint was filed with DHS against Sally Bryan, claiming that she failed to protect the girls. DHS commenced an investigation. Sally Bryan was interviewed but was never told what the charges against her were. Bryan's supervisor was interviewed and was found not to be a credible witness. Nevertheless, DHS concluded that Bryan had not told her supervisor about the girls' report and, based on this conclusion, DHS issued a "true" finding determination that Sally Bryan had committed "child maltreatment". The investigation was completed by August 17, 2007. (See attached Exhibit A.)

Before Sally Bryan had even requested an administrative hearing, DHS put Ms. Bryan's name in the Child Maltreatment Registry (Ark. Code Ann. § 12-12-505(b)) and sent official notices to Mansfield and the girls' parents/guardians telling them that Ms Bryan had been found guilty of child maltreatment. (Ark. Code Ann. § 12-12-515 and Ark. Code Ann. § 12-12-512(c)(1)(A)(I)). By certified mail DHS sent four (one for each child) "Notices to LEA (Local Education Agency) of Child Maltreatment" ("LEA Notice") to the Mansfield School District telling Mansfield that "... an allegation of child maltreatment involving a student at your school has been determined true ..." and that the offender was the Sally Bryan. By certified mail DHS sent a "Child Maltreatment Assessment Determination Notification" ("Maltreatment Notification") to the parents/guardians of the four girls which Notification said that an "allegation of child maltreatment (against Sally Bryan) involving a student [the parent's child] ... has been determined to be true."

The parents complained to Mansfield that they did not want Ms. Bryan driving a bus. Mansfield, based solely on the four LEA Notices sent to Mansfield, terminated Ms. Bryan's employment on October 23, 2006.

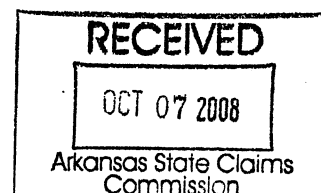
Ms. Bryan appealed DHS's "true" finding of child maltreatment and an administrative hearing was held after she lost her employment. The administrative law judge found that Ms. Bryan did not neglect any of the children on her bus. The judge specifically found that Ms. Bryan had, in fact, taken "reasonable action to protect the children on her bus." (See attached Exhibit B). At the administrative hearing DHS conceded that Ms. Bryan had reported to her supervisor what the girls had said.

The statutes under which DHS reported the "true" findings of maltreatment were ruled unconstitutional in the unrelated case of *AB, a minor v. Arkansas Department of Health and Human Services*, Circuit Court of Benton County, Case No. CV 2005-0914. (See attached Exhibit C.) The statutes were ruled unconstitutional because there was no provision for a hearing *before* "true" findings of child maltreatment were published and reported. DHS accepted the ruling in that case and has changed its practices. DHS no longer publishes findings of child maltreatment before a hearing is held.

DHS violated Ms. Bryan's due process rights by filing and sending out "true" findings that she was guilty of child maltreatment *before* she had any opportunity for a hearing. As a result of the ruling in the case of *AB, a minor v. Arkansas Department of Health and Human Services*, this constitutional violation of Ms. Bryan's rights is not in dispute. Therefore, the Claims Commission does not have to decide whether Ms. Bryan's constitutional rights were violated. That issue is not in dispute.

The Claims Commission only has to decide the amount of damages Ms. Bryan is entitled to as a result of DHS's violation of her due process rights. The Jurisdiction of the Arkansas Claims Commission is proper under §19-10-204(b)(2)(A). Ms. Bryan is barred by sovereign immunity from suing DHS for damages.

Ms. Bryan was making about \$10,000 per year. She has been unable to secure employment since that time.



BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

SALLY BRYAN

CLAIMANT

VS.

CLAIM #09-0334-CC

STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

Answer and Motion To Dismiss

Comes the Respondent, State of Arkansas, Department of Human Services, Division of Children and Family Services, by its attorney, Richard N. Rosen, and for its Answer and Motion to Dismiss states:

1. Respondent denies liability in the full amount of the above claim. Account information is:

Business Area:	0710
Cost Center:	417676
Internal Order:	HS5X00XX
Fund:	DCFS 2600
Fund Ctr:	883

2. Respondent denies liability as DHS was following the mandates enacted by the legislature in Ark. Code Ann § 12-12-501, *et seq.*, which is commonly known as the "Arkansas Child Maltreatment Act." The Child Maltreatment Act *required* that the notifications now complained of by the claimant be sent to the persons and entities involved. DHS had no discretion in sending the notifications. The Child Maltreatment Act provided for and directed the precise acts taken by DHS which are now complained of by Claimant. DHS had no option. They were ministerial tasks.

As asserted by Claimant in her complaint, Ark. Code Ann. § 12-12-512(c)(1)(A)(i) *requires* DHS to notify each subject of the report of the determination of a true finding. Ark. Code Ann. § 12-12-503 (20) requires that the notification go to the parents of any child suspected of being maltreated. Ark. Code Ann. § 12-12-515 requires DHS to also notify the local educational agency, specifically the child's school counselor. The August 17, 2006 letters to the parents and to the school counselor attached to the claim establish that DHS did as the law required.

Significantly, Ark. Code. Ann. § 12-12-505 requires DHS to establish a statewide registry for the collection of cases involving child maltreatment that is determined to be true. Since there was a true finding, DHS was required to place the claimant's name on the registry.

Consequently, DHS simply followed the statute when it sent the notifications now complained of and when they placed the claimant on the registry upon making the finding. Under Ark. Code Ann. § 12-12-212(c)(4), if the petitioner prevails at the administrative hearing, the report is changed from true to unsubstantiated and, per §12-12-505, the name is removed from the registry as (now) unsubstantiated. Copies of the relevant portions of Ark. Code Ann. §§ 12-12-505, -512, -515 are attached as Exhibit A. The acts of DHS that Claimant now complains of were nondiscretionary, ministerial acts required by law.

2. DHS further denies liability because DHS did not terminate claimant's employment nor request any such termination. DHS simply sent the statutory notifications that were required by law. Claimant was employed by the Mansfield School District, not by DHS. It was the Mansfield School District that terminated claimant and, apparently, refused to rehire her once her name was removed from the registry. Moreover, according to the exhibits attached to the claim itself, the Mansfield School District was notified of the finding by letter to Jim Hattabaugh, dated August

17, 2006. However, according to the claim filed herein, Claimant was not terminated by the Mansfield School District until sometime in October, 2006, approximately two (2) or more months later. Consequently, there is no causal connection between the notifications complained on August 17, 2006 and the Claimant's termination in October two (2) or more months later. The fact that the Mansfield School District failed (or refused) to rehire the claimant after she was removed from the registry confirms that there was no such causal connection between the two events.

3. Claimant has failed to state sufficient facts upon which relief may be granted. The complaint is vague and conclusory. In order to survive a motion to dismiss, the complaint must state sufficient facts as only the facts alleged in the complaint are considered. Arkansas law requires fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. *Key v. Coryell*, 86 Ark. App. 334, 340, 185 S.W.3d 98 (2004). In deciding a motion to dismiss, facts alleged in the complaint are taken as true and viewed in a light most favorable to the plaintiff. *Dowden v. Redd*, 367 Ark. 551 (2006). While viewing the facts in a light most favorable to a plaintiff, the facts should be liberally construed in the plaintiff's favor. *Hanks v. Sneed*, 366 Ark. 377 (2006). The rules in this state require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle a pleader to relief. *Arkansas Dep't of Env't'l Quality v. Brighton Corp.*, 352 Ark. 396, 403 (2003); Ark. R. Civ. P. 8(a). A court must look to the underlying facts supporting an alleged cause of action to determine whether the matter has been sufficiently pled. *Country Corner Food & Drug, Inc. v. First State Bank & Trust Co.*, 332 Ark. 645 (1998).

Claimant's cause of action is not apparent from her complaint. The complaint itself states it is for "wrongful termination" yet she was not employed by DHS and fails to allege that

DHS requested her termination. Claimant simply asserts that her cause of action is that her constitutional rights were violated and contends that is not in dispute. It is. As a matter of law, all statutes are presumed constitutional and the courts resolve all doubts in favor of constitutionality. *Arkansas Tobacco Control Bd. v. Sitton*, 357 Ark. 357, 166 S.W.3d 550 (2004). At the time of the acts complained of the statute was, thus, presumed to be constitutional and had not been declared otherwise. Consequently, DHS did not violated Claimant's constitutional rights.

4. Claimant has failed to mitigate her damages. Claimant states that she has been unable to work since October, 2006 despite her name being removed in December, 2007. Moreover, as evidenced in ¶ 1 the Final Order from the administrative hearing (directing removal of Claimant's name from the registry), Claimant *delayed* the administrative hearing for ten (10) months and now seeks an award of damages for that delay. Per the Final Order of the Administrative Law Judge, a copy of which was attached to the complaint as Exhibit B and which is attached hereto as Exhibit B, the administrative appeal hearing regarding the registry was scheduled for February 9, 2007, which just a few months after the notifications in question. *See* Exhibit B - Final Order, ¶1. Per *Claimant's request*, that hearing was continued from the date and then was not heard until December 5, 2007, ten months later. *See* Exhibit B – Final Order, ¶1. Claimant now seeks damages for lost pay during the time that she delayed the hearing.

Claimant had a duty to mitigate her damages by working, which she apparently failed to do. Despite the fact that her name was removed from the registry in December, 2007, that all record checks after that date would not reveal her name, and that she was sent a Final Order directing removal, she claims that she is still unable to find a job.

5. Claimant filed suit against DHS in the Circuit Court of Pulaski County, Arkansas, 6<sup>th</sup> Division, Case No. CV 2008-705 seeking, among other things, injunctive relief against Respondent. That litigation between the parties over the registry issue remains pending at this time. Though Claimant's lawsuit originally sought an award of damages from DHS for violating her constitutional rights with regard to the same registry matters in dispute herein, her damages claim was dismissed from the lawsuit due to the doctrine of "qualified immunity," which protects government officials from damage lawsuits where it is determined that their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Robinson v. Langdon*, 333 Ark. 662, 670, 970 S.W.2d 292, 296 (1998) *citing Mitchell v. Forsyth*, 472 U.S. 511, 524 (1985). Thus, the issue of whether DHS violated the claimant's clearly established constitutional rights has previously been decided by a Circuit Court. The Circuit Court found that DHS officials were entitled to qualified immunity for their actions in the notifications and the true finding resulting in Claimant's placement on the registry. In doing so, the Circuit Court, by necessity, also determined that DHS officials involved did not violate the claimant's clearly established constitutional rights. If the Court had found otherwise, then qualified immunity could not have been granted.

Consequently, a Circuit Court has previously determined that there was no violation of any clearly established constitutional rights by DHS and Claimant's attempt to relitigate the issue is barred by the doctrine of *res judicata*. *Arkansas Department of Human Services v. Arkansas Child Care Consultants, Inc.*, 318 Ark. 821, 889 S.W.2d 24 (1989). The doctrine of *res judicata* forbids the reopening of matters once judicially determined by competent authority. *Id.* The purpose of the *res judicata* doctrine is to put an end to litigation by preventing a party

who had one fair trial on a matter from relitigating the matter a second time. *Brandon v. Arkansas Western Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001) citing *Moon v. Marguez*, 338 Ark. 636, 999 S.W.2d 678 (1999).


Under the claim-preclusion aspect of the doctrine of *res judicata*, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim or cause of action. *Brandon v. Arkansas Western Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001) citing *Coleman Serv. Ctr., Inc. v Federal Deposit Ins. Corp.*, 55 Ark. App. 275, 935 S.W.2d 289 (1996). The doctrine bars relitigation of claims that were actually litigated in the first suit as well as those that could have been litigated. *Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002); *Nichols Bros. Investments v. Rector-Phillips-Morse*, 33 Ark.App. 47, 50, 801 S.W.2d 308, 310 (1990).

Claimant is consequently barred from relitigating her claim for damages due to an alleged violation of her constitutional rights and this matter should be dismissed.

WHEREFORE, for the reasons set forth above, Respondent moves this Commission to dismiss this matter and discharge Respondent from any liability herein. DHS was simply following the law passed by our legislature.

Respectfully submitted,

Arkansas Department Of Human Services

By:   
Richard N. Rosen  
Attorney – Bar #97164  
700 Main Street - Suite S260  
Little Rock, Arkansas 72201  
(501) 682-8608

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing was mailed postage prepaid this 30<sup>th</sup> day of October, 2008 to:

Clayton Blackstock, Esq.  
1010 West Third  
Little Rock, AR 72201

A handwritten signature in black ink that reads "Richard Rosen". The signature is written in a cursive style with a horizontal line underneath the name.

Richard N. Rosen

IN THE CIRCUIT COURT OF PULASKI COUNTY  
6<sup>TH</sup> DIVISION

SALLY BRYAN

PLAINTIFF

VS.

CASE NO. CV 08-705

FILED 10/17/2008 11:21:20  
Pat O'Brien Pulaski County Cle  
011

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES, *et. al.*

DEFENDANTS

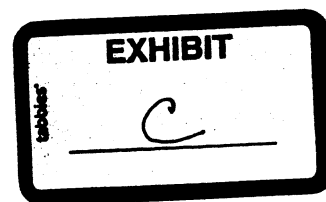
**ORDER GRANTING MOTION TO DISMISS AMENDED  
COMPLAINT AS TO THE INDIVIDUAL DEFENDANTS**

THIS MATTER came on to be heard on September 5, 2008 upon the motion of the defendants to dismiss the amended complaint and was argued by counsel.

Upon consideration of the Amended Complaint, the Motion to Dismiss the Amended Complaint, the written briefs filed by the parties hereto and the arguments of counsel at the hearing on the motion, the Court finds that defendants Corey Williams and Cindy Keith have qualified immunity from suit in their individual capacities under 42 U.S.C. 1983 and that the Motion to Dismiss the Amended Complaint should be granted as to defendants Corey Williams and Cindy Keith in their individual capacities; therefore it is

ADJUDGED and ORDERED that the Amended Complaint against defendants Corey Williams and Cindy Keith, in their individual capacities be and is hereby dismissed with prejudice; it is further

ADJUDGED and ORDERED that all other issues raised in the Motion to Dismiss the



Amended Complaint be and are hereby denied.

IT IS SO ORDERED.



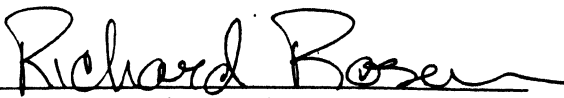
\_\_\_\_\_  
Timothy D. Fox  
Circuit Judge

OCT 17 2008

\_\_\_\_\_  
Date

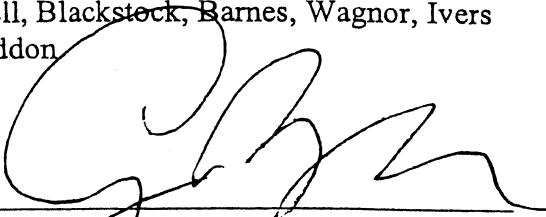
Prepared by:

Arkansas Department of Human Services

By:   
Richard N. Rosen, Bar No. 97164  
Office of Chief Counsel  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Phone: (501) 682-8608

Approved as to form:

Mitchell, Blackstock, Barnes, Wagnor, Ivers  
& Sneddon

By:   
Clayton Blackstock, Bar No. 84013  
1010 West Third Street  
Little Rock, AR 72201  
501/ 378-7870

**BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**SALLY BRYAN**

**CLAIMANT**

**VS.**

**CLAIM #09-0334-CC**

**STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES**

**RESPONDENT**

**RESPONSE TO MOTION TO DISMISS**

Comes the Petitioner, Sally Bryan, by her attorneys, Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC, and for her Response to the Motion to Dismiss states:

1. DHS claims Bryan's complaint should be dismissed on multiple grounds.
2. Bryan has done absolutely nothing wrong and because of the doctrine that the "king can do no wrong" has no other way to recover damages except before this body.
3. First, DHS claims it cannot be liable for damages because it followed an Arkansas law that DHS has acknowledged is unconstitutional and which DHS no longer follows even though the law is still on the books.
4. In response, Bryan claims DHS can be held liable for damages in this case because Bryan's claim for damages against DHS is barred by the doctrine of sovereign immunity.
5. Second, DHS claims Bryan is barred by *res judicata* from claiming damages against DHS because a circuit court has ruled that the two DHS employees who published the "finding" that Bryan was guilty of child maltreatment have qualified immunity and are not, therefore, liable in their individual capacities to Bryan for damages.

6. In response, Bryan asserts that *res judicata* only applies when the issues are the same and the issue of whether two individuals have qualified immunity from damages is not the same as the issue of DHS's violation of Bryan's due process rights by publishing a "finding" of child abuse before providing Bryan with a hearing.

7. Third, DHS claims it was not the proximate cause of Bryan's loss of employment even though Bryan was terminated based solely on DHS's publication of its "findings" that Bryan was guilty of child abuse.

8. In response, Bryan states that this is a factual issue not subject to a motion to dismiss and that DHS is the direct proximate cause of Bryan's termination from her job of 16 years as a bus driver with Mansfield School District.

9. Fourth, DHS claims that Bryan failed to mitigate her damages by not getting another job even in the face of DHS's widespread publication of its "finding" that she was guilty of child abuse.

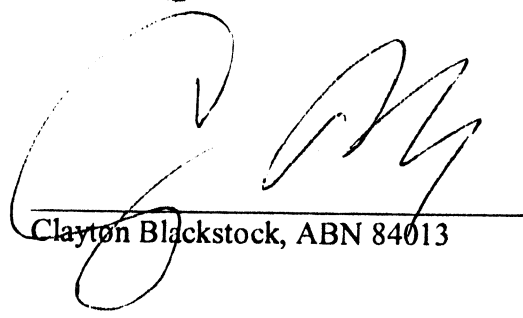
10. Again, Bryan states that this is a factual issue not subject to a motion to dismiss and that because of the widespread publication of the "finding" that she was guilty of child abuse she has only been able to secure some part-time employment at minimum wage and has not been able to secure another job working for any school district.

Wherefore, Bryan moves that DHS' Motion be dismissed and that the Claims Commission proceed with hearing her claim.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

By:

  
Clayton Blackstock, ABN 84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 13<sup>th</sup> day of November, 2008, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

**BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**SALLY BRYAN**

**CLAIMANT**

**VS.**

**CLAIM #09-0334-CC**

**STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES**

**RESPONDENT**

**BRIEF IN SUPPORT OF RESPONSE  
TO MOTION TO DISMISS**

Sally Bryan, an 18 year veteran bus driver with the Mansfield School District, cared deeply for all of the children on her bus. In the fall of 2005 and the spring of 2006, unbeknownst to her, a 16 year old male student who was under a court order not to be around young children because of a previous history of molesting them, was placed on her bus.

In August of 2006, following a short 30 day investigation and before ever affording Sally Bryan a chance to defend herself, DHS sent **four** notices via certified mail to Sally Bryan's 18 year employer, the Mansfield School District. Each notice said that an allegation of child maltreatment against Sally Bryan had been determined to be true. The notices, in part, read as follows:

As required by Arkansas Code Annotated §12-12-515, we are notifying you that an allegation of child maltreatment involving a student at your school has been determined true. The victim of the child maltreatment is [T.S.] (DOB) 07/18/2000.

The alleged offender is Sally Bryan. Alleged offender's relationship to the victim: school employee.

Exhibit A to Bryan's Complaint.

As required by Arkansas Code Annotated §12-12-515, we are notifying you that an allegation of child maltreatment involving a

student at your school has been determined true. The victim of the child maltreatment is [J.M.] (DOB) 11/12/1997.

The alleged offender is Sally Bryan. Alleged offender's relationship to the victim: school employee.

Exhibit A to Bryan's Complaint.

As required by Arkansas Code Annotated §12-12-515, we are notifying you that an allegation of child maltreatment involving a student at your school has been determined true. The victim of the child maltreatment is [L.R.] (DOB) 08/28/1997.

The alleged offender is Sally Bryan. Alleged offender's relationship to the victim: school employee.

Exhibit A to Bryan's Complaint.

As required by Arkansas Code Annotated §12-12-515, we are notifying you that an allegation of child maltreatment involving a student at your school has been determined true. The victim of the child maltreatment is [K.R.] (DOB) 03/24/1998.

The alleged offender is Sally Bryan. Alleged offender's relationship to the victim: school employee.

Exhibit A to Bryan's Complaint. DHS sent similar notices by certified mail to four parents in the community. The notices told the parents that the "evidence [from the investigation] supports the allegation of child maltreatment" against Sally Bryan. DHS also put Sally Bryan's name in the Child Maltreatment Registry. The notices provided no indication of what Sally Bryan was alleged to have done to be labeled a child abuser. Even Sally Bryan did not know what she had allegedly done wrong. Sending out these notices violated Sally Bryan's constitutional due process rights. The statute under which these notices were sent has been declared unconstitutional.

In April of 2007, in a different case involving an allegation of child maltreatment by a minor, Circuit Judge John R. Scott from Benton County ruled that the statutes under which DHS

published "findings" of child maltreatment violated the alleged perpetrator's right to be free from having the government irreparably damage their reputation by publishing a conclusion that the alleged perpetrator was a child abuser without first affording the alleged perpetrator a hearing:

5. Petitioner A.B. has constitutional standing to seek relief on account of the lack of pre-deprivation notice and hearing. Listing on the central registry has affected and will affect his important liberty interests. His reputation is damaged by his denomination as a maltreater of children. His educational path is adversely affected in that his identity as a child abuser has been made known to his school administrators and they are required by law to re-disclose that fact to any school he may subsequently attend, ARK. CODE ANN. § 12-12-506(c)(2). The State is authorized to disclose the central registry information on A.B. to certain classes of public and private persons, pursuant to ARK. CODE ANN. § 12-12-506, including employers and volunteer agencies. A.B.'s listing on the central registry will last at least until the Department, in its sole discretion and under standards known only to the Department, decides that A.B. has proven, by a preponderance of the evidence, that he has been rehabilitated. See ARK. CODE ANN. § 12-12-505(b)(iv). These impediments to the Petitioner's liberty interests, including his reputation, education, employment, and recreational activities, are of constitutional dimension; such rights have been prejudiced by the Department's action in violation of the United States and Arkansas Constitutions.

Exhibit C to Bryan's Complaint. DHS agreed with Judge Scott's opinion. DHS did not appeal Judge Scott's ruling. Instead DHS stopped following these Arkansas laws. Even though these laws are still on the books, DHS no longer follows them. DHS no longer disseminates "conclusions" that someone is a child abuser but instead waits until there has been such a finding following a hearing.

Ultimately, Sally Bryan had such a hearing. The administrative law judge found that she did everything she was supposed to do to protect the children on her bus. This did her no good. The damage done by DHS' dissemination of findings that she was a child abuser, to her

employer and the patrons in her community, could not be unraveled. The administrative law judge held:

The agency has failed to meet its burden of presenting by a preponderance of the evidence that Sally Bryan neglected JM, KR, TS, or LR.

Sally Bryan took reasonable action to protect the children on her bus. When [DE, juvenile offender] engaged in horseplay, Ms. Bryan told her supervisor and placed [DE] in a certain seat in the back of the bus. When two other children engaged in "French kissing", Ms. Bryan told her supervisor and separated the boys and the girls. When two girls told Junior Bryan that [DE] had been touching them inappropriately, Ms. Bryan told her supervisor, kept [DE] in his seat, kept the boys separated from the girls, and kept close watch on [DE]. Ms. Bryan was not authorized to deny [DE] a seat on the bus.

\*\*\*

Signed David Mackey, ALJ, Date 12/14/07.

Exhibit B to Bryan's Complaint. This did not undo the damage that had already been done.

In a case striking down a similar law, the court noted the irreparable nature of the damage from the government's publishing a claim that someone is a child abuser:

Due process requires that a person whose constitutional rights are affected by government action is entitled to be heard and it makes obvious sense in most cases "to minimize substantially unfair or mistaken deprivations" by insisting that the hearing be granted at a time when the deprivation can still be prevented (*see, Fuentes v. Shevin*, 407 U.S. 67, 79-82, 92 S.Ct. 1983, 1993-1995, 32 L.Ed.2d 556). That is particularly so in cases involving reputational injuries. The deprivation of a constitutionally protected property interest may be remedied *post hoc* by monetary damages but the injury inflicted on one's reputation cannot be so easily overcome. The damage to the subject following publication of an unsubstantiated report of child abuse may be irreversible.

Moreover, even where the facts that abuse occurred are clear, the appropriateness of disclosing that finding may not be (*see, Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543, 105 S.Ct. 1487, 1493-1494, 84 L.Ed.2d 494). Indeed, the statute provides that substantiated reports may not be disclosed unless relevant and

reasonably related to employment (see, Social Services Law § 422(8)(a)(ii); § 424-a).

*Lee TT. V. Dowling*, 664 N.E.2d 1243, 1253 N.Y. (1996).

A multitude of cases have struck down these laws in other states. *Cavarretta v. Dept. of Children and Family Serv.*, 277 Ill.App.3d 16, 214 Ill. Dec. 59, 660 N.E.2d 250, 254 (1996); *Valmonte v. Bane*, 18 F3d 992, 1000 (2d Cir. 1994); *In the Matter of Application of Anonymous v. Peters*, 189 Misc.2d 203, 730 N.Y.S.2d 689, 693 (2001); *Richardson v. Chevrefils*, 552 A 2<sup>nd</sup> 89 N.H. (1988); *Jamison v. State, Dept. of Social Services, Div. of Family Services*, 218 SW3d 399 (2007); *Angrisani v. City of New York*, 639 F.Supp. 1326 (1986). A hearing is required before any posting in a child maltreatment registry and before the government can tell the world that you are a child abuser.

**I. Bryan's Complaint Cannot be Dismissed on the Basis that DHS Was "Just Complying with Arkansas Law".**

DHS contends the Claims Commission should dismiss this case because, when it told the public that Sally Bryan was guilty of child abuse, it was "simply following Arkansas law."

Simply following an Arkansas statute does not exempt DHS from an award of damages by the Claims Commission. Sally Bryan's claim for damages against DHS is within the jurisdiction of the Claims Commission. Her damage claim is barred by the doctrine of sovereign immunity:

(a) Except as otherwise provided by law, the Arkansas State Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions, but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the state.

\* \* \*

(b)(2)(A) The commission shall have jurisdiction only over those claims which are barred by the doctrine of sovereign immunity from being litigated in a court of general jurisdiction.

A.C.A. §19-10-204.

Damage claims against state entities for the violation of constitutional rights are barred by the rule that the king can do no wrong. *Murphy v. State of Arkansas*, 127 F.3d 750 (8<sup>th</sup> Cir. 1997); *Hanks v. Sneed*, 366 Ark. 371, 235 S.W.3d 883 (2006). Thus, the fact that DHS sent out all these notices pursuant to Arkansas statutes does not divest the Claims Commission of jurisdiction.

DHS implies that whether these laws are constitutional is somehow still in dispute. That is not in dispute. DHS is collaterally estopped at this point from claiming that the laws are constitutional because a Circuit Judge has told DHS they are not constitutional, DHS has accepted that ruling, and DHS no longer follows these laws. Collateral estoppel applies when:

- (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) that issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment.

*Sparrow v. Ark. DHHS*, 2008 WL 240265, 101 Ark.App. 193. Thus, DHS' infringement of Sally Bryan's liberty interest is a given.

## **II. Bryan's Claim for Damages is Not Barred by Res Judicata**

Bryan has brought a claim against certain officials of DHS in Circuit Court in Pulaski County for injunctive relief. Any claim for damages against these officials in their official capacity is barred by the doctrine of sovereign immunity. *Alden v. Maine*, 527 U.S. 706 (1999). However, a claim for injunctive relief against them in their official capacity is not considered a suit against the state. *Ex Parte Young*, 209 U.S. 1234 (1908). So, even though this is probably too little too late, Bryan is asking the Circuit Court to order these officials to send out an "official" notice to all those that received the initial "finding" that Sally Bryan was a child abuser stating that the notice was wrong. That might, but probably won't, help Sally Bryan to become

gainfully employed again. The Claims Commission cannot award any injunctive relief – only damages. Thus, Bryan’s claim for injunctive relief is properly before the Circuit Court and the claim for damages, a claim that is barred by sovereign immunity, is properly before the Claims Commission.

In her Circuit Court suit Bryan alleges that the two individuals who sent out the “findings” of child abuse to the public have individual liability that is not barred by the doctrine of sovereign immunity. *Alden v. Maine*, 527 U.S. 706, 755 (1999). Only claims against DHS or DHS employees in their official capacity are considered claims against the State. This is a claim against two individuals for their alleged violation of Bryan’s constitutional rights. It is not a claim against the State. Bryan lost her claim against these two individuals when the Circuit Court ruled that the two DHS employees in their individual capacity were entitled to qualified immunity and, therefore, could not be held liable for any loss suffered by Bryan.

DHS claims that this qualified immunity ruling against Bryan somehow precludes her, under the doctrine of *res judicata*, from bringing her claim for damages against DHS before the Claims Commission. *Res judicata* only applies when the same issues are involved in two cases. *Brandon v. Arkansas Western Gas Co.*, 76 Ark.App. 201, 61 S.W.3d 193 (2001). The qualified immunity defense is a completely different issue of DHS’s violation of Bryan’s due process liberty interest. The ruling by the Circuit Court that two DHS employees are entitled to qualified immunity in their capacity as individuals does not serve as *res judicata* to Bryan’s damage claim against DHS.

The qualified immunity defense looks at whether the individuals involved reasonably should have known that the constitutional right they violated was clearly established. This issue is multifaceted and complex, especially when the individual is acting in accordance with a state

law. “A Second Line of Defense for Public Officials Asserting Qualified Immunity: What ‘Extraordinary Circumstances’ Prevent Officials from Knowing the Law Governing Their Conduct?”, 41 Suffolk U.L. Rev. (2008). This is a totally different issue from whether the publication by the government of a claim that someone is a child abuser violates one’s liberty interest. DHS violated Bryan’s liberty interest by disseminating the damaging assertion that she was guilty of child maltreatment without first affording her a hearing. That’s the issue in this case – not whether someone is entitled to qualified immunity. The qualified immunity ruling by the Circuit Court as to the DHS employees sued in their individual capacity is not *res judicata* to this damages claim against DHS.

### **III. Proximate Cause and Mitigation are Fact Issues.**

DHS claims that Sally Bryan’s Claims Commission complaint should be dismissed because DHS did not “fire” Bryan from her employment with Mansfield and also because Sally Bryan allegedly did not “mitigate” her damages. These claims by DHS do not serve as a basis for dismissing Sally Bryan’s complaint – instead they are fact issues that the Claims Commission must decide at a hearing.

DHS was the direct proximate cause of Bryan’s termination by Mansfield and Bryan, despite diligent efforts to find a job, has only been able to find part-time, minimum wage employment. Even though the Administrative Law Judge determined she did not neglect any students on her bus, the damage to Sally’s reputation by DHS sending out the “findings” that she was a child abuser had irretrievable consequences.

At the Claims Commission hearing Bryan will establish that the Mansfield School District superintendent, as soon as he received the four DHS “conclusions” that Bryan was guilty of child abuse, sent Bryan a letter recommending her termination – the sole reason given for

termination was the findings by DHS. The letter from her superintendent containing the recommendation read:

My reason for suspending you and recommending your termination arise from the following:

1. A finding by the Arkansas Department of Health & Human Services, Division of Children and Family Services determined to be true of allegations of child maltreatment involving four (4) students on your bus.

Ex. No. 1, attached to this Brief.

Sally Bryan requested a hearing before the school board and the school board terminated her based on the four notices from DHS. DHS is directly responsible for her termination.

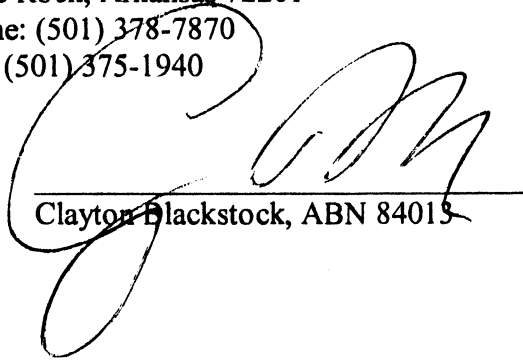
After that Sally Bryan tried desperately to find other employment. However, by this time, the fact that DHS said she was guilty of child abuse had spread far and wide throughout the community. It made front page news. This bell could not be un-rung.

Sally Bryan's hearing before the Administrative Law Judge was delayed because the ALJ refused to issue subpoenas for Sally Bryan to get DHS records from the DHS. DHS had files on the 16 year old child molester which files included statements from the students on Sally Bryan's bus. Sally Bryan's counsel was eventually able to secure those statements from the 16 year old's court-appointed attorney and introduced them at Sally Bryan's hearing; those statements, which had been available to DHS before it found Sally Bryan guilty of child abuse, showed that Sally Bryan had not done anything wrong. Thus, she has done everything she can to try and find other employment and she lost her job because of DHS.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

By:

  
Clayton Blackstock, ABN 84015

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 13<sup>th</sup> day of November, 2008, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

SALLY BRYAN

CLAIMANT

VS.

CLAIM #09-0334-CC

STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

Answer and Motion To Dismiss

Comes the Respondent, State of Arkansas, Department of Human Services, Division of Children and Family Services, by its attorney, Richard N. Rosen, and for its Answer and Motion to Dismiss states:

1. Respondent denies liability in the full amount of the above claim. Account information is:

Business Area:	0710
Cost Center:	417676
Internal Order:	HS5X00XX
Fund:	DCFS 2600
Fund Ctr:	883

2. Respondent denies liability as DHS was following the mandates enacted by the legislature in Ark. Code Ann § 12-12-501, *et seq.*, which is commonly known as the "Arkansas Child Maltreatment Act." The Child Maltreatment Act *required* that the notifications now complained of by the claimant be sent to the persons and entities involved. DHS had no discretion in sending the notifications. The Child Maltreatment Act provided for and directed the precise acts taken by DHS which are now complained of by Claimant. DHS had no option. They were ministerial tasks.

As asserted by Claimant in her complaint, Ark. Code Ann. § 12-12-512(c)(1)(A)(i) *requires* DHS to notify each subject of the report of the determination of a true finding. Ark. Code Ann. § 12-12-503 (20) requires that the notification go to the parents of any child suspected of being maltreated. Ark. Code Ann. § 12-12-515 requires DHS to also notify the local educational agency, specifically the child's school counselor. The August 17, 2006 letters to the parents and to the school counselor attached to the claim establish that DHS did as the law required.

Significantly, Ark. Code. Ann. § 12-12-505 requires DHS to establish a statewide registry for the collection of cases involving child maltreatment that is determined to be true. Since there was a true finding, DHS was required to place the claimant's name on the registry.

Consequently, DHS simply followed the statute when it sent the notifications now complained of and when they placed the claimant on the registry upon making the finding. Under Ark. Code Ann. § 12-12-212(c)(4), if the petitioner prevails at the administrative hearing, the report is changed from true to unsubstantiated and, per §12-12-505, the name is removed from the registry as (now) unsubstantiated. Copies of the relevant portions of Ark. Code Ann. §§ 12-12-505, -512, -515 are attached as Exhibit A. The acts of DHS that Claimant now complains of were nondiscretionary, ministerial acts required by law.

2. DHS further denies liability because DHS did not terminate claimant's employment nor request any such termination. DHS simply sent the statutory notifications that were required by law. Claimant was employed by the Mansfield School District, not by DHS. It was the Mansfield School District that terminated claimant and, apparently, refused to rehire her once her name was removed from the registry. Moreover, according to the exhibits attached to the claim itself, the Mansfield School District was notified of the finding by letter to Jim Hattabaugh, dated August

17, 2006. However, according to the claim filed herein, Claimant was not terminated by the Mansfield School District until sometime in October, 2006, approximately two (2) or more months later. Consequently, there is no causal connection between the notifications complained on August 17, 2006 and the Claimant's termination in October two (2) or more months later. The fact that the Mansfield School District failed (or refused) to rehire the claimant after she was removed from the registry confirms that there was no such causal connection between the two events.

3. Claimant has failed to state sufficient facts upon which relief may be granted. The complaint is vague and conclusory. In order to survive a motion to dismiss, the complaint must state sufficient facts as only the facts alleged in the complaint are considered. Arkansas law requires fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. *Key v. Coryell*, 86 Ark. App. 334, 340, 185 S.W.3d 98 (2004). In deciding a motion to dismiss, facts alleged in the complaint are taken as true and viewed in a light most favorable to the plaintiff. *Dowden v. Redd*, 367 Ark. 551 (2006). While viewing the facts in a light most favorable to a plaintiff, the facts should be liberally construed in the plaintiff's favor. *Hanks v. Sneed*, 366 Ark. 377 (2006). The rules in this state require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle a pleader to relief. *Arkansas Dep't of Env't'l Quality v. Brighton Corp.*, 352 Ark. 396, 403 (2003); Ark. R. Civ. P. 8(a). A court must look to the underlying facts supporting an alleged cause of action to determine whether the matter has been sufficiently pled. *Country Corner Food & Drug, Inc. v. First State Bank & Trust Co.*, 332 Ark. 645 (1998).

Claimant's cause of action is not apparent from her complaint. The complaint itself states it is for "wrongful termination" yet she was not employed by DHS and fails to allege that

DHS requested her termination. Claimant simply asserts that her cause of action is that her constitutional rights were violated and contends that is not in dispute. It is. As a matter of law, all statutes are presumed constitutional and the courts resolve all doubts in favor of constitutionality. *Arkansas Tobacco Control Bd. v. Sitton*, 357 Ark. 357, 166 S.W.3d 550 (2004). At the time of the acts complained of the statute was, thus, presumed to be constitutional and had not been declared otherwise. Consequently, DHS did not violated Claimant's constitutional rights.

4. Claimant has failed to mitigate her damages. Claimant states that she has been unable to work since October, 2006 despite her name being removed in December, 2007. Moreover, as evidenced in ¶ 1 the Final Order from the administrative hearing (directing removal of Claimant's name from the registry), Claimant *delayed* the administrative hearing for ten (10) months and now seeks an award of damages for that delay. Per the Final Order of the Administrative Law Judge, a copy of which was attached to the complaint as Exhibit B and which is attached hereto as Exhibit B, the administrative appeal hearing regarding the registry was scheduled for February 9, 2007, which just a few months after the notifications in question. *See* Exhibit B - Final Order, ¶1. Per *Claimant's request*, that hearing was continued from the date and then was not heard until December 5, 2007, ten months later. *See* Exhibit B - Final Order, ¶1. Claimant now seeks damages for lost pay during the time that she delayed the hearing.

Claimant had a duty to mitigate her damages by working, which she apparently failed to do. Despite the fact that her name was removed from the registry in December, 2007, that all record checks after that date would not reveal her name, and that she was sent a Final Order directing removal, she claims that she is still unable to find a job.

5. Claimant filed suit against DHS in the Circuit Court of Pulaski County, Arkansas, 6<sup>th</sup> Division, Case No. CV 2008-705 seeking, among other things, injunctive relief against Respondent. That litigation between the parties over the registry issue remains pending at this time. Though Claimant's lawsuit originally sought an award of damages from DHS for violating her constitutional rights with regard to the same registry matters in dispute herein, her damages claim was dismissed from the lawsuit due to the doctrine of "qualified immunity," which protects government officials from damage lawsuits where it is determined that their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Robinson v. Langdon*, 333 Ark. 662, 670, 970 S.W.2d 292, 296 (1998) *citing Mitchell v. Forsyth*, 472 U.S. 511, 524 (1985). Thus, the issue of whether DHS violated the claimant's clearly established constitutional rights has previously been decided by a Circuit Court. The Circuit Court found that DHS officials were entitled to qualified immunity for their actions in the notifications and the true finding resulting in Claimant's placement on the registry. In doing so, the Circuit Court, by necessity, also determined that DHS officials involved did not violate the claimant's clearly established constitutional rights. If the Court had found otherwise, then qualified immunity could not have been granted.

Consequently, a Circuit Court has previously determined that there was no violation of any clearly established constitutional rights by DHS and Claimant's attempt to relitigate the issue is barred by the doctrine of *res judicata*. *Arkansas Department of Human Services v. Arkansas Child Care Consultants, Inc.*, 318 Ark. 821, 889 S.W.2d 24 (1989). The doctrine of *res judicata* forbids the reopening of matters once judicially determined by competent authority. *Id.* The purpose of the *res judicata* doctrine is to put an end to litigation by preventing a party

who had one fair trial on a matter from relitigating the matter a second time. *Brandon v. Arkansas Western Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001) citing *Moon v. Marguez*, 338 Ark. 636, 999 S.W.2d 678 (1999).


Under the claim-preclusion aspect of the doctrine of *res judicata*, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim or cause of action. *Brandon v. Arkansas Western Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001) citing *Coleman Serv. Ctr., Inc. v Federal Deposit Ins. Corp.*, 55 Ark. App. 275, 935 S.W.2d 289 (1996). The doctrine bars relitigation of claims that were actually litigated in the first suit as well as those that could have been litigated. *Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002); *Nichols Bros. Investments v. Rector-Phillips-Morse*, 33 Ark.App. 47, 50, 801 S.W.2d 308, 310 (1990).

Claimant is consequently barred from relitigating her claim for damages due to an alleged violation of her constitutional rights and this matter should be dismissed.

WHEREFORE, for the reasons set forth above, Respondent moves this Commission to dismiss this matter and discharge Respondent from any liability herein. DHS was simply following the law passed by our legislature.

Respectfully submitted,

Arkansas Department Of Human Services

By: 

Richard N. Rosen  
Attorney – Bar #97164  
700 Main Street - Suite S260  
Little Rock, Arkansas 72201  
(501) 682-8608

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing was mailed postage prepaid this 30<sup>th</sup> day of October, 2008 to:

Clayton Blackstock, Esq.  
1010 West Third  
Little Rock, AR 72201

A handwritten signature in black ink, reading "Richard Rosen". The signature is written in a cursive style with a horizontal line underneath the name.

Richard N. Rosen

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 20,000.00

Claim No. 09-0334-CC

		Attorneys
<u>Sally Bryan</u>	Claimant	<u>Clayton Blackstock, Attorney</u> Claimant
vs.		<u>Breck Hopkins, Chief Counsel</u>
<u>DHS/Children and Family Services</u>	Respondent	<u>Rich Rosen, Attorney</u>
<u>State of Arkansas</u>		<u>Brenda Jackson, Accounts Payable</u>
		<u>Jerry Berry, Fiscal Officer</u> Respondent
Date Filed <u>October 7, 2008</u>		Type of Claim <u>Wrongful termination</u>

FINDING OF FACTS

This claim was filed for wrongful termination in the amount of \$20,000.00 against Arkansas Department of Human Services, Children and Family Services.

Present at a hearing was the Claimant, represented by Clayton Blackstock, Attorney, and the Respondent, represented by Rich Rosen, Attorney.

The Claims Commission unanimously denied and dismissed Respondent's "Motion to Dismiss", and **therefore this claim will be set for hearing.**

**IT IS SO ORDERED.**

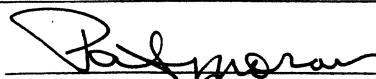
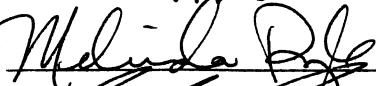
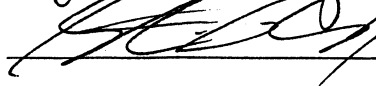
(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously denied and dismissed Respondent's "Motion to Dismiss" and **therefore this claim will be set for hearing.**

Date of Hearing January 9, 2009

Date of Disposition January 9, 2009

	Chairman
	Commissioner
	Commissioner

**BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**SALLY BRYAN**

**VS.**

**CLAIM #09-0334-CC**

**ARKANSAS STATE CLAIMANT  
CLAIMS COMMISSION**

**MAY 27 2009**

**STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES**

**RECEIVED**

**RESPONDENT**

**CLAIMANT'S MOTION TO COMPEL**

Comes the Petitioner, Sally Bryan, by and through her attorneys, Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC, for her Motion to Compel states:

1. The hearing in this matter is set for July 17, 2009.
2. On February 13, 2009, the Department of Human Services (DHS) objected to and did not answer even one of Sally Bryan's six (6) Requests for Production of Documents and nine (9) Interrogatories. (See attached Exhibit A)
3. Sally Bryan claims that DHS deprived her of liberty without due process when DHS sent her employer and members of the community notice that a "true" finding of child maltreatment had been made against her.
4. Under the due process clauses of the Arkansas and United States constitutions, Sally Bryan was entitled to a hearing *before* any "true" findings of child maltreatment were made public.
5. It is undisputed that Sally Bryan did not receive a hearing until *after* the "true" findings of child maltreatment were made public.
6. The fact that the "true" findings were sent out before any hearing, in and of itself, renders DHS liable for violating Sally Bryan's constitutional right to due process.

7. A due process hearing requires that the person charged must be given notice of the specific charges against her and have the opportunity to hear and cross examine witnesses.

8. The notices were sent out after a short 30 day investigation.

9. What happened or didn't happen during the investigation is relevant to show that the investigation was by no means a substitute for a due process hearing.

10. With this Motion, Sally Bryan is asking for an Order compelling DHS to respond to Bryan's discovery questions that dealt with (a) the complete record of Sally Bryan's administrative hearing before DHS, at which she was exonerated of the claim of child maltreatment (RFP #2); and (b) the DHS claim against Bryan's supervisor, Larry Wagoner, against whom DHS also brought child maltreatment charges (RFP # 3, 4, 5; Int. #1, 2, 3, 4, 5).

11. The information requested is relevant to the hearing before this Commission because it shows the investigation was clearly not a hearing.

12. At some point, it appears that DHS charged Sally Bryan with not telling her supervisor, Larry Wagoner, that two of the little girls on her bus reported to Sally Bryan's husband (the bus monitor) that they had been improperly touched by a 16 year old boy.

13. Larry Wagoner denied that Sally Bryan ever told him about the girls' report.

14. The DHS investigator, in his interview notes on Larry Wagoner, expressed serious doubts about Wagoner's credibility.

15. Nevertheless, the DHS investigator charged Sally Bryan with not reporting the children's complaints to her supervisor, Larry Wagoner.

16. DHS *also charged* Larry Wagoner with child maltreatment for not taking any action *based on the report he received* from Sally Bryan.

17. The DHS records on Larry Wagoner are relevant because they show that DHS took totally inconsistent positions when it charged Sally Bryan with child maltreatment – on the one hand it claimed that she did not tell her supervisor and on the other it claimed that she did tell her supervisor.

18. DHS's child maltreatment charge against Larry Wagoner was dismissed but the dismissal was due solely to a paperwork error by DHS.

19. Sally Bryan is entitled to the DHS records that show there was a paperwork error in Larry Wagoner's case. Without this evidence, it appears that DHS was consistent in its handling of the claims against Larry Wagoner and Sally Bryan.

20. Sally Bryan is also entitled to the complete record of her own administrative hearing.

21. The DHS investigator who made the initial "true" finding against Sally Bryan testified at her administrative hearing. That testimony is relevant to this proceeding.

22. The DHS investigator testified about the inconsistencies in his investigation, the lack of information to support his initial true finding against Sally Bryan and the fact that he sent the true findings to Sally Bryan's employer and the parents of students who rode her bus.

23. DHS incorrectly claims that it is precluded by law from releasing any of this information.

24. This Commission has the power to order the release of the requested information.

25. The law does not preclude this Commission from ordering DHS to release the record of **Sally Bryan's administrative hearing**.

(a) Under Claims Commission Rule 8.1 the Arkansas Rules of Civil Procedure apply;

(b) Under Ark. R. Civ. Pro. 26, 33 and 34, this Commission can order the production of documents and the answering of interrogatories that are reasonably calculated to lead to the discovery of admissible evidence;

(c) Under Ark. Code Ann. § 12-12-512(e), the administrative hearing decision and all exhibits submitted at the hearing may be disclosed as provided for in Ark. Code Ann. § 12-12-506(a)(2)(A) ;

(d) Under Ark. Code Ann. § 12-12-506(a)(2)(A)(iii), any person who is the subject of a true report, which Sally Bryan was, is entitled to receive all central registry date;

(e) Under Ark. Code Ann § 12-12-506 (a)(2)(A)(xiii), any court, upon a finding that the information in the record is necessary for a determination of an issue before the court, may order the release of that information; and

(f) Sally Bryan has already seen all the information requested and was present at the administrative hearing where all the testimony was given.

26. The law does not preclude this Commission from ordering DHS to release the **records relating DHS' charge against Larry Wagoner.**

(a) Under Claims Commission Rule 8.1, the Arkansas Rules of Civil Procedure apply;

(b) Under Ark. R. Civ. Pro. 26, 33 and 34, this Commission can order the production of documents and the answering of interrogatories that are reasonably calculated to lead to the discovery of admissible evidence;

(c) Under Ark. Code Ann. § 12-12-512(e), the administrative hearing decision and all exhibits submitted at the hearing may be disclosed as provided for in Ark. Code Ann. § 12-12-506(a)(2)(A) ; and

(d) Under Ark. Code Ann § 12-12-506 (a)(2)(A)(xiii), any court upon a finding that the information in the record is necessary for a determination of an issue before the court may order the release of that information.

WHEREFORE, Sally Bryan moves the Commission to order DHS to fully respond to her Requests for Production of Documents and Interrogatories as requested above and for all other proper relief.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940


By: 

Clayton Blackstock, ABN 84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 27 day of May, 2009, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

JUN 08 2009

BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

RECEIVED

SALLY BRYAN

CLAIMANT

VS.

CLAIM NO. #09-0334-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

**Defendants' Response Motion to Compel**

COMES NOW the Defendants, by and through counsel, Richard N. Rosen, and in response to the Claimant's Motion to Compel, states as follows:

1. Aside from the legal issues already decided by the Circuit Court of Pulaski County finding no a clear violation of Claimant's statutory and constitutional rights in order for damages to be awarded and notwithstanding the continued pendency of that action in Circuit Court, Claimants seeks this Commission to order the release of confidential information that the Arkansas legislature clearly, plainly and specifically ordered not be released. *See* Child Maltreatment Act - Ark. Code Ann. §§ 12-12-506, 12-12-512. Failure to comply with the mandates of the statute subjects one to criminal penalties.

2. Respondent filed timely its objections to the discovery requests and mailed a copy thereof to counsel on February 13, 2009, almost four (4) months ago. *See* Objections to discovery filed by Respondent attached hereto as DHS Exhibit A.

3. Though Claimant now asserts in ¶ 10 of her Motion that she requested "the complete record" of Ms. Bryan's administrative hearing, the actual discovery # 1 request shows otherwise. In Request # 1, Claimant requested transcripts from the hearing. Since no transcript presently exist, Respondent replied that "[n]o such documents exist." In Request # 2, Claimant

requested exhibits and tapes from the hearing. Since the hearing unfounded the reports, all such information is confidential as a matter of law. Ark. Code Ann. § 12-12-506(a)(2)(A) allows release of such information under certain specific conditions for *true finding*. However, Ark Code Ann. § 12-12-512(e) and § 12-12-512(a)(1)(B)(i) prohibits disclosure otherwise.

4. Claimant also requested disclosure of reports and investigations allegedly concerning third parties. See Requests # 3, 4, 5, 6 and Interrogatories # 1 – 9. Any and all such information, if it exists, is confidential as a matter of law under Ark. Code Ann. § 12-12-506(a)(1) and (2) pertaining to “true” reports of child maltreatment and § 12-12-512(a)(1)(B)(i) governing “unsubstantiated” reports of child maltreatment. Additionally, the Child Maltreatment Act, Ark. Code Ann. § 12-12-512(e), directs that “[a]dministrative hearing decisions and all exhibits submitted at the hearing are confidential and may be used or disclosed only as provided in § 12-12-506(a)(2)(A). Section 12-12-506(a)(2)(A) restricts use or disclosure to certain entities and individuals in the event that the *allegations are determined to be true*. Since Plaintiff asserts that the allegations were unsubstantiated at the administrative hearing, such exception is not applicable.

5. Despite Claimant’s claims otherwise in ¶¶ 25 and 26 of her Motion, the legislature mandated that the requested information **not** be disclosed except under very strict exceptions which do not apply here and which Claimant does not argue apply here. Failure to follow the law cited by Respondent may result in criminal prosecution. Claimant’s reliance on the Rules of Civil Procedure to argue otherwise is absurd.

WHEREFORE, Respondent moves that the Motion to Compel be denied.

Respectfully submitted,

Arkansas Department of Human Services  
Breck Hopkins, Chief Counsel

By: Richard Rosen  
Richard N. Rosen, Bar No. 97164  
Office of Chief Counsel  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Phone: (501) 682-8608

**CERTIFICATE OF SERVICE**

I hereby certify that on 6<sup>th</sup> day of June, 2009 I mailed a copy of the above,  
postage prepaid to:

Clayton Blackstock, Esquire  
1010 West Third Street  
Little Rock, AR 72201

Richard Rosen

STATE CLAIMS COMMISSION DOCKET  
OPINION

38,213.68

09-0334-CC

Amount of Claim \$ \_\_\_\_\_

Claim No. \_\_\_\_\_

Sally Bryan

Claimant

vs.

DHS/Children & Family Services

Respondent

State of Arkansas

Date Filed October 7, 2008

Attorneys

Clayton Blackstock, Attorney

Claimant

Michael Crump, Attorney

Breck Hopkins, Chief Counsel

Jerry Berry, Chief Finance & Admin. Officer

Brenda Jackson, Asst. Dir., Gen. Operations

Type of Claim Wrongful Termination

FINDING OF FACTS

The Arkansas State Claims Commission hereby unanimously grants the Claimant's "Motion to Compel" and directs certain information be made available on or before June 30, 2009. Material the Respondent deems "confidential" certainly does not include information presented at the hearing, including investigative reports, witnesses, testimony and Claimant's own defense information, which led to the Claimants being "clear" of child maltreatment charges.

As to material presented at Claimant's hearing relating to third parties, who were being investigated for or did face charges, the Commission is of the opinion that it can be received under a "protective order" of the Claims Commission, which would not allow its public presentation, but would make the material available for the Commission to review as to any relevance to the claim filed by the Claimant. The Commission has successfully used this procedure in the past with the Respondent agency and other parties when confidentiality has been a question.

IT IS SO ORDERED.

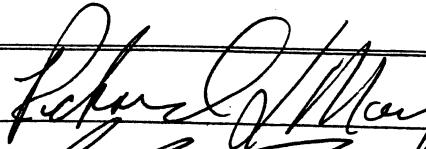
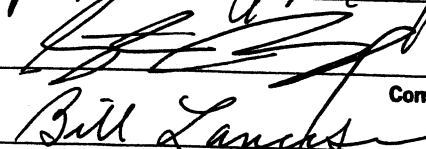
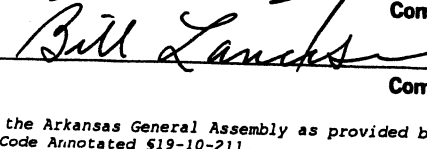
(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Claimant's "Motion to Compel" and directs certain information be made available on or before June 30, 2009.

Date of Hearing June 12, 2009

Date of Disposition June 12, 2009

  
Chairman  
  
Commissioner  
  
Commissioner

\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

43A

RECEIVED

JUN 25 2009

BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

Arkansas State  
Claims Commission

SALLY BRYAN

CLAIMANT

VS.

CLAIM NO. #09-0334-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

**Defendants' Motion for Reconsideration**

COMES NOW the Respondent, by and through counsel, Richard Rosen, and moves this Commission to reconsider its decision ordering the agency to disclose confidential information prohibited by state law; and as grounds therefore submits the following key points and legal authorities:

**CONFIDENTIAL INFORMATION  
CONCERNING THE UNRELATED THIRD PARTIES**

- This Commission's June 12, 2009 decision is in derogation of Ark. Code Ann. § 12-12-506(a)(1) by ordering DHS to disclose any registry information and reports concerning unrelated third parties which state statute mandates not be disclosed to anyone except under very limited circumstances identified Ark. Code Ann. §§ 12-12-506(a)(2)(A)(i) through (2)(A)(xix). Ark. Code Ann. § 12-12-506 is attached hereto as Exhibit 1.
- The exceptions authorized by Ark. Code Ann. § 12-12-506(a)(2) do not include the Claims Commission, the Claimant or her attorney. A Claims Commission issued protective order is not an exception under § 12-12-506(a)(2).

- The Claimant does not assert an exception allowed by Ark. Code Ann. § 12-12-506(a)(2)(A) and no applicable exception exists.
- Though an exception exists for individual senators and representatives acting within their *official* capacities, Ark. Code Ann. § 12-12-506(a)(2)(A)(xv) prohibits the information requested herein, to the extent that it exists, from being disclosed to any legislative body or committee since the discovery request is specific to individuals –
  - “(a) Individual federal and state senators and representatives in their official capacity and their staff members who agree not to allow any redisclosure of information.
  - (b) However, no disclosure shall be made to any committee or legislative body of any information that identifies any recipient of services by name or address.”
  - This prohibition extends to the Claims Commission which the Arkansas Supreme Court has repeatedly held is an “arm of the General Assembly.” *Griffen v. Ark. Judicial Discipline and Disability Comm’n*, 355 Ark. 38, 130 S.W.3d 524 (2003); *Hanley v. Arkansas State Claims Comm’n*, 333 Ark. 159, 166, 970 S.W.2d 198, 200 (1998); *Fireman’s Insurance Co. v. Arkansas State Claims Commission*, 301 Ark. 451, 784 S.W.2d 771 (1990) (emphasis added).
- The Commission’s belief that administrative hearings on registry appeals are public hearings is incorrect. All such hearings are closed, private hearings and are not open to the public.

- The Commission's belief that registry information and reports concerning the unrelated third parties, to the extent any exists, may be disclosed to the Commission, to the claimant and to the claimant's attorney absent a Court Order where no exception exists is incorrect.
- This Commission's finding that Respondent "deems" the information confidential is incorrect. State law, not Respondent, mandates that it is confidential –  
**"12-12-506. Disclosure of central registry data.**  
**(a)(1) A report made pursuant to this subchapter shall be confidential and shall be used or disclosed only as provided in this section."**
- **Compliance with the disclosure order by this Commission subjects government employees to criminal prosecution under Ark. Code Ann. § 12-12-506(c)(3) –**  
**"(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor."**
- **Claimant's lawsuit against the Respondent for allegedly violating her constitutional rights is also pending before the Circuit Court of Pulaski County.**
  - The Circuit Court lawsuit alleges the same cause of action as the claim filed herein. See the complaint filed in the Circuit Court lawsuit attached hereto as Exhibit 2.
  - Respondent (DHS) remains a defendant in that Circuit Court lawsuit and has not yet been dismissed.
  - The damage claim against DHS remains pending in the Circuit Court lawsuit and has not been dismissed. See the Order attached hereto dismissing the individual

DHS employees who had qualified immunity and denying the other issues raised in the Motion to Dismiss is attached as Exhibit 3.

- **Claimant simultaneously served the *exact same discovery* requests in both the Circuit Court lawsuit and the Claims Commissions action.**
  - DHS made the *exact same objections* to the Circuit Court lawsuit discovery requests as it did with the discovery requests served herein. *Compare* DHS's Responses to Discovery in the Circuit Case lawsuit attached as Exhibit 4 to the Respondent's Responses to Discovery filed herein which are attached hereto as Exhibit 5.
  - Though the Circuit Court of Pulaski County has the statutory authority to order disclosure in that lawsuit under certain conditions, where applicable, **Claimant has not moved the Circuit Court to overrule any of the objections to discovery in that case and the Circuit Court has not overruled any of the objections to discovery filed therein.**
- The Circuit Court already ruled that the acts of the agency employees complained of in the Circuit Court lawsuit (which are the exact same acts complained of herein) do not give rise to liability for damages due to qualified immunity. This claim was filed subsequent to the Circuit Court's ruling on liability for those acts.

**CONFIDENTIAL INFORMATION  
CONCERNING CLAIMANT**

- This Commission's June 12, 2009 order directly violates Ark. Code Ann. § 12-12-512(e) by ordering DHS to disclose administrative decisions and exhibits that state statute mandates not be disclosed to anyone except under very limited circumstances identified

Ark. Code Ann. §§ 12-12-506(a)(2)(A)(i) through (2)(A)(xix). Ark. Code Ann. § 12-12-512 is attached hereto as Exhibit 6.

- Ark. Code Ann. § 12-12-512(e) directs that administrative decisions and exhibits are confidential --

"(e) Administrative hearing decisions and all exhibits submitted at the hearing are confidential and may be used or disclosed only as provided in § 12-12-506(a)(2)(A)."

- Again, Claimant simultaneously served the *exact same discovery* requests in both the Circuit Court lawsuit and the Claims Commissions action.

- Claimant has not moved the Circuit Court to overrule any of the objections to discovery in that case and the Circuit Court has not overruled any of the objections to discovery filed therein.

WHEREFORE, Respondent moves that this Claims Commission reconsider its June 12, 2009 decision and deny Claimant's Motion to Compel. Though Claimant's simultaneous litigation of the exact same claim against DHS in both the Circuit Court of Pulaski County and the Claims Commission is improper and should by itself bar Claimant from proceeding herein, she has the ability to move the Circuit Court to rule on the validity of the objections but has failed to do so despite the pendency of the objections in both the Circuit Court and the Claims Commission since February, 2009.

Respectfully submitted,

Arkansas Department of Human Services

By: Richard Rosen

Richard N. Rosen, Bar No. 97164  
Office of Chief Counsel  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203-1437

Phone: (501) 682-8608

**CERTIFICATE OF SERVICE**

I hereby certify that on 25<sup>th</sup> day of June, 2009 I mailed and e-mailed a copy of the above motion, postage prepaid to:

Clayton Blackstock, Esquire  
1010 West Third Street  
Little Rock, AR 72201

cblackstock@mitchellblackstock.com

Richard Rosen

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL 6<sup>TH</sup> DIVISION

SALLY BRYAN

PLAINTIFF

VS.

CASE NO. CV 2008-705

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES, COREY WILLIAMS,  
Family Social Worker for DHS in his official  
and individual capacities, CINDY KEITH,  
Supervisor for DHS in her official and individual  
capacities, VELLOR WILLIAMS, Central Registry  
Supervisor in her official capacity; PAT PAGE,  
Director of the Division of Family Services in his/her  
official capacity; and JOHN SELIG, Director of  
DHS in his official capacity.

FILED 04/23/2008 15:20:46  
Pat O'Brien Pulaski Circuit Clerk

DEFENDANTS

AMENDED COMPLAINT AND PETITION

Comes the Plaintiff, Sally Bryan, by and through her attorney, Clayton Blackstock of Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC. and for her Amended Complaint and Petition states:

**PARTIES**

1. Plaintiff is a resident of Huntington, Arkansas. Until October 23, 2006 Plaintiff had been a long term employee and bus driver for the Mansfield School District ("Mansfield").
2. The Defendant, Arkansas Department of Human Services ("DHS") is an agency of the State of Arkansas that has the authority to investigate allegations of "child maltreatment" under Ark. Code Ann. § 12-15-501, *et seq* and maintains a "Central Registry" of the names of those people DHS finds guilty of "child maltreatment."
3. Defendant, Corey Williams ("Williams") is a Family Services Social Worker employed by DHS. Williams is sued in his individual and official capacity and is a "person" under



42 U.S.C. § 1983. The conduct complained of was committed by Corey Williams acting under color of state law and deprived Plaintiff of her rights, privileges and immunities secured by the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and corresponding provision of the Arkansas Constitution. Williams resides in Sebastian County Arkansas.

4. Defendant, Cindy Keith ("Keith") is a Supervisor employed by DHS and is sued in her individual and official capacity. Keith is a "person" under 42 U.S.C. § 1983 and the conduct complained of was committed by Cindy Keith acting under color of state law. The conduct deprived Plaintiff of her rights, privileges and immunities secured by the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and Article 2, § 8 of the Arkansas Constitution. Keith resides in Sebastian County Arkansas.

5. Defendant, Vellor Williams is the Central Registry Supervisor employed by DHS and is sued in her official capacity. She is a "person" under 42 U.S.C. § 1983 and the conduct complained of was committed by Vellor Williams and/or her predecessor acting under color of state law. The conduct deprived Plaintiff of her rights, privileges and immunities secured by the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and Article 2, § 8 of the Arkansas Constitution. Ms. Williams has control over data that is entered into the Central Registry and that is released from the Central Registry. Vellor Williams resides in Pulaski County Arkansas.

6. Defendant, Pat Page ("Page") is the Director of the Division of Family Services employed by DHS and in her official capacity. Page is a "person" under 42 U.S.C. § 1983 and the conduct complained of was committed by Pat Page and/or her predecessor acting under color of state law. The conduct deprived Plaintiff of her rights, privileges and immunities secured by the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and corresponding provision of the

Arkansas Constitution. Page has supervisory control over Keith and Corey Williams. Page resides in Pulaski County Arkansas.

7. Defendant, John Selig ("Selig"), is the Director of DHS and each Division of DHS is under the direction, control and supervision of Selig as set out in Ark. Code Ann. § 25-10-102(b)(1)(A). Selig is sued in his official capacity and he is a "person" under 42 U.S.C. § 1983. The conduct complained of was committed by Selig and/or his predecessor acting under color of state law. The conduct deprived Plaintiff of her rights, privileges and immunities secured by the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and corresponding provision of the Arkansas Constitution. Selig resides in Pulaski County Arkansas.

#### JURISDICTION AND VENUE

8. Venue is appropriate under Ark. Code Ann. § 16-60-103 which provides that actions against state agencies must be brought in Pulaski County; pursuant to Ark. Code Ann. § 25-15-212 which provides that actions under the Arkansas Administrative Procedure Act may be filed in Pulaski County; and pursuant to Ark. Code Ann. § 16-60-116 which permits the action to be filed in the residence of one or more of any of the Defendants.

9. Jurisdiction is appropriate under Amendment 80 to the Arkansas Constitution, the due process clauses of the Arkansas Constitution and the U.S. Constitution, 42 U.S.C. § 1983, 42 U.S.C. § 1988, Ark. Code Ann. § 25-15-207 which provides for the declaration of an agency's rules as constitutional, and under Ark. Code Ann. § 16-111-101 which provides for the declaration of the violation of rights.

#### FACTS

10. On or about July 21, 2006 one or more reports of alleged child maltreatment were

made to DHS against Plaintiff.

11. DHS commenced an investigation on August 17, 2006.
12. Corey D. Williams, a Family Service Worker ("FSW"), and his supervisor, Cindy Keith, staffed the investigation and made a "true" finding determination that Plaintiff had committed "child maltreatment."
13. During the 2005 - 2006 school year, Plaintiff had a male student who was causing trouble on her bus.
14. Plaintiff was unaware that the male student in question was subject to a juvenile court order requiring him to stay away from female students.
15. The Mansfield principal was aware of this information but never communicated it to Plaintiff, later denied that she ever received this information, and subsequently was charged with child maltreatment herself.
16. Without the knowledge that the male student had been disruptive on the bus, Plaintiff separated all the girls from all the boys on the bus and placed the male student in the front seat directly behind her. This occurred some time before late February of 2006.
17. After Plaintiff had separated the girls from the boys, one of the female students on her bus reported that the older male student had improperly touched her and a friend.
18. Plaintiff immediately went to her bus supervisor and told him this fact.
19. The bus supervisor said that he would take care of it.
20. DHS later filed child maltreatment charges against the bus supervisor who denied that Plaintiff ever told him anything about the male student improperly touching female students.
21. Williams and Keith concluded, during the course of the investigation, that Plaintiff's

supervisor was not a credible witness.

22. Nevertheless, Williams and Keith based their "true" finding on the "fact" that Plaintiff did not report what she learned about the female students to her bus supervisor.

23. Williams and Keith concluded on August 17, 2006, less than thirty (30) days after the alleged child maltreatment was reported, that Plaintiff, by allegedly not telling her supervisor of the female student's claim, "failed to take reasonable actions to protect the children" on her bus when she had "reason to believe" that they were in "significant danger" of being maltreated.

24. Soon after Plaintiff learned of the female students claim, sometime around March of 2006, the male student in question was arrested on multiple criminal counts and incarcerated. He was no longer in school by the time Williams and Keith concluded their investigation.

25. During the investigation, Williams conducted an interview with Plaintiff but Plaintiff was not informed of the specific charge(s) against her nor did she know what the specific charges against her were.

26. Williams based most of his investigative findings on statements from the superintendent at the Mansfield School District.

27. Additional information was gathered during the investigative process by Williams but Plaintiff was never given an opportunity to respond to the specific information gathered.

28. Williams and Keith transmitted their "true" finding to the DHS Central Registry pursuant to A.C.A. § 12-12-505(b), at which time Vellor Williams and/or her predecessor entered Plaintiff's name into the "Child Maltreatment Central Registry" ("Central Registry") which is a registry that is open to all potential employers, licensing agencies and educational institutions who want to know if someone they hired or are planning to hire has had a "true" finding of "child

36. The "true" finding in the Maltreatment Notification sent to the parents did not reveal any of the facts about the investigation but merely said that an "allegation of child maltreatment (against Plaintiff) involving a student [the parent's child] . . . has been determined to be true."

37. The "true" finding did not contain any definition of "child maltreatment" or explain the basis for the finding.

38. The parents who received the "true" finding in the Maltreatment Notification by certified mail are permitted by the statutes, under which DHS operates, to freely disseminate the "true" finding to anyone they so desire. Ark. Code. Ann. § 12-12-506(h).

39. In this case, the parents who received the "true" finding from DHS complained to Plaintiff's employer regarding Plaintiff's continued employment and disseminated the "true" findings to the public and the press.

40. The placement of Plaintiff's name in the Central Registry and the dissemination of the "true" findings by Williams and Keith to the parents and the Mansfield School District resulted in the termination of Plaintiff's employment by the Mansfield School District after 18 years of service.

41. Mansfield terminated Plaintiff based solely on the "true" findings in the LEA Notice without regard to the facts allegedly underlying those "true" findings and without even knowing the factual basis for the "true" findings.

42. Plaintiff was terminated on October 23, 2006 and has been unable to secure employment since that time.

43. Plaintiff timely appealed the "true" findings by Williams and Keith under the Arkansas Administrative Procedure Act to an Administrative Law Judge ("ALJ").

44. On December 14, 2007 following a hearing, the ALJ held that DHS failed to prove that

the allegation of child maltreatment against Plaintiff was true.

45. At the hearing, Williams did not assert that Plaintiff had failed to notify her supervisor.

46. At the hearing, DHS contended that Plaintiff should have done something more than notify her supervisor but could not come up with anything else that Plaintiff should have done since she had already separated the boys from the girls and make the male student in question sit in a particular place.

47. The ALJ held that Plaintiff took reasonable actions to protect all the children on her bus.

48. The constitutional issues regarding the deprivation of Plaintiff's liberty interest without due process of law that are raised in this Amended Complaint were also presented to the ALJ but, under Arkansas Law, the ALJ did not have the authority to rule on any constitutional issues.

49. The Attorney General of the State of Arkansas was informed of the challenge to the constitutionality of the various statutes and rules and regulations under which DHS operates by letter dated October 19, 2007 in accordance with Ark. Code Ann. § 16-111-106.

50. On October 19, 2007, the Attorney General responded and declined to participate reasoning that the issues could be fully defended by the existing parties.

**CLAIMS AGAINST DEFENDANTS, COREY WILLIAMS AND CINDY KEITH  
IN THEIR INDIVIDUAL CAPACITIES**

51. The investigative findings by Williams and Supervisor Keith, the LEA Notices and Maltreatment Notices sent out by Williams and Keith, and their report of their "true" findings to DHS resulted in the placement of Plaintiff's name in the Central Registry and violated Plaintiff's right not to be deprived of "liberty" without due process of law.

52. The phrase "child maltreatment" standing alone carries with it a damaging stigma. When the phrase "child maltreatment" is coupled with the statement that there has been a "true finding" of child maltreatment and/or a statement that child maltreatment has been proven by a "preponderance of the evidence" the damaging stigma is even greater.

53. The margin for error in the investigative process is great. The margin for error is evident in this case because, in part:

- (a) Williams found that some of the statements by witnesses against Plaintiff were not credible;
- (b) by the time of Plaintiff's hearing, the basis for the initial "true" finding against her had been changed; and
- (c) the investigative process is expedited by law and concluded within a short period of time.

54. There would be a minimal burden on the Defendants to hold some form of due process hearing before Plaintiff's name was placed in the Central Registry and before the "true" findings were disseminated to the public and employers.

55. The process followed by Williams and Keith prior to dissemination of the "true" findings and the placement of Plaintiff's name in the Central Registry did not provide notice to Plaintiff of any specific charges nor an opportunity to respond to those charges and did not entitle Plaintiff to cross examine witnesses or even to respond to witness statements taken during the investigation.

56. The listing of Plaintiff's name in the Central Registry is a quasi-penal penalty that deprives Plaintiff of liberty and property interests protected by the due process clauses of the U.S. and

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

By: 

Clayton Blackstock, ABA #84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, the 23<sup>rd</sup> day of April, 2008,  
served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

IN THE CIRCUIT COURT OF PULASKI COUNTY  
6<sup>TH</sup> DIVISION

SALLY BRYAN

PLAINTIFF

VS

CASE NO. CV 08-705

FILED 10/17/2008 11:21:20  
Sgt. P. Brian Pulaski County Clerk  
011

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES, *et. al.*

DEFENDANTS

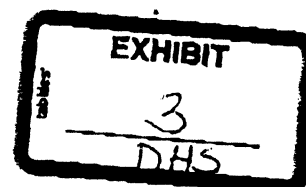
**ORDER GRANTING MOTION TO DISMISS AMENDED  
COMPLAINT AS TO THE INDIVIDUAL DEFENDANTS**

THIS MATTER came on to be heard on September 5, 2008 upon the motion of the defendants to dismiss the amended complaint and was argued by counsel.

Upon consideration of the Amended Complaint, the Motion to Dismiss the Amended Complaint, the written briefs filed by the parties hereto and the arguments of counsel at the hearing on the motion, the Court finds that defendants Corey Williams and Cindy Keith have qualified immunity from suit in their individual capacities under 42 U.S.C. 1983 and that the Motion to Dismiss the Amended Complaint should be granted as to defendants Corey Williams and Cindy Keith in their individual capacities; therefore it is

ADJUDGED and ORDERED that the Amended Complaint against defendants Corey Williams and Cindy Keith, in their individual capacities be and is hereby dismissed with prejudice; it is further

ADJUDGED and ORDERED that all other issues raised in the Motion to Dismiss the



Amended Complaint be and are hereby denied.

IT IS SO ORDERED.




\_\_\_\_\_  
Timothy D. Fox  
Circuit Judge

OCT 17 2008

\_\_\_\_\_  
Date

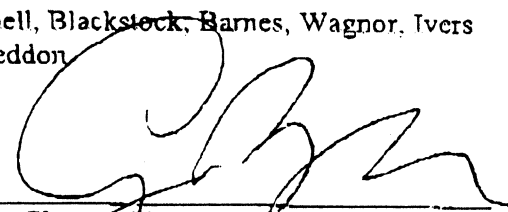
Prepared by:

Arkansas Department of Human Services

By:   
Richard N. Rosen, Bar No. 97164  
Office of Chief Counsel  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Phone: (501) 682-8608

Approved as to form:

Mitchell, Blackstock, Barnes, Wagnor, Ivers  
& Sneddon

By:   
Clayton Blackstock, Bar No. 84013  
1010 West Third Street  
Little Rock, AR 72201  
501/ 378-7870

**BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**SALLY BRYAN**

**VS.**

**CLAIM #09-0334-CC**

ARKANSAS CLAIMANT  
CLAIMS COMMISSION

JUN 30 2009

**STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES**

RECEIVED

**RESPONDENT**

**RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION**

Comes the Petitioner, Sally Bryan, by and through her attorneys, Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC, for her Response to Respondent's Motion for Reconsideration states:

1. DHS violated Sally Bryan's right not to be deprived of "liberty" without due process when it dissiminated "true" findings of child maltreatment before affording Ms. Bryan a hearing.
2. To illustrate why the due process clause of the Arkansas and U.S.'s Constitutions require a "hearing" before such findings are made public, Sally Bryan has requested (a) the testimony and documents from the DHS hearing at which she was exonerated and (b) the DHS file of others who were investigated and charged on inconsistent theories.
3. For the reasons stated in Sally Bryan's Motion to Compel filed on May 27, 2009, she is entitled to the information requested.
4. Sally Bryan is entitled to the testimony and exhibits from her own hearing because under Ark. Code Ann. § 12-12-506(a)(2)(A)(iii), any person who is the subject of a true report, which Sally Bryan was, is entitled to receive all central registry data and under Ark. Code Ann § 12-12-506 (a)(2)(A)(xiii), any court, upon a finding that the information in the record is

necessary for a determination of an issue before the court, may order the release of that information.

5. Sally Bryan is entitled to the other investigative information requested because it can be produced pursuant to a protective order and because under Ark. Code Ann § 12-12-506 (a)(2)(A)(xiii), any court upon a finding that the information in the record is necessary for a determination of an issue before the court may order the release of that information.

6. First, DHS claims that release of the information will subject governmental employee to a criminal prosecution for a Class C misdemeanor under Ark. Code Ann § 12-12-506(c)(3).

7. However, one is only subject to prosecution if the information is released in violation of the law; the release of the information is not in violation of the law.

8. Furthermore, no prosecutor is going to prosecute someone for releasing information pursuant to a court order.

9. Second, DHS claims that the fact that Sally Bryan served DHS with the same set of discovery in this Claims Commission proceeding and in the Circuit Court action is a basis for denying Sally Bryan's request.

10. The only reason the same set of discovery was set out in both proceedings was for back up purposes - on the off chance that the Claims Commission denied Sally Bryan's Motion to Compel, she might have been able to persuade the Circuit Court to grant the request.

11. The only relief requested against DHS in Circuit Court is injunctive relief because the Claims Commission cannot award injunctive relief.

12. Third, DHS claims that the Claims Commission is prohibited from even looking at any of the information requested under A.C.A. § 12-12-506(a)(2)(A)(xv).

13. That statute permits senators and representatives to view the information so long as they agree not to re-disclose the information and precludes legislative committee<sup>s</sup> or bodies from seeing any information that also discloses the name or address of the recipient of services.

14. This statute does not apply to the Claims Commission because it is not a legislative body or committee. Legislative bodies and committees are made up of elected representatives and they vote and debate on legislative proposals.

WHEREFORE, Sally Bryan moves the Commission to deny the Respondent's Motion for Reconsideration and for all other proper relief.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

By: 

Clayton Blackstock, ABN 84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 30 day of June, 2009, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

STATE CLAIMS COMMISSION PACKET  
OPINION

Amount of Claim \$ 38,213.68

Claim No. 09-0334-CC

Sally Bryan Claimant

vs.

DHS/Children & Family Services  
Respondent

State of Arkansas

Date Filed October 7, 2008

Attorneys

Clayton Blackstock, Attorney  
Breck Hopkins, Chief Counsel Claimant  
Rich Rosen, Attorney  
Brenda Jackson, Accts. Payable  
Jerry Berry, Fiscal Officer Respondent

Type of Claim Wrongful termination

FINDING OF FACTS

This claim was filed for failure to follow procedure that led to Claimant's wrongful termination in the amount of \$38,213.68 against DHS/Children and Family Services.

The Arkansas State Claims Commission hereby unanimously denies Respondent's "Motion for Reconsideration." While the Claims Commission is known to be an arm of the Arkansas General Assembly in that it assists the General Assembly with its work, the Claims Commission is not a legislative committee or body. The Claims Commission was created by statute to hear certain claims against the State of Arkansas due to the State's constitutionally provided "sovereign immunity. Thus, the Claims Commission, while not a court of record, clearly functions in the capacity of a court as specifically provided for in Arkansas Code Annotated §19-10-204 (a), §19-10-207 (a), and §19-10-210 (a)(b). (See attached)

The Claimant, who was subject originally to a "true report", has every right to the requested information, subject to the limitations elucidated in the order of the Claims Commission dated June 12, 2009, including information related to a third party. Such information received by the Commission under protective order and not subject to public presentation in no way breaches the confidentiality provisions of Arkansas Code Annotated §12-12-506 (a) (1) et seq., and in this case can assist the Commission in the determination of an issue before it.

IT IS SO ORDERED.

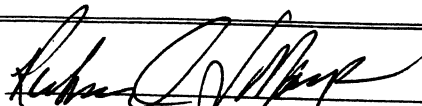
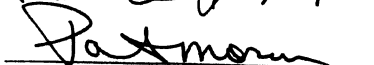
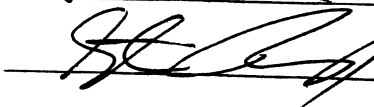
(See Back of Opinion Form)

CONCLUSION

Upon consideration of the facts as presented above, the Claims Commission hereby unanimously denies Respondent's "Motion for Reconsideration" and the claim is awaiting a hearing before the Claims Commission.

Date of Hearing July 16, 2009

Date of Disposition July 16, 2009

  
Chairman  
  
Commissioner  
  
Commissioner

\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

**19-10-204. Jurisdiction.**

(a) Except as otherwise provided by law, the Arkansas State Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions, but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the state.

**19-10-207. Power to examine.**

(a) The Director of the Arkansas State Claims Commission or any member of the Arkansas State Claims Commission shall have the authority to administer oaths, to subpoena witnesses, to examine any books, documents, or records that may be relevant to any proceeding before the commission, and to require the production of any such materials.

**19-10-210. Notice and hearings.**

(a) The Director of the Arkansas State Claims Commission shall notify each claimant and also the head of each state agency, department, or institution against which a claim is filed of the time and place set for the hearing thereof.

(b)(1) In conducting hearings, the Arkansas State Claims Commission shall not be bound by the formal rules of evidence and shall conduct all hearings publicly and in a fair and impartial manner, giving the parties full opportunity for presentation of evidence, cross-examination of witnesses, and argument.

(2) To the extent practicable, the commission shall adopt the procedure used by the circuit courts, and its hearing shall be conducted in a judicial manner.

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 38,213.68

Claim No. 09-0334-CC

<u>Sally Bryan</u> Claimant	<b>Attorneys</b>
vs.	<u>Clayton Blackstock, Attorney</u>
<u>DHS/Children &amp; Family Services</u>	<u>Breck Hopkins, Chief Counsel</u> Claimant
Respondent	<u>Michael Crump, Attorney</u>
<u>State of Arkansas</u>	<u>Brenda Jackson, Accts. Payable</u>
<u>Date Filed</u> <u>October 7, 2008</u>	<u>Jerry Berry, Fiscal Officer</u> Respondent
	<b>Type of Claim</b> <u>Wrongful termination</u>

FINDING OF FACTS

This claim was filed for wrongful termination in the amount of \$38,213.68 against DHS/Children and Family Services.

Present at a hearing July 17, 2009 was the Claimant, represented by Clayton Blackstock, Attorney, and the Respondent, represented by Michael Crump, Attorney

The Claims Commission hereby unanimously denies and dismisses this claim for Claimant's failure to prove by a preponderance of the evidence any liability on the part of Respondent. **Therefore, this claim is hereby unanimously denied and dismissed.**

**IT IS SO ORDERED.**

(See Back of Opinion Form)

CONCLUSION

Upon consideration of the facts as presented above, the Claims Commission hereby unanimously denied and dismissed this claim for Claimant's failure to prove by a preponderance any liability on the part of the Respondent.

Date of Hearing July 17, 2009

Date of Disposition August 13, 2009

Pat Moran Chairman  
Malinda R. [Signature] Commissioner  
Bill Lancaster Commissioner

SEP 21 2009

RECEIVED  
CLAIMANT

BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

SALLY BRYAN

VS.

CLAIM #09-0334-CC

STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

**CLAIMANT'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION**

Comes the Petitioner, Sally Bryan, by and through her attorneys, Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC, for her Motion for Reconsideration and/or Clarification states:

1. On August 13, 2009, the Commission entered an Order stating:

The Claims Commission hereby unanimously denies and dismisses this claim for Claimant's failure to prove by a preponderance of the evidence any liability on the part of Respondent.

2. The "Type of Claim" listed on the Order is identified as a "wrongful termination" claim.

3. The Claimant's claim has never been a state law claim for "wrongful termination" because she was never employed by DHS.

4. The Claimant's claim has always been a constitutional due process claim for deprivation of her liberty interest without due process of law.

5. The Claimant requests that the Commission reconsider its decision. Even if the Commission's decision remains the same, the Claimant asks (for purposes of any appeal to the Legislature) that the Commission explain in a little more detail the basis for its decision (including whether the Commission was deciding a state law "wrongful termination claim" or a

constitutional due process claim and, if it was not deciding the constitutional claim, the basis for not making such a decision).

6. To prove her due process claim, the Claimant had to establish (a) that putting her name in the central registry and sending the conclusion of child maltreatment to her employer and others in the community created a stigma that was damaging to her reputation and employment (i.e. her liberty interest); (b) that she was not provided with the required due process (notice of the specific charges and an opportunity to be heard) before being deprived of her liberty interest; and (c) that the dissemination of the child maltreatment finding and failure to provide due process caused her harm.

7. One of the cases cited in the Claimant's prehearing filings, *Jamison v. Department of Social Services*, 218 SW 3rd 399 (2007) (attached), provides a good analysis and explanation of Claimant's due process claim.

8. In the *Jamison* case, the court held that a liberty interest arises when someone's name is placed in the central registry because this "creates a stigma that is damaging to" one's reputation and employment prospects. *Jamison*, at 10.

9. This case is no different. A stigma was created by the release of the child maltreatment finding to the registry and to the Claimant's employer.

10. With respect to the due process required before someone's name can be placed in the registry (or in this case disseminated to the employer and parents), the *Jamison* case held that due process entitled the accused to formal notice of the specific charges and a hearing before the person's name could be listed in the registry.

11. The *Jamison* court specifically noted that no matter how elaborate an investigation might be, it cannot replace a hearing:

The investigation alone, even after review by the local director, is plainly insufficient to support the loss of liberty that accompanies listing in the Central Registry. Although Ms. Jamison and Ms. Dotson responded to an investigator's queries, they were not afforded specific notice of the allegation being investigated. Consequently, this did not constitute an opportunity to be heard at a meaningful time or in \*409 a "meaningful manner." See also Div. of Family Serv. v. Cade, 939 S.W.2d 546, 554 (Mo.App. W.D.1997) (due process requires pre-deprivation notice that provides "enough information to be able to defend the allegations and to present conflicting evidence in a timely manner"). "No matter how elaborate, an investigation does not replace a hearing." Winegar v. Des Moines Indep. Cmty. School Dist., 20 F.3d 895, 901 (8th Cir.1994).

The high risk of an erroneous deprivation provides an additional reason that investigation alone is insufficient to support placement on the Central Registry.

12. The Claimant proved that she was not given specific notice of the charges before the child maltreatment finding was released and that only an investigation - no hearing - took place before the release of the child maltreatment findings. The Claimant testified that she had a short interview with the investigator and she did not know specifically she was being accused of.

13. The only issue left is whether the release of the information caused her to lose her job.

14. The testimony was undisputed that the Claimant's employer relied solely on the child maltreatment investigative findings to terminate the Claimant's employment. The Claimant testified that the superintendent referred to the child maltreatment notices in his notice of recommended termination and that at the school board hearing the school board was informed that they were to base their decision on the DHS notices.

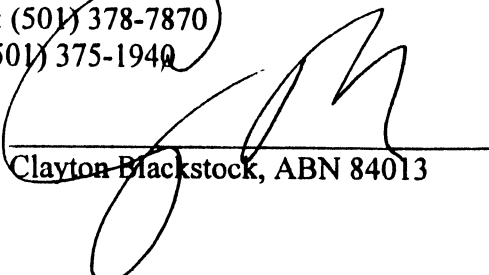
15. The Claimant proved all the elements of her liberty interest due process claim.

Wherefore, the Claimant, Sally Bryant, respectfully moves the Commission to reconsider its decision and/or provide further clarification of its decision and for all other proper relief.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

By:

  
Clayton Blackstock, ABN 84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 21<sup>st</sup> day of September, 2009, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
Clayton Blackstock

SEP 29 2009

RECEIVED

BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

SALLY BRYAN

CLAIMANT

VS.

CLAIM NO. #09-0334-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

**RESPONSE TO MOTION FOR  
RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW Respondent, State of Arkansas, Department of Human Services, Division of Children and Family Services (DCFS), by and through its attorney, Richard N. Rosen, and in response to the claimant's motion for reconsideration and/or clarification, submits the following points and authorities:

***Claimant Asserts No New Or Additional Evidence In Support  
Of Her Motion To Reconsider As Required By Rule 7.1***

1. This Commission unanimously denied the claim because Claimant failed to prove that the State of Arkansas was liable for the damages claimed. Claimant now disagrees with the Commission's decision and seeks reconsideration citing out of state "authority" as the basis for her motion. However, under Rule 7.1 of the Rules and Regulations of the Claims Commission, the **sole** criteria for entertaining a motion to reconsider is the availability of new or additional evidence not otherwise available at the time of the hearing. Since no new or additional evidence is asserted by Claimant, the rules and regulations prohibit reconsideration.

2. As this Commission will recall, all legal issues raised by this claim were extensively briefed, argued and litigated. All factual issues and disputes were resolved at the evidentiary hearing. Simply because Claimant now disagrees with the Commission's decision is not grounds for reconsideration.<sup>1</sup>

3. Though Claimant factually asserted she reported the incident as required, documentary evidence introduced at the hearing and Claimant's subsequent testimony shows otherwise. As this Commission will recall from the evidence introduced at the hearing, a written document *signed by the claimant* was introduced wherein the claimant *admitted* to the school district officials that she "fail[ed] to follow reporting procedures of complaints from students on the bus by not telling supervisor of student's complaints." Claimant acknowledged at the hearing that she signed the written document. The DHS investigator testified that he relied upon Claimant's signed, written statement when he substantiated the finding that Claimant failed to report the abuse as required. In other words, the DHS investigator relied upon Claimant's written admission in substantiating the report of neglect. See Exhibit 1, item no. 2 "Failure to follow reporting procedures from students on the bus by not telling supervisor of students' complaints." Claimant's motion for reconsideration neglects to address Claimant's admission that she failed to report the complaints and simply pretends it does not exist.

4. Consequently, the Motion for Reconsideration should be denied pursuant to Rule 7.1. there was no new or additional evidence presented as required.

---

<sup>1</sup> The Commission is in good company. The Circuit Court of Pulaski County also dismissed a lawsuit filed by claimant against the two DHS employees that conducted the investigation, made the true finding of neglect and who sent the disputed notices to the school as required by statute. The Circuit Court found the two DHS employees had "qualified immunity" (not sovereign immunity). Consequently, these employees were not liable for the financial damages claimed for claimant's termination as a bus driver. Claimant then filed her claim with the Claims Commission.

5. Claimant's alternate motion for "clarification" should likewise be denied. No "clarification" is required here. The Commission's Order is clear and plain -- the claim is denied and dismissed. To the extent that Claimant now argues any confusion by this Commission, such would only serve as further evidence of against Claimant who had the burden of proof and who failed to meet such burden.

WHEREFORE, Respondent moves that the Motion for Reconsideration and/or Clarification be denied.

Respectfully submitted,

Arkansas Department of Human Services

By: Richard N. Rosen  
Richard N. Rosen, Bar No. 97164  
Office of Chief Counsel  
P.O. Box 1437, Slot S260  
Little Rock, AR 72203-1437  
Phone: (501) 682-8608

#### CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of September, 2009 I mailed a copy of the above,  
postage prepaid to:

Clayton Blackstock, Esquire  
1010 West Third Street  
Little Rock, AR 72201

Richard N. Rosen

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 38,213.68

Claim No. 09-0334-CC

Sally Bryan

Attorneys

Clayton Blackstock, Attorney

Claimant

Claimant

vs.

DHS/Children & Family Services

Rich Rosen, Attorney

Respondent

Respondent

State of Arkansas

Date Filed October 7, 2008

Type of Claim Wrongful Termination

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration and/or Clarification." The Claims Commission was not aware Claimant raised constitutional issues before it and, as the Claims Commission has no authority to hear such issues, would not have heard them. Therefore, the Commission's August 13, 2009, order remains in effect.

IT IS SO ORDERED.

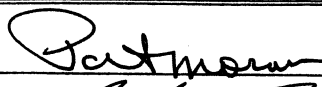
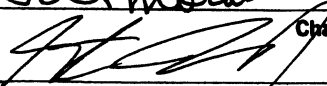
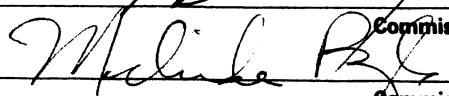
(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration and/or Clarification." Therefore, the Commission's August 13, 2009, order remains in effect.

Date of Hearing October 15, 2009

Date of Disposition October 15, 2009

  
Chairman  
  
Commissioner  
  
Commissioner

\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

**BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**SALLY BRYAN**

**CLAIMANT**

**VS.**

**CLAIM #09-0334-CC**

**STATE OF ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF CHILDREN AND FAMILY  
SERVICES**

ARKANSAS STATE  
CLAIMS COMMISSION

NOV 03 2009

**RESPONDENT  
RECEIVED**

**NOTICE OF APPEAL**

Comes the Petitioner, Sally Bryan, by and through her attorneys, Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC, for her Notice of Appeal states:

1. Sally Bryan ("Bryan") appeals the Claims Commission's Opinion entered on October 15, 2009.
2. The Claims Commission denied Bryan's claim on the basis that it had no authority to hear Bryan's constitutional issue.
3. The State of Arkansas ("DHS") is immune under the 11<sup>th</sup> Amendment to the U.S. Constitution from any award of damages for violation of its citizen's constitutional rights.
4. Thus, Bryan's only chance at recovering damages for the violation of her constitutional rights is before the Claims Commission.
5. Bryan asks the legislature to direct the Claims Commission to rule on her claim.
6. Bryan's original Complaint filed with the Claims Commission explains that DHS violated her due process rights by sending out a "true" finding of child maltreatment before affording her a hearing.
7. Bryan's Complaint is attached as Exhibit A.
8. Bryan was a bus driver for the Mansfield School District for eighteen (18) years.

9. A 16 year old student, who was under a court order not to be around small children, was placed on Bryan's bus without her knowledge.

10. The 16 year old student surreptitiously molested four (4) young girls while on the bus.

11. DHS conducted a thirty (30) day investigation that resulted in a "true" finding of "child maltreatment" against Bryan for an alleged failure to protect the children on her bus.

12. Bryan appealed that finding and, following a due process hearing, the Honorable David Mackey ruled that Bryan was not guilty of any child maltreatment and had taken "reasonable actions to protect the children on her bus."

13. Judge Mackey's decision is attached as Exhibit B.

14. However, before Bryan had a chance for a due process hearing, DHS, in accordance with the Arkansas law in effect at the time, sent the "true" investigative findings (one for each of the four girls) to Bryan's employer, the Mansfield School District, and placed Bryan's name in the child maltreatment registry.

15. Bryan's employer fired her based solely on the "true" investigative finding.

16. The statute, under which DHS placed Bryan's name in the child maltreatment registry and under which DHS sent the "true" investigative findings to Bryan's employer, was held unconstitutional in a case from the Circuit Court of Benton County. *AB, a minor v. Arkansas Department of Health and Human Services*, Circuit Court of Benton County, Case No. CV 2005-0914.

17. The Circuit Court held that the law deprived the accused of their "liberty" interest without due process of law because the law permitted the dissemination of a "true" finding of child maltreatment *before* the accused had an opportunity for a hearing.

18. As a result of that case, in 2009, the legislature amended this law to provide for a due process hearing before the name of any accused is placed in the child maltreatment registry. Ark. Code Ann. § 12-18-813.

19. However, this change in the law came too late to help Bryan – the investigator’s “true” finding had already been sent to Bryan’s employer and Bryan had already been fired based on that finding.

20. The Claims Commission was established to hear claims for damages where the State would otherwise be immune from liability for damages.

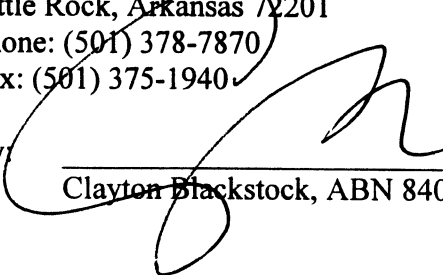
21. The State of Arkansas is immune from liability for damages for the violation of Bryan’s due process rights and, therefore, the Claims Commission is the appropriate and only forum through which Bryan can recover her lost wages.

Wherefore, Bryan requests that the legislature direct the Claims Commission to rule on her claim for damages based on the violation of her due process rights and for all other proper relief.

Respectfully Submitted,

MITCHELL, BLACKSTOCK, BARNES,  
WAGONER, IVERS & SNEDDON, PLLC  
1010 West Third Street  
Little Rock, Arkansas 72201  
Phone: (501) 378-7870  
Fax: (501) 375-1940

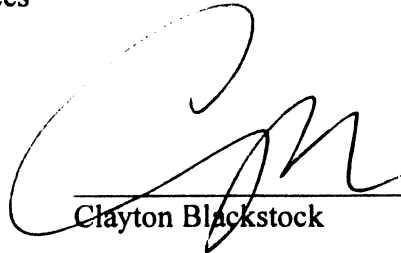
By

  
Clayton Blackstock, ABN 84013

**CERTIFICATE OF SERVICE**

I, Clayton Blackstock, do hereby certify that I have on this date, this 3 day of November, 2009, served via U.S. Mail a copy of the foregoing to the following:

Richard N. Rosen  
Office of Chief Counsel  
Arkansas Department of Human Services  
P.O. Box 1437, Slot S-260  
Little Rock, Arkansas 72203-1437

  
\_\_\_\_\_  
Clayton Blackstock

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

**BEFORE THE STATE CLAIMS COMMISSION**  
Of the State of Arkansas

☐ Mr.  
☐ Mrs.  
☒ Ms.  
☐ Miss

SALLY BRYAN

Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. \_\_\_\_\_

Date Filed \_\_\_\_\_

(Month)

(Day)

(Year)

Amount of Claim \$ \_\_\_\_\_

Fund \_\_\_\_\_

**COMPLAINT**

SALLY BRYAN

(Name)

the above named Claimant, of 2700 Hwy. 71, South

Huntington

(Street or R.F.D. & No.)

(City)

AR 72940

(State) (Zip Code)

(Daytime Phone No.)

County of Sebastian

represented by Clayton Blackstock

(Legal Counsel, if any, for Claim)

of 1010 West Third Street Little Rock

(Street and No.)

(City)

AR 72201

(State) (Zip Code)

501-378-7870

(Phone No.)

501-375-1940

(Fax No.)

says:

State agency involved: AR Depart. of Human Services

Amount sought: \$20,000.00

Month, day, year and place of incident or service: August 17, 2006

Explanation: Sally Bryan ("Bryan") was an 18 year veteran bus driver for the Mansfield School District ("Mansfield"). She lost her job in October of 2006 and has been unable to secure employment since that time. She lost her job as a result of DHS's premature determination that she was guilty of child maltreatment. She is bared by sovereign immunity from suing DHS for damages.

Unbeknownst to Sally Bryan, a 15 year old male student on her bus route was subject to a court order requiring him to stay away from female students. In late 2005 and early 2006, this boy surreptitiously molested or attempted to molest some of the girls on the bus. In late February 2006, the girls reported this to Bryan's husband, an aide on the bus, and Bryan reported this to their supervisor at Mansfield.

The boy had been generally disruptive on the bus even before the girls reported the boy's surreptitious conduct. As a result of the disruptive conduct, Bryan had placed the boy in a separate seat on the bus. Also before the girls reported the boy's conduct, Bryan had separated all the boys on the bus from the girls because of allegations that some older students were kissing on the bus. By the time the surreptitious conduct was reported, the boy had already been separated from all the girls on the bus. The boy was arrested and no longer in school by the end of March 2006.

(Continued on attached page)

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?  
NO ; when? ; in whom? (Department)

(Yes or No) (Month) (Day) (Year) ; and that the following action was taken thereat:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows:

; and was acquired on ; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

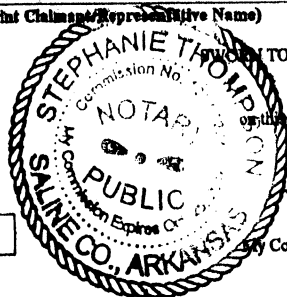
Clayton Blackstock

(Print Claimant/Representative Name)

given TO and subscribed before me at

(Signature of Claimant/Representative)

(SEAL)



24th

(Date)

day of

September

(Month)

2008

(Year)

Stephanie Thompson

(Notary Public)

My Commission Expires:

10

(Month)

25

(Day)

2016

(Year)

**CLAIMANT'S  
EXHIBIT**

A 79

(continued from Claim Form, pg. 1)

On July 21, 2006 a complaint was filed with DHS against Sally Bryan, claiming that she failed to protect the girls. DHS commenced an investigation. Sally Bryan was interviewed but was never told what the charges against her were. Bryan's supervisor was interviewed and was found not to be a credible witness. Nevertheless, DHS concluded that Bryan had not told her supervisor about the girls' report and, based on this conclusion, DHS issued a "true" finding determination that Sally Bryan had committed "child maltreatment". The investigation was completed by August 17, 2007.

Before Sally Bryan had even requested an administrative hearing, DHS put Ms. Bryan's name in the Child Maltreatment Registry (Ark. Code Ann. § 12-12-505(b)) and sent official notices to Mansfield and the girls' parents/guardians telling them that Ms. Bryan had been found guilty of child maltreatment. (Ark. Code Ann. § 12-12-515 and Ark. Code Ann. § 12-12-512(c)(1)(A)(I)). By certified mail DHS sent four (one for each child) "Notices to LEA (Local Education Agency) of Child Maltreatment" ("LEA Notice") to the Mansfield School District telling Mansfield that "... an allegation of child maltreatment involving a student at your school has been determined true ..." and that the offender was the Sally Bryan. By certified mail DHS sent a "Child Maltreatment Assessment Determination Notification" ("Maltreatment Notification") to the parents/guardians of the four girls which Notification said that an "allegation of child maltreatment (against Sally Bryan) involving a student [the parent's child] . . . has been determined to be true."

The parents complained to Mansfield that they did not want Ms. Bryan driving a bus. Mansfield, based solely on the four LEA Notices sent to Mansfield, terminated Ms. Bryan's employment on October 23, 2006.

Ms. Bryan appealed DHS's "true" finding of child maltreatment and an administrative hearing was held after she lost her employment. The administrative law judge found that Ms. Bryan did not neglect any of the children on her bus. The judge specifically found that Ms. Bryan had, in fact, taken "reasonable action to protect the children on her bus." At the administrative hearing DHS conceded that Ms. Bryan had reported to her supervisor what the girls had said.

The statutes under which DHS reported the "true" findings of maltreatment were ruled unconstitutional in the unrelated case of *AB, a minor v. Arkansas Department of Health and Human Services*, Circuit Court of Benton County, Case No. CV 2005-0914. The statutes were ruled unconstitutional because there was no provision for a hearing before "true" findings of child maltreatment were published and reported. DHS accepted the ruling in that case and has changed its practices. DHS no longer publishes findings of child maltreatment before a hearing is held.

DHS violated Ms. Bryan's due process rights by filing and sending out "true" findings that she was guilty of child maltreatment *before* she had any opportunity for a hearing. As a result of the ruling in the case of *AB, a minor v. Arkansas Department of Health and Human Services*, this constitutional violation of Ms. Bryan's rights is not in dispute. Therefore, the Claims Commission does not have to decide whether Ms. Bryan's constitutional rights were violated. That issue is not in dispute.

The Claims Commission only has to decide the amount of damages Ms. Bryan is entitled to as a result of DHS's violation of her due process rights. The Jurisdiction of the Arkansas Claims Commission is proper under §19-10-204(b)(2)(A). Ms. Bryan is barred by sovereign immunity from suing DHS for damages.

Ms. Bryan was making about \$10,000 per year. She has been unable to secure employment since that time.