

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Jasmine Jimenez, et al.,

Plaintiff,

vs

The State of Illinois, Lake County State's  
Attorney's office, Laura Horner, Assistant  
State's Attorney, Michael J. Waller, State's  
Attorney,

Defendants.

No. 11 C 4707

Judge John W. Darrah

DEFENDANT STATE OF ILLINOIS' MEMORANDUM IN SUPPORT OF ITS MOTION  
TO DISMISS

Defendant, The State of Illinois, by and through its attorney, LISA MADIGAN, Illinois Attorney General, respectfully request this Honorable Court dismiss Plaintiff's complaint against it in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In support thereof, Defendant submits the following memorandum of law:

BACKGROUND

Plaintiffs *pro-se* Jasmine Jimenez and Denise Rotheimer filed this action on July 12, 2011, claiming violations of 42 U.S.C. § 1983, §1985 and §1986. (See Complaint, p. 1) Plaintiffs' claims are somewhat confusing, but it appears that Ms. Jimenez was the victim of a crime when she was a minor, and Ms. Rotheimer is her mother. According to the Complaint, Ms. Rotheimer is complaining that the Lake County State's Attorney negotiated a plea in the criminal prosecution of her daughter's attacker, and was further not permitted to hire a private attorney to represent Ms. Jimenez (the victim) in the criminal case. (Complaint, p. 1-2) Furthermore, Ms. Rotheimer claims that she has been deprived of her rights under the Illinois titution pursuant to Article I Section 8, which grants crime victims certain rights. Plaintiffs

also claim that as they are not afforded the right to sue based on a deprivation of their rights as crime victims, their Fourteenth Amendment rights have been violated. (Complaint, p. 4).

Plaintiffs seek the following relief:

- A. Declare the provision under Article 1, Section 8.1(d) of the Crime Victim's Rights Act [assumed to be Article 1, Section 8.1(d) of the Illinois Constitution] and 720 ILCS 120/9 [which should be cited as 725 ILCS 120/9] of the Rights of Crime Victims and Witness Act which deprives crime victims of the right to appellate relief and cause of action for damages or attorney's fees in violation of the plaintiff's [sic] federally protected rights under the Fourteenth Amendment, Section 1 "That **no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**" (emphasis in original)..., and
- B. Order the Lake County State's Attorney's Office to include a victim impact statement that will be written by Plaintiffs, Jimenez and Rotheimer to become part of the permanent file in the Circuit Court of the 19<sup>th</sup> Judicial District...

Complaint, p. 5-6.

### ARGUMENT

#### A. The State of Illinois is Not a "Person" Subject to Suit Under 42 U.S.C. §1983

Certain of Plaintiff's claims are based on violations of Constitutional rights under 42 U.S.C. § 1983. While Plaintiff does not address what may constitute her claims under 42 U.S.C. §1985 or 1986,<sup>1</sup> the law is clear that any claim under §1983 must fail.

Neither the State of Illinois, a state agency, nor a state official acting in an official capacity are "persons" within the meaning of 42 U.S.C. § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 (1989); *Johnson v. Supreme Court of Illinois*, 165 F.3d 1140, 1141 (7<sup>th</sup> Cir. 1999). Therefore, as Plaintiff has plainly sued the "State of Illinois" and the State is not subject to suit under § 1983, Plaintiffs' claims fail to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) and must be dismissed with prejudice.

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<sup>1</sup> Plaintiffs do not specify what subsection of Section 1985 is at issue, but Plaintiffs make no allegations whatsoever pertaining to the State of Illinois, nor do Plaintiffs plead any elements of a conspiracy. As such, both the Section 1985 and 1986 claims must fail. *See Williams v. St. Joseph Hospital*, 629 F.2d 448 (7<sup>th</sup> Cir. 1980)(if Section 1985 claim fails, Section 1986 claim also must fail)

**B. Plaintiff's Claims Are Barred by the Eleventh Amendment**

Plaintiffs' claims (under either §1983, §1985 or §1986) against the State of Illinois are also barred by the Eleventh Amendment. The Eleventh Amendment provides, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State." U.S. Const. Amend. XII. While the literal reading appears not to include suits by a citizen against the citizen's own state, case law has interpreted the Eleventh Amendment immunity to apply to all suits against a state, regardless of one's citizenship. *Pennhurst v. Halderman*, 465 U.S. 89, 100 (1984).

The only exception to Eleventh Amendment immunity is if the state consents to suit, or if Congress overrides the Eleventh Amendment by specifically and unequivocally legislating under another constitutional grant of authority. See *Tennessee v. Lane*, 541 U.S. 509 (2004); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). Under the doctrine of *Ex Parte Young*, an individual can sue a state official in his or her official capacity to enjoin prospective relief that would violate federal law, however as the State of Illinois itself is the named Defendant, the *Ex Parte Young* exception is not applicable. *Dean Foods Co. v. Brancel*, 187 F.3d 609, 613 (7th Cir.1999).

Therefore, as none of the exceptions to Eleventh Amendment immunity are present, Plaintiffs' complaint against the State of Illinois must be dismissed with prejudice pursuant to F.R.C.P. 12(b)(1) for lack of jurisdiction.

**C. Plaintiffs Have Failed to Demonstrate that the Statutes in Question Violate the Fourteenth Amendment**

In the event this Court determines that the Plaintiffs are seeking to invalidate portions of the Rights of Crime Victim's Act (and potentially the Illinois Constitution), this Court is still lacking in jurisdiction, as the State of Illinois cannot be sued pursuant to the Eleventh

Amendment. Even if this Court were to consider the merits of any statutory challenge, it is clear that the statutes in question do not deprive Plaintiffs of “life, liberty or property, without due process of law” nor do they deny Plaintiffs “the equal protection of the laws.” (U.S. Const., 14<sup>th</sup> Amendment; Compliant, p. 6) Plaintiffs have not identified, nor are there any such federally protected rights that exist in the context of a victim’s rights in a criminal proceeding. As such, any claim that the statutes in question are in violation of the Fourteenth Amendment must fail.

**D. Plaintiff Rotheimer Lacks Standing and the Claims Are Subject to Dismissal Based on Violation of the Statute of Limitations**

In the interest of judicial economy, the State of Illinois hereby adopts, as if fully set forth herein, the portions of Co-Defendants Lake County State’s Attorney, Laura Horner and Michael J. Waller’s Motion to Dismiss that address issues of standing and statute of limitations.

**CONCLUSION**

**WHEREFORE**, Defendant State of Illinois respectfully request this Honorable Court dismiss Plaintiff’s complaint in its entirety against it pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Respectfully submitted,

LISA MADIGAN  
Illinois Attorney General

/s/ Meghan Maine  
Meghan Maine  
Assistant Attorney General  
General Law Bureau  
100 West Randolph Street, 13<sup>th</sup> Floor  
Chicago, IL 60601  
(312) 814-5165  
[mmaine@atg.state.il.us](mailto:mmaine@atg.state.il.us)