

Barbara Martin

v.

U.S.A., et al

**PLEADINGS AND CORRESPONDENCE
FIFTH CIRCUIT COURT OF APPEALS**

INDEX	DATE
1. Request for Corrections to Appellant's Brief	6/25/97
2. Corrected Brief of Appellant	6/23/97
3. Federal Appellee's Motion to Dismiss	6/24/97
4. Appellant's Brief made sufficient by Appellate Court	6/25/97
5. Federal Appellee's Motion to Dismiss received by Appellate Court	6/30/97
6. Appellant's Answer to Federal Appellee's Motion to Dismiss	7/03/97
7. Federal Appellee's Motion for Enlargement of Time	7/07/97
8. Fort Bend Co. Appellee's Motion to Dismiss received by Appellate Court	7/07/07
9. Federal Appellee's Motion for Enlargement of Timed received by Appellate Court	7/11/97
10. Appellant's Answer to Federal Appellee's Motion for Enlargement of Time	7/11/97
11. Appellant's Motion for Sanctions against Asst. Texas Atty. Gen. & Ft. Bend County Asst. Attorney	7/21/97
12. Certificate of Interested Persons	
13. Affidavit of Witnesses who witnessed opposing counsel's threat to file for a protective order against Barbara Martin if she filed anything else in her case, after she attempted to get opposing counsel to view the evidence in her case at the Joint Discovery/Case Management Plan meeting held 11-20-1996.	7/21/97
14. Order of Fifth Circuit Court of Appeals	7/24/97

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

June 11, 1997

Ms Barbara Martin
12906 West Bellfort
Fort Bend County
Houston, TX 00000

No. 97-20051 Martin v. USA
USDC No. H-96-CV-2563

Your brief is filed but requires corrections beyond the certificate of service. You must **advise us of your choice** from the following options immediately **so your corrections can be received within 10 days.**

1. Physically send someone to this office to correct the briefs.
2. Pick up the briefs, correct and return them.
3. Send a self-addressed stamped envelope and we will return the briefs for correction. We will provide the postage information for the return. The corrected briefs must then be mailed back to the court.
- ✓ 4. Send corrected briefs and we will recycle those on file.

The following correction(s) is/are needed to your briefs.

Certificate of interested persons (Local Rule 28.2.1)

Title on the brief does not agree with the title on the record in compliance with FRAP 32 (a). It should appear EXACTLY as it does on the attached caption sheet.

We have not received the Record Excerpts required by Local Rule 30. 4 copies are required.

The definitions in your brief are counted towards your page limit. Therefore, your brief is 52 pages long and is in excess of the page limitation. You may submit a motion to file the brief in excess pages or you may remove the definitions.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: C. LeSage / JPM
Carol LeSage, Deputy Clerk

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF THE FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

BRIEF FOR APPELLANT BARBARA MARTIN
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 97-20051 MARTIN V. USA

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF THE FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

APPEAL FROM A DECISION OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF TEXAS
HOUSTON DIVISION

Barbara Martin
Barbara Martin, Pro Se
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas, U.S.A.
Phone: (281) 495-4539
Fax: (281) 495-0334

Case No. 97-20051

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

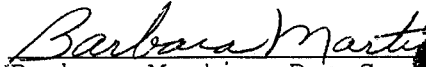
v.


UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
USDC No. H-96-CV-2563
Hon. Lynn L. Hughes, Presiding

BRIEF FOR APPELLANT


Barbara Martin, Pro Se
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas, U.S.A.



UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

CERTIFICATE OF INTERESTED PERSONS

The undersigned Pro Se Appellant certifies that the following listed persons have an interest in the outcome of this case.

- | | <u>Outcome</u> |
|--|----------------------|
| 1. All Agencies of United States of America, et al | (Citizenship Status) |
| 2. All Agencies of State of Texas, et al | (Citizenship Status) |
| 3. All Agencies of County of Fort Bend, Texas, et al | (Citizenship Status) |
| 4. All Members of the Posterity | (Citizenship Status) |

OPPOSSING COUNCEL

Mr. Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129

Mr. Matthew Lyle Rienstra
Assistant Attorney General
P.O.Box 12548, Capitol Station
Austin, Texas 78711-2548

Mr. Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469

Barbara Martin
Barbara Martin, Pro Se
23rd Judicial District
12906 W. Bellfort
Houston, Fort Bend County,
Texas U.S.A.

STATEMENT REGARDING ORAL ARGUMENT

Because the issues in this case are of such Constitutional importance, and affect the entire "Posterity", the "sleeping giant" of the great Republic that is their heritage, Appellant believes this case deserves every opportunity to be heard by oral argument.

TABLE OF CONTENTS

	Page
Table of cases	<u>4</u>
Table of statutes and other authorities	
<u>24</u>	
Statement of subject matter and appellate jurisdiction	<u>32</u>
Statement of issues presented for review	<u>38</u>
Statement of the case	<u>40</u>
--Nature of case	<u>40</u>
--Course of proceedings	<u>49</u>
--Disposition of case in District Court	<u>53</u>
--Statement of facts	<u>53</u>
Summary of appellant's argument	<u>55</u>
Argument	<u>57</u>
Conclusion	<u>67</u>
<u>68</u> [Appendix] Definitions	

TABLE OF CASES

Name and citation	Pages in
1. Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097, <u>2107</u> (U.S.Colo.1995) "[W]e deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States."	35 [7] 45 [12]
2. Ainsworth v. Oil City Brass Works (Tex.Civ.App.1954) 271 S.W.2d <u>754</u> , "... an action for declaratory judgment lies when fact situation manifests presence of ripening seeds of a controversy, as where claims of several parties are present and indicative of threatened litigation in immediate future."	33 [5]
3. American Banana Co. v. U.S. Fruit Co., 29 S.Ct. 41 511, <u>513</u> , 213 U.S. 347, <u>357</u> (U.S.N.Y.1909) "All legislation is prima facie territorial."	65 [19]
4. Anderson v. McRae (Tex.Civ.App. 6 Dist.1973) 49 S.W. 2d <u>351</u> "Judicable controversy which authorizes declaratory relief need not be one where wrong has already been committed or party has already been injured."	33 [5] 39 [4]
5. Ashwander v. Tennessee Valley Authority, 56 S.Ct. <u>466</u> , 297 U.S. 288 (U.S.Ala.1936) "Congress may not, under pretext of executing its powers, pass laws for	65 [19] 66 [23]

accomplishment of objects not intrusted to it by the Constitution."

6. Barnhill v. Rubin, 46 F.Supp. 963, 966 (D.C.Tex.1942) 48 [19]

"Before one can waive a right or estop himself, he must do it knowingly and be possessed of the facts, and when the opposite party only has such facts and does not reveal them to him he is not estopped nor does limitation run against him in asserting his right to a corrected statement embracing the true facts whereupon a settlement should be made.

7. Barron v. City of Baltimore, Md.1833, 32 U.S. 243, 7 Pet. 41 [3]

243, 8 L.Ed.672 "The Constitution was ordained and established by the people of the United States for themselves...the people of United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests."

8. Blackmon v. Parker, 544 S.W.2d 810, affirmed 55 S.W. 2d 32 [3]

810 (Tex.Civ.App.8 Dist.1976) "A declaratory judgment is one which declares the rights and duties or the status of the parties."

9. Boston Sand & Gravel Co. v. U.S., 49 S.Ct. 52,54, 278 U.S. 64 [15]

41,48 "It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a

rule of law and does not preclude consideration of persuasive evidence if it exists."

10. Boyd v. State of Nebraska ex rel Thayer, 12 S.Ct. 375, 61 [9]
381, 143 U.S. 135,158,159 (U.S.Neb.1892) "Mr. Justice Story, in his Commentaries on the Constitution, says: 'Every citizen of a state is ipso facto a citizen of the United States.'
11. Boyd v. U.S. 6 S.Ct. 524, 535, 116 U.S. 616, 635, 29 L.Ed. 34 [7]
746 (U.S.N.Y.1886) "...constitutional provisions for the security of persons and property should be liberally construed.. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis."
12. Briggs v. Rodriguez, 236 S.W.2d 510,513,514,518 (Tex.Civ. 48 [20]
App.1951) "... The party is justified in remaining inactive until he has knowledge of some fact which would put him upon inquiry whether the representations were false... 'Where a person obtains money of another by compulsion, extortion, oppression or fraud and action had and received will lie to recover it.' 4 Am. Jur.p.513,s23."
13. Carnival Cruise Lines, Inc. v. Shute, 111 S.Ct. 1522,1530, 48 [19]
1531 499 U.S. 585,600,601 (U.S.Wash. 1991) "...courts traditionally have reviewed with heightened scrutiny the terms of contracts of adhesion, ... Judge J. Skelly

Wright set out the state of the law succinctly in Williams v. Walker-Thomas Furniture Co ... "

14. Caterpillar, Inc. v. Williams, 107 S.Ct. 2425, 2433, 482 U.S. 386, 398,99 (U.S.Cal.1987) "...plaintiff is the master of the complaint,..." 39 [3]
15. Chisholm v. State of Georgia, Ga.1793, 2 U.S. 419,471, 2 Dall, 419, 1 L.Ed. 440, "'We the people of the United States, do ordain and establish this Constitution.'" 42 [4]
16. Civil Rights Cases, 3 S.Ct. 18,36, 109 U.S. 3,31 (U.S. Tenn.1883) "...who were citizens of the several states at the adoption of the constitution, and who, at that time, were recognized as the people whose rights and liberties had been violated by the British government... The judgment of the court was that the words 'people of the United States' and 'citizens' meant the same thing, both describing the 'political body who, according to our republican institutions, form the sovereignty and hold the power and conduct the government through their representatives;' that they are what we familiarly call the 'sovereign people',..." 41 [3]
60 [9]
17. In re Clark, Pa.1930, 152 A. 92, 301 Pa. 321, "State Courts had power to naturalize prior to the adoption of the Naturalization Act of 1790." 41 [3]
18. Crow et al v. The State of Missouri, 14 Mo 237,264 "doctrine of 'States Rights' ...The question ...not whether the State has directly or indirectly relinquished this alleged "right" to the federal government, but did her 66 [23]

people virtually, or not, prohibit the exercise of such a power by their own Constitution-for their own security-preserving it thereby amongst the great mass of powers and privileges not delegated to her government, but withheld and retained by her citizens,...“unalienable Rights... That to secure these rights, Governments are instituted among Men,..”

19. Conley v. Gibson, 78 S.Ct. 99,102, 355 U.S. 41,46 (U.S. 33 [5]
Tex.1957) “...a complaint should not be dismissed for 39 [5]
failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief...Under the federal rules, the purpose of pleading is to facilitate a proper decision on the merits. Fed.Rules Civ.Proc. rules 8(a)(2)(f), 12(c,e,f), 15,16, 26-37, 56, 28 U.S.C.A.”
20. Crickmer v. King, 507 S.W. 2d 314 (Tex. Civ. App.1974) 42 [5]
“Under provisions of the Declaratory Judgments Act that all parties who have an interest which would be affected by the declaration “shall be made parties” ... “no declaration shall prejudice the rights of persons not parties” ... “if proper parties are not joined they are not bound by decree...”
21. Dickson v. Strickland (1924) 114T.176, 265 S.W. 1012,1020 61 [9]
“Among the first words of the state’s declaration of independence, adopted March 2, 1836, is the declaration that government derives all its legitimate powers from

the people. In the Constitution of the Republic is a statement of rights never to be violated on any pretense whatever... 'all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.' ...the court would be unmindful of its high responsibility were it not careful in examining any claim of restriction on the liberty and authority of those who establish governments, and can change them in the mode prescribed by the fundamental law."

22. Donald V. Carr (Tex.Civ.App.1966) 407 S.W.2d. 288, "Main 33 [5]
"Main purpose of "declaratory judgment" is preventive in 47 [15]
nature, and it is intended as a means, unknown to the
common law, for determining rights of parties when
controversy has arisen even before any wrong has
actually been committed."
23. Employees of Dept. of Public Health and Welfare, Missouri 42 [4]
v. Dept. of Public Health and Welfare, Missouri
(U.S.Mo.1973) 93 S.Ct. 1614, 1637, 411 U.S. 279, 322, 323
"We the People' formed the governments of the several
States."
24. Faulk v. Buena Vista Burial Park Ass'n, 152 S.W.2d 891 39 [5]
(Civ.App.1941) "All powers of government are subject to
the Bill of Rights."
25. Franchise Tax Bd. of State of Cal. v. Construction Laborers 60 [7]
Vocation Trust for Southern California, 103 S.Ct.
2841, 2848, 463 U.S. 1, 13, 14 (U.S.Cal.1983) "...a suit

- brought upon a state statute does not arise under an act of Congress or the Constitution of the United States..."
26. *Frazier v. Wynn*, 472 S.W.2d 750,753 (Tex.1971) "... there 35 [8]
 "...there can be no ratification or estoppel from
 acceptance of the benefits by a person who did not have
 knowledge of all material facts."
27. *Haines v Kerner*, 92 S.Ct.594, 596, 404 U.S. 519, 520,521 39 [5]
 (U.S.Ill.1972) "We cannot say with assurance that under 47 [15]
 the allegation of the pro se complaint, which we hold to
 less stringent standards than formal pleadings drafted by
 lawyers, it appears 'beyond doubt that the plaintiff can
 prove no set of facts in support of his claim which would
 entitle him to relief.'" See also *Dioguardi v. Durning*,
 139 F.2d 774 (CA2 1944).
28. *Harris v. U.S.*, D.C.Mass.1962, 204 F.Supp. 228, affirmed 43 [8]
 308 F.2d 573, "The creation by Congress of federal 60 [7]
 district courts,... did not invest district courts with
 "across-the-board jurisdiction as to all cases in
 which the United States is a party;..."
29. *Healy v. Ratta* 54 S.Ct. 700, 292 U.S. 262 33,40 (U.S.N.H. 43 [8]
 1934)"Power reserved to the states, under the Constitution 60 [7]
 to provide for determination of controversies in their
 courts may be restricted only by the action of congress
 in conformity to the judiciary sections of the
 Constitution. U.S.C.A. Const.art.3, and Amend.10"
30. *Heilberg v. Fixa*, D.C.Cal.1964, 236 F.Supp. 405, affirmed 65 [18]

85 S.Ct. 1493, 381 U.S. 301, 14 L.Ed. 2d 398.

"Constitutional power of Congress to regulate postal system is not absolute and unfettered, and is limited and conditioned by other provisions of the Constitution."

31. Hendrick v. State of Maryland, 35 S.Ct., 140, 143, 235 U.S. 49 [21]
610, 624 (U.S.Md.1915) "The action of the state must be 64 [15]
treated as correct unless the contrary is made to appear."
32. Henningsen v. Bloomfield Motors, Inc. 161 A.2d 69, 86, 32 48 [19]
N.J. 358, (1960) "'The weaker party... is frequently not
in a position to shop around... His contractual intention
is but a subjection more or less voluntary to terms
dictated by the stronger party,..." Kessler, "Contracts of
Adhesion—Some thoughts about Freedom of Contract," 43
Colum.L.Rev. 629, 632 (1943); Ehrenzweig, "Adhesion
Contracts in the Conflict of Laws," 53 Colum. L.Rev.
1072, 1075, 1089 (1953)... "They are said to resemble a law
rather than a meeting of the minds. Siegelman v. Cunard
White Star, 221 F.2d 189, 206 (2 Cir.1955)"
33. Home L. Ins. Co. of Brooklyn v. Dunn, (U.S.Ohio 1873, 86 36 [2]
86 U.S. 214, 226, 22 L.Ed. 68 Wall. 214, "As regards the
inferior courts authorized to be established, Congress
may give them such jurisdiction, both original and
appellate, within the limits of the Constitution, as it
may see fit to confer."
34. Hooven & Allison Co. v. Evatt, 65 S.Ct. 870, 880, 324 U.S. 64 [15]

652, 671, 672 (U.S. Ohio 1945) "The term 'United States' may be used in any one of several senses. It may be merely the name of sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution."

35. Howard v. Commissioners of Sinking Fund, 73 S.Ct. 465, 468, 64 [15]
 344 U.S. 624, 628, 629 (U.S. Ky. 1953) "The grant was given within the definition of the Buck Act, and this was for any tax measured by net income, gross income, or gross receipts."
36. Insurance Corp. of Ireland, Ltd. V. Compagnie des Bauxites 33 [5]
 Bauxites de Guinea, (U.S. Pa. 1982) 102 S.Ct. 2099, 2103, 456 37 [4]
 U.S. 694, 701 72 L.Ed.2d 492, on remand 554 F.Supp.1080, 38 [2]
"Validity of an order of a federal court depends upon the court's having jurisdiction over both the subject matter and the parties.... Subject matter jurisdiction is a requirement of this article as well as a statutory requirement; it functions as a restriction on federal power. U.S.C.A.Const.Art.3, Sec.2, cl.1 ... No action of the parties can confer subject matter jurisdiction upon a federal court. U.S.C.A.Const.Art.3, Sec.2, cl.1" 59 [7]
37. International Primate Protection League v. Administrators 33 [4]
 of Tulane Educational Fund, et al., 111 S.Ct. 1700, 1705 37 [5]
 S.Ct. 1700, 1705, 500 U.S. 72, 79, 114 L.Ed.134, 59 (U.S. 38 [2]

- La.1991) "Statute authorizing removal of state court suits by federal officers does not permit removal by federal agencies." "...groups were injured when they lost right to sue in state court, and injury directly resulted from NIH's removal of case. U.S.C.A. Constitution Art.3, Sec.1 et seq,; 28 U.S.C.A. Secs. 1442(a)(1), 1447(c). "Sec. 1442 (a)(1) permits a defendant in a civil suit filed in state court to remove the action to a federal district court if the defendant is "[a]ny officer of the United States or any agency thereof, or person acting under him, [in a suit challenging] any act under color of such office." ... "The question before us is whether this provision permits agencies to remove." "We have little trouble concluding that the statutory language excludes agencies from removal power."...
38. Jamail v. Thomas, 481 S.W.2d 485, 490 (Tex.Civ. App.1972) 48 [20]
 "We are of the view that ratification of an agreement or act requires that a party alleged to have ratified it have full knowledge of all the facts. 2 Tex.Jur.2d, Agency, Section 88 ...acquiescence is merely evidence of ratification..."
39. Kleppe v. Odin Tp, McHenry County, 40 N.D. 595, 169 N.W. 49 [21]
 169 N.W. 313 (Sup.Ct.North Dakotat1918) "Presumption-
 'deemed'... refers to a disputable presumption." 64 [15]
40. Kline v. Burke Const. Co., (U.S.Ark.1922) 43 S.Ct. 79, 82, 36 [2]

83, 260 U.S. 226,234, 24 A.L.R. 1077, 67 L.Ed. 226,
 "Only the jurisdiction of the Supreme Court is derived
 directly from the Constitution. ... The Constitution
 simply gives to the inferior courts the capacity to take
 jurisdiction in the enumerated cases, but it requires an
 act of Congress to confer it."

41. Laborers' Intern. Union of North America, Const. and 46 [14]
 Municipal Workers Local Union No. 1253 v. Blackwell (Tex. 57 [2]
 Civ.App.1972) 482 S.W.2d 327 "A controversy is "judicable"
 when there are interested parties asserting adverse
 claims upon a state of facts which must have accrued
 wherein a legal decision is sought or demanded."
42. Lacy v. Mid-Continent Cas. Co. (D.C.Tex.1965) 247 F.Supp. 33 [5]
667 "In Texas, no present damage need be shown for 39 [4]
 declaratory judgment action. Vernon's Ann.Civ.St.Tex. 39 [5]
 art.2524-1" (Now VTCA Title 2, Chapter 37) 47 [15] 58 [3,4]
43. League v. De Young, (Tex.1850) 52 U.S. 185,203, 11 How. 41 [4]
 185, 13 L.Ed. 657 "The Constitution of the United States
 was made by, and for the protection of, the people of
 the United States."
44. Lonsdale v. Egger, 525 F.Supp.610 (D.C.Tex.1981) 47 [15]
 "Plaintiff's pro se complaint must be liberally construed
 and should only be dismissed for failure to state a
 claim if it appears beyond doubt that plaintiff can
 prove no set of facts in support of his claim which
 would entitle him to relief."
45. Martin v. Hunter's Lessee, (U.S.Va.1816) 14 U.S. 304,324, 42 [4]

- 1 Wheat 304, 4 L.Ed. 97 "The Constitution of the United States was ordained and established not by the states in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by 'the people of the United States.'" 45 [12]
46. Maty v. Grasselli Chemical Co. (U.S. N.J.1938) 58 S.Ct. 47 [15]
507, 509, 303 U.S. 197, 200, "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end."
47. Mayer and Aldermen of City of Nashville v. Cooper (U.S. Tenn.1867) 73 U.S. 247, 251, 252 "How jurisdiction shall be acquired by the inferior courts, whether it shall be original or appellate, or original in part and appellate in part, and the manner of procedure in its exercise after it has been acquired, are not prescribed." 36 [2]
48. McCart v. Cain (Tex.Civ.App.1967) 416 S.W.2d 463 "Declaratory Judgments Act provides broad powers of construction in courts to enable parties to determine their relative rights without waiting until they have suffered irreparable damage." 32 [3]
58 [4]
49. M'Culloch v. State, 17 U.S. 316, 383, 391 (U.S.Md.1819) 4 wheat 316, 4 L.Ed. 579, "The government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit ..." "A right to tax, 64 [15]

without limit or control, is essentially a power to destroy."

50. Mills v. Howell, 416 S.W. 2d 453 (Tex.Civ.App.- Austin 1967, "All Interests affected by declaratory judgment must be party if judgment is to be valid." 42 [5]
51. Minor v. Happersett, 88 U.S. 162,167 (U.S.Mo.1874) 22 L.Ed. 34 [6]
627, 21 Wall. 162 "Whoever, then was one of the people 41 [4]
of either of these states when the Constitution of the 60 [9]
United States was adopted, became ipso facto a citizen—a
member of the nation created by its adoption. He was
one of the persons associating together to form the
nation, and was, consequently, one of its original
citizens."
52. Miranda v. State of Arizona, 86 S.Ct. 1602, 1636, 384 U.S. 38 [2]
436, 491 (U.S.Ariz.1966); "Where rights secured by the 59 [7]
Constitution are involved, there can be no rule making or
legislation which would abrogate them."
53. Monongahela Nav. Co. v. United States, 13 S.Ct. 622,625, 42 [4]
626, 148 U.S. 312,324,325, 37 L.Ed. 463 (U.S.Pa.1893)
"It is the duty of courts to be watchful for the
constitutional rights of the citizen, and against any
stealthy encroachments thereon. Their motto should be
obsta principiis.'" "
54. National Homeopathic Hospital Ass'n of D.C. v. Britton 35 [8]
147 F.3d 551(1945)Statute 179: Where Act uses word in a
special sense which it defines, definition by average

man or by ordinary dictionary is not a substitute for the definition contained in the act."

55. New York Cent. R. Co. v. Chisholm, 45 S.Ct. 402, 268 U.S. 29,31 (U.S.Mass.1925) "'Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction.'... 'All legislation is prima facie territorial.'"
56. Oliver v. Trunkline Gas Co., 789 F.2d 341, 343 (C.A.5 (Tex) 1986) "the presence of a federal issue, however much it may 1987) dominate the case, is insufficient to confer federal-question jurisdiction. On the contrary, such jurisdiction is conferred by statute only when the plaintiff is asserting a right created by federal law."
57. In Re Po, 1894, 28 N.Y.S. 383,384, 7 Misc. 471. "Originally it was intended to limit naturalization to free whites,..."
58. "Rector, Etc, of Holy Trinity Church v. U.S. 12 S.Ct. 511, 512, 142 U.S. 457,459, (U.S.N.Y.1892) "It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers."
59. Roe v. O'Donohue, 38 F.3d 298,302,303,304 "Whatever (slight ambiguity # 1446 (b) poses in application to an ordinary case, such as ours, may be resolved by the principle that doubts should be resolved against removal... Any other conclusion drains the words "or otherwise" of meaning ... we hold that the 30 days commences when the

defendant, or its authorized agent, comes into possession of a copy of the complaint whether or not the delivery complies with the requirements of 'service'."

60. Rourke v. Garza, 530 S.W.2d 794, 805 (Tex.1975) "... party 48 [20] alleged to have ratified an agreement must have knowledge of all material facts".
61. Schwartz v. O'Hara TWP School Dist., 375 Pa. 440, 442 (Pa. 35 [8] 1953) "By act of Congress of October 9, 1940, 54 Stat. 1059 (commonly known as the Buck Act),..."
62. Severson v. Home Owners Loan Corporation, 1939, 88 F.2d 33 [4] 344, 184 Okl. 496 "The sections of the Federal 59 [7] Constitution limiting and defining the judicial power of the United States do not commit to the federal courts and withhold from the state courts jurisdiction of all suits in which a federal agency or instrumentality is a party." U.S.C.A.Const.art.3 [1,2]
63. Sharon v. Hill, 26 F. 337, 343 (1885) (Circuit Court, D. 34 [6] California) "...the fourteenth amendment, the first clause 41 [4] of which declares: Prior to the adoption of this amendment, 61 [9] strictly speaking, there were no citizens of the United States, but only of some one of them. Congress had the power 'to establish a uniform rule of naturalization.' But not the power to make a naturalized alien a citizen of any state. But the states generally provided that such persons might, on sufficient residence therein, become citizens thereof, and then the courts held, ab convenienti, rather than otherwise, that they became

ipso facto citizens of the United States. Story, Cont. P 1693; Prentiss v. Barton, 1 Brock.391. But the amendment declares the law positively on the subject, and reverses this order of procedure, by making citizenship of a state consequent on citizenship of the United States; for, having declared what persons are citizens of the United States, it does not stop there, and leave it in the power of a state to exclude any such person who may reside therein from its citizenship, but adds, "and such persons shall also be citizens of the state wherein they reside."

64. Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers, (U.S. Dist. Col. 1958) 78 S.Ct. 1087, 1088, 357 U.S. 197, 2 L.Ed. 2d 1255, "There are constitutional limitations upon power of courts, ... to dismiss an action without affording a party the opportunity for a hearing on merits of his case. Fed. Rules Civ. Proc. Rule 37, 28 U.S.C.A. 39 [4] 58 [4]
65. City of Springfield v. Kenny, 104 N.E.2d 65, 66 (App. Ohio 1951) "The presumption ... would prevail until overcome by evidence." 35 [7]
66. Steelman v. Rosenfield, 397 S.W.2d 906, reversed 405 S.W. 2d 801, on remand 408 S.W.2d 330, "Term necessary parties' means persons who have such an interest in the controversy that a final judgment or decree cannot be made without either affecting their interests or leaving 42 [5]

the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience."

67. *Stoll v. Gottlieb*, 59 S.Ct. 134, 137,139, 305 U.S. 165, 34,61
171,176 (U.S.Ill.1938) "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators.... there are certain strictly jurisdictional fact, the existence of which is essential to the validity of proceedings and the absence of which renders the act of the court a nullity."
68. *Suffolk Housing Services v. Town of Brookhaven* 1977, 397 33 [3]
N.Y.S.2d 302, 91 Misc.2d 80, affirmed as modified on other 46 [14]
grounds 405 N.Y.S.2d 302, 63 A.D.2d 731, "States may 58 [2,3,4]
adopt declaratory judgment statutes which do not contain the case or controversy restriction which binds the federal courts ... which is reflected in the federal Declaratory Judgment Act."
69. *Thompson v. Whitman*, 85 U.S. 457,463 (U.S.N.Y.1873) "The 37 [4]
court must have had jurisdiction not only of the cause, but of the parties."
70. *Tijerina v. Brownell*,141 F.Supp.266,269 (D.C.Tex.1956) 34 [7]
(D.C.Tex.1956) "It was not held in any of these cases 39 [4]
that it was necessary in order to obtain relief by way 46 [14]
by way of declaratory judgment, to establish that 57 [2]
administrative procedure for review of the action 58 [3,4]

complained of existed. In fact, in many cases relief by way of declaratory judgment was granted where the administrative agency simply refused to recognize the plaintiff's claim of citizenship."

71. Twining v. State of New Jersey, 29 S.Ct. 14,17,18, 211 34 [6]
U.S. 78,94,96 (U.S.N.J.1908) " ...There can be no doubt, 45 [11]
so far as the decision in the Slaughter House Cases has determined the question, that the civil rights sometimes described as fundamental and inalienable, which, before the War Amendments, were enjoyed by state citizenship and protected by state government, were left untouched by this clause of the 14th Amendment" ..."This part, at least, of the Slaughter-House Cases, has been steadily adhered to by this court,...'The opinion upon the matters actually involved and maintained by the judgment in the case has never been doubted or overruled by any judgment of this court.' The distinction between national and state citizenship and their respective privileges there drawn has come to be firmly established...
72. U.S. v. American Trucking Ass'ns, 60 S.Ct.1059, 310 U.S. 66 [20]
534, "In interpretation of statutes, courts should construe the language so as to give effect to the intent of Congress,... court may look beyond such words to the purpose when the plain meaning leads to absurd or futile results, or an unreasonable result plainly at variance with policy of the legislature as a whole. ...
When aid to construction of the meaning of words used in

statute is available, there can be no rule of law forbidding its use, however clear the words may appear on superficial examination. ... In analyzing the meaning of clauses or sections of general acts, court should appraise the purposes of Congress as a whole, and a few words of general connotation appearing in the text should not be given a wide meaning, contrary to a settled policy, excepting as a different purpose is plainly shown."

73. U.S. v. Bevans, 16 U.S. 336,388, 3 Wheat. 336, 4 L.Ed. 37 [4]
404 (U.S.Mass.1818) "It is in the 8th section of the 2nd article, we are to look for cessions of territory and of exclusive jurisdiction. Congress has power to exercise exclusive jurisdiction over this district," (the District of Columbia) "and over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings."
74. U.S. Coffee & Tea Co. v. Texas & Pacific Ry. Co. (Tex.Civ. App.5 Dist.1955) 280 S.W.2d 290,293 47 [14]
"The Declaratory Judgments Act necessarily deals with present rights, but it is a present right to have a judicial assurance that advantages will be enjoyed or liabilities escaped in the future."
75. U.S. v. Ryan, 52 S.Ct. 65,68, 284 U.S. 167,175 (U.S.Mont. 1931) 62 [12]
"A literal application of a statute which would 66 [23]

lead to absurd consequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose."

76. U.S. v. Spelar, 70 S.Ct. 10, 338 U.S. 217, 216 94 L.Ed. 3 65 [19]
(U.S.N.Y.1949) "Legislation of Congress, unless contrary intent appears, is presumed to apply only within territorial jurisdiction of United States,... 28 U.S.C.A. Sec. 2680(K)
77. United States v. Texas, 12 S.Ct. 488, 492, 143 U.S. 621, 37 [4]
643, 36 L.Ed. 285(U.S.Tex.1892) "It is apparent upon the face of this clause that in one class of cases the jurisdiction of the courts of the Union depends on the character of the cause, whoever may be the parties, and in the other, on the character of the parties, whatever may be the subject of controversy."
78. Van Valkenburg v. Brown, Cal. S.Ct. Vol. 43, pg. 43 (1872) 45 [11]
"No white person ... owes his status of citizenship to the 62 [12]
recent amendments to the Federal Constitution.
79. Vault Corp. v. Quaid Software Ltd., 655 F.Supp. 750, 48 [19]
760 (E.D.La.1987) "...an 'adhesion' contract, namely 49 [20]
one that is drafted unilaterally by the dominant party and then presented on a 'take-it-or-leave-it basis' to the weaker party..."
80. Watt v. State of Alaska, 101 S.Ct. 1673, 1677, 451 U.S. 259, 33 [4]
265, 68 L.Ed. 2d 80, 11 Env'tl. L.Rep. 20,378 (U.S.Alaska 37 [5]
1981) (citation omitted). '[T]he starting point in every 38 [3]

case involving construction of a statute is the language itself.'

81. Williams v. Walker-Thomas Furniture Co., 121 U.S. App. 48 [19] D.C. 315, 319, 320, 350 F.2d 445, 449, 450 (1965) "...when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms,... the court should consider whether the terms of the contract are so unfair that enforcement should be withheld."
82. Yick Wo v. Hopkins, 6 S.Ct. 1064, 1071, 118 U.S. 356, 370 41 [4] (U.S.Cal.1886) "... while sovereign powers are delegated to the agencies of the government, sovereignty itself remains with the people, by whom and for whom all government exists and acts."
83. In re Young, D.C.Wash.1912, 195 F. 645, affirmed on 45 [11] rehearing 198 F. 715; "An alien's right to citizenship depended upon parentage and blood, and not upon nationality or status."

TABLE OF STATUTES AND OTHER AUTHORITIES

1. Articles of Confederation "Article 1. The stile of this 34 [6] confederacy shall be "The United States of America ... 41 [2] Whereas the Delegates of the United States of America... agree to certain articles of Confederation and perpetual Union between the States..."
2. Commentaries on the Constitution, by Joseph Story, Vol.II 41 [4]

- Pg. 698 (Fourteenth Amendment) "If then, there is a
 difference between the privileges and immunities belonging
 to a citizen of the United States as such, and those
 belonging to the citizen of a State as such, the latter
 must rest for their security and protection where they
 have heretofore rested, so far as this paragraph is
 concerned, for they receive no additional aid from it.
- 45 [11]
62 [12]
3. Commentaries on the Constitution, by Joseph Story, Vol. II,
 Pages 630, 631. CLOSING REMARKS #1914. "Republics are
 created by the virtue, public spirit, and intelligence of
 the citizens. They fall when the wise are banished from
 the public councils, because they dare to be honest; and
 the profligate are rewarded, because they flatter the
 people in order to betray them.
- 49 [22]
4. Constitution of the United States of America, Art. I Sec.
 8, cl. 7, "To establish Post Offices and post Roads."
- 64 [16]
5. Constitution for the United States of America, "Bill of
 Rights" Article I, clause 6. "and to petition the
 Government for a redress of grievances."
- 38 [1]
6. Constitution for the United States of America, Article 3,
 Sec. 2, clause 1 "The judicial Power shall extend to all
 cases, in Law and Equity, arising under this
 Constitution, etc,..."
- 37 [4]
7. Constitution for the United States of America, Article
 4, Section 3, Clause 2, "The Congress shall have power to
- 65 [18]

dispose of and make all needed Rules and Regulations respecting the Territory or other Property belonging to the United States;..."

8. Constitution for the United States of America, "The power reserved to the states, under the Constitution (Amendment 10), to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in the conformity to the judiciary sections of the Constitution (Article 3). 37 [4]
9. Declaration of Independence. "When in the course of human events, it becomes necessary for one people ... they are endowed by their creator with certain "Unalienable Rights ... Life, Liberty and the pursuit of Happiness." 41 [2]
10. Federal Rules of Civil Procedure, Rule 11(b), "Representations to Court. By presenting to the court.. certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,..." 59 [6]
11. Federal Rules of Civil Procedure, Rule 81(c) Removed 43 [7]
Actions. These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal... In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under these rules within 20 days after the service of summons upon such initial pleading, then 59 [5]

filed, or within 5 days after the filing of the petition for removal, whichever period is longest."

12. Fourteenth Amendment: All Persons born or naturalized in 34 [7]
in the United States, and subject to the jurisdiction 36 [3]
thereof, are citizens of the United States and of the 48 [18]
State wherein they reside.
13. Municipal law of the District of Columbia, 16 United States 65 [19]
Statutes at Large 419. "all that part of the territory of
the United States... is hereby created into a government by
the name of the District of Columbia."
14. Preamble to the Unanimous Declaration of Independence 34 [6]
of the Republic of Texas. "...made by the People of
Texas..."
15. Preamble to the Constitution for the State of Texas "We 34 [6]
the people of the Republic of Texas do ordain and 35, 63
establish this Constitution."
16. Preamble to the Constitution for the United States of 34 [6]
America, "We the People"... secure the Blessings of 40 [2]
Liberty to ourselves and our Posterity...do ordain and 41 [2]
establish ... this Constitution for the United States of
America ..."
17. Public Salary Tax Act, House Resolution 3790, Title 4 35 [8]
USC, (4 USCS Sections 104-113) Sec. 110(a) The term 64 [15]
"person" shall have the meaning assigned to it in
section 3797 of title 26. Sec. (b) The term "sales or use
tax" means any tax levied on, with respect to, or
measured by, sales, receipts from sales, purchases,

storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable. Sec. (c) The "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts. Sec. (d) The term "State" includes any Territory or possession of the United States. Section 110(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State. Reference in Text (Section 3797 of Title 26, referred to in subsec.(a) is a reference to section 3797 of the Internal Revenue Code, 1939, which was repealed by section 7851 of Title 26, I.R.C., and is now covered by section 7701(a)(1)(e) of said Title 26. For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of said Title 26."

18. Statutes 176(Key) 90 FPD 4th-2 Statute 179 Interpretation 35 [8]
clauses and definitions in statutes construed.[9,17]
"Bkrtcy, W.D.Tex.1991. "'Plain, ordinary meaning'" rule for statutory construction does not apply when legislature specifically defines a term.- In re Hosek,

136 B.R. 672." ... "C.A.Fed. 1994. Ultimate objective when interpreting a statute is to give effect to the intent of Congress—spencer v. Brown, 17 F.3d 368, certiorari denied 115 S.Ct. 61, 130 L.Ed. 2d 19."

19. Texas Rules of Civil Procedure, Rule 99 (c) "If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." 42 [7]
59 [5]
20. Uniform Declaratory Judgments Act, Civil Practice and Remedies Code, (VTCA) Title 2, Chapter 37.Sec. 37.002(b) 32 [1,3]
33 [5]
"This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered."
21. 1 USCA Sec. 1 "...the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;..." 35 [8]
22. 8 USCA, Sec. 1421.1 Historical, "State courts had power to naturalize prior to the adoption of the Naturalization Act of 1790." 61 [9]
23. 8 USCA, Sec. 1422 2. Generally, "An alien's right to 61 [9]

citizenship depended upon parentage and blood, and not upon nationality or status. D.C.Wash.1912, 195 F. 645, affirmed on rehearing 198 F. 715,

24. 26 USCA, Sec.3101 Internal Revenue Code (IRC), Subtitle C—Employment Taxes, Chapter 21 “Federal Insurance Contributions Act” ...Sec.3101(a) “Old age, survivors, and disability insurance.... In addition to other taxes , there is hereby imposed on the income of every individual a tax.. (1) With respect to wages...” 64 [15]
25. 26 USCA, Sec. 3128, “This chapter may be cited as the “Federal Insurance Contributions Act (FICA). 64 [15]
26. 26 USCA, Sec.3797 and Sec. 7701(a)(1) “Person.—The term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.” 35 [8]
27. 28 USCA, Sec.2106, pg. 11035. Determination. “The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances” ... 36 [2]
28. 29 USCA, Sec.1302 ... “The Federal Insurance Contributions Act, referred to in subsec.(g)(1), is Act Aug.16, 1954,c 736, Secs. 3101,3102,3111,3112,3121, 68A Stat. 415, as 64 [15]

amended, which is classified generally to chapter 21 (section 3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of the Act to the Code, see section 3126 of Title 26 and Tables.

29. Zip Code was copyrighted by the U.S. Postal Service... 44 [9]
"Postal Service National Area Map"... "Copyright-U.S. 64 [16]
Postal Service.." "How the Zip Code Works"... A Zip Code is 64 [17]
a numeric code that identifies areas within the United
States and its territories... When customers voluntarily
use ZIP..."

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

SUBJECT MATTER

(1)

On February 10, 1995, the Appellant, Barbara Martin, filed her petition in (State) District Court of Fort Bend County, Texas, 240th Judicial District. She is seeking a Declaratory Judgment of her true status of Citizenship, pursuant to the Uniform Declaratory Judgments Act, Civil Practice and Remedies Code, (VTCA) Title 2, Chapter 37.

(2)

On August 13, 1996, this case was erroneously removed from the (State) District Court of Fort Bend County, Texas, 240th Judicial District, to the (Federal) United States District Court for the Southern District of Texas, Houston Division, by the assistant U.S. Attorney representing Government Agencies of the U.S.A, et al. On December 19, 1996, at a Conference/Hearing, the Federal Judge made a Final Judgment, dismissing Appellant's cause for "failure to state a claim". He also made a Final Judgment, ruling Appellant's Motion for Default Judgment, Motion for Sanctions and Motion to Remand as "Moot", disposing of all of Appellant's claims. The Final Order was filed in Federal District Court December 23, 1996. The Appellant, Barbara Martin appeals the Final Order, and filed her Notice of Appeal on January 10, 1997. On January 15, 1997, Appellant placed her Order for Transcript.

(3)

The Uniform Declaratory Judgments Act, Civil Practice and Remedies Code, (VTCA) Title 2, Chapter 37, "provides broad powers of construction in courts to enable parties to determine their relative rights without waiting until they have suffered irreparable damage." McCarr v. Cain, 416 S.W. 2d 463, ref. n.r.e. (Civ.App.1967); See, Blackmon v. Parker,

544 S.W.2d 810, affirmed 55 S.W.2d 623 (Civ.App.1976); Suffolk Housing Services v. Town of Brookhaven 1977, 397 N.Y.S.2d 302, 91 Misc.2d 80, affirmed as modified on other grounds 405 N.Y.S.2d 302, 63 A.D.2d 731

(4)

The "Statute authorizing removal of state court suits by federal officers does not permit removal by federal agencies." International Primate Protection League v. Administrators of Tulane Educational Fund, et al., 111 S.Ct. 1700, 1705, 500 U.S. 72, 79, 114 L.Ed. 134, 59 (U.S.La.1991); See Watt v. Alaska, 451 U.S. 259, 265, 101 S.Ct. 1673,1677, 68 L.Ed. 2d 80 (1981) (citation omitted); Severson v. Home Owners Loan Corporation, 1939, 88 F.2d 344, 184 Okl. 496

(5)

"In Texas, no present damage need be shown for declaratory judgment action. Lacy v. Mid-Continent Cas. Co. (D.C.Tex.1965) 247 F.Supp. 667. Vernon's Ann.Civ.St.Tex.art. 2524-1 (now VTCA Title 2, Chapter 37); See, Anderson v. McRae (Tex.Civ.App. 6 Dist.1973) 49 S.W.2d 351; Ainsworth v. Oil City Brass Works (Tex.Civ.App.1954) 271 S.W.2d 764; "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief ... under the Federal Rules, the purpose of pleading is to facilitate a proper decision on the merits." Conaly v. Gibson, 78 S.Ct. 99, 102, 355 U.S. 41, 46 (U.S.Tex.1957); See, Donald v. Carr (Tex.App.1966) 407 S.W.2d 288; Insurance Corp. of Ireland, Ltd. V. Compagnie des Bauxites de Guinea, Pa.1982, 102 S.Ct. 2099,2103, 456 U.S. 694,701, 72 L.Ed.2d 492, on remand 554 F.Supp.1080

(6)

Barbara Martin has Certified Government Documents to prove she is a member of the Posterity (by blood, heritage), and a Preamble (De Jure) Citizen of the State of Texas, by birth. (See Exhibit 18.1, "Public Notice, First Amendment to Positive Identification of Barbara Ann Martin). By virtue of her Preamble (De Jure) State Citizenship, she is ipso facto a Preamble (De Jure) Citizen of the (Perpetual) union of States, styled as the United States of America. "Whoever then was one of the people of either of these states when the Constitution of the United States was adopted, became ipso facto a citizen-a member of the nation created by its adoption. He was one of the persons (not 14th Amendment) associating together to form the nation, and was, consequently, one of its original citizens." Minor v. Happersett, 88 U.S. 162, 167 (U.S.Mo.1874); See, Twining v. State of New Jersey, 29 S.Ct. 14, 17,18, 211 U.S. 78, 94,96 (U.S.N.J.1908); Sharon v. Hill, 26 F. 337, 343 (1885) (Circuit Court, D. California); Preamble to the Unanimous Declaration of Independence of the Republic of Texas (1836); Preamble to the Constitution of the State of Texas (1845); Preamble to the Constitution for the United States of America (1778)

(7)

Appellees, Government Agencies, are determined to force upon Appellant, by "presumption" a (de facto) Fourteenth Amendment citizenship, with "equal/civil" rights, by refusing to acknowledge her Preamble (De Jure) Citizenship, thereby causing an infringement of her "Unalienable/Inalienable" Rights. "...in many cases relief by way of declaratory judgment was granted where the administrative agency simply refused to recognize the plaintiff's claim of citizenship." Tijerina v. Brownell, 141 F.Supp. 266, 269 (D.C.Tex.1956; "It is the duty of courts to be

watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis." Boyd v. U.S., 6 S.Ct. 524, 535, 29 L.Ed. 746 (U.S.N.Y.1886) 116 U.S. 616, 635; "See, Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097, 2107 (U.S.Colo.1995); City of Springfield v. Kenny, 104 N.E.2d 65,66 (App.Ohio 1951)

(8)

The "presumption" was created when Barbara Martin was deceived and coerced, by Federal, State and Local Government Agencies, and Unknowingly, without full disclosure, signed various "adhesion" contracts, and thereby erroneously accepted certain various "statute" definitions as applying to her. "Where Act uses word in a special sense which it defines, definition by average man or by ordinary dictionary is not a substitute for the definition contained in the act." National Homeopathic Hospital Assn'n v. Britton, 147 F.3d 551 (1944) Statute (Key) 179; See, Statutes 176 (Key), 90 FPD 4th-2 Statute 179 Interpretation clauses and definitions in statutes construed.; Public Salary Tax Act, House Resolution 3790, 4 USCS Sections 104-113. Section 110(a) "The term "person" shall have the meaning assigned to it in section 3797 of title 26. (now covered by section 7701(a)(1)of said Title 26"; "...the words "person" and "whoever" include corporation, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;..." 1 USCA Sec. 1; Schwartz v. O'Hara TWP School Dist. 375 Ps. 440,442 (Pa.1953); Frazier v. Wynn, 472 S.W.2d 750,753 (Tex.1971) See, Definitions of "Person", Black's Law Dictionary, 4th Edition, pg.1299,1300, 5th Edition, pg.1028, 6th Edition pg.1142; Webster's 1828 Dictionary.

APPELLATE JURISDICTION

(1)

This Court of Appeals for the Fifth Circuit, having Appellate jurisdiction over Federal District Courts, has jurisdiction to review the Order of the Federal Judge, Remand this case back to same Federal Judge with instructions that he Remand it back to State Court, where it rightfully belongs.

(2)

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." 28 USCA Sec. 2106 , Pg. 11035.
(Source) June 25, 1948, ch. 646, 62 Stat.963; See, Home L. Ins. Co. v. Dunn, Ohio 1874, 86 U.S. 214,226, 19 Wall 214, 22 L.Ed. 68; Kline v. Burke Const. Co., 43 S.Ct. 79,82,83, 260 U.S. 226,234, 24 A.L.R. 1077, 67 L.Ed. 226; Mayer and Alermen of City of Nashville v. Cooper, (U.S.Tenn.1867) 73 S.Ct. 247,251,252, 6 Wall 247, 18 L.Ed. 851

(3)

The (State) Court has jurisdiction to hear this case, because Federal jurisdiction is extremely limited by the Constitution for the United States of America (1787), and can only have jurisdiction in areas specifically ceded to it by the states. The states do not have the authority or power to cede to Congress personal or subject matter jurisdiction over a case concerning the infringement of "Unalienable/Inalienable" Rights of Preamble (De Jure) Citizens. The "Unalienable/Inalienable" Rights of Preamble (De Jure) Citizens pre-date

the Constitution (1787) and, unlike Fourteenth Amendment "equal/civil" rights, the "unalienable/Inalienable" Rights of Preamble (De Jure) Citizens do not "arise under the Constitution". Therefore, Congress does not have the authority or power to pass a statute allowing assistant U.S. Attorney to Remove Appellant's case from (State) District Court to (Federal) District Court.

(4)

Therefore, the Federal Judge did not have the jurisdiction to hear or dismiss Appellant's case. ... "The validity of an order of a federal court depends upon the court's having jurisdiction over both the subject matter and the parties. Subject matter jurisdiction is a requirement of this article as well as a statutory requirement; it functions as a restriction on federal power. U.S.C.A.Const.Art.3, Sec.2, cl.1 ... No action of the parties can confer subject matter jurisdiction upon a federal court."; Insurance Corp. of Ireland, Ltd. V. Compagnie des Bauxites de Guinea, Pa.1982, 102 S.Ct. 2099,2103, 456 U.S. 694,701, 72 L.Ed.2d 492, on remand 554 F.Supp.1080; U.S. v. Bevans, 16 U.S. 336,388 (U.S.Mass.1818); U.S. v. Texas, 12 S.Ct. 488,492, 143 U.S. 621,643, 36 L.Ed.285 (U.S.Tex.1892); Thompson v. Whitman, 85 U.S. 457,463 (U.S.N.Y.1873); Article 10, Bill of Rights (1791) of the Constitution for The United States of America (1787). Even if this were a case where the Federal Court had jurisdiction, the "Statute authorizing removal of state court suits by federal officers does not permit removal by federal agencies." International Primate Protection League v. Administrators of Tulane Educational Fund, et al., 111 S.Ct. 1700,1705, 500 U.S. 72,79, 114 L.Ed. 134, 59 USLW 4424; See, Watt v. Alaska, 101 S.Ct. 1673,1677, 451 U.S. 259, 265, 68 L.Ed. 2d 80 (1981) (citation omitted).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(1)

1. Whether Statute 28 U.S.C. 1331, 1346, 1441 or 1442 allows Government Agencies to remove a case concerning the infringement of the "Unalienable/Inalienable" Rights of a Preamble (De Jure) State Citizen, a member of the Posterity, thereby infringing her Right to "petition the government for a redress of grievances", as secured by The Bill of Rights, Article 1 Clause 6 of (1791).

(2)

"Statute authorizing removal of state court suits by federal officers does not permit removal by Federal Agencies." International Primate Protection League v. Administrators of Tulane Educational Fund, et al., 111 S.Ct. 1700,1705, 500 U.S. 72,79, 114 L.Ed. 134, 59 USLW 4424; See, Insurance Corp. of Ireland, Ltd. v. Compagnie des Beax de Guinea, Pa.1982, 102 S.Ct. 2099,2103, 456 U.S. 694,701, 72 L.Ed.2d 492, on remand 554 F.Supp. 1080; Miranda v. State of Arizona, (U.S.Ariz.1966) 86 S.Ct. 1601,1636, 384 U.S. 436,491

(3)

2. Whether Appellant suffered injury by being denied her Right as "Master of the Claim" to litigate her case in State Court, and if so, whether removal of case by assistant U.S.Attorney directly caused Appellant to suffer injury. "...groups were injured when they lost right to sue in state court, and injury directly resulted from NIH's removal of case." International Primate Protection League v. Administrators of Tulane Educational Fund, et al., 111 S.Ct. 1700,1705, 500 U.S. 72,79, 114 L.Ed. 134, 59 USLW 4424; See Watt v. Alaska, 101 S.Ct. 1673,1677, 451 U.S. 259,265, 68 L.Ed. 2d 80 (1981) (citation omitted); "The presence of a federal question, even a

Sec.301 question, in a defensive argument does not overcome the paramount policies embodied in the well pleaded complain rule-that the plaintiff is the master of the complaint..." Caterpillar, Inc. v. Williams, 107 S.Ct. 2425, 2433, 482 U.S. 386, 398, 399 (U.S.Cal.1987)

(4)

3. Whether Appellant's case can be dismissed for "failure to state a claim", when "In Texas, no present damage need be shown for declaratory judgment action." Lacy v. Mid-Continent Cas.Co. (D.C.1965) 247 F.Supp. 677; "Judicable controversy which authorizes declaratory relief need not be one where wrong has already been committed or party has already been injured." Anderson v. McRae (Tex.Civ.App.6 Dist.1973) 495 s.w.2d 351; See, Tijerina v. Brownell, 141 F.Supp. 266, 269 (D.C.Tex.1956); Societe Internationale Pour Participations Industrielles Et Commerciãls, S.A. v. Rogers, U.S.Dist.Col.1958, 78 S.Ct. 1087, 1088, 357 U.S. 197;

(5)

4. Whether Appellant suffered injury when her case was dismissed for "failure to state a claim" without having the opportunity to prove her claim or amend her complaint. "... the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." Conley v. Gibson, 78 S.Ct. 99, 102, 355 U.S. 41, 46 (U.S.Tex.1957); Haines v. Kerner, 92 S.Ct. 594, 596, 404 U.S. 519, 520 (U.S.Ill.1972); Lacy v. Mid-Continent Cas. Co. 247 F. Supp. 667 (D.C.Tex.1965) "All powers of government are subject to the Bill of Rights." Faulk v. Buena Vista Burial Park Ass'n, 152 S.W.2d 891 (Civ.App.1941)

STATEMENT OF THE CASE

Nature of the Case

(1)

Barbara Martin, the Appellant in this case, filed a Petition for Declaratory Judgment that she is a (De Jure) Citizen under the Preamble of the Constitution for the United States of America (1787), and of this State's Constitution (1845) in (State) District Court. The Assistant U.S. Attorney, representing Federal Agencies, erroneously removed Appellant's case from (State) District Court to Federal District Court. At the Conference/Hearing, the Federal Judge made a Final Judgment, dismissing Appellant's case for "failure to state a claim", and ruling Appellant's Motion for Default Judgment, Motion for Sanctions and Motion to Remand as "Moot".

(2)

Barbara Martin, the Appellant is a blood descendant of early American colonists who were, prior to 1775, subjects of England, thereby making her a member of the Posterity, spoken of in the Preamble of the Constitution for the United States of America (1787). Between 1775 and 1784, these same colonists, Thomas Norris and William Kerr, who were both Great, Great, Great Grandfathers of Appellant, Barbara Martin, along with other colonists, fought and won the Revolutionary War against King George III, thereby gaining their independence, sovereignty, and allodial title to their land. These rights were NOT given to them by Congress, because there was no Congress. Thomas Norris and William Kerr were no longer "subjects" of England, but were now original Preamble (De Jure) State Citizens, in the "Sovereign Body Politic" of the Nation of South Carolina. They were members of that group of Sovereign People,

the founders of this great Nation, who, via their delegates, wrote the Declaration of Independence (1776), who agreed to certain Articles of Confederation and Perpetual Union between the States/Nations (1777), and then in (1787) "ordained and established" the Constitution for the United States of America, to "secure the Blessings of Liberty", thereby securing their "Unalienable/Inalienable" Rights for themselves and their "Posterity". By virtue of their State Citizenship, these Sovereign People, were ipso facto Preamble (De Jure) Citizens of the (perpetual) union of States, styled as the United States of America.

(3)

"...who were citizens of the several states at the adoption of the constitution, and who, at that time, were recognized as the people whose rights and liberties had been violated by the British government.. The judgment of the court was that the words 'people of the United States' and 'citizens' meant the same thing, both describing the 'political body who, according to our republican institutions, form the sovereignty and hold the power and conduct the government through their representatives;' that 'they are what we familiarly call the 'sovereign people',..." Civil Rights Cases, 3 S.Ct. 18,36, 109 U.S. 3,31 (U.S.Tenn.1883); Barron v. City of Baltimore, (Md.1833) 32 U.S. 243, 7 Pet. 247, 8 L.Ed.; In Re Clark, Pa.1930, 152 A.92, 301 Pa. 321

(4)

"Sovereignty itself remains with the people, by whom and for whom all government exists and acts." Yick Wo v. Hopkins, 6 S.Ct. 1064, 1071, 118 U.S. 356,370 (U.S.Cal.1886); See, Minor v. Happersett, 88 U.S. 162,167, 21 Wall. 162,167; Sharon v. Hill, 26 F. 337, 343 (1885) (Circuit Court, D. California); Commentaries on the Constitution, by Joseph Story, Vol. II, page 698 (Fourteenth Amendment); League v. De

Young, Tex. 1850, 52 U.S. 203, 11 How.203, 13 L.Ed. 657; Martin v. Hunter's Lessee, Va.1816, 14 U.S. 324, 4 L.Ed. 97; Monongahela Nav. Co. v. United States, 13 S.Ct. 622,625,626, 148 U.S. 312,324,325, 37 L.Ed. 463 (U.S.Pa.1893); Chisholm v. Georgia, Ga.1793, 2 U.S. 471, 2 Dall, 471, 1 L.Ed. 440, 462; Employees of Dept. of Public Health and Welfare, Missouri v. Dept. of Public Health and Welfare, 93 S.Ct. 1614, 1637, 411 U.S. 279,322,323 (5)

Barbara Martin named the Appellees, U.S.A., et al, in her cause of action because, "All interests affected by declaratory judgment must be party if judgment is to be valid." Mills v. Howell, Tex.Civ.App.Austin (1967), 416 S.W.2d 453; Crickmer v. King, 507 S.W. 2d 314; Steelman v. Rosenfield, 397 S.W.2d 906, reversed 405 S.W.2d 301, on remand 408 S.W. 2d 330 (Tex.Civ.App.-Dallas) (6)

Federal Appellees have never filed their original answer in State Court, and the Notice of Removal the assistant U.S.Attorney filed was not timely. Even if attorney for federal Appellees was being truthful and did not receive Appellant's claim until July 15, 1996, he still did not file a timely removal, as he filed a Notice of Removal in Federal Court August 12, 1996, and filed a Notice of Removal in State Court August 13, 1996. On August 20, 1996, He filed a Motion to Dismiss. See, Excerptps 4-22 and Petitioner's Motion for Default Judgment, pages 10-44 with attached exhibits. The State Appellees filed their Original Answer August 12, 1996, and their Motion to Dismiss, October 4, 1996. See, Excerptps 4-22 and Petitioner's Motion for Default Judgment, pages 1-9 with attached exhibits. (7)

The Texas Rules of Civil Procedure, Rule 99 (c) state "If you or your attorney do not file a written answer with the clerk who issued this

citation by 10:00 a.m. on the Monday next following the expiration of twenty days (not 28) after you were served this citation and petition, a default judgment may be taken against you." The Federal Rules of Civil Procedure, Rule 81 (c) state "...the defendant shall answer or present the other defenses or objections available under these rules within 20 days (not 28 days) after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days (not 28 days) after the service of the summons upon such initial pleading, then filed, or within 5 days (not 8 days) after the filing of the petition for removal, whichever period is longest."

(8)
"Whatever slight ambiguity # 1446 (b) poses in application to an ordinary case, such as ours; may be resolved by the principle that doubts should be resolved against removal... Any other conclusion drains the words "or otherwise" of meaning, a step we are loath to take. Accordingly, we hold that the 30 days commences when the defendant, or its authorized agent, comes into possession of a copy of the complaint whether or not the delivery complies with the requirements of "service". Roe v. O'Donohue, 38 F.3d 298, 302, 303, 304; See, Harris v. U.S., D.C.Mass.1962, 204 F.Supp.228, affirmed 308 F.2d 573; Healy v. Ratta, 54 S.Ct. 700, 292 U.S. 262, 78 L.Ed. 1258 (1934)

(9)
The Appellant, Barbara Martin first learned her case had been removed when she attempted to file her Memorandum of Law at the (State) District Court. Although she mailed the location of her permanent place of abode where she could receive mail to the Federal District Clerk and to all the attorneys for the Federal, State and County Agencies, they will not

acknowledge her Permanent place of abode. Throughout this entire case, even though the attorneys for the Appellees all know that Barbara Martin, a Preamble (De Jure) Citizen, cannot accept mail addressed to a "resident" in a federal municipal legislative venue, with a zip code, they have either mailed copies of the Motions or Responses they filed by Certified Mail addressed to a "resident" in a federal municipal legislative venue, with a zip code, or they have not mailed copies of the Motions or Responses at all.

(10)

At the Pre-trial conference/hearing, although the judge tried to get Barbara Martin, the Appellant to state she had a "residence", she insisted she is not a "resident", but gave her place of "domicil" (she meant "domicil" as defined in Webster's Dictionary of 1828), not the statute definition. She stated that she is a (De Jure) Citizen of Texas, by virtue of her birthright, and that she was natural born in Texas. She has ancestors who were in Texas, when Texas was a Republic and has copies of their Land Patents and other Certified Government Documents to prove she is their Posterity. She insisted her Citizenship is her heritage, and is derived from her ancestors, and not from the Fourteenth Amendment of (1868) nor by the Immigration Naturalization Act of the United States. The Appellant was not issued a Certificate of Citizenship signed by a U.S. District Judge, proclaiming her status as a Fourteenth Amendment Citizen. The Fourteenth Amendment did not give her anything, and she does not need, or want, the "protection" of the Fourteenth Amendment.

(11)

"If then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging

to the citizen of a State as such, the latter must rest for their security and protection where they have heretofore rested, so far as this paragraph is concerned, for they receive no additional aid from it." Commentaries on the Constitution, by Joseph Story, (Fourteenth Amendment, Vol.II, pg. 698; "There can be no doubt, so far as the decision in the Slaughter House Cases has determined the question, that the civil rights sometimes described as fundamental and inalienable, which, before the War Amendments, were enjoyed by state citizenship and protected by state government, were left untouched by this clause of the 14th Amendment ... This part, at least, of the Slaughter-House Cases, has been steadily adhered to by this court,..." Twining v. State of New Jersey, 29 S.Ct. 14, 17, 18, 211 U.S. 78, 94, 96; "[W]e deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States." Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097, 2107 (U.S. Colo. 1995); See, Van Valkenburg v. Brown, Cal. S.Ct. Vol. 43, pg.43 (1872); In re Young, D.C.Wash.1912, 195 F. 645, affirmed on rehearing 198 F. 715

(12)

Barbara Martin also stated she has Certified Government Documents that prove she has ancestors who fought in the Revolutionary War. These ancestors "ordained and established" these governments to protect their "Unalienable/Inalienable" Rights and the "Unalienable/Inalienable" Rights of their "Posterity". "The Constitution of the United States was ordained and established not by the states in their sovereign capacities, but emphatically, as the preamble of the Constitution

declares, by 'the people of the United States.'" Martin v. Hunter's Lessee, (Va.1860) 14 U.S. 324, 4 L.Ed. 97;

(13)

Although she stated the government is classifying her as a "person" under the Fourteenth Amendment, who are, as per the Fourteenth Amendment, U.S. Corporate citizens of the District of Columbia, the Federal Judge stated he could not see where there is a "controversy". "It is not necessary that a person who seeks a declaration of rights shall have incurred or caused damage or injury in a dispute, and an action for declaratory judgment lies when fact situation manifests presence of ripening seeds of a controversy, as where claims of several parties are present and indicative of threatened litigation in immediate future." Ainsworth v. Oil City Brass Works (Tex.Civ.App.1954) 271 S.W.2d 754; See, Definition of "Person" 1 USCA Sec. 1; Black's Law Dictionary, 4th Edition, Pg.1299,1300, 5th Edition, Pg.1028, 6th Edition, Pg. 1142 and Webster's 1828 Dictionary

(14)

"It was not held in any of these cases that it was necessary in order to obtain relief by way of declaratory judgment, to establish that administrative procedure for review of the action complained of existed. In fact, in many cases relief by way of declaratory judgment was granted where the administrative agency simply refused to recognize the plaintiff's claim of citizenship." Tijerina v. Brownell, 141 F.Supp.266,269 (D.C.Tex.1956) See, Suffolk Housing Services v. Town of Brookhaven 1977, 397 N.Y.S.2d 302,91 Misc.2d 80, affirmed as modified on other grounds 405 N.Y.S.2d 302, 63 A.D.2d 731; Laborers' Intern. Union of North America, Const. and Municipal Workers Local Union No. 1253 v.

Blackwell(Civ.App.1972) 482 S.W.2d 327; U.S. Coffee & Tea Co. v. Texas & P. Ry. Co. (Civ. App.1955) 280 S.W.2d 290,293

(15)

Although the Federal District Judge acknowledged that Barbara Martin is sovereign, and a Citizen of Texas, he dismissed her case for "failure to state a claim." "Plaintiff's pro se complaint must be liberally construed and should only be dismissed for failure to state a claim if it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (* The judge read only part of Appellant's case) Lonsdale v. Egger, 525 F.Supp.610 (D.C.Tex.1981); "In Texas, no present damage need be shown for declaratory judgment action." Lacy v. Mid-Continent Cas. Co. (D.C.1965) 247 F.Supp. 667; Donald V. Carr 407 S.W.2d. 288 (Civ.App.1966); Maty v. Grasselli Chemical Co. 58 S.Ct. 507,509, 303 U.S. 197, 200 (U.S. N.J.1938); Haines v Kerner, 92 S.Ct. 594, 596, 404 U.S. 519, 520, (U.S.Ill. 1972)

(16)

When the Appellant, Barbara Martin was finally told by the Court Reporter, after approximately 2-1/2 months, that her transcript was ready and could be picked up, she found the transcript had been "censored" to the point that it was absolutely "guttred". Many important statements made by both Appellant and the Federal Judge are "omitted".

(17)

When Barbara Martin tried to purchase a copy of the audio tape, she was told by the court reporter that the audio tape was not available because the audio tapes are used over and over. This entire situation concerning the transcript seems very suspicious to Appellant.

(18)

Although the "adhesion" contracts Barbara Martin was deceived and coerced into signing, created a false "presumption" that she is a "de facto", Fourteenth Amendment citizen with "equal/civil" rights, the fact remains that her "Unalienable/Inalienable" Rights "can never be abridged", because they are so fundamental", See, Unalienable/Inalienable, Black's Law Dictionary, 5th Edition, page 1366, and 6th Edition, page 1523. Barbara Martin would never knowingly exchange her God given "Unalienable/Inalienable" Rights for "equal/civil" rights granted by Congress, via the Fourteenth Amendment.

(19)

"Before one can waive a right or estop himself, he must do it knowingly and be possessed of the facts, and when the opposite party only has such facts and does not reveal them to him he is not estopped nor does limitation run against him in asserting his right to a corrected statement embracing the true facts whereupon a settlement should be made." Barnhill v. Rubin, 46 F.Supp. 963,966 (D.C.Tex.1942); See Carnival Cruise Line, Inc. v. Shute, 111 S.Ct. 1522,1530,531, 499 U.S. 585,600,601 (U.S.Wash.1991); Williams v. Walker-Thomas Furniture Co., 121 U.S. 315,319,320 350 F.2d 445,449,450 (App.D.C.1965); Henningsen v. Bloomfield Motors, 161 A.2d 69,86 (1960); Vault Corp. v. Quaid Software Ltd., 655 F.Supp. 750,760 (E.D.La.1987)

(20)

"...there can be no ratification or estoppel from acceptance of the benefits by a person who did not have knowledge of all material facts." Frazier v. Wynn, 472 S.W.2d 750,753 (Tex.1971); Jamail v. Thomas, 481 S.W.2d 485,490 (Tex.Civ.App.1972); Rourke v. Garza, 530 S.W.2d 794,805 (Tex.1975); Briggs v. Rodriguez, 236 S.W.2d 510,513,514,518 (Tex.Civ.

App.1951); Vault Corp. v. Quaid Software Ltd., 655 F.Supp. 750,760
(E.D.La.1987) (21)

Whereas the "Unalienable/Inalienable" Rights of the Preamble State (De Jure) Citizens, which the "perpetual" Constitution for the United States of America (1787) was ordained and established to secure, pre-date said Constitution, as well as the Texas Constitution (1845), they Pre-date the Fourteenth Amendment (1868), with its "equal/civil" rights. Therefore, not one branch of government, nor all three combined, have the authority or power, by coercion, deceit, fraud, false "presumption" or otherwise, to force "equal/civil" rights upon the Appellant, Barbara Martin, a Preamble (De Jure) Citizen, a member of the Posterity. See, Kleppe v. Oden Tp, McHenry County, 40 N.D. 595, 169 N.W. 313, (Sup.Ct.North Dakota 1918); Hendrick v. State of Maryland, 35 S.Ct. 140,143, 235 U.S. 610,624 (U.S.Md.1915)

(22)
Commentaries on the Constitution, by Joseph Story, Vol.II, Pg's. 630,631. CLOSING REMARKS #1914. "Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall when the wise are banished from the public councils, because they dare to be honest; and the profligate are rewarded, because they flatter the people in order to betray them."

Course of Proceedings

1. On February 10, 1995, Petitioner's Petition for Declaratory Judgment was filed in the District Court of Fort Bend County, Texas 240th Judicial District.

2. On January 24, 1996, a notice and a true copy of Petitioner's complaint was mailed, via Certified Mail, Return Receipt Requested, to Respondents.
3. On May 31, 1996, a Motion for Alternate Service was filed by Petitioner.
4. On July 3, 1996, Motion for Alternate Service was denied.
5. On August 12, 1996, Notice of Removal was filed in District Court by Assistant U.S. Attorney.
6. On August 13, 1996, this case was improperly removed from State Court to United States District Court by Respondent, Assistant U.S. Attorney, based upon United States being named as Respondents.
7. On August 20, 1996, Respondent, U.S. Attorney filed a Motion to Dismiss, followed by Motions to Dismiss filed by Respondents Assistant Attorney General of Texas and Assistant County Attorney for Fort Bend County.
8. On September 6, 1996, Petitioner filed Response to Federal Respondents Motion to Dismiss, a Supplemental Memorandum on Classes of Citizenship and a Motion for Default Judgment.
9. On September 16, 1996, Federal Respondents filed a Response to Petitioner's Motion for Default Judgment and a Response to Petitioner's Response to Motion to Dismiss
10. On September 18, 1996, Petitioner filed letter to District Court giving her Correct designation of permanent place of abode as 23rd Judicial District, 12906 W. Bellfort, Houston, Fort Bend County, Texas U.S.A. and telephone and fax numbers.

11. On October 4, 1996, Motion to Dismiss and Memorandum was filed by Texas Respondents.
12. On October 25, 1996, Motion to Dismiss and Memorandum was filed by Fort Bend County Clerk.
13. On November 5, 1996, Petitioner filed Response to Texas Respondents Motion to Dismiss.
14. On October 28, 1996, Petitioner filed 2nd Response to Motion to Dismiss.
15. On November 8, 1996, Federal Respondents filed Reply to Petitioner's 2nd Response to Motion to Dismiss.
16. On November 13, 1996, Petitioner filed Response to Motion to Dismiss.
17. On November 25, 1996, Petitioner filed Motion for Sanctions against Attorney for Federal Respondents.
18. On November 25, 1996, Petitioner filed Response to Motion to Dismiss.
19. On December 5, 1996, Petitioner filed Joint Discover/Case Management Plan.
20. On December 5, 1996, Petitioner filed Response to Office of Fort Bend County Clerk's Original Answer, and Motion and Notice for Remanding to State Court, action improperly removed by Federal Respondents.
21. On December 9, 1996, Notice of Change of counsel for Federal Respondents.
22. On December 10, 1996, Order entered, setting Motions Hearing at 4:00 on 12/19/96.

23. On December 12, 1996, Appendix by Barbara Martin to Petitioner for Declaratory Judgment.
24. On December 18, 1996, Reply filed by Petitioner to Response to Motion for Sanctions and 1st Amendment to Supplemental Memorandum of Law in support of request for Declaratory Judgment of Citizenship.
25. On December 19, 1996, Final Judgment granting Motion to Dismiss for Failure to State a Claim; denying as Moot Petitioner's Motions for Default Judgment, Motion for Sanctions and Motion for Order remanding to State Court action improperly removed by Federal Respondents. Case Closed and Minute entry.
26. On January 10, 1997, Petitioner filed Notice of Appeal.
27. On January 15, 1997, Notice of Appeal and certified copy of docket transmitted to USCA.
28. On January, 15, 1997, Petitioner ordered Transcript and mailed copies to USCA and all Respondents.
29. On January 21, 1997, case was docketed by Fifth Circuit Court of Appeals.
30. On January 21, 1997, transcript from Appellant, Barbara Martin received by Fifth Circuit Court of Appeals.
31. On January 30, 1997, appearance form filed by Randall W. Morse for Appellee, Fort Bend County Clerk.
32. On January 31, 1997, appearance form filed by Matthew Rienstra for Appellee, Texas Dept. of Public Safety and Office of the Governor.
33. On March 12, 1997, appearance form filed by Robert L. Bernard for Appellees U.S.A.

34. On April 14, 1997 Transcript filed in District Court by Court Reporter.
35. On April 29, 1997, Record on Appeal filed.
36. On April 29, 1997, Briefing notice issued.
37. On June 9, 1997, Appellant, Barbara Martin mailed Brief, via Certified Mail to Appellate Court.
38. On June 23, 1997, Appellant, Barbara Martin mailed Corrections to Brief, via Certified Mail to Appellate Court.

DISPOSITION OF CASE BY DISTRICT COURT

On December 19, 1996, in a Pre-trial Conference/Hearing, Federal Judge, Lynn N. Hughes, made a final judgment dismissing Appellant's case for "failure to state a claim." Appellant's Motions for Default Judgment, Sanctions and Remand were denied as moot, although he acknowledged that Appellant, Barbara Martin, is a Citizen of the State of Texas, and is Sovereign. See Excerpts

Statement of Facts

(1)

1. Barbara Martin, the Appellant, was born July 14, 1937, in Titus County, Texas, the fifth natural born child of Bunyan Oco Norris and Winnie Della (Kerr) Norris. She is by blood (heritage), and by birth a Preamble (De Jure) State Citizen of Texas, and by virtue of her State Citizenship, is ipso facto a Preamble Citizen of the "Perpetual" union of the States, styled as the United States of America.

(2)

2. Appellees, by "presumption" claim that Appellant's Citizenship

status emanates from the provisions of the Fourteenth Amendment of 1868, of the United States Constitution and that Appellant therefore is a "person", a "de facto" citizen within the meaning of the Fourteenth Amendment, and as such, is "subject to the jurisdiction thereof", therefore a subject of the United States (U.S.) government.

(3)

3. When Appellant, Barbara Martin, became aware of the entrapment that had been perpetrated upon her, she filed suit in State Court, pursuant to the Uniform Declaratory Judgments Act, Civil Practice and Remedies Code (VTCA) Title 2, Chapter 37, seeking a Declaratory Judgment that she is a (De Jure) Citizen under the Preamble of the original Constitution for the united States of America, (1787) and of this State's Constitution (1845).

(4)

4. The Constitution for the United States of America (1787) describes the unrestricted right to contract, so long as the action is taken for legal purposes. However, Appellant, Barbara Martin has participated unknowingly in waiving her "Unalienable/Inalienable" Rights. The Uniform Commercial Code defines the "unconscionable contract" as one entered into without "informed consent". Thus, the Social Security, Driver's License, IRS Forms W4, 1040, etc., Voter Registration, and other such "adhesion" contracts contain a serious "fault", because there is no "informed consent". As a result of the "fraud", the entire contract is null and void, as fraud vacates the most solemn promise to pay, and there is no statute of limitation on fraud.

(5)

5. Had Appellant known she was signing "adhesion" contracts that would waive her "Unalienable/Inalienable" Rights, she would never have signed those contracts. She would never trade her "Unalienable/Inalienable" Rights, her birthright, for Fourteenth Amendment "civil rights".

(6)

6. Appellees, by refusing to recognize the true status of Citizenship of Appellant, Barbara Martin, as being that of (De Jure), are, by "presumption", determined to force upon Appellant a de facto citizenship (14th Amendment).

SUMMARY OF APPELLANT'S ARGUMENT

(1)

Appellant, Barbara Martin, is by blood (heritage) a member of the "Posterity", spoken of in the Preamble to the Constitution for the United States of 1787, and she is by blood (heritage) and by birth, a Preamble State (De Jure) Citizen of Texas. By virtue of her State Citizenship, she is ipso facto, a Citizen of the union of States, Styled as the United States of America.

(2)

However, by coercion, deceit, fraud and presumption perpetrated by various agencies of the federal, state and local governments, Appellant was coerced into signing various "adhesion" contracts, and unknowingly accepted certain "statute" definitions, as applying to her. As a result, she (unknowingly), without "full disclosure", and with no "informed consent", waived her God given "Unalienable/Inalienable" Rights, which are her birthright as a member of the Posterity. These God given

"Unalienable/Inalienable" Rights are secured by the Constitution for the United States of America (1787).

(3)
Having learned the truth, Appellant, Barbara Martin, hereby rescinds all adhesion contracts she has ever signed, and is exercising her God given "Unalienable/Inalienable" Right to "petition the government for a redress of grievances", as secured by Article I Clause 6, "Bill of Rights" (1791), of the United States Constitution (1787), and is seeking a Declaratory Judgment, pursuant to the Uniform Declaratory Judgments Act, Civil Practice and Remedies Code, (VTCA) Title 2, Chapter 37, that the true status of her Citizenship is that of (De Jure) as stated above.

(4)
As "Master of the Claim", Appellant filed her claim in the proper court, as only the State Court has original jurisdiction and venue to hear cases concerning issues of Preamble (De Jure) State Citizenship.

(5)
Although Congress has the authority to pass statutes concerning Fourteenth Amendment citizens, in Appellant's case, she being a member of the Posterity, Congress, being the created, has no authority or power to pass a statute granting an absolute right to the U.S. Appellees to remove Appellant's case to federal court. By Removal of the claim to Federal Court, Appellees infringed Barbara Martin's right to bring suit in the court of her choice. After removal, Appellees promptly filed, and were granted, a Motion for dismissal for "failure to state a claim". Thus, they denied Barbara Martin, a member of the Posterity, her Right to "petition the government for a redress of grievances". Maxim of Law, The created is never greater than the Creator. See, Rector, Etc,

of Holy Trinity Church v. U.S. 12 S.Ct. 511,512, 142 U.S. 457,459
(U.S.N.Y.1892)

(6)
Some of these "adhesion contracts" are, Application for a Social Security Card, various IRS forms, such as W4 and 1040, etc.. Other various State "adhesion" contracts are Driver's License, Marriage License, permits, Voter Registration, etc,.. Appellant was also deceived and coerced into accepting various "statute" definitions of entrapment such as, "citizen of the United States, United States citizen, U.S. citizen, citizen of the U.S., person, individual, taxpayer, vehicle, driver, operator, voter, etc,.. as applying to her.

ARGUMENT

STANDARD OF REVIEW

(1)

The fact findings of the federal judge at the conference/hearing were clearly erroneous. He stated he could see no controversy, dismissed the Appellant's case for "failure to state a claim", and declared her Motions for Default Judgments, Sanctions against the assistant U.S. Attorney and her Motion to Remand as "moot". These fact findings were clearly erroneous because:

(2)

1. The State Civil Appeals Court ruled "A controversy is 'judicable' when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." Laborers' Intern. Union of North America, Const. and Municipal Workers Local Union No. 1253 (Tex.civ.App.1972) 482 S.W.2d 327. Tijerina v.Brownell,141 F.Supp.266,269(D.C.Tex.1956);

Suffolk Housing Services v. Town of Brookhaven 1977, 397 N.Y.S.2d 302,91 Misc.2d 80, affirmed as modified on other grounds 405 N.Y.S.2d 302, 63 A.D.2d 731;

(3)

2. "In Texas, no present damage need be shown for declaratory judgment action." Lacy v. Mid-Continent Cas. Co., 247 F.Supp. 667 (D.C.1965); See, Tijerina v. Brownell, 141 F.Supp. 266,269 (D.C.Tex.1956); Suffolk Housing Services v. Town of Brookhaven 1977, 397 N.Y.S.2d 302,91 Misc.2d 80, affirmed as modified on other grounds 405 N.Y.S.2d 302, 63 A.D.2d 731; U.S. Coffee & Tea Co. v. Texas & Pacific Ry. Co. (Tex.Civ.App.5 Dist.1955)

(4)

3. The Uniform "Declaratory Judgments Act "provides broad powers of construction in courts to enable parties to determine their relative rights without waiting until they have suffered irreparable damage." McCart v. Cain (Civ.App.1967) 416 S.W.2d 463, ref. n.r.e. See, Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers, U.S.Dist.Col.1958, 78 S.Ct.1087,1088, 357 U.S. 197; Lacy v. Mid-Continent Cas. Co. (D.C.1965) 247 F.Supp.667; Tijerina v. Brownell,141 F.Supp.266,269 (D.C.Tex.1956); Suffolk Housing Services v. Town of Brookhaven 1977, 397 N.Y.S.2d 302,91 Misc.2d 80, affirmed as modified on other grounds 405 N.Y.S.2d 302, 63 A.D.2d 731

(5)

4. Appellant is entitled to a Default Judgment against Appellees, U.S.A., Office of the Governor of the State of Texas & Texas Department of Public Safety. Texas Rules of Civil Procedure, Rule

99(c), 239 & 240, and Federal Rules of Civil Procedure, Rule 81(c).
See also *Roe v. O'Donohue*, 38 F.3d, 298, 302, 303, 304.

(6)

5. By making false allegation that Barbara Martin is a "tax protester", Assistant U.S. Attorney violated Federal Rules of Civil Procedure, Rule 11(b). "Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,..." Barbara Martin had produced 30 years worth of IRS documentation, that she always paid taxes, even though, as she later learned, IRS "statute" definitions do not apply to her. Title 28 and Title 42 Tax liability was forced on her by Government Agencies, when she was deceived and coerced into signing (unknowingly), without "informed consent" and without "full disclosure" onerous "adhesion" contracts.

(7)

6. The "Statute authorizing removal of state court suits by federal officers does not permit removal by federal agencies." *International Primate Protection League v. Administrators of Tulane Educational Fund, et al.*, 111 S.Ct. 1700, 1705, 500 U.S. 72, 79, 114 L.Ed. 134, 59 (U.S.La.1991); *Insurance Corp. of Ireland, Ltd. V. Compagnie des Bauxites de Guinea*, Pa.1982, 102 S.Ct. 2099, 2103, 456 U.S. 694, 701, 72 L.Ed.2d 492, on remand 554 F.Supp.1080; *Miranda v. State of Arizona*, (U.S.Ariz.1966) 86 S.Ct. 1602, 1636, 384 U.S. 436, 491; *Oliver v. Trunkline Gas Co.*, 789 F.2d 341, 343, (C.A.5 (Tex.) 1986); *Severson v. Home Owners Loan Corporation*, 1939, 88 P.2d 344, 184 Okl.

496; Franchise Tax Bd. of State of Cal. v. Construction Laborers Vocation Trust for Southern California, 103 S.Ct. 2841, 2848, 463 U.S. 1, 13,14 (U.S.Cal.1983); Harris v. U.S., D.C.Mass.1962, 204 F.Supp. 228, affirmed 308 F.2d 573; Healy v. Ratta 54 S.Ct. 700, 292 U.S. 262 (U.S.N.H. 1934); Roe v. O'Donohue, 38 F.3d 298, 302,303,304

(8)

Even the Federal District Judge is not recognizing and acknowledging the difference between (De Jure) Citizenship, with "Unalienable/Inalienable" Rights and the (de facto) "Fourteenth Amendment" citizenship, with "equal/civil" rights. He, like the Appellees, is making a false "presumption" as to the status of citizenship of the Appellant, Barbara Martin. Therefore, she must prove her status of Citizenship in order to have the Constitutional Standing to exercise her "Unalienable/Inalienable" Rights, secured by the Bill of Rights (1791) of the Constitution for the United States of America (1787). By rescinding all of the onerous "adhesion" contracts, which created the "presumption", and by declaration of her true status of Citizenship, the Appellant, Barbara Martin, is hereby claiming her birthright, as a member of the Posterity.

(9)

Barbara Martin was natural born July 14, 1937, in Titus County, Texas, the fifth natural born child of Bunyan Oco Norris and Winnie Della (Kerr) Norris. She has Certified Government Documents, to prove she is by blood (heritage) a member of the Posterity, and by birth, a Preamble (De Jure) State Citizen of Texas, and by virtue of her State Citizenship, is ipso facto a Preamble Citizen of the "Perpetual" union of the States, styled as the United States of America. Minor v. Happersett, 21 Wall. 162, 167; Civil Rights Cases, 3 S.Ct. 18, 36, 109

U.S. 3, 31 (U.S.Tenn. 1883); Boyd v. Nebraska ex rel Thayer, 12 S.Ct. 375, 381 143 U.S. 135, 158, 159 (U.S.Neb.1892); Sharon v. Hill, 26 F. 337, 343 (1885) (Circuit Court, D. California ; Dickson v. Strickland (1924) 114T. 176, 265 S.W. 1012, 1020; 8 USCA Sec's. 1421.1 and 1422 2.

(10)

When her Great, Great, Great Grandfathers, Thomas Norris and William Kerr, who were both early American Colonists, via their delegates, drafted the Declaration of Independence, (Statute of 1776) declaring their independence from King George III, they referred to themselves as "One People". These same "One People" all were of the original stock of Europe. These same "One People" were the "free inhabitants", who, via their "delegates", agreed to certain "Articles of Confederation and perpetual Union between the States", stiled as the United States of America. These same "One People", "free inhabitants" were also the same "We the People" who ordained and established the Constitution for the United States of America, and who fought and won the Revolutionary war against King George III, thereby gaining their independence and sovereignty. Therefore, Thomas Norris and William Kerr were no longer "subjects" of England, but were now the original Preamble (De Jure) State Citizens, in the "Sovereign Body Politic", who were the founders of this great Nation. By virtue of their (De Jure) State Citizenship, they were "ipso facto" Preamble (De Jure) Citizens of the (perpetual) union of States, stiled as the United States of America."

(11)

These same "We the People", ordained and established the Constitution for the United States of America, to secure the "Blessings of Liberty to ourselves and our Posterity". They Created their own, and the Appellant, Barbara Martin's Citizenship. The local, state, and federal governments

were ordained and established (created), to secure and protect these "Blessings of Liberty".

(12)

However, Barbara Martin was "deceived and coerced" by agencies of federal, state and county governments into signing various "adhesion" contracts and accepting certain definitions of entrapment as pertaining to her. Thus, she participated (unknowingly), without "full disclosure" and with no "informed consent", in creating a false "presumption" that the status of her citizenship is "de facto" via the Fourteenth Amendment. See, In Re Po, 1894, 28 N.Y.S. 383, 384. These government agencies have therefore, by "coercion, deceit, fraud, and presumption", forced upon her, "equal/civil" rights, which are not the "same" as "Unalienable/Inalienable" Rights, which are her rightful and lawful heritage. See, U.S. v. Ryan, 52 S.Ct. 65, 68, 284 U.S. 167, 175 (U.S.Mont.1931); Van Valkenburg v. Brown, Reports of Cases, Calif. S.Ct. Vol. 43, pg. 43 (1872); Commentaries on the Constitution, by Joseph Story, (Fourteenth Amendment, page 698).

(13)

After all of the original Preamble (De Jure) State Citizens had died, certain perpetrators in the Office of the President, the U.S. Congress and certain other perpetrators in U.S. Government agencies, via the Social Security Administration, Internal Revenue Service, (Income Tax Hoax) Department of Commerce, etc,... determined to usurp the Sovereignty and destroy the "Unalienable/Inalienable" Rights of the "Posterity". Because They knew they did not have the jurisdiction to tax and control De Jure Citizens, they devised a method of securing the needed jurisdiction by defining the terms "United States citizen, citizen of the United States, U.S. citizen, person, individual, resident, taxpayer,

etc,..." to mean someone under federal jurisdiction. They knew that under the Constitution, all acts of Congress are territorial in nature, and apply only within the territorial jurisdiction of Congress, but not within the boundaries of the Sovereign States. Unwilling to violate this constitutional principle, but determined to tax and control all (De Jure) Citizens of the several states, the Feds had to create a contractual nexus between the Federal Government and the Preamble (De Jure) State Citizens.

(14)

The Social Security program was first used as bait to link and entice these Citizens into the tax system. After the public acceptance of Social Security, introduced in 1935, the "victory Tax" of 1942, which took advantage of the Patriotism of Americans, and introduced the W4 form, was passed by Congress. Soon Sovereign Preamble (De Jure) State Citizens were deceived into waiving their God given "Unalienable/Inalienable" Rights, that are "secured" by the Constitution for the United States of America. This was accomplished through "adhesion" contracts, via the 1040 and the W4 form. A few years later, Congress passed the Federal Tax Act of 1966, whereby the entire taxing system was placed under the "Uniform Commercial Code", which was meant to assure the uniformity of contract terms throughout the states. By instituting Social Security, the Feds created ten Social Security "Districts" which completely covered the 48 independent and Sovereign States much like an overlay of clear glass. In this way the Feds created a series of "Federal Areas" over the entire United States that expanded Federal jurisdiction far beyond the original constitutional limits.

(15)

Congress passed various other "acts", all towards the same goal, such as the "Public Salary Tax Act", passed in 1939, and the 'Buck Act", passed in 1940; See, 26 USCA Sec's 3101, 3128 & 29 USCA Sec. 1302; Howard v. Commissioners of Sinking Fund, 73 S.Ct. 465, 468, Boston Sand & Gravel Co. v. U.S. 49 S.Ct. 52, 54, 278 U.S. 41, 48 (U.S.Md.1833); M'Culloch v. State 17 U.S. 316, 383 (U.S.Md.1819); Hooven & Allison Co. v. Evatt, 65 S.Ct. 870, 880, 324 U.S. 652, 671, 672 (U.S.Ohio 1945); Kleppe v. Odin Tp, McHenry County, 40 N.D. 595, 169 N.W. 313, (Sup.Ct.North Dakota 1918); Hendrick v. State of Maryland, 35 S.Ct. 140, 143, 235 U.S. 610, 624 (U.S.Md.1915)

(16)

By creating a host of "Federal Areas" within the boundaries of the states, the federal government has expanded its jurisdiction and cleverly usurped the constitutional Sovereignty of the People and the States by creating a "fictional" Federal "state within a state". This fictional State uses a ZIP Code, which is copyrighted by the U.S. Postal Service. The Post Office Department, created by Article I Sec. 8 clause 7, was replaced by the United States Postal Service in 1971, which uses a Zip Code. See, Black's Law Dictionary, 5th Ed., Pg. 1049, 6th Ed. 1166

(17)

"A zip code is a numeric code that identifies areas within the United States and its territories ..." (which places Citizens in a "venue" within the municipal legislative jurisdiction of Congress.) "...When customers voluntarily use ZIP..." 1996 National Five Digit Zip Code and Post Office Directory, Volume 2 Pg's. 1-1, A-3, 1-10, United States Postal Service, U.S. Postal Service Manual, **Postal Code 122.32.**; U.S.Postal Service, Postmaster General, "Although we recommend placing a

ZIP Code on all mail, its usage is entirely voluntary...", letter dated January 9, 1991, in response to letter to Postmaster General, Anthony Frank. See, Heilberg v. Fixa, D.C.Cal.1964, 236 F.Supp.405, affirmed 85 S.Ct. 1493, 381 U.S. 301, 14 L.Ed. 2d 398

(18)

As a result, even though they reside in one of the States of the union, "United States citizens, citizens of the United States, U.S.citizens, etc,..." which are legally citizens of the "District of Columbia", are classified as property, franchises, and "individual entities" of the federal governmental. See, United States Constitution (1787) Article 4 Section 3 Clause 2.

(19)

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction"; New York Cent, R.Co. v. Chisholm, 45 S.Ct. 402, 403 268 U.S. 29,31 (U.S.Mass.1925); ..All legislation is prima facie territorial." American Banana Co. v. U.S. Fruit Co., 29 S.Ct. 511,513, 213 U.S. 347,357 (U.S.N.Y.1909); "Legislation of Congress, unless contrary intent appears, is "presumed" to apply only within territorial jurisdiction of United States,..." U.S. v. Spelar, 70 S.Ct. 10, 338 U.S. 217,216 (U.S.N.Y.1949); Municipal Law of the District of Columbia, 16 United States Statutes at Large 419, pg.1, Section 1; See Ashwander v. Tennessee Valley Authority, 56 S.Ct. 466, 297 U.S. 288 (U.S.Ala.1936);

(20)

By now, it is quite obvious that the IRS, the Social Security Administration, and other government agencies operate under contract law jurisdiction, and not according to the perimeters of the United States

Constitution. (1787) See, U.S. v. American Trucking Ass'ns, 60 S.Ct. 1059,
310 U.S. 534

(21)
Appellant, Barbara Martin, a Preamble (De Jure) State Citizen was trapped, by coercion, deceit and fraud, into these programs by "adhesion contracts." Had Appellant known she was signing "adhesion" contracts that would waive her "Unalienable/Inalienable" Rights, she would never have signed those contracts. She would never trade her "Unalienable/Inalienable" Rights, her "birthright", for Fourteenth Amendment "civil rights".

(22)
The Constitution describes the unrestricted right to contract, so long as the action is taken for legal purposes. However, the Uniform Commercial Code defines the "unconscionable contract" as one entered into without "informed consent". Because Barbara Martin has participated unknowingly, without "informed consent", in waiving her "Unalienable/Inalienable" Rights, the IRS, Social Security and other such contracts contain a serious "fault". As a result of the "fraud" the entire contract is null and void, as fraud vacates the most solemn promise to pay, and there are no statutes of limitation on fraud.

(23)
No Government Agency has the power or authority to "define" the Appellant, Barbara Martin's status of Citizenship, nor can they destroy her "Unalienable/Inalienable" Rights, by their "statute" definitions. See, U.S. v. Ryan, 52 S.Ct. 65,68, 284 U.S. 167,175 (U.S.Mont.1931); See, Ashwander v. Tennessee Valley Authority, 56 S.Ct. 466, 297 U.S. 288 (U.S.Ala.1936); Crowe et al v. The State of Missouri, 14 Mo 237,264;

When studying cases, it's not enough to learn the decisions or rules of law in a case. To fully appreciate the significance of a rule and to be capable of applying the rule intelligently, the reasoning of the court in reaching the decision must also be considered. Although a court decides only the case that is before it, the decision rendered would be of little use if it did not serve as a guideline for future cases in which similar factual patterns arise. Therefore, the facts are of importance and careful attention must be paid to them in reading the cases.

CONCLUSION

(1)

Therefore, Barbara Martin, the Appellant in this case, appeals to this Court of Appeals for the Fifth Circuit to overrule the Federal District Judge's Order dismissing her case, and his rulings that her Motions for Default Judgment, Sanctions and Remand were moot. Appellant, Barbara Martin also appeals to this Court of Appeals to Remand this case back to Federal Court with Orders for the Federal Court to Remand it back to the (State) District Court of Fort Bend County, Texas, 240th Judicial District, Fort Bend County, Texas, where it rightfully belongs.

DEFINITIONS

1. Adhesion Contract: Black's Law Diction, 5th Ed.Pg.38, 35 [8]
6th Ed.Pg.40. Standardized contract form offered to 48 [18]
consumer on a "take it or leave it" basis ... Distinctive
feature of adhesion contract is that weaker party has no
realistic choice as to its terms ... Recognizing that
these contracts, are not the result of traditionally
"bargained" contracts, the trend is to relieve parties
from onerous conditions imposed by such contracts."
2. Agency of the United States: Black's Law Dictionary, 5th 34 [7]
Ed.Pg.57, 6th Ed.Pg.62. A department, division, or 35 [8]
administration within the federal government. 43 [9]
3. Allodial: Black's Law Dictionary, 5th Ed.Pg.70, 6th Ed.Pg. 40 [2]
76. "Free; not holden of any lord or superior; owned
without obligation of vassalage or fealty; the opposite
of feudal."
4. Ancestor: Black's Law Dictionary, 5th Ed.Pg.78, 6th Ed. 44 [10]
Pg.84. One from whom a person lineally descended
or may be descended; a progenitor. A former possessor;
the person last seised. A deceased person from whom
another has inherited land. Embraces both collaterals
and lineals. Correlative of "heir."
5. Ancestor: Webster's 1828 Dictionary. One from whom a 44 [10]
a person descends, either by the father or mother,
at any distance of time, in the tenth or hundredth

generation. An ancestor precedes in the order of nature or blood; a predecessor, in the order of office.

6. Citizen: Black's Law Dictionary, 5th Ed.Pg.222, 6th Ed.Pg. 34 [6,7]
 244 "Citizens are members of a political community who, 36 [3]
 in their associated capacity, have established or 44 [10]
 submitted themselves to the dominion of a government 49 [21]
 for the promotion of their individual as well as
 collective rights. Herriott v. City of Seattle, 81
 Wash.2d 48, 500 P.2d 101,109.
7. Citizen: Webster's 1828 Dictionary. 1.The native of a city, 34 [7]
 or an inhabitant who enjoys the freedom and privileges of 36 [3]
 the city in which he resides; the freeman of a city. 44 [10]
 49 [21]
8. Civil: Black's Law Dictionary, 5th Ed.Pg.222, 6th Ed. 34 [7]
 Pg.244 "...Also relating to the community, or to the 36 [3]
 policy and government of the citizens and subjects of a 48 [18]
 state." 49 [21]
9. De facto: Black's Law Dictionary, 5th Pg.375, 6th Ed. 416 34 [7]
 "In this sense it is the contrary of de jure, which means 60 [8]
 rightful, legitimate, just, or constitutional."
10. De Jure: Black's Law Dictionary, 5th Ed.Pg.382 6th Ed.Pg. 34 [6]
 425. Descriptive of a condition in which there has been 36 [3]
 total compliance with all requirements of law of right; 40 [2]
 legitimate; lawful; by right and just title. In this 44 [10]
 sense it is the contrary of de facto (q.v.). It may be 49 [21]
 contrasted with de gratia, in which case it means "as

a matter of right," as de gratia means "by grace or favor." Again it may be contrasted with de aequitate; here meaning "by law," as the latter means "by equity."

11. Descendant: Black's Law Dictionary, 5th Ed.400, 6th Ed. 445. "Term means those descended from another...who proceed from the body of another,... who proceed to the remotest degree." 40 [2]
12. Domicil: Webster's Dictionary, 1828, "An abode or mansion." 44 [10]
13. Equal: Black's Law Dictionary 5th Pg. 6th Pg. "... Word "equal" as used in law implies not identity but duality and the use of one thing as the measure of another." 34 [7]
14. Fraud: Black's Law Dictionary 5th Ed.Pg.594, 6th Ed.Pg.660 54 [4]
An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. 66 [22]
15. Human: Black's Law Dictionary, 4th,5th & 6th Editions. NO DEFINITION. 46 [13]
16. Human: Webster's 1828 Dictionary, Belonging to man 46 [13]

or mankind; pertaining or relating to the race of man; as a human voice; human shape; human nature; human knowledge; human life. Having the qualities of a man.

17. Infringement: Black's Law 5th Edition, Pg. 6th Edition. 34 [7]
"A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right. 36 [3]
18. Ipso facto: Black's Law Dictionary, 5th Ed.Pg.743,6th Ed.Pg. 34 [6]
828. By the fact itself; by the mere fact. By the mere act or a fact. 41 [2]
19. Liberty: Black's Law Dictionary, 6th Ed.Pg.918. The 41 [2]
The "liberty" guaranteed and protected by constitutional provisions denotes not only freedom from unauthorized physical restraint, but embraces also the freedom of an individual (not statute definition) to use and enjoy his faculties in all lawful ways, acquire useful knowledge, marry, establish a home, and bring up children, worship God according to the dictates of his own conscience, live and work where he chooses, engage in any of the common and lawful occupations of life, enter into all contracts which may be proper and essential to carrying out successfully the forgoing purposes, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free people.
20. Liberty: Black's Law Dictionary, 5th Ed.Pg.827. The word 41 [2]
"liberty as used in the Constitution means more than freedom from arrest or restraint and includes freedom of

action, freedom to own, control, and use property, freedom to pursue any lawful trade, business or calling thereto.

21. License: Black's Law Dictionary: 5th Ed.829, 6th Ed. 920
The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowable.
22. Perpetual: Black's Law Diction, 5th Ed.Pg.1027, 6th Ed. 34 [6]
Pg.1140. "Never ceasing; continuos; enduring; lasting; 41 [2]
unlimited in respect of time; continuing without 49 [21]
intermission or interval."
23. Person: Webster's 1828 Dictionary. 1. An individual human 46 [13]
being consisting of body and soul. We apply the word to
living beings only; possessed of a rational nature; the
body when dead is not called a person. It is applied
alike to a man, woman or child. A person is a thinking
intelligent being.
24. Person: Black's Law Dictionary, 6th Ed.Pg.1142. In general 46 [13]
usage, a human being (ie. natural person), though by
statute term may include labor organizations,
partnerships, associations, corporations, legal
representatives, trustees, trustees in bankruptcy, or
receivers ... Scope and delineation of term is necessary
to determine those to whom Fourteenth Amendment of
Constitution affords protection since this Amendment
expressly applies to "person."
25. Person: Black's Law Dictionary, 5th Ed.Pg. 1028. In 46 [13]

general usage, a human being (ie. natural person), though by statute term may include labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

26. Person: Black's Law Dictionary, 4th Edition, Pg. 1299,1300. 46 [13]

A man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. People v. R. Co., 134 N.Y. 506, 31 N.E. 873. The word in its natural and usual signification includes women as well as men... Corporations are "persons" as that word is used in the first clause of the XIV th Amendment;... It has been held that when the word person is used in a legislative act, natural persons will be intended unless something appear in the context to show that it applies to artificial persons, Blair v. Worley, 1 Scam., Ill. 178; Appeal of Fox, 112 Pa. 337; 4 A 149; but as a rule corporations will be considered persons within the statutes unless the intention of the legislature is manifestly to exclude them. Stribbling v. Bank, 5 Rand., Va., 132;...

27. Person: 1 USCA, Sec. 1. "In determining the meaning of any 46 [13]

Act of Congress unless the context indicates otherwise— "the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

28. Postal Service. Black's Law Dictionary, 5th Ed.Pg.1049, 64 [16]
6th Ed.Pg.1166. The United States Postal Service replaced
the Post Office Department in 1971. It is administered by a
governing board whose members are appointed by the
President. The head of the Service is the Postmaster
General.
29. Posterity: Webster's Dictionary, 1828 Edition. Descendants; 34 [6]
children, children's children, &c indefinitely; the race 40 [2]
proceeds from a progenitor. The whole human race are the 41 [2]
posterity of Adam. 2. In a general sense, succeeding 45 [12]
generations; opposed to ancestors. 49 [21]
30. Posterity: Black's Law Dictionary, 5th Ed.1050, 6th Ed.Pg. 41 [2]
1166. "All the descendants of a person in a direct line 45 [12]
to the remotest generation.
31. Presumption: Black's Law Dictionary, 5th Ed.Pg.1067, 6th Ed. 34 [7]
Pg.1185 "An inference in favor of a particular fact. A 35 [8]
presumption is a rule of law, statutory or judicial, by 48 [18]
finding of a basic fact gives rise to existence of 49 [21]
presumed fact, until presumption is rebutted." ... "A
presumption is an assumption of fact resulting from a
rule of law which requires such fact to be assumed from
another fact or group of facts found or otherwise
established in the action... A presumption is a rebuttable
assumption of fact resulting from a rule of law which
requires such fact to be assumed from another fact or
group of facts found or otherwise established in the
action.

32. Disputable Presumption: Black's Law Dictionary, 5th Ed.Pg. 423, 6th Ed.Pg.471 "A species of evidence that may be accepted and acted upon when there is no other evidence to uphold contention for which it stands; and when evidence is introduced supporting such contention, evidence takes place of presumption, and there is no necessity for indulging in any presumption. A rule of law to be laid down by the court, which shifts to the party against whom it operates the burden of evidence merely."
33. Resident: Webster's 1828 Dictionary. Dwelling or having 44 [9,10]
 an abode in a place for a continuance of time, but not definite; as a minister resident at the court of St.James.
34. Resident: Black's Law Dictionary, 5th Ed.1177, 6th Ed.Pg. 44 [9,10]
 1309. "Resident Word "resident" has many meanings in law, largely determined by statutory context in which it is used. Kelm v. Carlson, C.A.Ohio, 473 F.2d 1267,1271."
35. Unalienable: Webster's Dictionary, 1828 Edition. 34 [7], 36 [3]
 That cannot be legally or justly alienated or 41 [2], 45 [12]
 transferred to another: Inalienable: Not alienable; 48 [18]
 that cannot be alienated; that may not be transferred; 49 [21]
 as unalienable rights.
36. Unalienable: Blacks Law Dictionary, 5th Ed.Pg.1366, 34 [7], 36 [3]
 6th Ed.Pg.1523. Inalienable; Incapable of being 41 [2], 45 [12]
 aliened, that is, sold and transferred. 48 [18] 49 [21]
Inalienable Rights. Rights which can never be abridged because they are so fundamental.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 23, 1997, a true and correct copy of the forgoing document was served upon the following counsel via Certified Mail, Return Receipt Requested. Respondent:

United States of America, et al, represented by:

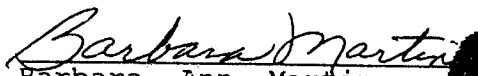
Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129

Respondent Governor of the State of Texas and Texas Department of Public Safety, represented by:

Matthew Lyle Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469


Barbara Ann Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4530
Fax: 281-495-0334

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BARBARA MARTIN,

APPELLANT,

vs.

UNITED STATES OF
AMERICA, et al,

APPELLEES.

APPELLEE UNITED STATES OF AMERICA

MOTION TO DISMISS

UNITED STATES OF AMERICA
APPELLEE
BY ITS ATTORNEY
GAYNELLE GRIFFIN JONES
UNITED STATES ATTORNEY

HAYS JENKINS, JR.
CHIEF, CIVIL DIVISION

ROBERT L. BERNARD
ASSISTANT U. S. ATTORNEY

United States of America ("USA"), appellee, by its attorney Gaynelle Griffin Jones, United States Attorney for the Southern District of Texas, and her designated attorney-in-charge, Robert L. Bernard, Assistant U. S. Attorney, pursuant to Rule 27, Federal Rules of Appellate Procedure ("FRAP"), move to dismiss the appeal based upon the following facts, law and reasons:

I. Facts:

This is an appeal of a dismissal for failure to state a claim upon which relief can be granted of a petition for declaratory judgment originally filed in Texas state court stating in paragraph I that plaintiff is seeking "a declaratory judgment that Petitioner is a De Jure Citizen under the Preamble of the original Constitution for the united (sic) States of 1787, and of this State's Constitution..." In a word, plaintiff's State court lawsuit seeks a declaration that she is a citizen of Texas but not a citizen of United States ("USA").

Plaintiff named and served USA as defendant along with the office of President of USA and five USA agencies. Plaintiff also named the State of Texas, the office of governor, department of public safety and office of Fort Bend County Clerk as additional defendants. Neither the United States Attorney nor the Attorney General were served process; but the USA President and various other federal agencies were served on or about July 15-16, 1996. The U.S. Attorney received notice of the state lawsuit from a federal agency and the USA removed the case to the district court

pursuant to 28 U.S.C. §§ 1441(b) and 1442 on August 12, 1996 on behalf of the USA and all other federal defendants. Eight days later, on August 20, 1996, the USA filed the motion to dismiss pursuant to Rule 12(b)(5) and (6), Fed.R.Civ.P. ("FRCP") on grounds of insufficiency of service of process on USA and on grounds that the complaint fails to state a claim upon which relief can be granted.

Appellant filed a FRCP 11 motion for sanctions against "Federal Respondents...for such other and further relief, both general and special, at law and in equity to which Petitioner shows herself justly entitled". The case was then assigned to the undersigned who filed a response to appellant's motion for sanctions.

The district court conducted a hearing on December 19, 1996 wherein the court, after a 45 minute discussion with appellant who stated that she was born in Texas in 1937, granted appellee's motion to dismiss on FRCP 12(b)(6) grounds that the complaint fails to state a claim upon which declaratory relief can be granted against defendants.

Appellant filed her notice of appeal on August 12, 1996.

II. Issues Presented

Appellant contends that the USA erroneously removed the case from state court to federal court relying on International Primate Protection League v. Administrators of Tulane Educational Fund, et al., 500 U.S. 72, 111 S.Ct. 134, 114 L.Ed.2d 134. (1991).

Appellant also contends that the federal removal was untimely relying on Rule 99(c), Texas Rule of Procedure, ("TRCP") and Rule 81(c), FRCP.

Appellant's second issue is "Whether Appellant's case can be dismissed for 'failure to state a claim', when 'In Texas, no present damage need be shown for declaratory judgment action.'" relying on Lacy v. Mid-Continent Cas. Co., 247 F.Supp. 677 (S.D.Tex.1965). Appellant insists "her Citizenship is her heritage, and is derived from her ancestors, and not from the Fourteenth Amendment of (1868) nor by the Immigration Naturalization Act of the United States." (Br. 46)

III. Applicable Law

The removal statutes are constitutional. Home Life Ins. Co. v. Dunn, 19 Wall 214, 22 L.Ed. 68 (1874); State of Texas v. Heaton, 58 F.2d 656 (D.C.Tex.1932); Texas Emp. Ins. Ass'n v. Felt, 150 F.2d 227 (5th Cir.1945).

The *Primate Protection* case held that federal agencies (NIH) could not properly remove a state court suit wherein plaintiff challenged the 'inhumane' treatment of monkeys used in medical research.

TRCP 99(c) requires an answer in state court within twenty days after the next Monday after being served process.

FRCP 81(c) requires that "defendant shall answer or present the other objections available under these rules within 20

days after the receipt through service..."

IV. Law Applicable To Facts

Defendant USA removed the case within thirty days after receipt of a copy of the initial pleading from a federal agency in accordance with 28 U.S.C. § 1446(b). TRCP is inapplicable because the case was in federal court, not state court.

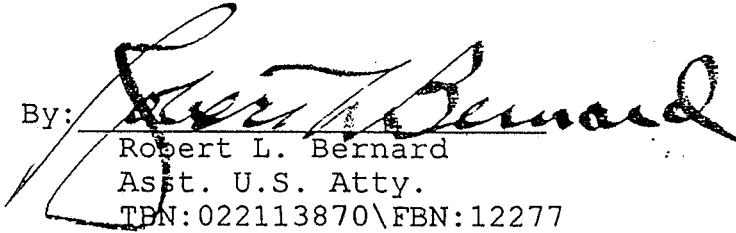
Federal defendants filed their motion to dismiss before the expiration of the twenty day limit stated in FRCP 81(c) and did not have to answer the petition. FRCP 81(c) is inapplicable because it allows "other defenses or objections" and the USA motion to dismiss is a defense or objection; hence the filing of the motion to dismiss tolls the time to file an answer.

After the court hearing, the court finding was that she was a USA citizen because she admitted she was born in Texas in 1937. The court ruled that appellant's petition for declaratory judgment did not state a claim against defendants on grounds that defendants could not make appellant a de jure citizen of Texas.

Respectfully submitted,

Gaynelle Griffin Jones
United States Attorney

By:


Robert L. Bernard

Asst. U.S. Atty.

TBN:022113870\FBN:12277

Office of U. S. Attorney

P. O. Box 61129

Houston, Texas 77208

Tel.: -713-567-9505

Fax.: -713-718-3309

Certificate Of Service

I, Robert L. Bernard, Asst. U.S. Attorney, pursuant to 28 U.S.C. 1728, declare under the penalty of perjury that a copy of the above was posted into U.S. Mail, postage prepaid by the U.S. Department of Justice on the 29 day of June, 1997 to counsel of record:

Appellant:


Barbara Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County
Texas U.S.A.

Defendant Office of Fort Bend County Clerk is represented by:

Randall W. Morse
Assistant County Attorney
309 S. Fourth St., Suite 621
Richmond, Texas 77469

Defendants State and Governor of Texas is represented by:

Matthew L. Rienstra
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548


Robert L. Bernard

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

June 25, 1997

TO: Mr Robert L Bernard
Mr Matthew Lyle Rienstra
Mr Randall W Morse

No. 97-20051 Martin v. USA
USDC No. H-96-CV-2563

Appellant's brief was made sufficient on 6/25/97. Under FRAP 31(a) appellee's brief is due within 30 days of that date.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By:

Carol N. LeSage
Carol LeSage, Deputy Clerk

Enclosure
cc w/encl: Ms Barbara Martin

BR-4

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

June 30, 1997

Ms Barbara Martin
12906 West Bellfort
Fort Bend County
Houston, TX 00000

No. 97-20051 Martin v. USA
USDC No. H-96-CV-2563

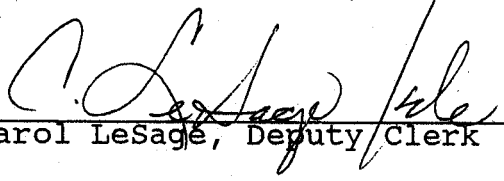
Regarding the case above, the following has been filed:

Motion filed by Appellees United States of America, Office of President of the United States of America, United States Department of Treasury, Office of Secretary, Department of Health and Human Services, Social Security Administration, and Internal Revenue Service to dismiss the appeal

This matter will be **presented** for ruling **without oral argument**. Any response must be filed by opposing counsel on or before July 7, 1997. Counsel will be notified by mail after the court has ruled.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: 
Carol LeSage, Deputy Clerk

/tdc

cc: Mr Robert L Bernard
Mr Matthew Lyle Rienstra
Mr Randall W Morse

P.S. to counsel filing pleadings: Unless the pleading is purely procedural and/or a certificate of interested persons has already been submitted, please send the certificate required by Local Rule 27.5 by the date above.

MOT-1

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

APPELLANT Barbara Martin's ANSWER TO APPELLEE
UNITED STATES OF AMERICA's MOTION TO DISMISS

(1)

Appellee, Barbara Martin, answers United States of America ("USA"), appellee's motion to dismiss based upon the following facts, law and reasons:

I. Facts:

Apparently the Assistant U.S. "Bar Attorney" can not comprehend what Appellant, Barbara Martin, has stated in paragraph 1 of her petition, filed in State Court. Appellant clearly stated "... Barbara Martin, Petitioner, who respectfully

requests this Honorable Court to issue a declaratory judgment that Petitioner is a De Jure Citizen under the Preamble of the original Constitution for the united States of 1787, and of this State's Constitution,..." In a word, Petitioner's State Court Action, seeks a declaration (RECOGNITION) that she is (present tense) a De Jure Citizen under the Preamble of the original Constitution for the united States of 1787, and of this State's Constitution. No court, congress, or any agency of any government can make Appellant a De Jure Citizen, because she is (present tense) a De jure Citizen by birth and blood (heritage).

(2)

Also, Assistant U.S. Attorney should read the subtitle of "The unanimous Declaration of the thirteen united States of America" (1776), NOT ("USA"). Appellant is a member of the "Posterity" of "WE THE PEOPLE, spoken of in the Preamble of the Constitution for the United States of America, 1787. Therefore, she derives her De Jure Citizenship from her ancestors, who were a part of the "one people". Please read the 1st paragraph of the Declaration of Independence of 1776 carefully. "When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another,..."

(3)

Petitioner filed suit in State Court, and Petitioner has found no rule in Texas Rules of Civil Procedure that states the

United States Attorney or the Attorney General must be served process.

(4)

Assistant U.S. Attorney admits the the other Assistant U.S. Attorney (now replaced) filed removal of case on August 12, 1996. This is the date he filed in federal court. He filed notice of removal in State Court on August 13, 1996. He also admits U.S. Attorney filed motion to dismiss eight days later, on August 20, 1996. 28 USCA Sec. 1446(b) states "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading..." FRCP Rule 81 (c) states: "In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under these rules within 20 days after the receipt through service or otherwise of a copy of the initial pleading... or within 20 days after the service of summons... or within 5 days (NOT 8 days) after filing of the petition for removal, whichever period is longest." Appellees first received a copy of the initial pleading January 29, 30 & 31, 1996. See Appellant's Record Excerpts 4, 5, 6, 12-16.

(5)

Assistant U.S. Attorney states ("USA") "filed motion to dismiss pursuant to Rule 12(b)(5) and (6), Fed.R.Civ.P. ("FRCP") on grounds of insufficiency of service of process on USA (See

Appellant's Motion for Default Judgment, pages 1-9 with attached Exhibits) and on grounds that the complaint fails to state a claim upon which relief can be granted." Appellant would remind Assistant U.S. Attorney, that the Uniform Declaratory Judgments Act, Civil Practice and Remedies Code, (VTCA) Title 2, Chapter 37, Sec. 37.002 (b) "This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered."

(6)

In Tijerina v. Brownell, 141 F.Supp.266,269 (D.C.Tex.1956), the court held, "...in many cases relief by way of declaratory judgment was granted where the administrative agency simply refused to recognize the plaintiff's claim of citizenship."; In Conley v. Gibson, 78 S.Ct. 99,102, 355 U.S. 41,46 (U.S.Tex.1957) the Supreme Court held, "...a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief... Under the federal rules, the purpose of pleading is to facilitate a proper decision on the merits. Fed.Rules Civ.Proc. 8(a)(2)(f), 12 (c,e,f), 15,16, 26-37, 56, 28 U.S.C.A."; In Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers, 78 S.Ct. 1087,1088, 357 U.S. 197, 2 L.Ed. 1255, the Supreme Court held, "There are constitutional limitations upon power of courts, ...to dismiss an

action without affording a party the opportunity for a hearing on merits of his case. Fed.Rules Civ.Proc.Rule 37, 28 U.S.C.A."; In Anderson v. McRae (Tex.Civ.App. 6 Dist.1973) 49 S.W.2d, 351, the court held, "Judicable controversy which authorizes declaratory relief need not be one where wrong has already been committed or party has already been injured." ; and in U.S.Coffee & Tea Co. v. Texas & Pacific Ry. Co. (Tex.Civ.App.5 Dist.1955) 280 S.W.2d 290,293, the court held, "The Declaratory Judgments Act necessarily deals with present rights, but it is a present right to have a judicial assurance that advantages will be enjoyed or liabilities escaped in the future."; and, in Faulk v. Buen Vista Burial Park Ass'n, 152 S.W.2d 891 (Civ.App.1941), the court held, "All powers of government are subject to the Bill of Rights."

(7)

At the hearing/conference held in federal district court, the judge admitted he had read "part of the case". How can Appellant have her "redress of grievances" if the judge only reads "part of the case"? This was left out of the "guttred" "censored" transcript. However, Appellant has witnesses that will testify and/or sign affidavits, that they heard the judge make this statement. The federal judge never gave Appellant an opportunity to properly present her case.

(8)

Assistant U.S.Attorney makes a false statement on page 3, paragraph 4, of his motion to dismiss, filed in the United States

Court of Appeals for the Fifth Circuit. He states Appellant filed her notice of appeal on August 12, 1996. This is not true. Appellant filed her Notice of Appeal on January 10, 1997. See Appellant's Record Excepts #2, Notice of Appeal.

(9)

II. Applicable Law:

Assistant U.S. Attorney insinuates Appellant is contesting the constitutionality of the removal statutes. Appellant is asserting, statute 28 U.S.C. 1441(b) does not apply in this case, because Appellant's status of Citizenship does not "arise under the constitution" and the Uniform Declaratory Judgment Act does not "create a case arising under Constitution or laws of United States within Sec. 1331 of this title, giving district courts original jurisdiction of such cases or within Sec. 1441 of this title." American Mfrs. Mut. Ins. Co. v. Manor Inv. Co., D.C.N.Y. 1968, 286 F.Supp. 1007. Also, the Supreme Court of the United States held, "Statute authorizing removal of state court suits by federal officers does not permit removal by federal agencies. 28 U.S.C.A. Sec. 1442(a)(1), International Premate Protection League v. Tulane Educational Fund, 111 S.Ct. 1700, 1705, 500 U.S. 72, 79, 114 L.Ed. 2d. 134, 59 USLW 4424 (U.S.La. 1991)

(10)

On page 4, paragraph 2 of Assistant U.S. Attorney's motion to dismiss, he states Appellant's second issue relies on Lacy v. Mid-Continent Cas. Co., 247 F.Supp. 677 (S.D. Tex. 1965). He

neglects to state Appellant's second issue also relies on 7 other cases. See Appellant's Brief, page 39, paragraphs 4 and 5.

(11)

On page 4, paragraph 4 of Assistant U.S. Attorney's motion to dismiss, he mis-states the whole point of the case. In the Primate Protection case, the Supreme Court held "Statute authorizing removal of state court suits by federal officers does not permit removal by federal agencies. Justice Marshall, in delivering the opinion of the Court, goes on to state on page 1705 [500 U.S. 79] A, "We have little trouble concluding that the statutory language excludes agencies from the removal power." On page 1706 [500 U.S. 81], of the same case, IBR notes, "... when Congress enacted Sec. 1442(a)(1) it also defined 'agency' as any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest." Appellant believes all federal appellees fall into the above definition.

(12)

On page 4, paragraph 6, and on page 5, paragraph 1, Assistant U.S. Attorney quotes part of FRCP 81(c). He quotes "defendant shall answer or present the other objections available under these rules within 20 days after the receipt through service...", but he leaves out the "or otherwise".

(13)

On page 5, paragraph 2, Assistant U.S. Attorney alleges "TRCP is inapplicable because the case was in federal court, not state court." This case was erroneously removed. Therefore TRCP is applicable. Also in paragraph 3 on the same page, he alleges "FRCP is inapplicable because it allows 'other defenses or objections' and the USA motion to dismiss is a defense or objection; hence the filing of the motion to dismiss tolls the time to file an answer." Again, the removal was erroneous.

(14)

On page 5, paragraph 2 of Assistant U.S. Attorney's motion to dismiss, he cites 28 U.S.C. 1446(b), which states, "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise..." The federal defendants first received a true copy of the initial pleading on January 29, 1996, January 30, 1996 and January 31, 1996. See Appellant's Record Excerpts # 12-16. In *Roe v. O'Donahue*, 38 F.3d 298,302,303,304.(7thCir.1994), the court held, "Whatever (slight) ambiguity 1446(b) poses in application to an ordinary case, such as ours, may be resolved by the principle that doubts should be resolved against removal... Any other conclusion drains the words "or otherwise" of meaning ... we hold that the 30 days commences when the defendant, or its authorized agent, comes into possession of a copy of the

complaint whether or not the delivery complies with the requirements of 'service'."

(15)

On page 5, paragraph 4, Assistant U.S. Attorney states "the court finding was that she was a USA citizen because she admitted she was born in Texas in 1937. The court ruled that appellant's petition for declaratory judgment did not state a claim against defendants on grounds that defendants could not make appellant a de jure citizen of Texas." This was clearly an erroneous decision. Appellant realizes the federal court does not have jurisdiction over issues concerning Preamble De Jure State Citizenship. That is why Appellant filed her case in State Court. Also, Appellant did not ask the federal court to "make appellant a de jure citizen of Texas." Appellant is (present tense) a Preamble De Jure Citizen of Texas by birth and by blood (heritage), and by virtue of her state Citizenship, she is ipso facto, a De Jure Citizen under the Preamble of the original Constitution for the united States of 1787. She is asking the federal, state and local governments to RECOGNIZE her De Jure Citizenship. As stated in Tijerina v. Brownell, 141 F.Supp. 266, 269 (D.C.Tex.1956) "...in many cases relief by way of declaratory judgment was granted where the administrative agency simply refused to recognize the plaintiff's claim of citizenship."

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 3, 1997, a true and correct copy of the forgoing document was served upon the following counsel via Regular U.S. Mail.

Respondent United States of America, et al, represented by:

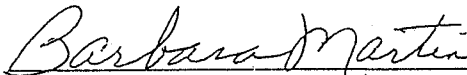
Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129


Respondent Governor of the State of Texas and Texas Department of Public Safety, represented by:

Matthew Lyle Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469


Barbara Ann Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334



NO. 97-20051

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BARBARA MARTIN,

APPELLANT,

vs.

UNITED STATES OF
AMERICA, et al,

APPELLEES.

APPELLEE UNITED STATES OF AMERICA AND ALL FEDERAL APPELLEES'

MOTION FOR ENLARGEMENT OF TIME

UNITED STATES OF AMERICA
APPELLEE
BY ITS ATTORNEY
GAYNELLE GRIFFIN JONES
UNITED STATES ATTORNEY

HAYS JENKINS, JR.
CHIEF, CIVIL DIVISION

ROBERT L. BERNARD
ASSISTANT U. S. ATTORNEY

United States of America and all federal appellees ("USA"), by their attorney, Gaynelle Griffin Jones, United States Attorney for the Southern District of Texas, and her designated attorney-in-charge, Robert L. Bernard, Assistant U. S. Attorney, pursuant to Rule 26(b) Federal Rules of Appellate Procedure move for an enlargement of time, if necessary, to file their brief based upon the following:

1. This is a civil appeal filed on August 12, 1996; but appellant's brief was not made sufficient until June 25, 1997.
2. USA filed its motion to dismiss on June 30, 1997 and believes that it has adequately responded to the issues presented by appellant.
3. Co-appellee, Office of the Fort Bend County Clerk, Fort Bend County, Texas filed its motion to dismiss on/about July 7, 1997 and it has adequately responded to the issues presented by appellant.
4. In the event the court grants USA motion, there is no necessity to file its brief. Conversely, if the court denies USA motion, then USA will file its brief.
5. Because of the scores of filings in the district court the record contains four (4) volumes that USA would be required to review. The review of the four (4) volumes of the record may consume more time than is remaining for USA to file its brief, top wit: July 25, 1997.
5. For good cause shown, USA moves the court to grant an

enlargement of time, to wit: thirty (30) from the date of its denial of USA motion to dismiss in which USA must file its brief.

Respectfully submitted,
Gaynelle Griffin Jones
United States Attorney

By: 

Robert L. Bernard
Asst. U.S. Atty.
TBN:022113870\FBN:12277
Office of U. S. Attorney
P. O. Box 61129
Houston, Texas 77208
Tel.: -713-567-9505
Fax.: -713-718-3309

Certificate Of Service

I, Robert L. Bernard, Asst. U.S. Attorney, pursuant to 28 U.S.C. 1728, declare under the penalty of perjury that a copy of the above was posted into U.S. Mail, postage prepaid by the U.S. Department of Justice on the 7th day of July, 1997 to counsel of record:

Appellant:

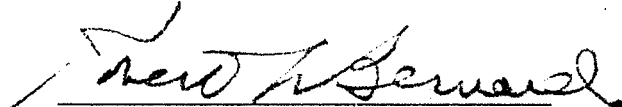
Barbara Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County
Texas U.S.A.

Defendant Office of Fort Bend County Clerk is represented by:

Randall W. Morse
Assistant County Attorney
309 S. Fourth St., Suite 621
Richmond, Texas 77469

Defendants State and Governor of Texas is represented by:

Matthew L. Rienstra
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548


Robert L. Bernard
Assistant U. S. Attorney

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

July 7, 1997

Ms Barbara Martin
12906 West Bellfort
Fort Bend County
Houston, TX 00000

Mr Robert L Bernard
US Attorney's Office
Suite 1500
910 Travis
PO Box 61129
Houston, TX 77208

Mr Matthew Lyle Rienstra
Texas Attorney General's Office
7th Floor
300 W 15th Street
Austin, TX 78701

No. 97-20051 Martin v. USA
USDC No. H-96-CV-2563

Regarding the case above, the following has been filed:

Motion filed by Appellee Fort Bend Cty Clk, Appellee Fort Bend County, Texas to dismiss appeal

This matter will be **presented** for ruling **without oral argument**.
Any response must be filed by opposing counsel on or before 7/14/97.
Counsel will be notified by mail after the court has ruled.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: Carol A. LeSage
Carol LeSage, Deputy Clerk

cc: Mr Randall W Morse

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

July 11, 1997

Ms Barbara Martin
12906 West Bellfort
Fort Bend County
Houston, TX 00000

Mr Matthew Lyle Rienstra
Texas Attorney General's Office
7th Floor
300 W 15th Street
Austin, TX 78701

Mr Randall W Morse
Office of the County Attorney
of Fort Bend County, Texas
Suite 621
301 Jackson Street
Richmond, TX 77469

No. 97-20051 Martin v. USA
USDC No. H-96-CV-2563

Regarding the case above, the following has been filed:

Motion filed by Appellee USA and All Federal Appellees for
an enlargement of time to file their brief

This matter will be **presented** for ruling **without oral argument**.
Any response must be filed by opposing counsel on or before 7/18/97.

Counsel will be notified by mail after the court has ruled.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: Carol H. LeSage
Carol LeSage, Deputy Clerk

cc: Mr Robert L Bernard

P.S. to counsel filing pleadings: Unless the pleading is purely procedural and/or a certificate of interested persons has already been submitted, please send the certificate required by Local Rule 27.5 by the date above.

MOT-1

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

V.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

APPELLANT Barbara Martin's ANSWER TO APPELLEES'
UNITED STATES OF AMERICA AND ALL FEDERAL APPELLEES'
MOTION FOR ENLARGMENT OF TIME

Appellant, Barbara answers United States of America and all Federal Appellees' ("USA") Motion for Enlargement of Time.

1. Once again, Assistant U.S. Attorney has attempted to mislead this court, by mis-stating the facts. On page 1, #1, He alleges Appellant's Appeal was filed on August 12, 1996. The truth is, Appellant filed her Motion for Appeal January 10, 1997. See Appellant's Record Excerpts #2.

2. On page 1, #3, Assistant U.S. Attorney states "Co-appellee, Office of the Fort Bend County Clerk, Fort Bend County, Texas filed its motion to dismiss on/about July 7, 1997..." Since the Assistant Attorney for the Fort Bend County Clerk's Office has not served a copy on Appellant at her designated permanent place of abode, where she can receive mail, she has no way to properly respond to it. He has done this same thing throughout this entire case.

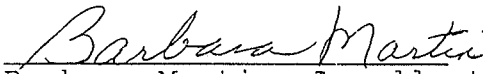
3. Assistant U.S. Attorney cries Federal Appellees need more time to "review" Appellant's case. The Appellant, Barbara Martin would remind this Court of Appeals, the opposing counsel had ten (10) months to read Appellant's case. In fact, Appellant had her ENTIRE case at the Joint Discovery/Case Management Plan meeting of November 20, 1996, and tried to get opposing counsel to at least read part of it. They not only refused to even look at any of Appellant's evidence, but threatened to file a Motion for a "Protective Order" if Appellant filed anything else in her case.

4. Appellees, ("USA") have not shown good cause for this Court of Appeals to grant it an enlargement of time.

Appellant would call this court's attention to Ward v. Hudnell, 366 F.2d 247, 249 (C.A.5 (Tex.)1966), at page 249 [1][2]. Circuit Judge, Waterman stated "It is axiomatic that a motion to dismiss an action for failure to state a

claim upon which relief can be granted admits the facts alleged in the complaint, but challenges plaintiff's rights to relief based upon those facts. Thus, in deciding such a motion, the court views that allegations of the complaint in the light most favorable to the plaintiff, accepting as true all facts well pleaded. See 1A Barron & Holtzoff, Federal Practice and Procedure 350 (1960 Rules ed., Wright revision)."

Appellant, Barbara Martin, respectfully requests this Court of Appeals deny Appellee's Motions to Dismiss and federal Appellee's Motion for Enlargement of Time.


Barbara Martin, Appellant
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 11, 1997, a true and correct copy of the forgoing document was served upon the following counsel via Regular U.S. Mail.

Respondent United States of America, et al, represented by:


Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129


Respondent Governor of the State of Texas and Texas Department of Public Safety, represented by:

Matthew Lyle Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469


Barbara Ann Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334



UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

V.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

APPELLANT'S MOTION FOR SANCTIONS AGAINST ASSISTANT TEXAS ATTORNEY GENERAL AND ASSISTANT FORT BEND COUNTY ATTORNEY

Barbara Martin, the Appellant, respectfully requests this Court of Appeals for the Fifth Circuit to sanction the assistant Texas Attorney General and the assistant Fort Bend County Attorney for deliberately refusing to follow the Rules of Appellate Procedure, Rule 27(a).

APPELLATE RULES:

1. Rule 27(a) of the Federal Rules of Appellate Procedure clearly states "an application for an order or other relief shall be

made by filing a motion for such order or relief with proof of service on all other parties... Any party may file a response in opposition to a motion... within 7 days after service of the motion." How can Appellant file a response to motions filed by the assistant Texas Attorney General and assistant Fort Bend County Attorney if she does not receive a true copy of the motion?

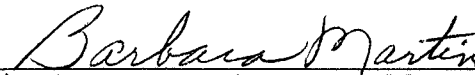
2. Rule 27 of the Federal Rules of Appellate Procedure HISTORICAL NOTES ADVISORY COMMITTEE NOTES clearly states "The provisions of subdivision (a) which permits any party to file a response in opposition to a motion within 7 days after its service upon him assumes that the motion is one of substance which ought not be acted upon without affording affected parties an opportunity to reply. A motion to dismiss or otherwise determine an appeal is clearly such a motion."

FACTS:

1. The assistant Texas Attorney General and the assistant Fort Bend County Attorney have never served a copy of anything they have filed on the Appellant. They have deliberately ignored the Federal Rules of Civil Procedure, Rule 5(a) and the Federal Rules of Appellate Procedure, Rule 27(a). Apparently they think the rules don't apply to them.
2. The opposing counsel should not be granted an extension of time to file their briefs because they have had ten (10)

months to read Appellant's case. In fact, at the Joint Discovery/Case Management Plan meeting of November 20, 1996, when Appellant asked the assistant Texas Attorney General to read the evidence in her case, he stated he was "not going to read this crap". (See attached Affidavit)

Appellant, Barbara Martin would also point out, the assistant United States Attorney's title on the motions he filed do not agree with the title on the record, and if he included a "certificate of interested persons" as required by Federal Rule of Appellate Procedure, Rule 27.5, he did not include it with the copy he served on Appellant. Is the Appellant the only party in this case that is required to follow the rules?


Barbara Martin, Appellant
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County
Texas, U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

V.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

CERTIFICATE OF INTERESTED PERSONS

The undersigned Pro Se Appellant certifies that the following listed persons have an interest in the outcome of this case.

1. All Agencies of United States of America, et al
2. All Agencies of State of Texas, et al
3. All Agencies of County of Fort Bend, Texas, et al
4. All Members of the Posterity

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

AFFIDAVIT

Subscribed, sealed and affirmed this 21st day of July, in the year of our Lord and Savior, Nineteen Hundred Ninety Seven, in Harris County, Texas.

We, the undersigned, were present at the Joint Discovery/Case Management Plan meeting held November 20, 1996, and witnessed Appellant, Barbara Martin attempt to get the opposing counsel to view the evidence in her case. We heard the opposing counsel refuse, and threaten to file a motion for a "Protective Order" against Appellant if she filed anything else in her case.

Cliff F. Williams

, a Citizen of the State of Texas

Clifford F. Williams, J.D.
7457 Harwin, suite 258
Houston, Tx. 77036

Mark Ariza

, a Citizen of the State of Texas

Mark Ariza, J.D.
7457 Harwin, suite 258
Houston, Tx. 77036

Ernest O. Martin

, a Citizen of the State of Texas

Houston, Texas
12906 W. Bellfort

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 21, 1997, a true and correct copy of the forgoing document was served upon the following counsel via Regular U.S. Mail.

Respondent United States of America, et al, represented by:


Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129

Respondent Governor of the State of Texas and Texas Department of Public Safety, represented by:

Matthew Lyle Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469


Barbara Ann Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

SUPPLEMENT TO APPELLANT'S MOTION FOR SANCTIONS AGAINST ASSISTANT TEXAS ATTORNEY GENERAL AND ASSISTANT FORT BEND COUNTY ATTORNEY

PRAYER

Wherefore, premises considered, Appellant asks this honorable court to sustain her Motion for Sanctions against Assistant Texas Attorney General and Assistant Fort Bend County Attorney for refusing to properly serve Appellant as required by Rule 27(a) of the Federal Rules of Appellate Procedure, and enter an order requiring said Appellees to send copies of all motions filed by them in this court of appeals to Appellant at her permanent place of abode. Appellant also asks this court to enter an order for Remand and for such other relief as Appellant may show herself entitled.

Barbara Martin
Barbara Martin, Appellant
23rd Judicial District
12906 West Bellfort
Houston, Texas U.S.A.
Phone: 281-495-4530
Fax: 281-495-0334



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 26, 1997, a true and correct copy of the forgoing document was served upon the following counsel via Regular U.S. Mail.

Respondent United States of America, et al, represented by:

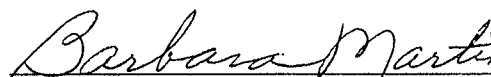
Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129


Respondent Governor of the State of Texas and Texas Department of Public Safety, represented by:

Matthew Lyle Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469


Barbara Ann Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334



UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

ORDER FOR SANCTIONS AGAINST ASSISTANT TEXAS ATTORNEY GENERAL AND ASSISTANT FORT BEND COUNTY ATTORNEY FOR FAILURE TO COMPLY WITH FEDERAL RULES OF APPELLATE PROCEDURE, RULE 27(a)

On _____, 1997 came on to be considered failure of Assistant Texas Attorney General and Assistant Fort Bend County Attorney to comply with Federal Rules of Appellate Procedure, Rule 27(a).

The court agrees that Appellant was not properly served by above listed Appellees.

IT IS, THEREFORE, ORDERED that Assistant Texas Attorney General and Assistant Fort Bend County Attorney comply with Federal Rules of Appellate Procedure, Rule 27(a) and serve on

Appellant all Motions and Responses filed by them in this court of appeals, at her permanent place of abode.

IT IS ALSO ORDERED that this case be remanded back to the District Court of Fort Bend County, Texas, 240th Judicial District.

Judge
United States Court of Appeals
Fifth Circuit

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

V.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

CERTIFICATE OF INTERESTED PERSONS

The undersigned Pro Se Appellant certifys that the following listed persons have an interest in the outcome of this case.

1. All Agencies of United States of America, et al
2. All Agencies of State of Texas, et al
3. All Agencies of County of Fort Bend, Texas, et al
4. All Members of the Posterity

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

BARBARA MARTIN

Plaintiff - Appellant

V.

UNITED STATES OF AMERICA; OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF THE SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

AFFIDAVIT

Subscribed, sealed and affirmed this 21st day of July, in the year of our Lord and Savior, Nineteen Hundred Ninety Seven, in Harris County, Texas.

We, the undersigned, were present at the Joint Discovery/Case Management Plan meeting held November 20, 1996, and witnessed Appellant, Barbara Martin attempt to get the opposing counsel to view the evidence in her case. We heard the opposing counsel refuse, and threaten to file a motion for a "Protective Order" against Appellant if she filed anything else in her case.

Cliff F. Williams

, a Citizen of the State of Texas

Clifford F. Williams, J.D.

7457 Harwin, suite 258

Houston, Tx. 77036

Mark Ariza

, a Citizen of the State of Texas

Mark Ariza, J.D.

7457 Harwin, suite 258

Houston, Tx. 77036

Donald O. Martin

, a Citizen of the State of Texas

Houston, Texas

12906 W. Bellfort

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 21, 1997, a true and correct copy of the forgoing document was served upon the following counsel via Regular U.S. Mail.

Respondent United States of America, et al, represented by:

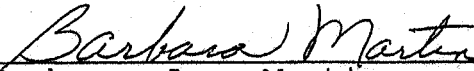
Robert L. Bernard
Assistant United States Attorney
910 Travis, Suite 1500
P. O. Box 61129
Houston, Texas 77208-1129

Respondent Governor of the State of Texas and Texas Department of Public Safety, represented by:

Matthew Lyle Rienstra
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Respondent Office of Fort Bend County Clerk, represented by:

Randall W. Morse
Assistant County Attorney
301 Jackson, Suite 621
Richmond, Texas 77469


Barbara Ann Martin
23rd Judicial District
12906 West Bellfort
Houston, Fort Bend County,
Texas U.S.A.
Phone: 281-495-4539
Fax: 281-495-0334

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 97-20051

U.S. COURT OF APPEALS
FILED

JUL 24 1997

CHARLES R. FULBRUGE III
CLERK

BARBARA MARTIN

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFFICE OF PRESIDENT OF THE UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF TREASURY, Office of the Secretary; OFFICE OF SECRETARY; DEPARTMENT HEALTH AND HUMAN SERVICES, Office of the Secretary; SOCIAL SECURITY ADMINISTRATION, Office of the Commissioner; INTERNAL REVENUE SERVICE, Office of the Commissioner; STATE OF TEXAS; OFFICE OF THE GOVERNOR; TEXAS DEPARTMENT OF PUBLIC SAFETY, Office of the Director; OFFICE OF THE FORT BEND COUNTY CLERK; FORT BEND COUNTY, Texas

Defendants - Appellees

Appeal from the United States District Court for the
Southern District of Texas, Houston

Before JOLLY, WIENER, and BARKSDALE, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motions of appellees to dismiss appeal is **GRANTED**,

IT IS FURTHER ORDERED that the alternative motion of appellees for extension of 30 days from the date of this Court's denial of the motion to dismiss to file their brief is **DENIED as moot**,