

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

THE ARKANSAS TIMES, INC.;
NORTHWEST ARKANSAS
CHAPTER OF THE SOCIETY OF
PROFESSIONAL JOURNALISTS;
and MAX BRANTLEY

PLAINTIFFS

v.

No. 5:07-CV-195 SWW

LARRY B. NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

DEFENDANT

DEFENDANT'S MOTION TO DISMISS

For his motion to dismiss, Defendant Larry B. Norris states:

1. This is a First Amendment lawsuit brought pursuant to 42 U.S.C. § 1983 by a newspaper, its editor, and a group of journalists seeking access to activities surrounding Arkansas executions from the time the condemned inmate enters the execution chamber until he or she is declared dead.

2. The Plaintiffs' Complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) because it does not state a claim upon which relief can be granted.

3. The Plaintiffs have failed to state any claim against Defendant Larry B. Norris in his individual capacity.

4. In his official capacity, Mr. Norris has sovereign immunity from suit for damages, including nominal damages, pursuant to the Eleventh Amendment, and he is not amenable to suit for damages under 42 U.S.C. § 1983.

5. The Plaintiffs have failed to state a claim for viewpoint discrimination.

6. The Plaintiffs fail to state a First Amendment claim for denial of access to executions conducted in an Arkansas penitentiary.

7. Mr. Norris has filed a brief in support of this motion that more fully explains why the Complaint should be dismissed.

WHEREFORE, Defendant Larry B. Norris prays that the Plaintiffs' Complaint be dismissed and that they receive no relief whatsoever.

Respectfully submitted,

DUSTIN McDANIEL
Attorney General

BY: /s/ C. Joseph Cordi, Jr.
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I, C. Joseph Cordi, Jr., certify that on August 17, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to:

James G. Lingle
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/s/ C. Joseph Cordi, Jr.