

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2005 JUL 25 AM 11:08

NO. 05-CVS-8378

WAKE COUNTY, C.S.C.

DELMA BLINSON; JERRY R. JOHNSON;
KELLIENE FISHER; DONALD R. REID;
BRIAN GOSSAGE; WILFORD R. DOWE;
and KENT MISEGADES,

Plaintiffs,

v.

STATE OF NORTH CAROLINA;
JAMES T. FAIN, III, Secretary of the
N.C. Department of Commerce, in his official
capacity; CITY OF WINSTON-SALEM,
North Carolina and ALLEN JOINES, Mayor
of Winston-Salem, in his official capacity;
FORSYTH COUNTY, North Carolina and
GLORIA D. WHISENHUNT, Chairperson of
the Board of Commissioners of Forsyth
County, in her official capacity; THE
MILLENNIUM FUND; WINSTON-SALEM
BUSINESS, INC.; THE WINSTON-SALEM
ALLIANCE; and DELL, INC.,

Defendants.

AUG 01 2005

**MOTION BY DEFENDANTS
CITY OF WINSTON-SALEM,
ALLEN JOINES, FORSYTH COUNTY,
GLORIA D. WHISENHUNT,
THE MILLENNIUM FUND, WINSTON-
SALEM BUSINESS, INC., AND THE
WINSTON-SALEM ALLIANCE FOR
CHANGE OF VENUE AS A MATTER OF
RIGHT, TO DISMISS FOR FAILURE TO
STATE A CLAIM, AND TO DISMISS
FOR LACK OF STANDING
[CHVN] [DISM]**

NOW COME the Defendants, City of Winston-Salem, North Carolina and Allen Joines, Mayor of Winston-Salem, in his official capacity; Forsyth County, North Carolina and Gloria D. Whisenhunt, Chairperson of the Board of Commissioners of Forsyth County, in her official capacity; The Millennium Fund; Winston-Salem Business, Inc.; and The Winston-Salem Alliance,¹ and respectfully move the Court (1) pursuant to G.S. § 1-83 and Rule 12(b)(3) of the North Carolina Rules of Civil Procedure, as a matter of right, for an order transferring the causes of

¹ For ease of reference, Defendants City of Winston-Salem, Allen Joines, Forsyth County, and Gloria D. Whisenhunt are collectively referred to herein as the "Local Government Defendants"; and the Millennium Fund, Winston-Salem Business, Inc., and the Winston-Salem Alliance are collectively referred to herein as the "Non-Profit Defendants." The Local Government Defendants and the Non-Profit Defendants are collectively referred to herein as the "Defendants."

action alleged against these Defendants to the Superior Court of Forsyth County, North Carolina for all further proceedings; (2) pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, for an order dismissing the Complaint or specific claims therein for failure to state a claim upon which relief can be granted as against these Defendants; and (3) pursuant to Rule 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure, for an order dismissing the Complaint or specific claims therein for lack of standing for Plaintiffs to assert such a claim or claims against these Defendants. In support of these motions, the Defendants respectfully show the Court:

MOTION FOR CHANGE OF VENUE

1. The Local Government Defendants are local governmental entities located in Forsyth County or officials of local governmental entities located in Forsyth County. The Non-Profit Defendants are non-profit business development corporations located in Forsyth County whose dedicated purpose is to promote business development in Winston-Salem and Forsyth County, and they are apparently sued on the basis of their alleged status as agents or affiliates of the Local Government Defendants in connection with the transactions that are the subject of this action.

2. It appears on the face of the Complaint that the only two plaintiffs who have any colorable standing to assert claims against any or all of these moving Defendants are Jerry R. Johnson, a resident of Forsyth County, North Carolina, and Wilford R. Dowe, a resident of Winston-Salem, Forsyth County, North Carolina.

3. Even though combined in one "Complaint," it appears on the face of the Complaint that the first 15 counts apply only to defendants other than the Local Government Defendants and the Non-Profit Defendants, while counts 16 through 21 allege claims only

against these Defendants.² It further appears on the face of the complaint that the first 15 counts of the Complaint challenge the legality of legislation enacted by the North Carolina General Assembly, while counts 16 through 21 challenge the legality of resolutions enacted by the Winston-Salem City Council and the Forsyth County Commission and actions taken pursuant thereto within Forsyth County. Count 22, which purports to state a claim for a declaratory judgment against all defendants, while stated as one count, is, on its face, a count seeking a declaratory judgment against the group of defendants involved in counts 1 through 15 of the Complaint, and a separate one against these moving Defendants alleged to be involved in counts 16 through 21 of the Complaint.

4. By virtue of the provisions of G.S. § 1-77(2), and the case law applying that statute, the Local Government Defendants and the Non-Profit Defendants are entitled as a matter of right to a transfer of the causes of action applicable to them to the Superior Court of Forsyth County, North Carolina.

MOTION OF THE LOCAL GOVERNMENT DEFENDANTS AND THE NON-PROFIT DEFENDANTS TO DISMISS FOR FAILURE TO STATE A CLAIM

1. The allegations stated in the Complaint fail to state a claim upon which relief can be granted against these Defendants, and they are entitled to dismissal of the Complaint in its entirety or particular claims therein as a matter of law pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. This defense is asserted collectively and individually on behalf of each moving Defendant as to each count of the Complaint.

² It is not clear that count 6 of the Complaint, which purports to assert a claim pursuant to 42 U.S.C. § 1983, is intended to be directed against these Defendants, but if so there is no factual or legal basis for a § 1983 claim against these Defendants under the facts and claims alleged in the Complaint.

**ALTERNATIVE MOTION OF THE LOCAL GOVERNMENT DEFENDANTS AND
THE NON-PROFIT DEFENDANTS TO DISMISS FOR LACK OF STANDING**

1. The Complaint does not contain allegations sufficient to establish the Plaintiffs' standing to assert the claims alleged in the Complaint against these Defendants. Thus, this Court lacks jurisdiction with respect to the Complaint in its entirety or as to particular claims or Plaintiffs, and to that extent the Complaint should be dismissed pursuant to Rule 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure.

WHEREFORE, the Local Government Defendants and the Non-Profit Defendants respectfully pray the Court:

1. That the causes of action stated in the Complaint against the Local Government Defendants and the Non-Profit Defendants be transferred to the Superior Court of Forsyth County, North Carolina for all further proceedings;

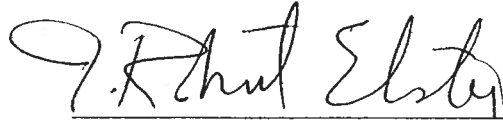
2. That the Court grant the Local Government Defendants' and the Non-Profit Defendants' motion to dismiss for failure to state a claim upon which relief can be granted;

3. Alternatively, that the Court grant the Local Government Defendants' and the Non-Profit Defendants' motion to dismiss for lack of standing;

4. That the attorneys' fees and costs incurred in filing these motions be taxed against the Plaintiffs; and

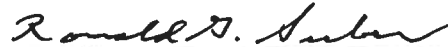
5. For such other and further relief as the Court deems just and proper.

This the 25th day of July, 2005.



J. Robert Elster (State Bar No. 1341)
Adam H. Charnes (State Bar No. 32039)
Attorneys for the City of Winston-Salem; Allen Joines, Mayor of Winston-Salem, in his official capacity; Forsyth County; Gloria D. Whisenhunt, Chairperson of the Board of Commissioners of Forsyth County, in her official capacity; the Millennium Fund; Winston-Salem Business, Inc.; and the Winston-Salem Alliance

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CERTIFICATE OF SERVICE

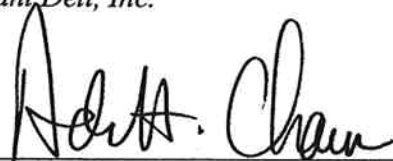
The undersigned hereby certifies that the foregoing **MOTION FOR CHANGE OF VENUE AS A MATTER OF RIGHT, TO DISMISS FOR FAILURE TO STATE A CLAIM, AND TO DISMISS FOR LACK OF STANDING** was this day served upon the below-named party by mailing, postage prepaid, first class mail, a copy of such document to counsel at the address shown below:

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Counsel for Defendant, Dell, Inc.

This the 25th day of July, 2005.



Adam H. Charnes
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