

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR DIVISION  
05 CVS 8378

WAKE COUNTY

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. )

**MOTION TO DISMISS**  
(Rules 12(b)(1), (2) and (6))  
[DISM]

NOW COME Defendants State of North Carolina and James T. Fain, III, Secretary of the North Carolina Department of Commerce (hereinafter jointly referred to as "State Defendants"), and move the Court to dismiss Plaintiffs' Amended Complaint in its entirety against the State Defendants. The State Defendants make this motion pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1), for lack of subject matter jurisdiction, Rule 12(b)(2), for lack of personal jurisdiction, and Rule 12(b)(6), for failure to state a claim upon which relief may be granted. In particular, the State Defendants submit that Plaintiffs' Amended Complaint should be dismissed against them for the following reasons:

1. Plaintiffs have failed to state a claim upon which relief may be granted in that, even if all the factual allegations of their Amended Complaint were true, each and every one of Plaintiffs'

claims would fail as a matter of law.

2. Plaintiffs have failed to allege facts sufficient to show that they have suffered any harm as a result of the matters alleged in their Amended Complaint or to show the existence of a case or controversy, and they lack standing to bring this action.

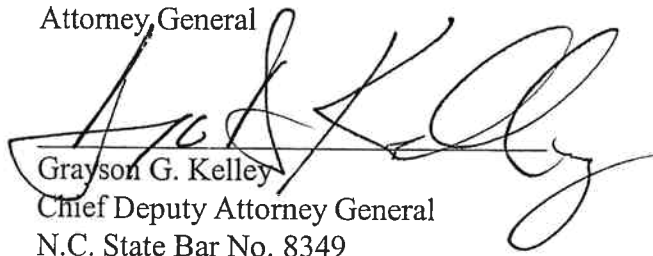
3. Plaintiffs' Amended Complaint must be dismissed against Defendant State of North Carolina for any claim based on 42 U.S.C. § 1983, on the grounds that the State is not a "person" that can be sued under § 1983.

4. Plaintiffs' state-law claims are barred by sovereign immunity as against the State Defendants except for those claims based on Article I of the Constitution of North Carolina.


WHEREFORE, the State Defendants urge the Court to dismiss Plaintiffs' Amended Complaint in its entirety, as against the State Defendants, and tax the costs of this litigation to the Plaintiffs.

Respectfully submitted this the 12<sup>th</sup> day of October, 2005.

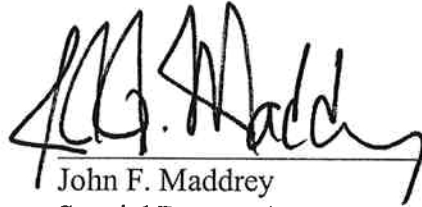
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*Attorneys for Defendants State of North Carolina  
and James T. Fain, III, Secretary of the North  
Carolina Department of Commerce*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing **MOTION TO DISMISS** in the above titled action upon all other parties to this cause by:

- [ ] Hand delivering a copy hereof to each said party or to the attorney thereof;
- [ ] Transmitting a copy hereof to each said party via facsimile transmittal; or
- [x] Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

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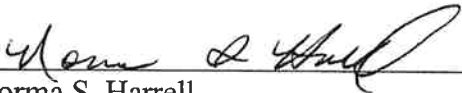
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This the 12<sup>th</sup> day of October, 2005

  
\_\_\_\_\_  
Norma S. Harrell  
Special Deputy Attorney General