

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

JOHN DOE, )  
 ) Civil Action  
 )  
 Plaintiff, ) File No. 2:03-CV-0156-WCO  
 )  
 v. )  
 )  
 BARROW COUNTY, GEORGIA; )  
 WALTER E. ELDER, in his official )  
 capacity as Chairman of the Barrow )  
 County Board of Commissioners and )  
 in his individual capacity, )  
 )  
 Defendants. )

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND TO STRIKE  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

COME NOW the defendants, Barrow County, Georgia, and Walter E. Elder, in his official capacity as Chairman of the County Board of Commissioners and in his individual capacity, through their undersigned counsel, and move this Court, pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5) and 12(b)(6), Federal Rules of Civil Procedure, to dismiss Plaintiff's Complaint herein and to strike Plaintiff's Motion for Preliminary Injunction.

1. For reasons therefor, Defendant Elder, in both in his official capacity and his individual capacity, says that the Complaint must be dismissed as it was brought by an anonymous plaintiff without

seeking leave of court, and therefore this Court lacks jurisdiction over the anonymous plaintiff, rendering the Complaint a nullity. Defendant Barrow County, Georgia says that the process allegedly issued to it is insufficient, that the service of process attempted upon it is insufficient as well, and that the Complaint should be dismissed as to it. Further, and without waiving those grounds for dismissal, it joins in the motion with Defendant Elder to dismiss the Complaint for lack of jurisdiction over the anonymous plaintiff.

2. All Defendants also join in requesting this Court to strike Plaintiff's Motion for Preliminary Injunction on the ground that there is no pending case or controversy legitimately before this Court, and that injunctive relief would be inappropriate on that ground as well as other grounds. Alternatively, should this motion to strike be denied, Defendants request leave to file their substantive opposition to said motion within 30 days of the date of this Court's ruling denying Defendants' motion herein.

Pursuant to LR 7.1(A)(1) of the Local Rules of this Court, Defendants submit herewith their Memorandum of Law in Support of this motion, and they hereby request oral argument on this motion.

This 14<sup>th</sup> day of November, 2003.

Respectfully submitted,

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Pro Hac Vice pending