

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TIMOTHY JOHNSTON,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 4:04CV1075 DJS
)	
GARY B. KEMPKER, et al.,)	
)	
Defendants.)	

DEFENDANTS KEMPKER, ROPER, AND PURKETT’S MOTION TO DISMISS

COME NOW defendants Gary Kempker, Don Roper, and Jim Purkett, by and through counsel, and move this Court, pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), to dismiss plaintiff’s Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

A memorandum of law in support of this motion is filed contemporaneously herewith.

WHEREFORE, defendants Kempker, Roper, and Purkett respectfully request this Court dismiss plaintiff’s Complaint against them for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, and grant such other relief as this Court deems just and proper, including the awarding of costs to these defendants.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

/s/Denise G. McElvein
Denise G. McElvein
Assistant Attorney General
Laclede Gas Building
720 Olive Street, Suite 2150
St. Louis, MO 63101
(314) 340-7861 (telephone)
(314) 340-7029 (fax)

/s/Stephen D. Hawke
Stephen D. Hawke
Assistant Attorney General
1530 Rax Court
Jefferson City, MO 65109
(573) 751-3321 (telephone)
(573) 751-5391 (fax)

CERTIFICATE OF SERVICE

A copy of the foregoing was served in accordance with this Court's electronic filing procedures this 15th day of November, 2004 to:

Michael J. Gorla
720 Olive Street, Suite 1630
St. Louis, Missouri 63101

Christopher E. McGraugh
Leritz, Plunkert & Bruning, P.C.
One City Center, Suite 2001
St. Louis, Missouri 63101

/s/Denise G. McElvein