

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

JOHN TYLER CLEMONS <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil Action No. 3:09-cv-104-P-A
U.S. DEPARTMENT OF COMMERCE <i>et</i>)	
<i>al.</i>)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 56, the U.S. Department of Commerce, Gary Locke, Secretary of the U.S. Department of Commerce, and Robert Groves, Director of the U.S. Census Bureau (collectively, “Defendants”), hereby move this Court to dismiss this action under Rule 12(b)(1), for lack of subject matter jurisdiction; Rule 12(b)(6), for failure to state a claim upon which relief can be granted; and/or Rule 56, because there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. A memorandum of law supporting Defendants’ motion, with exhibits and declarations, is submitted herewith.

Respectfully submitted,

TONY WEST
Assistant Attorney General

JIM M. GREENLEE
United States Attorney

SANDRA SCHRAIBMAN
Assistant Director
Federal Programs Branch

s/ Wendy M. Ertmer

WENDY M. ERTMER
DC Bar No. 490228
Trial Attorney
Federal Programs Branch
U.S. Department of Justice, Civil Division
Ben Franklin Station
P.O. Box 883
20 Massachusetts Avenue NW, Room 7218
Washington, DC 20001
Telephone: (202) 616-7420
Fax: (202) 318-2382
Email: wendy.ertmer@usdoj.gov

Dated: December 21, 2009

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2009, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following counsel of record:

Michael P. Farris
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Avenue, NW, Suite 1000
Washington , DC 20006

Phil R. Hinton
WILSON, HINTON & WOOD, P.A.
P. O. Box 1257
505 Waldron Street
Corinth , MS 38834-1257

s/ Wendy M. Ertmer
WENDY M. ERTMER