

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

No. 1:07-CV-0943 LEK/DRH

ROBERT SCHULZ, et al.,)	
)	
Plaintiffs)	MOTION TO DISMISS AND
)	NOTICE OF
v.)	MOTION TO DISMISS
)	(FED. R. CIV. P. 12 (b)(2) & (3))
STATE OF NEW YORK, et al.,)	
)	
Defendants.)	

PLEASE TAKE NOTICE that on January 18, 2008, at 9:30 a.m., the defendants the State of North Carolina, the North Carolina State Board of Elections, and its members Larry Leake, Lorraine Shinn, Charles Winfree, Genevieve Sims, and Robert Cordle, shall and do hereby move this Court for dismissal of the amended complaint pursuant to Rule 12 (b)(2) and (3) of the Federal Rules of Civil Procedure for lack of personal jurisdiction and lack of proper venue over these defendants. Defendant State of North Carolina also moves to dismiss plaintiffs' amended complaint on the ground that their claims are barred by the Eleventh Amendment of the United States Constitution. This motion is supported by a memorandum and the affidavit of Gary O. Bartlett, Executive Director of the North Carolina State Board of Elections, submitted contemporaneously herewith. Defendants do not request an opportunity to be heard on this Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 7.1 of the Local Rules of Practice of the United States District Court for the Northern District of New York, any papers to be submitted in opposition to this motion must be timely filed with the clerk and served in accordance with the Orders of this Court. These papers must include, at a minimum, a memorandum of law containing relevant factual and legal arguments.

PLEASE BE FURTHER ADVISED that if you do not respond in opposition to this motion, then if appropriate it will be granted and judgment will be entered against you.

This the 17th day of December 2007.

ROY COOPER
Attorney General

/s/ _____
SUSAN KELLY NICHOLS
N.Y. Bar Roll No. 106501
N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602-0629
Tel.: 919-716-6890
Fax: 919-716-6755
Email: snichols@ncdoj.gov

ATTORNEYS FOR NORTH
CAROLINA DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Motion to Dismiss and Notice of Motion to Dismiss, Affidavit, and Memorandum in Support of Motion to Dismiss in the above titled action upon the Lead Plaintiffs' Representative in this cause by depositing copies, first class postage pre-paid, in the United States mail, properly addressed as follows:

Mr. Robert L. Schulz
2458 Ridge Road
Queensbury, N.Y. 12804

Lead Representative for Plaintiffs

This 17th day of December, 2007.

_____/s/
Susan Kelly Nichols
Special Deputy Attorney General

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602-0629
Tel.: 919-716-6890
Fax: 919-716-6755
Email: snichols@ncdoj.gov