

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L SCHULZ, *et al*

Plaintiffs,

-against-

STATE OF NEW YORK, *et al.*,

Defendants.

**DECLARATION OF
AAG BRUCE J. BOIVIN**

07-CV-0943

LEK/RFT

Bruce J. Boivin, an attorney admitted to practice in the State of New York, on the date noted below, pursuant to 28 U.S.C §1746, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an Assistant Attorney General of counsel in this matter to Andrew M. Cuomo, Attorney General of the State of New York, attorney for defendant State of New York.
2. I make this declaration in support of the motion by defendant State of New York to dismiss the amended complaint on the ground that it is barred by the 11th Amendment.
3. The other “New York” defendants [the NYS Board of Elections, and the Boards’ Commissioners, Neil Kelleher, Douglas Kellner, Evelyn Aquila and Helen Moses Doanhue, will be separately represented.

4. The amended complaint is brought by in excess of 150 plaintiff, proceeding *pro se*, against all 50 States and Commonwealths of the United States, and their respective chief election officials.

5. In essence, the amended complaint seeks a permanent injunction directing that each State and Commonwealth conduct the Presidential primary and general elections using paper ballots which are publicly counted by hand.

6. The State of New York is not a proper party to this action as it is not a person within the meaning of 42 U.S.C §1983 and, in any event, is protected from suit by sovereign immunity under the 11th Amendment.

7. As of the writing of this declaration, approximately 35 States and Commonwealths have filed motions to dismiss, all of which raise the 11th Amendment immunity defense.

8. Rather than file a duplicative motion, the State of New York joins each of these motion as to the 11th Amendment sovereign immunity defense and specifically joins the State of Oregon's motion to dismiss (Dkt. No. 22) and adopts and incorporates by reference Point II of its memorandum of law, as Oregon was the first State to so move.

9. Accordingly, the State of New York respectfully requests that it be dismissed from this action in its entirety with prejudice.

Dated: Albany, New York
December 17, 2007

s/ Bruce J. Boivin
Bruce J. Boivin
Bar Roll No. 507894