

**1:07-CV-0943 LEK/DRH**

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

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**ROBERT L. SCHULTZ (New York), et al**

**Plaintiffs,**

**vs.**

**STATE OF NEW YORK, et al.**

**Defendants.**

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**MEMORANDUM IN SUPPORT OF OKLAHOMA  
DEFENDANTS' MOTION TO DISMISS**

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(Central Division)**

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v.	)	Case No. 1:07-CV-0943 LEK/DRH
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	)	<b>DEFENDANTS’ MOTION TO</b>
	)	<b>DISMISS</b>
Defendants.	)	

**OKLAHOMA DEFENDANTS’ MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO DISMISS**

Defendants, State of Oklahoma, Thomas Prince, Susan Turpen, and Ramon Watkins, State Election Board (“Oklahoma Defendants”), by and through their attorney, Tina L. Izadi, Assistant Attorney General for the State of Oklahoma, hereby submit this Memorandum in Support of Oklahoma Defendants’ Motion to Dismiss. Oklahoma Defendants respectfully request that this Court dismiss Plaintiffs’ claims against them as a matter of law, based upon the following grounds:

- 1) This Court lacks personal jurisdiction over Oklahoma Defendants;
- 2) The Eleventh Amendment bars Plaintiffs’ claims against the State of Oklahoma, and State Election Board.
- 3) This Court is not the proper venue for Plaintiffs’ claims against Oklahoma Defendants.

**BACKGROUND**

Plaintiffs filed this Amended Complaint (“Complaint”) alleging three causes of action against the fifty states and their respective officers, who have been named in their individual and official capacities, including Oklahoma Defendants, the State of Oklahoma, Thomas Prince, Susan Turpen,

Ramon Watkins, and State Election Board. Plaintiffs allege that Defendants' use of voting machines infringes upon Plaintiffs' constitutional rights. The Complaint does not allege any contacts between Oklahoma Defendants and the State of New York. It does not allege any acts by Oklahoma Defendants that occurred within the State of New York and it does not allege any acts by the Oklahoma Defendants that have violated the rights of any New York resident in any way.

**ARGUMENT AND JOINDER IN ARGUMENTS OF OTHER STATES**

Oklahoma Defendants hereby join in the arguments raised by their co-defendants in the Motions to Dismiss, and Memoranda of Law in Support thereof submitted to this Court. In order to fully preserve Oklahoma Defendants' arguments, the grounds in support of their Motion to Dismiss are briefly set forth herein. Oklahoma Defendants adopt and incorporate the arguments advanced by other states as specifically cited below.

**I. THIS HONORABLE COURT LACKS PERSONAL JURISDICTION OVER OKLAHOMA DEFENDANTS**

The party seeking to invoke the Court's jurisdiction bears the burden of establishing by competent proof that jurisdiction exists. *See Computer Associates Intern., Inc. v. Altai*, 126 F.3d 365, 370-71 (2<sup>nd</sup> Cir. 1997). The personal jurisdiction rules of the State of New York dictate whether this Court has personal jurisdiction over Oklahoma Defendants. *See PDK Labs, Inc. v. Friedlander*, 103 F.3d 1105, 1108 (2<sup>nd</sup> Cir. 1997). Plaintiffs have failed to allege any facts sufficient to confer personal jurisdiction over Oklahoma Defendants under either New York law or the Due Process Clause.

In support of their Motion to Dismiss, Oklahoma Defendants adopt and incorporate by reference the arguments advanced in the following memoranda regarding lack of personal jurisdiction:

- Memorandum in Support of **Oregon** Defendants' Motion to Dismiss, Doc. 22-2, pp. 2-7;
- State of **South Carolina's** Memorandum in Support of Motion to Dismiss, Doc. 23-2, pp. 3-6;
- **Texas** Defendants' Motion to dismiss Plaintiffs' First Amended Complaint Pursuant to Fed.R.Civ.P. 12(b)(2) With Order, Doc. 36, pp. 2-7;
- State of **North Dakota's** Memorandum in support of Motion to Dismiss, Doc. 39-2, pp. 2-8;
- Memorandum in Support of **Wyoming** Defendants' Motion to Dismiss Amended Verified Complaint, Doc. 95-2, pp. 3-8;
- Memorandum in Support of Defendant State of **Kansas** Motion to Dismiss, Doc. 137, pp. 5-6;
- Memorandum of Points and Authorities in support of the **California** Defendants' Motion to Dismiss, Doc. 140-2, pp. 3-9;
- State of **Kentucky's** Memorandum in Support of Motion to Dismiss, Doc. 171-3, pp. 3-6;
- Memorandum of Law in Support of the Motion of Defendants' State of **New Jersey**, Doc. 180-2, pp. 2-5; and
- Memorandum in Support of **Idaho** Defendants' Motion to Dismiss, Doc. 185-2, pp. 2-4.

Plaintiffs fail to allege any facts sufficient to connect Oklahoma Defendants with the State of New York. *See e.g., International Shoe Co. v. State of Wash.*, 326 U.S. 310, 319, 66 S.Ct. 154, 160 (1945). This Honorable Court lacks personal jurisdiction over the Oklahoma Defendants

because the Oklahoma Defendants do not have the minimal contacts necessary to establish personal jurisdiction herein.

**II. PLAINTIFFS' CLAIMS AGAINST THE STATE OF OKLAHOMA, AND STATE ELECTION BOARD ARE BARRED BY THE ELEVENTH AMENDMENT**

The Eleventh Amendment to the United States Constitution bars claims against states in federal court, including claims for injunctive relief, such as those at issue in this litigation. *See Pennhurst State Sch. & Hosp. v. Halderman*, 456 U.S. 89, 100 (1984). Moreover, “a State is not a ‘person’ within the meaning of §1983.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65-66, 71 (1989). Additionally, the doctrine of sovereign immunity plays a critical role in our federal system, “[b]ecause of the sensitive problems inherent in making one sovereign appear against its will in the courts of the other.” *Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468, 486-487, 107 S.Ct. 2941, 2953 (1987)(internal citations omitted).

In support of their Motion to Dismiss, Oklahoma Defendants adopt and incorporate by reference the arguments advanced in the following memoranda regarding Eleventh Amendment immunity:

- Memorandum in Support of **Oregon** Defendants’ Motion to Dismiss, Doc. 22-2, p. 7;
- Memorandum of Law submitted by **Michigan** Defendants, Doc. 70-2, pp. 20-22;
- Memorandum in Support of Defendant State of **Kansas** Motion to Dismiss, Doc. 137, pp. 2-3;
- Brief in Support of Motion of **Wisconsin** Defendants to Dismiss Amended Complaint, Doc. 162-2, pp. 2-5;
- State of **Kentucky**’s Memorandum in Support of Motion to Dismiss, Doc. 171-3, pp. 11-13;

- Memorandum of Law in Support of the Motion of Defendants' State of **New Jersey**, Doc. 180-2, pp. 6-7; and
- Memorandum in Support of **Idaho** Defendants' Motion to Dismiss, Doc. 185-2, pp. 4-5.

Plaintiffs' claims against the State of Oklahoma and the State Election Board are barred by the 11<sup>th</sup> Amendment of the United States Constitution.

### **III. THIS COURT IS NOT THE PROPER VENUE FOR SUIT AGAINST OKLAHOMA DEFENDANTS**

The Northern District of New is not the proper venue for Plaintiffs' actions against the Oklahoma Defendants.

In support of their Motion to Dismiss, Oklahoma Defendants adopt and incorporate by reference the arguments advanced in the following memoranda regarding improper venue:

- Memorandum in Support of **New Hampshire** Defendants' Motion to Dismiss, Doc. 24-2, pp. 4-6;
- State of **North Dakota**'s Memorandum in Support of Motion to Dismiss, Doc. 39-2, pp. 8-9;
- Memorandum of Law submitted by **Michigan** Defendants, Doc. 70-2, pp. 18-20;
- Memorandum in Support of **Wyoming** Defendants' Motion to Dismiss Amended Verified Complaint, Doc. 95-2, pp. 9-11;
- State of **Kentucky**'s Memorandum in Support of Motion to Dismiss, Doc. 171-3, pp. 7-9; and
- Memorandum in Support of **Idaho** Defendants' Motion to Dismiss, Doc. 185-2, pp. 5-6.

**CONCLUSION**

For the foregoing reasons as well as the arguments adopted and incorporated by reference, Oklahoma Defendants respectfully request that this Court dismiss Plaintiffs' claims against them as a matter of law, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

s/Tina L. Izadi

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