

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

ROBERT SCHULZ (New York), et al,)	C/A No. 1:07-CV-0943 LEK/DRH
)	
Plaintiffs,)	
)	
v.)	MOTION TO DISMISS
)	OF SOUTH CAROLINA
STATE OF NEW YORK, et al,)	ELECTION DEFENDANTS
Defendants)	
_____)	

PLEASE TAKE NOTICE that on January 4, 2008 at 9:30 a.m., at Albany, New York, or as soon thereafter as is convenient for the Court, the Defendants John Hudgens, III, Cynthia Bensch¹, Tracey Green, Pamella Pinson, Edward Pritchard, Jr. and State Election Commission of South Carolina (SC Election Defendants)² shall and hereby do move before this Court for the dismissal of the Amended Complaint pursuant to Rules 12(b)(1), (2), (3), and (6), FRCP, in that, for the following reasons, the Court lacks jurisdiction over the subject matter of this action, the Court lacks jurisdiction of the person as to the SC Election Commission Defendants, venue is improper and the Plaintiffs have failed to state a claim upon which relief can be granted:

1. This Court lacks personal jurisdiction as to the SC Election Defendants.
2. The venue is improper.

¹ The Amended Complaint misspells Ms. Bensch’s name as “Cynthiz.” This motion is made on behalf of Ms. Bensch as named in the complaint and under the correct spelling of her name.

² The State of South Carolina has already filed a motion to dismiss dated November 9, 2007.

3. This action is barred by the Eleventh Amendment as to the State Election Commission.
4. The Plaintiffs have failed to state a claim upon which relief can be granted.
5. The Court lacks subject matter jurisdiction of this case.

Respectfully submitted,

/s/ J. Emory Smith, Jr.
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December 4, 2007

Counsel for the State of South Carolina

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FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT SCHULZ (New York), et al,)	C/A No. 1:07-CV-0943 LEK/DRH
)	
Plaintiffs,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
STATE OF NEW YORK, et al,)	
Defendants.)	
_____)	

I hereby certify that I have served the SC Election Defendants’ Motion to Dismiss upon Plaintiffs in accordance with this Court’s Order of October 30, 2007, by mailing a copy of it to the Lead Plaintiff’s Representative at the address below via the United States Mail this December 4, 2007:

Mr. Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

Service on other Defendants is by electronic means.

/s/ J. Emory Smith, Jr.
NY Bar Roll No. 106463
J. EMORY SMITH, JR.
Assistant Deputy Attorney General