

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

ROBERT L. SCHULZ, et al.,

Plaintiffs,

v.

STATE OF NEW YORK, et al.,

Defendants.

Case No. 07-CV-0943 LEK/DRH

**NEBRASKA DEFENDANTS'  
MOTION TO DISMISS AND  
NOTICE OF MOTION**

**Motion to Dismiss**

Pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) defendants State of Nebraska and Nebraska Secretary of State John Gale (“Nebraska defendants”) move for dismissal of plaintiffs’ amended complaint in the above-captioned matter with respect to said defendants for the reasons that (1) the court lacks jurisdiction over the persons of the Nebraska defendants and (2) plaintiffs’ claims against the State of Nebraska are barred by the Eleventh Amendment to the United States Constitution.

**Notice of Motion**

PLEASE TAKE NOTICE that on January 18, 2008, at 9:30 a.m., or as soon thereafter as is convenient for the court, the undersigned attorney shall, and hereby does, make the above and foregoing motion to dismiss plaintiffs’ claims against the Nebraska defendants. Oral argument is not requested.

PLEASE TAKE FURTHER NOTICE that in support of their motion the Nebraska defendants will rely upon this Nebraska Defendants’ Motion to Dismiss and Notice of

Motion, together with the Affidavit of John A. Gale and the Memorandum of Law in Support of Nebraska Defendants' Motion to Dismiss being submitted herewith.

DATED this 6<sup>th</sup> day of December, 2007.

STATE OF NEBRASKA AND NEBRASKA  
SECRETARY OF STATE JOHN GALE,  
Nebraska Defendants,

BY: JON BRUNING, NSB #20351  
Attorney General

BY: /s/ Dale A. Comer  
Dale A. Comer, NYB # 106484  
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Attorneys for Nebraska Defendants.

**CERTIFICATE OF SERVICE**

I, DALE A. COMER, do hereby declare that I electronically filed the foregoing Nebraska Defendants' Motion to Dismiss and Notice of Motion with the Clerk of the District Court using the CM/ECF system, and that I caused a true and correct copy to be served by First-Class mail, upon Robert L. Schulz, 2458 Ridge Road, Queensbury, NY 12804.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on December 6, 2007.

/s/ Dale A. Comer, NYB # 106484  
Dale A. Comer, NSB #15365  
Assistant Attorney General

05-560-21