

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

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ROBERT L. SCHULTZ, et al.,

Case No. 07-cv-943  
(LEK)(DRH)

*Plaintiffs,*

v.

STATE OF NEW YORK, et al.

**COLORADO DEFENDANTS’  
AFFIDAVIT TO JOIN MOTIONS  
TO DISMISS**

*Defendants.*

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The State of Colorado and Colorado’s Secretary of State, (collectively referred to herein as “Colorado Defendants”), by and through their attorneys, Office of the Colorado Attorney General and undersigned counsel, do hereby submit this Affidavit to Join Motions to Dismiss as follows:

I, Melody Mirbaba, counsel for the Colorado Defendants, being duly sworn, do hereby attest and affirm:

1. I have reviewed the Motions to Dismiss and Memorandums of Law in this matter filed on behalf of the State of South Carolina, the State of New Hampshire, the State of Texas, and the State of Oregon.
2. The Colorado Defendants do hereby join in the Motions to Dismiss and Memorandums of Law filed by the State of South Carolina, the State of New Hampshire,<sup>1</sup> the State of Texas and the State of Oregon. The arguments made therein apply to the Colorado Defendants. In particular, as with those Defendants, Plaintiffs’

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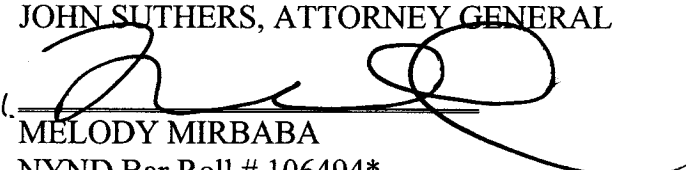
<sup>1</sup> However, the Colorado Defendants do not incorporate portions of New Hampshire’s Motion to Dismiss that argues lack of jurisdiction because the New Hampshire Secretary of State does not have authority to approve and require the use of electronic voting machines.

claims against the Colorado Defendants should also be dismissed because: (1) the Court lacks personal jurisdiction over the Colorado Defendants because Plaintiffs failed to allege any facts establishing minimum contacts between the State of New York and the Colorado Defendants, and Plaintiffs failed to allege any facts establishing the Colorado Defendants are within the scope of New York's long arm statute; (2) extending jurisdiction over the Colorado Defendants would violate the due process clause of the United States Constitution; (3) the State of Colorado is immune from suit pursuant to the Eleventh Amendment to the United States Constitution; and (4) New York is not the proper venue for a suit against the Colorado Defendants. For the same reasons and authorities set forth in those Motions and Memorandums of Law, this Court should dismiss all claims against the Colorado Defendants.

3. The Colorado Defendants also submit the following supplemental authority in support of their request to dismiss: *Springer v. Balough*, 96 F.Supp.2d 1250, 1255-56 (N.D. Okla. 2000), *aff'd*, 232 F.3d 902 (10<sup>th</sup> Cir. 2000) (in an action by a presidential candidate against all States in the United States District Court for the Northern District of Oklahoma, the federal court lacked personal jurisdiction over States and State election officials that have not purposely directed their continuous and systematic contacts in the forum state).

Respectfully submitted this 10th day of December, 2007.

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