

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

ROBERT L. SCHULZ (New York),  
et al.,  
  
Plaintiffs,

v.

STATE OF NEW YORK, et al.,  
  
Defendants.

NO. 07-CV-0943 LEK/DRH

MEMORANDUM IN SUPPORT  
OF STATE OF WASHINGTON'S  
AND SAM REED'S MOTION TO  
DISMISS

**I. INTRODUCTION**

Plaintiffs' Amended Complaint attempts to assert claims against all fifty states and their election officials. This is not the first attempt to challenge the election procedures of every state in a single action in a single United States District Court. *See, e.g., Springer v. Balough*, 96 F. Supp. 2d 1250, 1255-56 (N.D. Okla. (2000), *aff'd*, 232 F.3d 902 (10th Cir. 2000) (dismissing, for lack of personal jurisdiction, attempt by aspiring presidential candidate to sue every state's election officials in a single action). It doesn't work. Personal jurisdiction may not be asserted against every state or its election officials in any single federal district, and similarly venue will not be proper as to all defendants in any single district. Additionally, the Eleventh Amendment bars claims against states themselves, and a plaintiff must possess standing in order to successfully assert a claim.

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

The State of Washington and Sam Reed (the Washington Defendants) add their voices to those numerous other states and state election officials, and seek an order dismissing this case upon the same grounds already asserted by other states. It is, however, unnecessary to add

MEM. IN SUPPORT OF  
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any additional arguments or authority to those already offered by other states. The Washington Defendants accordingly join the arguments of other states as follows:

**A. This Court Lacks Personal Jurisdiction Over The Washington Defendants**

Due process prevents the exercise of personal jurisdiction over any non-resident defendant unless “there exist ‘minimum contacts’ between the defendant and the forum State.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980). This basic constitutional requirement applies even when a plaintiff challenges state election procedures based on what that plaintiff perceives as a federal claim of allegedly national significance. *Springer*, 96 F. Supp. 2d at 1256 (rejecting claim of jurisdiction over election law claim that the plaintiff characterized as “federal in nature”). Plaintiffs allege no conduct by the Washington Defendants in New York.

The Washington Defendants need not duplicate arguments already offered by other states. With regard to personal jurisdiction, Washington joins and incorporates by reference the arguments of other states as follows:<sup>1</sup> Memorandum in Support of Defendant State of **Kansas** and Kansas Secretary of State Ron Thornburgh’s Motion to Dismiss at 5-6; **Oregon** Defendants’ Memorandum in Support Of Motion to Dismiss at 2-7; Memorandum in Support of Defendants State of **Minnesota** and Mark Ritchie, Secretary of State’s Motion to Dismiss at 4-6; State of **North Dakota**’s Memorandum in Support of Motion to Dismiss at 2-8; State of **South Carolina**’s Memorandum in Support of Motion to Dismiss at 3-6; **Texas** Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint at 2-7; and Memorandum of Law in Support of **Vermont** Defendants’ Motion to Dismiss at 2-5.

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<sup>1</sup> In citations to memoranda filed by other states, the Washington Defendants place the name of such states in bold for ease of identification.

**B. The Eleventh Amendments Bars Claims Against The State Of Washington**

The Eleventh Amendment to the United States Constitution bars actions against states in federal court, absent that state's consent. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). Washington has not consented to waiver of its Eleventh Amendment immunity. *Yakima Indian Nation v. Washington*, 176 F.3d 1241, 1245 (9th Cir. 1999).

Again, to avoid duplication of argument, Washington Defendants join and incorporate by reference the arguments of other states regarding the Eleventh Amendment as follows: Memorandum in Support of Defendant State of **Kansas** and Kansas Secretary of State Ron Thornburgh's Motion to Dismiss at 2-3; **Oregon** Defendants' Memorandum in Support Of Motion to Dismiss at 7; Memorandum in Support of Defendants State of **Minnesota** and Mark Ritchie, Secretary of State's Motion to Dismiss at 3; State of **South Carolina**'s Memorandum in Support of Motion to Dismiss at 6; and Memorandum of Law in Support of **Vermont** Defendants' Motion to Dismiss at 5.

**C. Venue Is Not Proper In This District**

Not only must a court possess jurisdiction in order to entertain a case, but the federal district must be an appropriate venue as well. The Northern District of New York is not an appropriate venue for the claims Plaintiffs seek to assert against the Washington Defendants, for the reasons expressed by the following states, which the Washington Defendants hereby join and incorporate by reference: Memorandum in Support of Defendants State of **Minnesota** and Mark Ritchie, Secretary of State's Motion to Dismiss at 6-7; and State of **North Dakota**'s Memorandum in Support of Motion to Dismiss at 8-9.

**D. Plaintiffs Lack Standing**

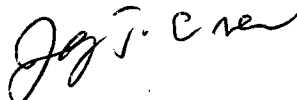
In order to assert a claim, the plaintiff must possess standing. That is, the plaintiff must present an actual “case or controversy” as to which the plaintiff has suffered from threatened or actual injury resulting from the conduct of the defendant. *Hein v. Freedom From Religion Found. Inc.*, 551 U.S. \_\_\_, 127 S. Ct. 2553, 2562, 168 L. Ed. 2d 424 (2007). The Washington Defendants join, and adopt by reference, the arguments of the Minnesota Defendants regarding standing. Memorandum in Support of Defendants State of Minnesota and Mark Ritchie, Secretary of State’s Motion to Dismiss at 7-8.

**III. CONCLUSION**

For all of these reasons, including the reasons offered by other states with which the Washington Defendants join and incorporate by reference, this action should be dismissed as to the Washington Defendants.

Dated this 10th day of December, 2007.

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