

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,)	Case No. 07-CV-0943 LEK/DRH
)	
Plaintiffs,)	
)	
v.)	SOUTH DAKOTA DEFENDANTS'
)	MEMORANDUM IN SUPPORT
STATE OF NEW YORK, et al.,)	OF MOTION TO DISMISS
)	
Defendants.)	

COME NOW, the South Dakota Defendants, State of South Dakota and Chris Nelson, Secretary of State, by and through their attorney, Sherri Sundem Wald, Deputy Attorney General for the State of South Dakota, and in support of their Motion to Dismiss state as follows:

1. This Honorable Court lacks personal jurisdiction over the South Dakota Defendants because the South Dakota Defendants do not have the minimal contacts necessary to subject them to the jurisdiction of New York courts. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). See attached Affidavit by South Dakota Secretary of State Chris Nelson.

2. The Northern District of New York is not the proper venue for Plaintiffs' action against the South Dakota Defendants. *Leroy v. Great Western United Corp.*, 443 U.S. 173, 184 (1979).

3. The action against the State of South Dakota is barred by the Eleventh Amendment to the United States Constitution. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

4. In support of their Motion to Dismiss, the South Dakota Defendants adopt the arguments made by numerous other states and state election officials and specifically those arguments set forth in Sections A, B, and E of the Memorandum of Law in Support of the New Hampshire Defendants' Motion to Dismiss filed by the New Hampshire Defendants on November 14, 2007.

WHEREFORE, the South Dakota Defendants respectfully request that this Honorable Court grant their Motion to Dismiss.

Dated this 11th day of December, 2007.

Respectfully submitted,

LAWRENCE E. LONG
ATTORNEY GENERAL

/s/ Sherri Sundem Wald
Sherri Sundem Wald, No. 106480
Deputy Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
sherri.wald@state.sd.us

Attorneys for South Dakota Defendants

pld1207_ssw(dh)

CERTIFICATE OF SERVICE

I, Sherri Sundem Wald, do hereby declare that I electronically filed the foregoing South Dakota Defendants' Memorandum in Support of Motion to Dismiss 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, New York 12804.

Dated this 11th day of December, 2007.

/s/ Sherri Sundem Wald
Sherri Sundem Wald, No. 106480
Deputy Attorney General

p1d1207_ssw(dh)