

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT SCHULZ, *et al*,
Plaintiffs

v.

STATE OF NEW YORK, *et al*,
Defendants

*
*
*
*
*
*
*
*
*

CASE NO: 1:07-CV-0943 LEK/DRH

**Notice of Indiana Defendants’
Motion to Dismiss Plaintiffs’ Amended Complaint**

PLEASE TAKE NOTICE that the State of Indiana and Todd Rokita, Indiana Secretary of State (hereinafter referred to as “Indiana Defendants”), by and through counsel, the Office of the Attorney General for the State of Indiana, and hereby move this Court to dismiss the Plaintiffs’ amended complaint against the Indiana Defendants on **January 18, 2008 at 9:30 am**, or as soon as thereafter as is convenient for this Court.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7.1(c) of the Local Rules of Practice of the United States District Court for the Northern District of New York, any papers to be submitted in opposition to the within motion must be filed with Clerk and served upon counsel for the defendants no later than seventeen (17) days before the return date of the motion, exclusive of that day. These papers must include, at a minimum, a memorandum of law containing relevant factual and legal arguments.

PLEASE BE FURTHER ADVISED that if you do not respond in opposition to the motion, the motion to dismiss, if appropriate, will be granted and judgment will be

entered against you. If the motion to dismiss is granted, your case will be dismissed and there will not be any trial concerning any of the issues asserted in your complaint.

In support of this motion, the Indiana Defendants state the following:

1. Pursuant to Federal Rules of Civil Procedure 12(b)(2), this Court does not have personal jurisdiction over the Indiana Defendants, and therefore, this Court should dismiss this action against the Indiana Defendants.

2. Pursuant to Fed. R. Civ. P. 12(b)(3), this Court is not the proper venue to sue the Indiana Defendants, and therefore, this Court should dismiss this action against the Indiana Defendants.

3. Pursuant to Fed. R. Civ. P. 12(b)(1), this Court lacks jurisdiction over the subject matter of this case because the Indiana Secretary of State has no authority to control the types of electronic voting systems that are used in Indiana, and therefore, the plaintiffs lack standing

4. Pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiffs have failed to state a claim upon which relief may be granted because the individual Indiana counties independently determine whether they are going to use voting machines at their polling places for all local, state and federal elections, thus a ruling in favor of the Plaintiffs would fail to redress the Plaintiffs' alleged injuries.

5. Pursuant to the 11th Amendment of the United State Constitution, the State of Indiana is immune from suit, and therefore, Plaintiffs' claim against the State of Indiana must be dismissed.

6. A memorandum of law in support of this motion is filed concurrently herewith.

7. This is a dispositive motion. Therefore, there is no requirement that concurrence be sought.

8. Attached to this NOTICE of Motion, please find the Indiana Defendants' Memorandum of Law in Support of Motion to Dismiss.

WHEREFORE, it is respectfully requested that this Court order as follows:

- A. Grant the Indiana Defendants' Motion to Dismiss Plaintiffs' amended complaint; and
- B. For such other and further relief as is necessary.

Dated: December 12, 2007

Respectfully submitted,

INDIANA DEFENDANTS
By their attorneys,

STEVE CARTER
Attorney General of Indiana
Indiana Attorney No. 4150-64

By: /s/ Kate Van Bokkelen
Kate Van Bokkelen
Deputy Attorney General
Indiana Attorney No. 26626-45
Office of the Attorney General
IGCS, 5th Floor
302 West Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6241
Fax: (317) 232-7979
kvbokkelen@atg.in.gov
Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2007, a copy of the foregoing Notice of Motion to Dismiss was sent to the following by U.S. Mail:

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

/s/ Kate Van Bokkelen
Kate Van Bokkelen
Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
302 West Washington Street
IGCS – 5th Floor
Indianapolis, IN 46204
Telephone: (317) 232-6241
FAX: (317) 232-7979
kvbokkelen@atg.in.gov