

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

ROBERT L. SCHULZ, et al.,

Plaintiffs,

v.

Case No. 1:07-CV-0943 LEK/DRH

STATE OF NEW YORK, et al.,

Defendants.

MOTION OF WISCONSIN DEFENDANTS
TO DISMISS AMENDED COMPLAINT

NOTICE OF MOTION

Please take notice that the State of Wisconsin, Wisconsin State Elections Board, John Schober, Shane Falk, David Anstaett, Kirby Brant, Donald Goldberg, Carl Holborn, Patrick Hodan, Robert Kasieta, and Jon Savage (collectively Wisconsin defendants), by their attorneys, J.B. Van Hollen, Attorney General of Wisconsin, and Thomas J. Balistreri, Assistant Attorney General, will bring the accompanying motion on for hearing on January 18, 2008, at 9:30 a.m., or as soon thereafter as they can be heard, before the Honorable Lawrence E. Kahn, United States District Judge for the Northern District of New York, in the James T. Foley U.S. Courthouse, 445 Broadway, Albany, New York.

In support of this motion the Wisconsin defendants will rely on the brief filed with this motion.

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 in opposition to this motion must be served on the attorneys for the Wisconsin defendants and filed with the Clerk of the United States District Court for the Northern District of New York in Albany no later than seventeen days before the return date of the motion, exclusive of that day. Any matter in opposition must include a memorandum of law containing relevant factual and legal arguments.

If you do not timely respond to this motion to dismiss, the motion will be granted, judgment will be entered against you, your case against the Wisconsin defendants will be dismissed, and there will not be a trial involving the Wisconsin defendants concerning any of the issues raised in your complaint against them.

MOTION TO DISMISS

The Wisconsin defendants, identified above, move the Court to dismiss the amended complaint of all plaintiffs against defendants State of Wisconsin and Wisconsin State Elections Board under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction over the subject matter under U.S. Const. amend. XI, and to dismiss the amended complaint of all plaintiffs against all remaining Wisconsin defendants under Fed. R. Civ. P. 12(b)(2) for lack of jurisdiction over the person.

In the alternative, the Wisconsin defendants move to dismiss the amended complaint of all plaintiffs except Francine Arnold and Anita Zibton (collectively Wisconsin plaintiffs) against all Wisconsin defendants under Fed. R. Civ. P. 12(b)(1) for

lack of standing to sue the Wisconsin defendants, to dismiss the amended complaint of Francine Arnold and Anita Zibton against all non-Wisconsin defendants under Fed. R. Civ. P. 12(b)(1) for lack of standing to sue the other defendants, and under Fed. R. Civ. P. 12(b)(3), to transfer venue of any claims of any remaining Wisconsin plaintiffs against any remaining Wisconsin defendants under 28 U.S.C.A. §§ 1391 and 1404(a) to the United States District Court for the Western District of Wisconsin.

Dated this 12th day of December, 2007.

J.B. VAN HOLLEN
Attorney General

s/Thomas J. Balistreri
THOMAS J. BALISTRERI
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