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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF NEW YORK

11 ROBERT L. SCHULZ, et al.)
12 Plaintiffs,)
13 vs.)
14 STATE OF NEW YORK, et al.,)
15 Defendants.)
16 _____)

Case No. 07cv-0943-LEK/DRH
**MEMORANDUM IN SUPPORT OF STATE
OF NEVADA'S AND ROSS MILLER'S
MOTION TO DISMISS**

17 **I. INTRODUCTION**

18 Plaintiffs' Amended Complaint attempts to assert claims against all fifty states and
19 their election officials. This is not the first attempt to challenge the election procedures of
20 every state in a single action in a single United States District Court. *See, e.g., Springer v.*
21 *Balough*, 96 F. Supp. 2d 1250, 1255-56 (N.D. Okla. 2000), *aff'd*, 232 F.3d 902 (10th Cir.
22 2000) (dismissing, for lack of personal jurisdiction, attempt by aspiring presidential
23 candidate to sue every state's election officials in a single action). Personal jurisdiction may
24 not be asserted against every state or its election officials in any single federal district, and
25 similarly venue will not be proper as to all defendants in any single district. Additionally, the
26 Eleventh Amendment bars claims against states themselves, and a plaintiff must possess
27 standing in order to successfully assert a claim.

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

2 The State of Nevada and Ross Miller (the Nevada Defendants) add their voices to
3 those numerous other states and state election officials, and seek an order dismissing this
4 case upon the same grounds already asserted by other states. It is, however, unnecessary
5 to add any additional arguments or authority to those already offered by other states. The
6 Nevada Defendants accordingly join the arguments of other states as follows.

7 **A. This Court Lacks Personal Jurisdiction Over The Nevada Defendants**

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

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

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28 ¹ In citations to memoranda filed by other states, the Nevada Defendants place the name of such states in bold for ease of identification.

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1 **B. The Eleventh Amendments Bars Claims Against The State Of Nevada**

2 The Eleventh Amendment to the United States Constitution bars actions against
3 states in federal court, absent that state's consent. See *Pennhurst State Sch. & Hosp. v.*
4 *Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). Nevada has not
5 consented to waiver of its Eleventh Amendment immunity in federal courts. See *Carey v.*
6 *Nevada Gaming Control Board*, 279 F.3d 873 (9th Cir. 2002).-

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

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

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

23 **D. Plaintiffs Lack Standing**

24 In order to assert a claim, the plaintiff must possess standing. That is, the plaintiff
25 must present an actual "case or controversy" as to which the plaintiff has suffered from
26 threatened or actual injury resulting from the conduct of the defendant. *Hein v. Freedom*
27 *From Religion Found. Inc.*, 551 U.S. ___, 127 S. Ct. 2553, 2562, 168 L. Ed. 2d 424 (2007).
28 The Nevada Defendants join, and adopt by reference, the arguments of the Minnesota

1 Defendants regarding standing. Memorandum in Support of Defendants State of Minnesota
2 and Mark Ritchie, Secretary of State's Motion to Dismiss at 7-8.

3 **III. CONCLUSION**

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

7 DATED this 12th day of December 2007.

8 CATHERINE CORTEZ MASTO
9 Attorney General

10 By: /s/
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