

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT SCHULZ, et al,
Plaintiffs

v.

STATE OF NEW YORK, et al,
Defendants

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

**NOTICE OF THE RHODE ISLAND DEFENDANTS’
MOTION TO DISMISS PLAINTIFFS’ AMENDED COMPLAINT**

Now come the Defendants, the State of Rhode Island and A. Ralph Mollis, Secretary of State of Rhode Island (“Rhode Island,” “State” or “Defendants”), by and through counsel, the Department of Attorney General for the State of Rhode Island, and hereby move this Honorable Court to dismiss the Pro Se Plaintiffs’, Robert L. Schulz, et. al., Amended Verified Complaint against the Rhode Island on January 18, 2008 at 9:30 a.m. In support, the Rhode Island Defendants respectfully assert the following:

1. Pursuant to the Federal Rules of Civil Procedure (“Fed. R. Civ. P”) Rule 12(b)(2), this Court lacks personal jurisdiction over the Rhode Island Defendants and, therefore, this Court should dismiss this action against the Rhode Island Defendants.
2. Pursuant to Fed. R. Civ. P. Rule 12(b)(3), this Court is not the proper venue to sue the Rhode Island Defendants and, therefore, this Court should dismiss this action against the Rhode Island Defendants.

3. Pursuant to the 11th Amendment of the United State Constitution, the State of Rhode Island and the Secretary of State of Rhode Island in his official capacity are immune from suit and, therefore, Plaintiffs' claim against the State of Rhode Island and the Secretary of State of Rhode Island in his official capacity should be dismissed.

3. A Memorandum of Law in support of this Motion to Dismiss is filed concurrently herewith.

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

5. Attached to this Notice of Motion, please find the Rhode Island Defendants' Memorandum of Law in Support of Motion to Dismiss.

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

- A. that the Rhode Island Defendants' Motion to Dismiss be granted;
- B. that this civil action be denied and dismissed, with prejudice;
- C. that a Final Judgment be entered in this civil action; and
- D. such other and further relief as the interests of justice may require.

Respectfully submitted,

DEFENDANTS

State of Rhode Island and
A. Ralph Mollis,
Secretary of State of Rhode Island

By their Attorney,

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CERTIFICATION

I hereby certify that I have filed the within Notice via the ECF filing system and caused a copy to be sent on this 13th day of December, 2007 to:

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I hereby certify that I mailed a true copy of the within Motion to Dismiss by first class mail, postage prepaid on this 13th day of December, 2007 to:

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