

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 07-CV-943
)	
STATE OF NEW YORK, et al.)	
)	
Defendants.)	

NOTICE OF MOTION TO DISMISS AND MOTION TO DISMISS BY THE VIRGINIA DEFENDANTS

State of Virginia, Jean Cunningham, Harold Pyon and Nancy Rodrigues, State Board of Elections, (hereinafter “Virginia Defendants”), by counsel and pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), 12(b)(3) and 12(b)(6), respectfully move this Court to dismiss the amended complaint against them on January 18, 2008, at 9:30 a.m., or as soon thereafter as counsel may be heard, because

1) Pursuant to Fed. R. Civ. P. 12(b)(1), this Court lacks subject matter jurisdiction because the 11th Amendment of the United States Constitution renders the Virginia defendants immune from suit, and plaintiffs lack standing against the Virginia defendants;

2) Pursuant to Fed. R. Civ. P. 12(b)(2), this Court lacks personal jurisdiction over the Virginia defendants;

3) Pursuant to Fed. R. Civ. P. 12(b)(3), this Court is not proper venue for the Virginia defendants; and

4) Pursuant to Fed. R. Civ. P. 12(b)(6), plaintiffs' amended complaint fails to state a claim upon which relief may be granted.

The Virginia Defendants respectfully request that the Court consider the grounds set forth in more detail in the accompanying Memorandum of Law in Support of the Virginia defendants' Motion to Dismiss filed herewith and dismiss the amended complaint.

Because the Virginia defendants seeks dismissal of this action against them, they are required to give notice to a *pro se* plaintiff. Accordingly, plaintiff, *pro se*, is hereby warned that you are entitled to file a response opposing this motion, and any such response must be filed and served on the Virginia defendants' counsel no later than seventeen (17) before the motion return date. These papers must include a memorandum of law containing relevant factual and legal argument. If you do not file a response, the Court could grant the Virginia defendants' motion to dismiss and dismiss your action without trial.

STATE OF VIRGINIA, JEAN
CUNNINGHAM, HAROLD PYON and
NANCY RODRIGUES, STATE BOARD
OF ELECTIONS

By: _____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby certify that I mailed the document by U.S. mail to the following non-filing user:

Robert L. Schulz, Plaintiff, *pro se*
2458 Ridge Road
Queensbury, New York 12804

By: _____/s/_____

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