

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ROBERT L. SHULZ, *et al.*,

*Plaintiffs,*

-against-

STATE OF NEW YORK, *et al.*,

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*Defendants.*

**NOTICE OF MOTION TO  
DISMISS KENTUCKY  
DEFENDANTS  
PURSUANT TO FED. R.  
CIV. P. 12(B)(2), 12(B)(3)  
and 12(B)(6)**

07-CV-0943

LEK/DRH

PLEASE TAKE NOTICE that upon the annexed affidavit of Trey Grayson, Kentucky Secretary of State and the accompanying memorandum of law; all prior filings with the Court; and upon all prior proceedings, Defendants State of Kentucky (a/k/a Commonwealth of Kentucky) and Trey Grayson, Kentucky Secretary of State (hereafter collectively referred to as “the Kentucky Defendants”), on January 18, 2008 at 9:30 a.m., or as soon thereafter as counsel can be heard, will make a motion as a submission before the Honorable Lawrence E. Kahn, at the United States District Court, Northern District of New York, Albany, New York for an order dismissing the amended complaint against them on the grounds that: (1) pursuant to Federal Rule of Civil Procedure (“FRCP”) 12(b)(2), this Court does not have personal jurisdiction over the Kentucky Defendants; (2) pursuant to FRCP 12(b)(3), this Court constitutes improper venue as to the Kentucky Defendants; (3) pursuant to FRCP 12(B)(6), Plaintiffs have failed to state a claim upon which relief may be granted against the Secretary of State because the Kentucky Secretary of State does not have the

statutory authority to approve voting machines in Kentucky; (4) pursuant to FRCP 12(B)(6), Plaintiffs have failed to state a claim upon which relief may be granted because the Kentucky Secretary of State does not have the statutory authority to require or otherwise approve voting districts in Kentucky to use or not use voting machines and because the Commonwealth of Kentucky is not a “person” that can be sued under 42 U.S.C. § 1983; the Kentucky Secretary of State is not appropriately named; and (5) pursuant to the Eleventh Amendment to the Constitution of the United States and common-law principles of sovereign immunity, the Commonwealth of Kentucky and its Secretary of State are immune from suit.

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 in Syracuse, New York and served upon counsel for the defendants no later than seventeen (17) days before the return date of the motion, exclusive of that day. (By court order entered December 11, 2007, the response deadline was extended to January 2, 2008). 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, all your claims against these defendants will be dismissed and there will not be any trial concerning any of the issues asserted in your complaint.

Dated: Frankfort, Kentucky

December 13, 2007

Respectfully submitted,

GREGORY D. STUMBO  
KENTUCKY ATTORNEY GENERAL

/s/ *D. Brent Irvin*

DAVID BRENT IRVIN

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*Counsel for Commonwealth of Kentucky  
and Secretary of State Trey Grayson*

**CERTIFICATE OF SERVICE  
C/A NO. 1:07-CV-0943 LEK/DRH**

I hereby certify that on December 13, 2007, the following documents: State of Kentucky and Secretary of State Trey Grayson's Notice of Motion to Dismiss, Memorandum of Law, and Affidavit were filed electronically with the Clerk of the Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to counsel for the other named defendants.

I further certify that a copy of the foregoing document was served upon the following by mailing a true and correct copy to the following non-ECF participant who has been designated by the Court as the "Lead Plaintiff's Representative":

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

With postage prepaid, in the United States mail at Frankfort, Kentucky this 13th day of December, 2007.

/s/ D. Brent Irvin  
DAVID BRENT IRVIN  
Assistant Attorney General