

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,

Plaintiffs,

vs.

Case No. 1:07-CV-0943

STATE OF NEW YORK, et al.,

Defendants.

**MOTION TO DISMISS BY DEFENDANTS
STATE OF WEST VIRGINIA AND BETTY IRELAND,
SECRETARY OF STATE AND CHIEF ELECTION OFFICIAL**

Now come the State of West Virginia and Betty Ireland, Secretary of State and Chief Election Official, in her individual and official capacity (the “West Virginia Defendants”), by their counsel, the Office of the Attorney general for the State of West Virginia, and hereby move the Court to dismiss the Plaintiffs’ Amended Complaint against the West Virginia Defendants; as grounds for said Motion, the West Virginia Defendants allege and say as follows:

1. That this Court lacks personal jurisdiction over the West Virginia Defendants pursuant to Federal Rule of Civil Procedure 12(b)(2), and accordingly the Court should dismiss this action as to the West Virginia Defendants.

2. This Court is not the proper venue within which to bring an action against the West Virginia Defendants, and accordingly this action should be dismissed against the West Virginia Defendants pursuant to Federal Rule of Civil Procedure 12(b)(3).

3. The West Virginia Defendants are further immune from suit pursuant to the Eleventh Amendment to the United States Constitution.

4. The West Virginia Defendants are not “persons” as described in 42 U.S.C. § 1983 and the Plaintiffs’ claim against the West Virginia Defendants under this section must be dismissed.

5. Attached hereto is the West Virginia Defendants Memorandum of Law in Support of the Motion to Dismiss.

WHEREFORE, the State of West Virginia and Betty Ireland, Secretary of State and Chief Election Official, in her individual and official capacity (the “West Virginia Defendants”) requests that the Court enter an order granting their Motion to Dismiss the Plaintiffs’ Amended Complaint and to grant unto said Defendants such other and further relief as the Court deems appropriate.

DATED: Charleston, West Virginia
_____ December 17, 2007

West Virginia Defendants

By Counsel

By: s/ *Christie S. Utt*

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