## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

ROBERT L SCHULZ, et al

Plaintiffs,

**DECLARATION OF** AAG BRUCE J. BOIVIN

-against-

07-CV-0943

STATE OF NEW YORK, et al.,

LEK/RFT

Defendants.

Bruce J. Boivin, an attorney admitted to practice in the State of New York, on the date noted below, pursuant to 28 U.S.C §1746, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

- 1. I am an Assistant Attorney General of counsel in this matter to Andrew M. Cuomo, Attorney General of the State of New York, attorney for defendant State of New York.
- 2. I make this declaration in support of the motion by defendant State of New York to dismiss the amended complaint on the ground that it is barred by the 11<sup>th</sup> Amendment.
- The other "New York" defendants [the NYS Board of Elections, and the Boards' 3. Commissioners, Neil Kelleher, Douglas Kellner, Evelyn Aquila and Helen Moses Doanhue, will be separately represented.

Case 1:07-cv-00943-LEK-DRH Document 189-2 Filed 12/17/2007 Page 2 of 2

4. The amended complaint is brought by in excess of 150 plaintiff, proceeding pro se,

against all 50 States and Commonwealths of the United States, and their respective chief election

officials.

5. In essence, the amended complaint seeks a permanent injunction directing that each

State and Commonwealth conduct the Presidential primary and general elections using paper ballots

which are publicly counted by hand.

The State of New York is not a proper party to this action as it is not a person within 6.

the meaning of 42 U.S.C §1983 and, in any event, is protected from suit by sovereign immunity

under the 11<sup>th</sup> Amendment.

7. As of the writing of this declaration, approximately 35 States and Commonwealths

have filed motions to dismiss, all of which raise the 11th Amendment immunity defense.

8. Rather than file a duplicative motion, the State of New York joins each of these

motion as to the 11<sup>th</sup> Amendment sovereign immunity defense and specifically joins the State of

Oregon's motion to dismiss (Dkt. No. 22) and adopts and incorporates by reference Point II of its

memorandum of law, as Oregon was the first State to so move.

9. Accordingly, the State of New York respectfully requests that it be dismissed from

this action in its entirety with prejudice.

Dated: Albany, New York December 17, 2007

Bruce J. Boivin

Bar Roll No. 507894

s/ Bruce A. Boivin

2