THOM D. ROBERTS (#2773) **Assistant Attorney General** MARK L. SHURTLEFF (#4666) Attorney General 160 East 300 South, 5th Floor P.O. Box 140857 Salt Lake City, Utah 84114-0857 Telephone: (801) 366-0353 Attorney For Utah Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,

Plaintiffs.

VS.

STATE OF NEW YORK, et al.,

Defendants,

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COMPLAINT BY STATE OF UTAH AND UTAH LIEUTENANT GOVERNOR **GARY R. HERBERT**

> Civil No. 07-CV-0943 LEK/DRH

Defendants State of Utah and Gary R. Herbert, Utah Lieutenant Governor and chief election officer (Utah Defendants), by and through their attorney of record, Thom D. Roberts, Assistant Utah Attorney General, and in support of their Motion for Summary Judgment, hereby submit the following Memorandum of Law:

Since this action by these Plaintiffs is brought against each of the 50 states and their election officers, and since the state are raising the same and similar issues with their Motions to Dismiss, and in order to limit the amount of paperwork, the Court has allowed the Defendants to adopt and incorporate by reference the Motions to Dismiss and Memoranda of Law in Support thereof of the sister states. Utah Defendants hereby incorporate those Motions and

Memorandums in support of their Motion to Dismiss, specifically including the Memorandum of Law filed by the New Hampshire Defendants, California Defendants and the Michigan Defendants.

Based upon the Motions and Memorandums on file, Utah Defendants request that the Court dismiss this matter as to Utah Defendants, on the bases that there is no personal jurisdiction over these Defendants, there is no subject matter jurisdiction over these claims, that the Eleventh Amendment bars this action, there is not a justiciable controversy amongst the parties, and that it does not state a claim upon which relief can be granted.

DATED this 17th day of December, 2007.

MARK L. SHURTLEFF Attorney General

/s/ Thom D. Roberts THOM D. ROBERTS Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2007, a true and correct copy of the above and foregoing was filed electronically with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to the following any counsel of record as follows:

AAG Bruce J. Boivin Office of the Attorney General Litigation Bureau The Capitol Albany, NY 12224 bruce.boivin@oag.state.ny.us

I further certify that on December 17, 2007 I mailed the foregoing, by first class mail to the non-CM/ECF participant:

Robert L. Schulz 2458 Ridge Road Queensbury, NY 12804

/s/ Sherri L. Cornell
