

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

