

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT SCHULZ, *et al*,
Plaintiffs

v.

STATE OF NEW YORK, *et al*,
Defendants

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CASE NO: 1:07-CV-0943 LEK/DRH

Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1),(2), (3) and (6)

Defendants the State of Hawai'i and Rex M. Quidilla, acting Chief Election Officer for the State of Hawai'i (collectively, the "Hawai'i Defendants"), by and through their counsel, the Department of the Attorney General for the State of Hawai'i, hereby move this Court to dismiss Plaintiffs' amended complaint against them on Friday, January 18, 2008 at 9:30 a.m., or as soon thereafter as is convenient for this Court.

Plaintiffs' amended complaint against the Hawai'i Defendants must be dismissed because:

1. Pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1), and the State of Hawai'i's sovereign immunity, this Court does not have subject matter jurisdiction over the State of Hawai'i.
2. Pursuant to FRCP 12(b)(2), this Court does not have personal jurisdiction over the Hawai'i Defendants.
3. Pursuant to FRCP 12(b)(3), this Court is not the proper venue in which to sue the Hawai'i Defendants.

4. Pursuant FRCP 12(b)(6), and under the 11th Amendment of the United States constitution, the State of Hawai'i is immune from suit, and therefore, Plaintiffs' claim against the State of Hawai'i must be dismissed as the court lacks subject matter jurisdiction and the amended complaint fails to state a claim upon which relief can be granted.

4. A memorandum of law in support of this motion is filed concurrently herewith.

5. This is a dispositive motion. Therefore, there is no requirement that concurrence be sought.

6. Attached to this Motion, please find the Hawai'i Defendants' memorandum of Law in Support of Motion to Dismiss.

WHEREFORE, it is respectfully requested that this Court order as follows:

- A. Grant the Hawai'i Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1),(2), (3) and (6); and
- B. For such other and further relief as is necessary.

Respectfully submitted,

HAWAI'I DEFENDANTS

By their attorneys,

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State of Hawai'i

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Admitted *Pro Hac Vice*

December 17, 2007