

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULTZ, et al.,)
)
 Plaintiffs,)
)
v.) No. 07 cv-0943
)
THE STATE OF NEW YORK, et a.,)
)
 Defendants.)

TENNESSEE DEFENDANTS’ NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that on January 18, 2008, at 9:30 a.m., or as soon thereafter as is convenient for the Court, the undersigned attorney shall move and does hereby move the United States District Court of the Northern District of New York to dismiss the above-reference complaint with respect to the State of Tennessee and Tennessee’s Secretary of State Riley Darnell (hereinafter collectively referred to as the “Tennessee Defendants”), on the grounds that: (1) this Court lacks jurisdiction over their persons; (2) plaintiffs’ claims against the Tennessee Defendants are barred by the Eleventh Amendment to the United States Constitution; and (3) venue is not proper in the Northern District of New York.

PLEASE TAKE FURTHER NOTICE that in further support of this Motion, the Tennessee Defendants shall rely on the Notice of Motion, Tennessee Defendants’ Affidavit to Join Motions to Dismiss, Motions to Dismiss and Memoranda of Law filed by the States of Texas, Oregon and Michigan, as well as the certificate of service submitted herein.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 7.1(c) of the Local Rules of Practice of the United States District Court for the Northern District of New York, any papers to be submitted in opposition to the Tennessee Defendants' Motion must be filed with the Clerk in Albany, New York and served upon counsel for the Tennessee Defendants no later than seventeen (17) days before the return date of the Motion, exclusive of that day. These papers must include, at a minimum, a memorandum of law containing relevants and legal arguments.

PLEASE BE FURTHER ADVISED that if you do not respond in opposition to the Motion to Dismiss, the Motion to Dismiss, if appropriate, will be granted and judgment will be entered against you. If the Motion is granted, your case will be dismissed and there will not be any trial concerning any of the issues asserted in your complaint.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter

/s/ Janet M. Kleinfelter
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