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COUNSEL FOR DEFENDANTS STATE OF MONTANA  
AND MONTANA SECRETARY OF STATE BRAD JOHNSON

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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ROBERT L. SCHULZ, et al.,	)	Cause No. 07 CV-0943
	)	
	)	
Plaintiffs	)	<b>MONTANA DEFENDANTS'</b>
- against -	)	<b>MOTION AND NOTICE OF</b>
	)	<b>MOTION TO DISMISS</b>
STATE OF NEW YORK, et al.,	)	<b>PLAINTIFFS' AMENDED</b>
	)	<b>COMPLAINT</b>
Defendants.	)	

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PLEASE TAKE NOTICE that pursuant to the Court's December 12, 2007 scheduling order, on January 18, 2008 at 9:30 a.m., Defendants the State of Montana and Brad Johnson, Montana Secretary of State ("Montana Defendants"), shall, and hereby do, move this Court to dismiss the Plaintiffs' amended complaint against the Montana Defendants on pursuant to Fed. R. Civ. P. 12(b) on the following grounds:

1. Pursuant to Rule 12(b)(1), this Court does not have subject matter jurisdiction because Plaintiffs lack standing.

2. Pursuant to Rule 12(b)(2), this Court does not have personal jurisdiction over the Montana Defendants.

3. Pursuant to Rule 12(b)(3), this Court is not the proper venue to sue the Montana Defendants.

4. The Montana Secretary of State does not have the statutory authority to control what, if any, type of voting machine is used in local, state and federal elections held in Montana. Therefore, pursuant to FRCP 12(b)(6), Plaintiffs have failed to state a claim upon which relief may be granted and this action must be dismissed.

5. The State of Montana is immune from suit under the 11th Amendment of the United States Constitution.

A memorandum of law in support of this motion is attached. This is a dispositive motion, so there is no requirement that concurrence be sought.

PLEASE BE FURTHER ADVISED that if you do not respond in opposition to the motion, the motion to dismiss, if appropriate, will be granted, judgment will be entered against you, your case will be dismissed, and there will not be a trial on your claims.

Respectfully submitted this 17th day of December, 2007.

MIKE McGRATH  
Montana Attorney General  
215 North Sanders  
P.O. Box 201401  
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By:           /s/ Anthony Johnstone            
ANTHONY JOHNSTONE  
Assistant Attorney General  
Counsel for Defendants  
State of Montana and  
Montana Secretary of State Brad Johnson

**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 2007, an accurate copy of the foregoing Notice of Montana Defendants' Motion to Dismiss Plaintiffs' Amended Complaint was filed electronically with the Clerk of Court through ECF, and the ECF will send a Notice of Electronic Filing (NEF) on Defendants.

I further certify that a copy of the foregoing document was served upon the following by mailing a true and correct copy thereof to the following non-ECF participant:

Mr. Robert L. Schulz  
2458 Ridge Road  
Queensbury, NY 12804

with postage prepaid in the United States mail at Helena, Montana this 17th day of December, 2007.

*/s/ Anthony Johnstone*

Anthony Johnstone  
Assistant Attorney General  
Counsel for Defendants State of Montana and  
Montana Secretary of State Brad Johnson