

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT L. SCHULTZ (New York),
et. al.,

Plaintiffs,

v.

NO. 07-CV-0943 LEK/DRH

STATE OF NEW YORK, et. al.,

Defendants.

**MEMORANDUM IN SUPPORT OF STATE OF FLORIDA'S
AND KURT BROWNING'S MOTION TO DISMISS**

I. INTRODUCTION

Plaintiffs' Amended Complaint attempts to assert claims against all fifty states and their election officials. This is not the first attempt to challenge the election procedures of every state in a single action in a single United States District Court. *See, e.g., Springer v. Balough*, 96 F. Supp. 2d 1250, 1255-56 (N.D. Okla. 2000), *aff'd*, 232 F.3d 902 (10th Cir. 2000) (dismissing, for lack of personal jurisdiction, attempt by aspiring presidential candidate to sue every state's election officials in a single action). It does not work. Personal jurisdiction may not be asserted against every state or its election official in any single federal district, and similarly venue will not be proper as to all defendants in any single district. Additionally, the Eleventh Amendment bars claims against the states themselves, and a plaintiff must possess standing in order to successfully assert a claim.

II. ARGUMENT AND JOINDER IN ARGUMENTS OF OTHER STATES

The State of Florida and Kurt Browning (The Florida Defendants) add their voices to those numerous other states and state election officials, and seek an order dismissing this case upon the same grounds already asserted by other states. It is, however, unnecessary to add any additional arguments or authority to those already offered by other states. The Florida Defendants accordingly join the arguments of other states as follows:

A. This Court Lacks Personal Jurisdiction Over The Florida Defendants

Due process prevents the exercise of personal jurisdiction over any non-resident defendant unless “there exist ‘minimum contacts’ between the defendant and the forum State.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 599, 62 L. Ed. 2d 490 (1980). This basic constitutional requirement applies even when a plaintiff challenges state election procedures based on what that plaintiff perceives as a federal claim of allegedly national significance. *Springer*, 96 F. Supp. 2d at 1256 (rejecting claim of jurisdiction over election law claim that the plaintiff characterized as “federal in nature”). Plaintiffs allege no conduct by the Florida Defendants in New York.

The Florida Defendants need not duplicate arguments already offered by other states. With regard to personal jurisdiction, Florida joins and incorporates by reference the arguments of other states as follows: Memorandum in Support of Defendant State of Kansas and Kansas Secretary of State Ron Thornburgh’s Motion to Dismiss at 5-6; Oregon Defendants’ Memorandum in Support of Motion to Dismiss at 2-7; Memorandum in Support of Defendants

State of Minnesota and Mark Ritchie, Secretary of State's Motion to Dismiss at 4-6; State of North Dakota's Memorandum in Support of Motion to Dismiss at 2-8; State of South Carolina's Memorandum in Support of Motion to Dismiss at 3-6; Texas Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint at 2-7; and Memorandum of Law in Support of Vermont Defendants' Motion to Dismiss at 2-5.

B. The Eleventh Amendment Bars Claims Against The State Of Florida

The Eleventh Amendment to the United States Constitution bars actions against states in federal court, absent that state's consent. *See Pennhurst State Sch. & Hosp. V. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). Florida has not consented to waiver of its Eleventh Amendment immunity. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996).

Again, to avoid duplication of argument, Florida Defendants join and incorporate by reference the arguments of other states regarding the Eleventh Amendment as follows: Memorandum in Support of Defendant State of Kansas and Kansas Secretary of State Ron Thornburgh's Motion to Dismiss at 2-3; Oregon Defendants' Memorandum in Support of Motion to Dismiss at 7; Memorandum in Support of Defendants State of Minnesota and Mark Ritchie, Secretary of State's Motion to Dismiss at 3; State of South Carolina's Memorandum in Support of Motion to Dismiss at 6; and Memorandum of Law in Support of Vermont Defendants' Motion to Dismiss at 5.

C. Venue Is Not Proper In This District

Not only must a court possess jurisdiction in order to entertain a case, but the federal district must be an appropriate venue as well. The Northern District of New York is not an appropriate venue for the claims Plaintiffs seek to assert against the Florida Defendants, for the reasons expressed by the following states, which the Florida Defendants hereby join and incorporate by reference: Memorandum in Support of Defendants State of Minnesota and Mark Ritchie, Secretary of State's Motion to Dismiss at 6-7; and State of North Dakota's Memorandum in Support of Motion to Dismiss at 8-9.

D. Plaintiffs Lack Standing

In order to assert a claim, the plaintiff must possess standing. That is, the plaintiff must present an actual injury resulting from the conduct of the defendant. *Hein v. Freedom From Religion Found. Inc.*, 551 U.S. ___, 127 S. Ct. 2553, 2562, 168 L. Ed. 2d 424 (2007). The Florida Defendants join, and adopt by reference, the arguments of the Minnesota Defendants regarding standing. Memorandum in Support of Defendants State of Minnesota and Mark Ritchie, Secretary of State's Motion to Dismiss at 7-8.

III. CONCLUSION

For all of these reasons, including reasons offered by other states with which the Florida Defendants join and incorporate by reference, this action should be dismissed as to the Florida Defendants.

Dated this 17th day of December, 2007.

Respectfully submitted,

BILL MCCOLLUM
Attorney General

s/ Paul J. Martin
PAUL J. MARTIN
Senior Assistant Attorney General
Fla. Bar No. 211427
Northern District of NY No. 106503
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Tel.: (850) 414-3300
Fax: (850) 488-4872
Admitted *pro hac vice*
Counsel for Defendants State of Florida
and Kurt Browning