

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

COMMON CAUSE INDIANA,

Plaintiff,

v.

**INDIANA SECRETARY OF STATE, in her
official capacity,**

Defendant.

Case No. 1:12-cv-1603-RLY-DML

**DEFENDANT INDIANA SECRETARY OF STATE’S MOTION TO DISMISS
PURSUANT TO RULES 12(b)(1) and 12(b)(6)**

Defendant, Indiana Secretary of State in her official capacity¹ (“Secretary”), by counsel, Gregory F. Zoeller, Indiana Attorney General, by Dino L. Pollock and Kenneth L. Joel, Deputy Attorneys General, respectfully moves this Court, to dismiss the Plaintiff’s Complaint (“Complaint”) against the Secretary pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In support of this Motion, the Secretary states the following:

1. Plaintiff filed its Complaint on November 1, 2012. *Dkt. 1*
2. On November 14, 2012, the Secretary filed a Notice of Automatic Enlargement of Time pursuant to L.R. 6-1(b), and with consent of Plaintiff, the Secretary’s responsive pleading is due on or before December 20, 2012. *Dkt. 7*
3. Plaintiff’s Complaint does not present a claim for relief that is plausible on its face because Plaintiff lacks Article III and prudential standing; therefore its Complaint must be dismissed.
4. Furthermore, Plaintiff’s Complaint is barred by the Eleventh Amendment to the United States Constitution.

¹ The Indiana Secretary of State is the Honorable Connie Lawson.

5. Lastly, Plaintiff's Complaint fails to state a claim upon which relief may be granted as this case is controlled by the Supreme Court's decision in *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008).
6. Therefore the Court should dismiss Plaintiff's Complaint with prejudice.
7. Plaintiff's Complaint cannot establish that this Court has subject matter jurisdiction and it is irrefutably and fatally flawed and cannot be cured through amendment, as the Complaint fails to state a claim for relief that is plausible on its face, and the Secretary is entitled to dismissal as a matter of law.
8. The Secretary has contemporaneously filed her Memorandum of Law in support of this Motion to Dismiss and incorporates that Memorandum as if fully set forth.

WHEREFORE, the Secretary respectfully requests that the Court grant her Motion to Dismiss, dismiss the Complaint with prejudice, and grant all other appropriate relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Atty. No. 1958-98

Date: December 20, 2012

By: /s/ Dino L. Pollock
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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2012, a copy of the foregoing *Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6)* was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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