

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CARL E. PERSON,

Plaintiff,

-against-

STATE OF NEW YORK, GOVERNOR GEORGE E.
PATAKI, ATTORNEY GENERAL ELIOT SPITZER,
NEW YORK STATE RACING AND WAGERING:
BOARD, NEW YORK LOTTERY, CITY OF NEW:
YORK, MAYOR MICHAEL R. BLOOMBERG, NEW:
YORK CITY REGIONAL OFF-TRACK BETTING:
CORPORATION, and BUSINESS INTEGRITY:
COMMISSION,

Defendants.
-----X

Index No.: 112563/2005

**NOTICE OF MOTION
TO DISMISS THE
COMPLAINT AS
AGAINST THE
STATE DEFENDANTS**

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Lewis A. Polishook, dated December 14, 2005, the exhibit thereto, the accompanying Memorandum of Law, and upon all prior papers and proceedings had herein, defendants State of New York, George E. Pataki, sued herein in his official capacity as Governor of the State of New York, Eliot Spitzer, sued herein in his official capacity as Attorney General of the State of New York, the New York State Racing and Wagering Board, and the New York State Division of the Lottery (collectively, the “State Defendants”), will move this Court, before the Motion Support Part, Room 130, at the Courthouse located at 60 Centre Street, New York, New York, on the 8th day of February, 2006, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order: (i) pursuant to CPLR 3211(a)(7), dismissing plaintiff’s complaint in its entirety as against the State Defendants, because none of plaintiff’s allegations state a cause of action under the United States or New York Constitutions or applicable New York State statutes; (ii) pursuant to CPLR 3211(a)(2), dismissing plaintiff’s claims as against the State Defendants to the extent they allege selective enforcement of the New York

State Constitution or New York State statutes, because plaintiff lacks standing to assert such claims;
and (iii) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), any papers in
opposition to the instant motion shall be served on or before February 1, 2006.

Dated: New York, New York
December 14, 2005

Respectfully submitted,

ELIOT SPITZER
Attorney General of the
State of New York
Defendant Pro Se and Attorney for Defendants State
of New York, Governor Pataki, New York State
Racing and Wagering Board, and
New York State Division of the Lottery
By:

LEWIS A. POLISHOOK
Assistant Attorney General
120 Broadway, 24th Floor
New York, New York 10271
(212) 416-8372

TO: CARL E. PERSON, ESQ.
Plaintiff Pro Se
325 West 43rd Street - Suite 201
New York, New York 10036-3803
(212) 307-4444

Nicholas Ciappetta Esq.
OFFICE OF CORPORATION COUNSEL
NEW YORK CITY LAW DEPARTMENT
Attorney for Defendants Bloomberg,
New York City Regional Off-Track Betting Corp.,
and Business Integrity Commission
100 Church Street
New York, New York 10007
(212) 788-0708