

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

ROBERT J. FITRAKIS,	:	
Plaintiff,	:	
	:	
v.	:	Case No:12cv13888
	:	
JON HUSTED, et al.,	:	Judge: Judge Mark A. Serrott
Defendants.	:	

**DEFENDANT ELECTION SYSTEMS & SOFTWARE, INC.’S
REPLY MEMORANDUM SUPPORTING MOTION TO DISMISS
PLAINTIFF’S COMPLAINT FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF MAY BE GRANTED**

Plaintiff Robert J. Fittrakis filed his Complaint in this Court on November 5, 2012 – the same day he filed the identical lawsuit in Federal Court. Defendant Election Systems & Software, Inc. (“ES&S”) eventually persuaded Plaintiff to dismiss the duplicative Federal Court lawsuit entirely, and to dismiss his first claim for relief in this case. But Plaintiff refused to dismiss ES&S from the lawsuit entirely, despite the fact that his only remaining claim for relief is not addressed against ES&S.

In the absence of Plaintiff’s cooperation, on November 27, 2012, ES&S filed its Motion to Dismiss ES&S from the remainder of Plaintiff’s lawsuit.

On December 12, 2012, Plaintiff filed his Memorandum Contra Defendant ES&S’ Motion to Dismiss. But Plaintiff’s Memorandum does not rebut any of ES&S’ arguments, and does not identify any claims pending against ES&S. Instead, Plaintiff’s Memorandum confirms that the “mandamus claim [i.e., the only pending claim] relates **only to the state defendant.**” [Memorandum Contra at 1 (emphasis added)]. In other words, everyone agrees Plaintiff has no claims against ES&S.

Plaintiff has not demonstrated that his Complaint states any claim for relief against ES&S, has not amended his Complaint to address any claims against ES&S, and has not explained why any delay to amend his Complaint would result in a viable claim against ES&S. Plaintiff has failed his burden to withstand dismissal. The Court should dismiss Plaintiff's Complaint in its entirety as against ES&S. ES&S will provide the Court a proposed Order, for the Court's convenience.

Respectfully submitted,

s/ Steven D. Forry _____
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*Counsel for Defendant Election Systems &
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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2012, I electronically filed the foregoing with the Court via the Court's electronic filing system, which will provide notice to all counsel of record.

s/ Steven D. Forry _____
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