

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ROBERT J. FITRAKIS,

Plaintiff,

v.

JON HUSTED
In his official capacity as
Ohio Secretary of State,

Case No. 12CV01 3888

Judge Serrott

and

ELECTION SYSTEMS & SOFTWARE, INC.,

Defendants.

PLAINTIFF FITRAKIS' MEMORANDUM CONTRA DEFENDANT ES&S MOTION TO DISMISS

ES&S' motion to dismiss as to the present form of Plaintiff's state complaint is moot, by reason of the Plaintiff's dismissal the federal claim set forth therein. The mandamus claim relates only to the state defendant.

ES&S' motion to dismiss is premature as to the broader state election law claim discussed at the hearing of this matter on Plaintiff's motion for a temporary restraining order.

Plaintiff is preparing an amended complaint and intends to file it within the time allowed for responding to the Ohio Secretary of State's motion to dismiss.

Wherefore, ES&S' motion to dismiss should be denied.

Respectfully submitted,

/s/ Clifford O. Arnebeck, Jr.

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Certificate of Service

This is to certify that a copy of the foregoing was delivered to counsel for defendants through the court's electronic filing system this 11th day of December 2012.

/s/ Clifford O. Arnebeck, Jr.

Clifford O. Arnebeck, Jr.