

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
SUPPLEMENTAL REPLY MEMORANDUM
SUPPORTING MOTION TO DISMISS
PLAINTIFF’S COMPLAINT FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF MAY BE GRANTED**

It has been nearly two months since Defendant Election Systems & Software, Inc. (“ES&S”) filed its Motion to Dismiss (“ES&S Motion”), but Plaintiff still has not responded. There are no pending claims against ES&S. ES&S should be dismissed from this lawsuit.

Plaintiff Robert J. Fitrakis (“Plaintiff”) filed this lawsuit against two defendants: ES&S and the Ohio Secretary of State (“SOS”). However, on November 20, 2012, Plaintiff voluntarily dismissed all claims against ES&S. Nonetheless, Plaintiff has refused to dismiss ES&S from the lawsuit altogether.

On November 27, 2012, ES&S filed the ES&S Motion. Plaintiff did not oppose the Motion. Instead, on December 11, 2012, Plaintiff asked the Court for an extension of time to respond to the ES&S Motion, until December 18, 2012 (Plaintiff’s deadline to oppose the separate Motion to Dismiss filed by the SOS (“SOS Motion”)).

Plaintiff did not respond to the ES&S Motion *or* the SOS Motion on December 18, 2012. Instead, Plaintiff sought another extension of time (until January 2, 2013) to respond to the SOS Motion – no mention of the outstanding ES&S Motion.

Plaintiff did not respond to the ES&S Motion or the SOS Motion on January 2, 2013, either. Instead, Plaintiff sought yet another extension of time (until January 17, 2013) to respond to the SOS Motion – again, no mention of the ES&S Motion.

On January 17, 2013, Plaintiff finally responded to the SOS Motion (“Plaintiff Opposition”). The Plaintiff Opposition did not address any claims against ES&S and did not respond to any arguments set forth in the ES&S Motion.

Plaintiff’s operative pleading does not contain any claim against ES&S. For these reasons and those set forth in the ES&S Motion, ES&S respectfully requests the Court dismiss ES&S from the lawsuit.

Respectfully submitted,

s/ Steven D. Forry
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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2013, 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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