

## No-Bid Contract for Election Software

*Fitrakis v. Husted (Gregory L. Frost, S.D. Ohio 2:12-cv-1015)*

Late on the Saturday before the 2012 general election, because of long lines during early voting, a party filed a complaint seeking relief from anticipated long lines on election day at the polls in three counties. The assigned judge was out of the district when the case was filed, so another judge, selected at random, handled the emergency motion. In response to the lawsuit, the counties created additional opportunities for in-person absentee voting.

*Subject:* Voting procedures. *Topics:* Absentee ballots; early voting; case assignment.

A voter filed a federal complaint<sup>1</sup> and a motion for a temporary restraining order<sup>2</sup> in the Southern District of Ohio on the day before the 2012 general election, complaining that Ohio's secretary of state had entered into contracts for voting software and equipment on September 18 without opening them up to public bidding.

Judge Gregory L. Frost held a telephonic conference at 2:30 p.m. on the day that the case was filed<sup>3</sup> and set the matter for hearing at 9:00 a.m. on election day.<sup>4</sup> One expert testified at the hearing by telephone.<sup>5</sup> After the hearing, Judge Frost denied the plaintiff immediate relief.<sup>6</sup> Ohio's evidence was that the purpose of the software was not the tabulation of votes but the reporting of tabulations by the counties to the secretary's office.<sup>7</sup> Judge Frost found the plaintiff's concerns too speculative for immediate relief.<sup>8</sup>

The plaintiff dismissed the case voluntarily on November 20.<sup>9</sup>

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1. Complaint, *Fitrakis v. Husted*, No. 2:12-cv-1015 (S.D. Ohio Nov. 5, 2012), D.E. 2.

2. Temporary-Restraining-Order Motion, *id.* (Nov. 5, 2012), D.E. 3.

3. Notice, *id.* (Nov. 5, 2012), D.E. 6.

4. Notice, *id.* (Nov. 6, 2012), D.E. 8; *see Minutes, id.* (Nov. 6, 2012), D.E. 12.

5. Opinion at 3, *id.* (Nov. 6, 2012), D.E. 13, 2012 WL 5411381.

6. *Id.* at 1, 10; *see Mary Beth Lane, Voter Finds Maiden Name in Poll Book*, Columbus Dispatch, Nov. 8, 2012, at 8A.

7. Opinion, *supra* note 5, at 4–6.

8. *Id.* at 7.

9. Notice, *Fitrakis*, No. 2:12-cv-1015 (S.D. Ohio Nov. 20, 2012), D.E. 14.