

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

THE BUCKEYE INSTITUTE, ET AL.,	:	
	:	CASE NO. 20CV-4301
PLAINTIFFS,	:	
	:	
V.	:	JUDGE WILLIAM WOODS
	:	
MEGAN KILGORE, ET AL.,	:	
	:	
DEFENDANTS.	:	

**MOTION TO STRIKE PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT
KILGORE'S MOTION TO DISMISS**

Now comes Defendant Megan Kilgore, in her official capacity as Columbus City Auditor, and moves to strike, pursuant to Civ.R. 12(F) Plaintiffs' Brief in Opposition to Defendant Kilgore's Motion to Dismiss for being out of time. The grounds supporting this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On July 2, 2020, Plaintiffs filed a Complaint against Defendant Megan Kilgore, in her official capacity as Columbus City Auditor (“Megan Kilgore”) and Defendant Dave Yost, in his official capacity as Ohio Attorney General. Plaintiffs failed to properly serve Defendant Megan Kilgore and, instead served Franklin County Auditor, Michael Stinziano. On August 5, 2020, counsel for Megan Kilgore made initial contact with Plaintiffs’ counsel, advised them of the error, and waived and accepted service of the Complaint.

On August 25, 2020 at 1:54 p.m., Defendant Megan Kilgore, timely filed a Motion to Dismiss the Complaint for Failure to State a Claim Under Civil Rule 12(B)(6) (“Motion to Dismiss”). On September 9, 2020 at 7:04 p.m., Plaintiffs filed their Brief in Opposition to Kilgore’s Motion to Dismiss (“Brief in Opposition”) in an untimely manner. On September 10, 2020 at 8:15 a.m., counsel for Defendant Megan Kilgore received e-mail notification from the Franklin County Clerk of Courts that Plaintiffs had filed their response the day before, September 9, 2020 at 7:04 p.m.

Under Civ.R. 6(C)(1) and barring any enlargement of time granted by this Court, Plaintiffs’ response was due within fourteen (14) days of Defendant Megan Kilgore’s Motion to Dismiss. Civ. R. 6(C)(1) clearly states that, “[r]esponses to a written motion, other than motions for summary judgment, may be served **within fourteen days** after service of the motion.” (Emphasis added.) Here, the Motion to Dismiss was filed and served on August 25, 2020 which means, any response thereto would have been due on or before September 8, 2020. Plaintiffs’ response is untimely, as it was filed the next day on September 9, 2020.

Despite open lines of communication between undersigned counsel and counsel for Plaintiffs, Plaintiffs’ counsel failed to contact counsel for Megan Kilgore to either request an

extension or to advise counsel that a late response to the Motion to Dismiss was forthcoming. Further, Plaintiffs did not email a courtesy copy of their reply when it was submitted for filing after business hours on September 9, 2020.

As a result of Plaintiffs' late filing, lack of communication with opposing counsel regarding the late filing, and a complete failure to comply with the Ohio Rules of Civil Procedure, Megan Kilgore is prejudiced in her pursuit of a fair and just outcome. Disregard for the rules in any case should not be overlooked – but particularly so in a case of this magnitude.

Therefore, because Plaintiffs filed their Brief in Opposition outside of time and without seeking permission from this Court to do so, Defendant Megan Kilgore, respectfully requests this Court, pursuant to Civ.R. 6(C)(1) and Civ.R. 12(F) to strike Plaintiffs' Brief in Opposition to Defendant Kilgore's Motion to Dismiss.

Respectfully submitted,

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*Counsel for Defendant Megan Kilgore, in
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Auditor*

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing MOTION TO STRIKE PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT KILGORE'S MOTION TO DISMISS was served by way of the Clerk's electronic filing system to those registered on September 16, 2020:

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Respectfully submitted,

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