

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TRACIE HUNTER, et al.,	:	Case No. 1:10-cv-820
	:	
Plaintiffs,	:	
	:	Chief Judge Susan J. Dlott
vs.	:	
	:	
HAMILTON COUNTY BOARD OF ELECTIONS, et al.	:	<u>PLAINTIFFS HUNTER, NEOCH AND</u>
	:	<u>OHIO DEMOCRATIC PARTY’S</u>
	:	<u>LIST OF BALLOTS THAT SHOULD</u>
Defendants.	:	<u>BE COUNTED OR SUBJECT TO</u>
	:	<u>PROCEDURAL DUE PROCESS</u>
	:	<u>RELIEF</u>

On the last day of the trial, the Court asked Plaintiffs to file a document that categorizes ballot envelopes in groups that correlate with Plaintiffs’ arguments in favor of counting those ballots. Plaintiffs’ categories are based on the objective criteria for determining poll worker error established to date through these proceedings. Each category will be fully explained in Plaintiffs’ Post-Trial Proposed Findings of Fact and Conclusions of Law and Post-Trial Trial Brief. All ballots are summarized in the attached Tables A through K.

Table A contains 690 provisional ballot envelope numbers. Plaintiffs contend that all of these ballots should be counted. This master spreadsheet contains separate columns that indicate the type of poll worker error established with respect to each ballot, the testimony associated with the ballot, and whether the ballot is also a NEOCH ballot. Table A includes the nine ballots¹ contained in PX 2006 (nine NEOCH incomplete affirmation ballot envelopes), one ballot² in PX 2002 (NEOCH ballot rejected by Board 7-12-11), the nine ballots³ the Board of Election members voted to count as being in the correct precinct (indicated in “right location”

¹ Provisional ballot numbers 10262, 10311, 10267, 10378, 10379, 10375, 10352, 10377, 10261.
² Provisional ballot number 10308.
³ Provisional ballot numbers 2204, 9395, 9771, 9823, 9935, 9940, 10175, 10035 and 10036. See JX 27 p. 44, 60-68, 52-59.

column as “YES BOE-c”), the seven ballots⁴ the Board of Election members voted to count as being miscast in the wrong precinct due to poll worker error (indicated in the “right location” column as “YES BOE”), the two ballots⁵ the Board voted to count at the July 12, 2011 board meeting (indicated in the “right location” column as “YES BOE 7-12-11”). Table A *excludes* 18 provisional ballot envelopes⁶ Plaintiffs concede have fatal flaws, i.e., are not qualified to be counted for reasons unrelated to why they were cast in the wrong precincts, such as voter lived outside of Hamilton County. Table A also *excludes* 155 provisional ballot envelopes⁷ where Plaintiffs did not present particularized evidence of poll worker error.

Tables B through J contain the ballot envelope number and Joint Exhibit 12 page number for each ballot envelope that falls into each category identified in Table A. Except for 19 ballots discussed below, every ballot listed on Table A is also listed on one or more of the tables attached as B through J. More than one type of poll worker error has been established for 398 ballots, so those ballots will be listed on more than one of the tables attached as B through J.

Tables B through J are summarized as follows:

- 295 Provisional ballots cast in the right location (Table B)
- 183 Provisional ballots cast in the wrong precinct due to poll worker error in determining the correct precinct by making a mistake with regard to whether the voter’s current address was on the even or odd side of the street (Table C)
 - 90 odd/even mistakes for ballots cast at the correct location
 - 93 odd even mistakes for ballots cast at the wrong location

⁴ Provisional ballot numbers 9398, 9399, 9580, 9738, 9764, 9769, and 10154. See JX 27 p. 70-73.

⁵ Provisional ballot numbers 10548 and 10549.

⁶ The 18 ballots Plaintiffs concede should not be counted are: 9552, 9568, 9570, 9571, 9572, 9573, 9574, 9575, 9576, 9683, 9702, 9828, 10003, 10179, 10204, 10218, 10500, and 10506

⁷ See Table K for a list of the 155 ballot envelope numbers.

- 141 Provisional ballots cast in the wrong precinct due to poll worker error in determining which precinct the voter's current street passed through (Table D)
 - 64 pass through street mistakes for ballots cast at the correct location
 - 77 pass through street mistakes for ballots cast at the wrong location
- 183 Provisional ballots cast in the voter's old precinct (Table E)
- 145 Provisional ballots where the Provisional Judge did not look up the voter's address to determine if he/she was voting in the correct precinct (Table F)
- 66 Provisional ballot envelopes were not signed by Provisional Judges (Table G)
- 206 Provisional voters were not warned by the Provisional Judges that they were voting in the wrong precinct, or if they voted in the wrong precinct that their vote would not be counted by the Board (Table H)
- 261 Provisional ballots where particularized testimony of poll worker error was elicited from poll workers at the Board of Election hearings or at trial and/or from voters at trial (Table I)
- 26 Provisional ballots that were rejected in violation of the NEOCH Consent Decree (Table J)
 - 16 right location
 - 10 incomplete printed name or signature on affirmation

Ballots That Do Not Fit a Category

Table A contains 19 ballots that should be counted that do not fit into any of the categories discussed above because they have been conceded for counting by Defendants. The Board members voted to count 18 Provisional Ballot envelopes (16 on December 28, 2011 and 2 on July 12, 2011). The Board of Elections conceded that Provisional ballot envelope No. 9635

(voter lived at 310 Oak Street in Cincinnati) was voted in the correct precinct. TR 12-78. The Board members should be ordered to open the provisional envelopes and count these 19 ballots.

Table K is a list of 154 ballot envelopes that do not fall into any of the categories delineated above. These ballots are not on Table A because Plaintiffs do not request an order to count these ballots. Plaintiffs do seek an order requiring the Board members to provide these voters with notice and opportunity to be heard as to why their ballot should be counted before the Board members vote to count or reject these ballots.

On July 12, 2011, the Board members reviewed three provisional ballot envelopes that had been found in May. The Board members voted to count 2 of the ballots but voted to reject the third ballot⁸ for being cast in the wrong precinct. The Board members did not investigate this ballot for poll worker error. TR (Burke)1-132 - 133. Plaintiffs do seek an order requiring the Board members to provide this voter with notice and opportunity to be heard as to why his ballot should be counted before the Board members vote to count or reject his ballot.

Respectfully submitted,

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⁸ The provisional ballot number was not put into evidence. Plaintiffs believe the number is 10547.

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2011, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

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