IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE NORTHEAST OHIO COALITION
FOR THE HOMELESS, et al.,

Plaintiffs,

vs.

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

Defendant,

and

STATE OF OHIO,

Intervenor-Defendant.

Case No. 2:06-CV-896
Judge Algenon Marbury
Magistrate Judge Terence P. Kemp
SUPPLEMENTAL REPLY
DECLARATION OF DANIEL B.
MILLER IN SUPPORT OF
PLAINTIFFS' MOTION TO MODIFY
APRIL 19, 2010 CONSENT DECREETO PREVENT CONSTITUTIONAL
VIOLATIONS
DECLARATION OF DANIEL B. MILLER

I, Daniel B. Miller, declare the following based upon my personal knowledge:

1. I am an attorney for Plaintiffs Northeast Ohio Coalition for the Homeless ("NEOCH") and Service Employees International Union ("SEIU") District 1199 in this action.

2. I previously submitted a Declaration in Support of Plaintiffs’ Motion to Modify April 19, 2010 Consent Decree to Prevent Constitutional Violations, with which I submitted the public records requests that I sent on May 22, 2012, and June 8, 2012, to Ohio’s 88 counties.

3. This declaration describes and attaches as exhibits additional documents that were produced by the county boards of elections in response to these public records requests since the filing of Plaintiffs’ Motion for Preliminary Injunction on June 22, 2012. The records relate to poll-worker error and the casting and counting of provisional ballots in the November 2008, November 2009, November 2010, November 2011, and March 2012 elections.

4. To date I have received at least partial responses from 84 of Ohio’s 88 counties. Most counties have not responded to every category of these requests. In particular, not all counties have produced either minutes or transcripts from each Board of Elections meetings at which provisional ballots were counted or rejected from each election from 2008 through the present. Most counties have not produced any staff reports discussing the provisional ballots (and any consideration of poll worker error) at those meetings from 2008-2012. And many counties have not produced any contemporaneous records of voter or poll worker incidents or complaints on election day.

**Board of Elections Meeting Minutes and Transcripts 2008-2012**

5. Ashtabula County. Attached hereto as Exhibit A is a true and correct copy of the Ashtabula County Board of Elections Meeting Minutes from March 27, 2012, at which the Board
voted whether to count or reject provisional ballots cast in the March 2012 primary. The Board voted to reject “six provisional ballots that had insufficient information on them.” Ex. A at 1.

6. Auglaize County. Attached hereto as Exhibit B is a true and correct copy of the Auglaize County Board of Elections Special Meeting Minutes from November 15, 2010. The Board voted to reject 16 ballots from voters who voted in the wrong precinct. Ex. B at 1. In addition:

“The Board asked that those Poll Workers in precincts where ballots were cast in wrong polling places be advised of the seriousness of making certain a voter is in the correct precinct and that it is imperative to call the Board of Elections office [if] there is any doubt.”

Id.

7. Clinton County. Attached hereto as Exhibit C is a true and correct copy of the Clinton County Board of Elections Meeting Minutes from March 20, 2012. At that meeting the Board discussed the validity of two provisional ballots for which the voter had not filled out the back of the provisional ballot envelope. The Board explained that “work[ing] through Directive 2012-01 steps 1-4 the provisionals are valid. . . . [But] when we get to step 5 to determine correct county & precinct, we have questions. The voters are all registered in Clinton County so we know the county is correct,” but the Board was unable to determine if the voters had voted in the wrong precinct, or if they had voted provisionally because they had moved, and therefore were voting in their new and correct precinct. Ex. C at 1.

The Board received advice from an attorney for the Secretary of State “not to make any assumptions about why the person voted provisional and only rely on the information provided on the 12-B envelope[,] in the voter registration system and voter query system.” Id. The attorney specifically instructed the Board “not [to] check the signature book [or] any separate [voter registration] card” the voter may have filled out. Id. The Board voiced its concern that
based on this advice, if the voter had moved and was in fact voting in his or her new and correct precinct, the Board would not be able to count the voter’s provisional ballot solely because the voter had not filled out the back of the 12-B envelope, even though that section of the envelope specifically informed voters that “[f]ailure to complete this form will not cause your provisional ballot to be rejected.” *Id.*

Based on the advice of the attorney for the Secretary of State, the Board voted to reject both ballots in question. *Id.* at 2. In so doing, however, two members “expressed concern regarding the new provisional verification process [and their] hope it [would be] modified before the November election.” *Id.*

8. Attached hereto as Exhibit D is a true and correct copy of the Clinton County Board of Elections Meeting Minutes from November 22, 2011. At the meeting, the Board voted to count the provisional ballot of a voter who had voted the wrong precinct’s ballot in the Board’s Office because “[t]he staff handed out the incorrect ballot to the voter.” Ex. D at 1. The Board also voted to count several other ballots cast in the wrong precinct but in the right polling location by voters who had provided their social security numbers, including another wrong precinct ballot given out “in the office due to poll worker error.” *Id.* at 3.

9. Attached hereto as Exhibit E is a true and correct copy of the Delaware County Board of Elections Meeting Minutes from November 22, 2010. The Board voted to “count the 28 provisional ballots that were voted in the wrong precincts due to pollworker error.” Ex. E at 1. The Board also voted to not count 11 ballots due to either a failure to sign the envelope or a failure to print the voter’s name on the envelope. *Id.*

10. Hancock County. Attached hereto as Exhibit F is a true and correct copy of the Hancock County Board of Elections Meeting Minutes from November 15, 2010. At this
meeting, the Board discussed the “grading procedure for the poll workers at the General Election.” Ex. F at 32. The Board concluded that “[t]he most errors made were with the provisional voters.” Id. The Board at this meeting also voted to reject 7 provisional ballots as cast “in the Wrong Precinct.” Id.

11. Medina County. Attached hereto as Exhibit G is a true and correct copy of the Medina County Board of Elections Meeting Minutes from November 22, 2011. The Board voted on whether to count or reject provisional ballots, and stated that “other provisionals were rejected due to poll worker error.” Ex. G at 1. The Board “requested that Poll Worker error problems be examined and corrective actions be implemented.” Id.

12. Mercer County. Attached hereto as Exhibit H is a true and correct copy of the Mercer County Board of Elections Meeting Minutes from March 20, 2012. At this meeting, the Board Members discussed expending funds “for the purchase of additional electronic poll books” because “it decreases poll worker error related to giving voters the incorrect ballot.” Ex. H at 2. The Board voted to count one provisional ballot that “fit the criteria for the [NEOCH] consent decree. The voter voted in the wrong precinct, was not directed to the correct precinct by the pollworker, but only provided the last four digits of her social security number.” Id. at 4. At the same time, the Board voted to reject one provisional ballot “because the voter voted in the wrong precinct, and there was no indication of poll worker error.” Id.

13. Attached hereto as Exhibit I is a true and correct copy of the Mercer County Board of Elections Meeting Minutes from November 18, 2010. The Board initially voted to reject three ballots from voters who “did not provide identification on the provisional envelope,” Ex. I at 4, but later reconsidered their vote based in part on additional information provided by the poll workers, including information obtained when a Board Member called the poll worker
who had processed one of the voters to find out whether the voter had presented appropriate
identification. Id. at 5.

The Board additionally reviewed “ballots where there appeared to be poll worker error”
and voted to count fifteen provisional ballots “from voters who did not provide the last four
digits of their social security number and the poll worker failed to properly complete the back
side of the provisional envelope,” based “on the recommendation of... [Secretary of State] legal
counsel.” Id.

14. Washington County. Attached hereto as Exhibit J is a true and correct copy of
the Washington County Board of Elections Meeting Minutes from November 18, 2010. The
Board voted to reject seven provisional ballots because they were from the wrong precinct. Ex. J
at 2. The Board then discussed poll worker error:

Peggy will notify each of the poll workers that worked in these precincts. Peggy
noted that six of these seven people were in the correct location. The poll worker
needed to send them to the correct table. None of these rejected votes had the
name of a Board of Elections employee on the sticker that is now attached to each
provisional envelope. The Washington County Board of Elections has a policy
that the poll worker must call in to get direction from a board employee before
voting a voter in a provisional envelope. This was done to reduce the number of
mistakes at the polls.

Id.

County Board of Elections Election Day Incident Reports

15. Some county boards of elections produced “Incident Reports,” “Problem Sheets,”
spreadsheets, charts, notes, email messages, and other documents for some or all of the elections
between 2008 and 2012, which include descriptions of problems reported by elections officials
and poll workers, or sometimes voters themselves.

a. A true and correct copy of excerpts from such documents produced by Ashtabula
County for the 2010 and 2011 elections is attached hereto as Exhibit K.
b. A true and correct copy of excerpts from such documents produced by Hardin County for the 2010 elections is attached hereto as Exhibit L.

c. A true and correct copy of excerpts from such documents produced by Medina County for the 2008, 2011, and 2012 elections is attached hereto as Exhibit M.

d. A true and correct copy of excerpts from such documents produced by Richland County for the 2012 elections is attached hereto as Exhibit N.

These documents contain reports of problems in the following categories:

16. Voters in the wrong precinct are given provisional ballots instead of being re-directed to the correct precinct.
   - “[V]oted a provisional ballot in precinct H by mistake, should have been in B. Mistake not discovered until late . . . .” (Medina County 2011) (Ex. M at 17)

17. Poll workers specifically report giving voters the wrong precinct’s provisional ballot.
   - Provisional voter “received KCS [provisional] ballot instead Rdmt.” (Hardin County 2010) (Ex. L at 3)
   - “Brian Solitario is in precinct 1-B (we had him vote provincially [sic] [in precinct 1-A]).” (Medina County 2011) (Ex. M at 18)
   - “Nicole Pichard – just married – had a slip from another precinct to permit her to vote provisional in WC 2A. Her address was not w/in WC 2A but we had her vote a provisional ballot to resolve the issue.” (Medina County 2008) (Ex. M at 11)
   - “Gina A Flippo was sent from another precinct to here, after they had called Board of Elections. She said the other precinct told her to come here, but they did not fill out authority to vote card. She was upset, so I had her vote provisional. She should have voted there?” (Medina County 2008) (Ex. M at 13)
   - Poll Worker Comments indicate “Amy L. Fowler voted in wrong precinct.” (Medina County 2008) (Ex. M at 3)
“Tasha Burton moved and said BOE said she was to come here[,] [W]e did the provisional (we were very busy) then after she left put her in and found she was not to vote here.” (Richland County 2012) (Ex. N at 2)

18. **Poll workers fail to direct voters at all or direct them incorrectly.**

- “Greeter needs more training—slept most of the day.” (Medina County 2012) (Ex. M at 29)

- “What is the purpose of the greeter? Ours, Michael, did not do anything all day except sit at the table. To my knowledge, he did not greet or talk to anyone.” (Medina County 2012) (Ex. M at 30)

- “Whoever the ‘greeter’ was at the Nazarene Church did NOT greet. She sat in the corner behind WC 1C and did **nothing**.” (Medina County 2012) (Ex. M at 32)

19. **Voters were directed by poll workers to incorrect voting and precinct locations.**

- Poll workers “called and complained that community center is just sending voter[s] to them” without checking with Board of Elections as to where to send them. (Ashtabula County 2011) (Ex. K at 5)

- Greeter sent “more than a few people to the wrong precinct.” (Medina County 2012) (Ex. M at 23)

- “People were sent to our precinct that did not belong with us. One couple had been to 3 places.” (Medina County 2008) (Ex. M at 7)

20. **Poll workers report errors and ambiguities in their materials for determining voters’ correct voting locations and precincts.**

- “You have streets on maps not in street book – i.e., Keystone Dr. and some marked as 1-C on Prec. Map but marked 1E in Street Book. . . . Ashley Taylor Ct. is 1C but not included on Prec. Map.” (Medina County 2011) (Ex. M at 19)

- “Block south of Neff (Lonesome Pine to Meadowwood Dr.) should be marked as ‘A’ – was not on our map; or did it go to Erhart? Confusing!” (Medina County 2008) (Ex. M at 4)
21. Poll workers are unable to read or find addresses in the guidebooks to tell voters their voting locations and precincts.

- "Precinct Map is WORSE than before! We needed larger map w/ clear street names. Info. that was added – with COLOR – does NOT assist precinct identification." (Medina County 2012) (Ex. M at 31)

- "Precinct maps need to be enlarged – can’t read street names very well." (Medina County 2011) (Ex. M at 19)

22. Poll workers report significant confusion in directing voters and providing appropriate ballots when houses on odd and even sides of a street are assigned to different precincts.

- "[S]ome votes may have gone through that belong to another precinct. It was initially overlooked that we had to watch [e]ven vs. [o]dd # street # when figuring out if they should vote in our precinct." (Medina County 2008) (Ex. M at 5)

23. Poll workers report having insufficient staff to direct voters to their correct voting locations and precincts.

- "During an extremely [busy] rush of people, we had minor pand[emonium with absentee votes who come but hadn’t voted, plus other provisional voters. There are so many pages of instructions and forms to fill out, it was overwhelming. . . . There’s gotta be a better way!" (Medina County 2008) (Ex. M at 6)

- "Need one Person (Supervisor) to be free to answer questions. . . . Ans. Pollworkers questions—Provisional, etc." (Medina County 2008) (Ex. M at 14)

- "Paper ballot judges should have been trained!! Presiding Judge had to stop sign in book to help with provisionals." (Medina County 2008) (Ex. M at 9)

24. Poll workers and voters report receiving inadequate assistance or incorrect instructions from the Board of Elections in resolving provisional voter problems.

- Board of Elections call line instructed poll worker that voter in “same polling place, but different precinct . . . must vote provisionally.” (Ashtabula County 2011) (Ex. K at 4)

- "I called Board of Elections to see if the man was registered as he was not listed in book. The woman who answered said let him vote Provisional, I asked if she
could tell me if he was registered and she just hung up.” (Medina County 2011) (Ex. M at 20)

25. Poll workers reported lacking the appropriate materials to look up voter addresses to direct them to the correct voting locations and precincts.

- “More detailed polling precinct list would be helpful.” (Medina County 2008) (Ex. M at 12)

26. Voters and poll workers report lack of clear signs informing voters of voting and precinct locations.

- “The Greeters Table should have a sign so people know to go there for info as to where they vote?!” (Medina County 2012) (Ex. M at 22)

- “Please give us a precinct map to be placed near the door.” (Medina County 2012) (Ex. M at 24)

- “[T]here were not enough signs for new voters (old Precinct D) to find exactly where to vote. One gentleman did complain about the lack of signs.” (Medina County 2012) (Ex. M at 25)

- “Need larger map of precincts to hang on wall.” (Medina County 2012) (Ex. M at 26)

- “It would be helpful to the voters to post precinct numbers both on the table and on the wall behind tables.” (Medina County 2012) (Ex. M at 28)

- “Need large signs to let people know which precinct.” (Medina County 2008) (Ex. M at 7)

- “Suggestions from several voters were we should have a ‘large map’ that is easy to read at the front door so they would know where and what precinct.” (Medina County 2008) (Ex. M at 10)

- “Better signs identifying precincts in room – large signs on wall behind tables would be good.” (Medina County 2008) (Ex. M at 2)

- “Precinct maps should be much larger . . . . Smaller maps should be at each precinct table.” (Medina County 2008) (Ex. M at 2)
27. Poll workers fail to instruct voters on how accurately to fill out a provisional ballot such that it will be counted, fail to accurately fill out the poll-worker portion of the provisional ballot, and fail to provide voters with the appropriate provisional voting materials.

- Poll worker “[d]idn’t have voter fill out registration form” on back of ballot. (Ashtabula County 2010) (Ex. K at 2)

- Poll worker stated there should be “[b]etter training for Presiding Judge re: completeness of Provisional Ballot.” (Medina County 2011) (Ex. M at 16)

28. Voters reported not being sent cards with updated precinct information.

- “Many folks who were changed to BC1-A are telling us they had no notice or postcards with appropriate precinct change.” (Medina County 2012) (Ex. M at 27)

**County Poll Worker Training Materials**

29. In response to a request for training materials used by poll workers in the 2008-2012 elections, some counties produced materials that were used to train poll workers.

a. A true and correct copy of excerpts from the training manual provided by Franklin County is attached hereto as Exhibit O.

b. A true and correct copy of excerpts from the training manual provided by Lorain County is attached hereto as Exhibit P.

c. A true and correct copy of excerpts from the training manual provided by Medina County is attached hereto as Exhibit Q.

d. A true and correct copy of excerpts from the training manual provided by Stark County is attached hereto as Exhibit R.

e. A true and correct copy of excerpts from the training manual provided by Summit County is attached hereto as Exhibit S.
f. A true and correct copy of excerpts from the training manual provided by Trumbull County is attached hereto as Exhibit T.

**County Polling Location Layouts and Diagrams**

30. Some counties also produced diagrams or descriptions of polling location layouts.

31. A true and correct copy of such materials produced by Ashland County is attached here to as Exhibit U. The excerpted diagram shows that, in a multi-precinct location, provisional voters are processed at one “prov table.”

32. A true and correct copy of such materials produced by Butler County is attached here to as Exhibit V. The excerpted diagram shows that, at a multi-precinct location, provisional voters are processed at the “provisional” table.

33. A true and correct copy of such materials produced by Cuyahoga County is attached here to as Exhibit W. These diagrams show that at every multi-precinct location, provisional voters and lost voters are all processed at one “Voter Assistance Table.”

34. A true and correct copy of such materials produced by Delaware County is attached here to as Exhibit X. The excerpted diagrams show that, in multi-precinct locations, provisional voters are processed at the “provisional voting table.”

35. A true and correct copy of such materials produced by Fayette County is attached here to as Exhibit Y. The excerpted diagrams show that, in multi-precinct locations, provisional voters are processed as a “provisional” table.

36. A true and correct copy of such materials produced by Hancock County is attached here to as Exhibit Z. The excerpted diagram shows that “[v]oter[s] will be directed to correct precinct table by the Precinct Locator Judge.”
37. A true and correct copy of such materials produced by Harrison County is attached here to as Exhibit AA. The excerpted diagrams show that voters must first go to “[v]oter info table” prior to voting and that provisional ballots are processed at the “Provis. Voting” table.

**County Street and Address Guides**

38. In response to a request for street guides used by poll workers in the 2012 election, some counties produced street and address guides that poll workers are directed to use to determine the precinct to which voters have been assigned.

a. A true and correct copy of excerpts from the street guide provided by Brown County is attached hereto as Exhibit BB.

b. A true and correct copy of excerpts from the street guide provided by Champaign County is attached hereto as Exhibit CC.

c. A true and correct copy of excerpts from the street guide provided by Clinton County is attached hereto as Exhibit DD.

d. A true and correct copy of excerpts from the street guide provided by Darke County is attached hereto as Exhibit EE.

e. A true and correct copy of excerpts from the street guide provided by Defiance County is attached hereto as Exhibit FF.

f. A true and correct copy of excerpts from the street guide provided by Fayette County is attached hereto as Exhibit GG.

g. A true and correct copy of excerpts from the street guide provided by Geauga County is attached hereto as Exhibit HH.
h. A true and correct copy of excerpts from the street guide provided by Greene County is attached hereto as Exhibit II.

i. A true and correct copy of excerpts from the street guide provided by Guernsey County is attached hereto as Exhibit JJ.

j. A true and correct copy of excerpts from the street guide provided by Highland County is attached hereto as Exhibit KK.

k. A true and correct copy of excerpts from the street guide provided by Knox County is attached hereto as Exhibit LL.

l. A true and correct copy of excerpts from the street guide provided by Marion County is attached hereto as Exhibit MM.

m. A true and correct copy of excerpts from the street guide provided by Medina County is attached hereto as Exhibit NN.

n. A true and correct copy of excerpts from the street guide provided by Mercer County is attached hereto as Exhibit OO.

o. A true and correct copy of excerpts from the street guide provided by Ottawa County is attached hereto as Exhibit PP.

p. A true and correct copy of excerpts from the street guide provided by Preble County is attached hereto as Exhibit QQ.

q. A true and correct copy of excerpts from the street guide provided by Wood County is attached hereto as Exhibit RR.

Polling Location Lists

39. Some counties also produced lists of polling locations and precincts. The additional polling location lists for the 2008-2012 elections – which were received after June 15,
2012, and which demonstrate the extent to which these counties use multi-precinct polling locations – for the following counties are compiled and attached hereto as Exhibit SS: Ashtabula, Athens, Auglaize, Brown, Champaign, Clinton, Columbiana, Darke, Defiance, Delaware, Fairfield, Fayette, Fulton, Guernsey, Hancock, Harrison, Highland, Holmes, Knox, Licking, Lucas, Marion, Medina, Meigs, Mercer, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Preble, Richland, Sandusky, Scioto, Van Wert, Vinton, Wood, and Wyandot.

40. My law firm is counsel for Intervenor-Plaintiff NEOCH in the case captioned Hunter v. Hamilton County Board of Elections, filed in the United States District Court for the Southern District of Ohio, Western Division, as Case No. 1:10CV820. Attached hereto as Exhibit TT is a true and correct copy of the complete trial transcript of the testimony of defense witness Dr. Alfred Tuchfarber, including the portions of the direct examination and cross-examinations that were excluded from the excerpt provided by Defendant Burke in support of his Opposition to the motion for preliminary injunction in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of July, 2012.

Daniel B. Miller