

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
FOR THE WESTERN DIVISION

<b>TRACIE HUNTER, et al.</b>	:	<b>Case No.: 1:10-cv-820</b>
<b>Plaintiffs,</b>	:	<b>Judge Susan J. Dlott</b>
<b>v.</b>	:	
<b>HAMILTON COUNTY BOARD OF ELECTIONS, et al.</b>	:	<b>DEFENDANT HAMILTON COUNTY BOARD OF ELECTIONS NOTICE OF EXHIBIT TO MOTION FOR SUMMARY JUDGMENT</b>
<b>Defendants.</b>	:	
	:	
	:	

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Attached is Exhibit 1 to Hamilton County Board of Elections' Motion for Summary Judgment which was filed on July 6, 2011 and which was inadvertently omitted. Exhibit 1 is Plaintiff-Intervenor Northeast Ohio Coalition for the Homeless' Objections and Responses to Defendant Hamilton County Board of Elections' First Request for Discovery.

Respectfully submitted,

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HAMILTON COUNTY, OHIO  
BY:

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Board of Elections*

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed on July 12, 2011 using the Court's CM/ECF system, which will transmit notice of the filing to all counsel of record in this case.

/s/ Colleen McCafferty  
Colleen M. McCafferty

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

TRACIE HUNTER,	:	Case No. 1:10-CV-820
	:	
Plaintiff,	:	Judge Susan J. Dlott
	:	
vs.	:	
	:	<b>PLAINTIFF-INTERVENOR</b>
HAMILTON COUNTY BOARD OF	:	<b>NORTHEAST OHIO COALITION FOR</b>
ELECTIONS, et al.,	:	<b>THE HOMELESS'S OBJECTIONS AND</b>
	:	<b>RESPONSES TO DEFENDANT</b>
Defendants.	:	<b>HAMILTON COUNTY BOARD OF</b>
	:	<b>ELECTIONS' FIRST REQUEST FOR</b>
	:	<b>DISCOVERY</b>

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Plaintiff-Intervenor Northeast Ohio Coalition for the Homeless ("NEOCH"), pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, objects and responds to Defendant Hamilton County Board of Elections' First Request for Discovery as follows:

**GENERAL OBJECTIONS TO DISCOVERY REQUESTS**

1. NEOCH objects to the discovery requests to the extent they seek information or documents, or both, that are neither relevant to the claims or defenses of any party nor appear reasonably calculated to lead to the discovery of admissible evidence.
2. NEOCH objects to the discovery requests to the extent they purport to impose obligations beyond those that the Federal Rules of Civil Procedure and the Court's Local Rules impose.
3. NEOCH objects to the discovery requests to the extent they seek information or the production of documents, or both, that the attorney-client privilege, the work-product

doctrine, or any other applicable privilege protects, or information that is otherwise not subject to discovery under the Federal Rules of Civil Procedure.

4. NEOCH objects to the discovery requests to the extent that they are unreasonably cumulative or duplicative, seek information that may be obtained from another source that is more convenient, less burdensome or less expensive, or seek documents that are already in Defendant's possession, custody, or control.

5. NEOCH objects to the discovery requests to the extent that they are vague, ambiguous, or otherwise employ undefined terms subject to more than one reasonable interpretation.

6. NEOCH objects to the discovery requests to the extent that they seek answers and responses that call for a legal conclusion.

7. NEOCH reserves the right to amend or supplement these objections and responses.

#### **OBJECTIONS AND ANSWERS TO REQUESTS FOR ADMISSIONS**

1. Admit that on November 2, 2010, no members of NEOCH resided in Hamilton County, Ohio.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether members of NEOCH resided in Hamilton County, Ohio, on November 2, 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Hamilton County Board of Elections ("the Board") and its members.

2. Admit that NEOCH did not provide voting services, including but not limited to assistance with registration, reducing barriers to registration, and assuring homeless people actually voted, to any homeless person or persons in Hamilton County, Ohio for the General Election held November 2, 2010.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or

defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether NEOCH provided voting services to homeless persons in Hamilton County, Ohio in connection with the General Election held November 2, 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

3. Admit that no person who was a member of NEOCH was registered to vote in Hamilton County, Ohio, in the General Election held November 2, 2010.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether members of NEOCH were registered to vote in Hamilton County, Ohio, in the General Election held November 2, 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

4. Admit that no person who was a member of NEOCH on November 2, 2010, voted in Hamilton County, Ohio, in the General Election held that day.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether members of NEOCH voted in Hamilton County, Ohio, in the General Election held November 2, 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

5. Admit that no person who was a member of NEOCH at the time cast a provisional ballot in Hamilton County, Ohio, in the General Election held that day.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether members of NEOCH cast provisional ballots in Hamilton County, Ohio, in the General Election held November 2, 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

6. Admit that no person who was a member of NEOCH at the time cast a provisional ballot in a precinct in which the member was not eligible to vote in Hamilton County, Ohio, in the General Election held November 2, 2010.

RESPONSE: NEOCH objects to this request for the reasons set forth in General

Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether members of NEOCH cast provisional ballots in a precinct in which the NEOCH member was not eligible to vote in Hamilton County, Ohio, in the General Election held November 2, 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

7. Admit that one purpose of the Consent Decree was to suspend, for one class of voters, the operation of § R.C. 3505.183(B)(4)(a)(ii) which prohibits provisional ballots cast in the wrong precinct from being opened and counted.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. NEOCH also objects to this request for the reasons set forth in General Objection No. 6 in that this request calls for NEOCH to make a conclusion regarding the purpose of the Consent Decree and the Consent Decree's legal effect.

8. Admit that one purpose of the Consent Decree was to suspend, for one class of voters, the operation of § R.C. 3505.183(B)(4)(a)(iii) which prohibits provisional ballots with incomplete affirmations from being opened and counted.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. NEOCH also objects to this request for the reasons set forth in General Objection No. 6 in that this request calls for NEOCH to make a conclusion regarding the purpose of the Consent Decree and the Consent Decree's legal effect.

9. Admit that the Hamilton County Board of Elections was not a party to the Consent Decree.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. NEOCH also objects to this request for the reasons set forth in General Objection No. 5 in that "party to the Consent Decree" is not defined, is ambiguous, and is subject to more than one reasonable interpretation.

Without waiving these objections and subject to the General Objections, NEOCH denies that the Hamilton County Board of Elections was not "a party to the Consent Decree." The Consent Decree was issued by the United States District Court for the Southern District of Ohio. As a judicial decree, the Consent Decree does not contemplate or discuss any "party to the Consent Decree." The Consent Decree, however, does

identify the parties *who are bound by the Consent Decree*. Thus, although there are no parties to the Consent Decree, there are parties who are bound by the Consent Decree.

The parties bound by the Consent Decree include the Secretary of State of Ohio, the State of Ohio, and "their employees, agents, and representatives." The Board is bound by the Consent Decree because it is an agent and/or representative of the Secretary of State of Ohio, the State of Ohio, or both.

The Board is also bound by the Consent Decree by way of the Consent Decree's requirement that the Secretary of State issue directives to the Boards of Elections in Ohio to follow the Consent Decree. Following this requirement, the Secretary of State issued Directive 2010-74, which incorporated the provisions of the Consent Decree. The Secretary of State later reissued Directive 2010-74 as Directive 2010-96. More recently, the Secretary of State issued Directive 2011-16, which reminded all boards of elections in Ohio that they are bound to follow the Consent Decree. Directive 2010-74, Directive 2010-96, and Directive 2011-16 are all binding on all boards of elections in Ohio, including the Hamilton County Board of Elections.

10. Admit that the Hamilton County Board of Elections was not a party in the case in which the Consent Decree was entered.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. Whether the Board was a party to the case in which the Consent Decree was entered is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to whether the Board is bound by the Consent Decree. NEOCH also objects to this request for the reasons set forth in General Objection No. 4 because the Board can determine the identity of the parties in the case in which the Consent Decree was entered by simply examining the pleadings from that case, which are readily available to the public.

Without waiving this objection and subject to the General Objections, NEOCH admits that the Board was not a party in the case in which the Consent Decree was entered. The Board, however, is bound by the Consent Decree for the reasons set forth in NEOCH's response to the Board's Request for Admission No. 9, which is incorporated by reference into this response as if fully restated.

#### **OBJECTIONS AND ANSWERS TO INTERROGATORIES**

1. State the full name, address and phone number of each person who prepared, or assisted in preparing a response, to any of these interrogatories.

RESPONSE:

- (1) Brian Davis, Executive Director  
Plaintiff The Northeastern Ohio Coalition for the Homeless

3631 Perkins Avenue, 3A-3, 3rd Floor  
Cleveland, OH 44114

Mr. Davis may be contacted only through counsel for NEOCH.

(2) Counsel for NEOCH.

2. State the name, address, and telephone number of each individual likely to have discoverable information, along the subjects of that information, that the Plaintiff may use to support its claims.

RESPONSE: Plaintiffs identify the individuals likely to have discoverable information in the jointly prepared proposed Final Pretrial Order. NEOCH incorporates Plaintiffs' list of witnesses in the jointly prepared proposed Final Pretrial Order into this response as if fully restated.

3. In the event that the Response to Request for Admission 1 was anything other than an unqualified admission, identify by name, current address, and all current telephone numbers each and every member of NEOCH who resided in Hamilton County, Ohio, on November 2, 2010.

RESPONSE: See NEOCH's objection to the Board's Request for Admission No. 1, which is incorporated by reference into this response as if fully restated.

4. In the event that the Response to Request for Admission 2 was anything other than an unqualified admission, describe any voting services NEOCH provided to homeless persons in Hamilton County, Ohio for the General Election held November 2, 2010, including but not limited to assistance with registration, reducing barriers to registration, and assuring homeless people actually voted.

RESPONSE: See NEOCH's objection to the Board's Request for Admission No. 2, which is incorporated by reference into this response as if fully restated.

5. In the event that the Response to Request for Admission 3 was anything other than an unqualified admission, identify by name, current address, and all current telephone numbers each and every member of NEOCH registered to vote in Hamilton County, Ohio, for the General Election held November 2, 2010.

RESPONSE: See NEOCH's objection to the Board's Request for Admission No. 3, which is incorporated by reference into this response as if fully restated.

6. In the event that the Response to Request for Admission 4 was anything other than an unqualified admission, identify by name, current address, and all current telephone numbers each and every member of NEOCH who cast a ballot in Hamilton County, Ohio, during the General Election held November 2, 2010.

RESPONSE: See NEOCH's objection to the Board's Request for Admission No. 4, which is incorporated by reference into this response as if fully restated.

7. In the event that the Response to Request for Admission 5 was anything other than an unqualified admission, identify by name, current address, and all current telephone numbers each and every member of NEOCH who cast a provisional ballot in Hamilton County, Ohio, during the General Election held November 2, 2010.

RESPONSE: See NEOCH's objection to the Board's Request for Admission No. 5, which is incorporated by reference into this response as if fully restated.

8. In the event that the Response to Request for Admission 6 was anything other than an unqualified admission, identify by name, current address, and all current telephone numbers each and every member of NEOCH who cast a provisional ballot in a precinct in which the member was not eligible to vote within Hamilton County, Ohio, during the General Election held November 2, 2010.

RESPONSE: See NEOCH's objection to the Board's Request for Admission No. 6, which is incorporated by reference into this response as if fully restated.

9. In the event that the response to any other Request For Admission was anything other than an unqualified admission, identify the Request for Admission so described and state with particularity the basis for the qualification or denial.

RESPONSE: See NEOCH's objections and responses to the Board's Requests for Admissions Nos. 7, 8, and 9, which are incorporated by reference into this response as if fully restated.

10. Identify all documents, electronically stored information, and tangible things that Plaintiff has in its possession, custody or control and may use to support its claims.

RESPONSE: Plaintiffs identify the documents, electronically stored information, and tangible things that they may use to support their claims in the jointly prepared proposed Final Pretrial Order. NEOCH incorporates Plaintiffs' list of exhibits in the jointly prepared proposed Final Pretrial Order into this response as if fully restated.

11. List and describe all documents and objects that you will introduce into evidence at the trial of this case, and state their present location.

RESPONSE: Plaintiffs identify the documents and objects that they may introduce into evidence in the jointly prepared proposed Final Pretrial Order. NEOCH incorporates Plaintiffs' list of exhibits in the jointly prepared proposed Final Pretrial Order into this response as if fully restated. Copies of those documents and objects were previously provided to the Board, are currently in the Board's possession, or are readily available to the Board through public sources.

12. Provide the names, addresses, and telephone numbers of all witnesses Plaintiff may use to present evidence in this matter and state the subject matter on which the witness is expected to testify.

RESPONSE: Plaintiffs identify the witnesses who they may call to testify in this matter in the jointly prepared proposed Final Pretrial Order. NEOCH incorporates Plaintiffs' list of witnesses in the jointly prepared proposed Final Pretrial Order into this response as if fully restated.

13. Provide the names, addresses, and telephone numbers of all expert witnesses Plaintiff may use to present evidence under Federal Rule of Evidence 702, 703, or 705 and state the subject matter on which the expert is expected to testify.

RESPONSE: Plaintiffs identify the expert witnesses who they may call to testify in this matter in the jointly prepared proposed Final Pretrial Order. NEOCH incorporates Plaintiffs' list of expert witnesses in the jointly prepared proposed Final Pretrial Order into this response as if fully restated. Further answering this interrogatory, at this time, NEOCH does not expect to introduce testimony from any expert witnesses.

14. State whether any of the expert witnesses listed in Interrogatory No. 9 [sic] have submitted written reports concerning facts known or opinions held by the experts relative to this action.

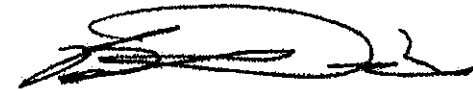
- a. If so, state the name of the expert, the date of the report, the nature of the report and the name and address of the person having custody of the report.
- b. Attach a copy of each report listed in response to Interrogatory No. 9 [sic] to your answers to these interrogatories.

RESPONSE: Plaintiffs identify the expert witnesses who they may call to testify in this matter in the jointly prepared proposed Final Pretrial Order. NEOCH incorporates Plaintiffs' list of expert witnesses in the jointly prepared proposed Final Pretrial Order into this response as if fully restated. Further answering this interrogatory, at this time, NEOCH does not expect to introduce testimony from any expert witnesses.

VERIFICATION

I, Brian Davis, hereby state that I have read Plaintiff-Intervenor Northeast Ohio Coalition For The Homeless's responses to Defendant Hamilton County Board Of Elections' interrogatories, and that I find the responses to be true and accurate to the best of my knowledge and belief.

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



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Brian Davis

Executed this 28th day of June, 2011.

**OBJECTIONS AND ANSWERS TO REQUESTS FOR PRODUCTION**

1. Produce all documents that were referenced in preparing the responses to the foregoing Requests for Admissions and Interrogatories.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 2 in that the Board requests production of documents on or before June 27, 2011, which is less than the time permitted under Rule 34. NEOCH also objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. NEOCH incorporates by reference all of its objections to the Board's Requests for Admissions Nos. 1-10 and Interrogatories 1-14. NEOCH also objects to this request for the reasons set forth in General Objection No. 3 to the extent the request seeks the production of documents protected from disclosure by the attorney-client privilege or the work product doctrine.

Without waiving this objection and subject to the General Objections, NEOCH states that it does not have any documents in its possession, custody, or control responsive to this request that were not earlier produced or made available to the Board.

2. Produce all rosters of the members of NEOCH that identify persons who were members at anytime during 2010.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 2 in that the Board requests production of documents on or before June 27, 2011, which is less than the time permitted under Rule 34. NEOCH also objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. The identity of NEOCH's members in 2010 is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

NEOCH also objects to this request because it would be unduly burdensome to NEOCH's members for NEOCH to be required to disclose its membership rosters. NEOCH's members' association with one another is protected by the First Amendment to the U.S. Constitution, and disclosure of NEOCH's membership rosters would unduly impinge NEOCH's members' rights under the First Amendment.

3. Produce a roster of the current members of NEOCH.

RESPONSE: NEOCH objects to this request for the reasons set forth in General Objection No. 2 in that the Board requests production of documents on or before June 27, 2011, which is less than the time permitted under Rule 34. NEOCH also objects to this request for the reasons set forth in General Objection No. 1 in that this request seeks

information that is not relevant to any claim or defense of any party to this action, nor is the information reasonably calculated to lead to the discovery of admissible evidence. The identity of NEOCH's current members is not relevant to any issue presented by the parties' claims and defenses in this action, including but not limited to NEOCH's standing to assert its claims against the Board and its members.

NEOCH also objects to this request because it would be unduly burdensome to NEOCH's members for NEOCH to be required to disclose its membership rosters. NEOCH's members' association with one another is protected by the First Amendment to the U.S. Constitution, and disclosure of NEOCH's membership rosters would unduly impinge NEOCH's members' rights under the First Amendment.

4. Produce all documents you intend to use as exhibits in the trial of this matter.

RESPONSE: Plaintiffs identify the exhibits that they may introduce into evidence in the jointly prepared proposed Final Pretrial Order. Copies of those exhibits were previously provided to the Board, are currently in the Board's possession, or are readily available to the Board through public sources.

5. Produce all reports of experts intended to be used in the trial of this matter.

RESPONSE: NEOCH has not identified any documents responsive to this request.

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*Attorneys for Plaintiff-Intervenor Northeast  
Ohio Coalition for the Homeless*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of June, 2011, I served the foregoing *Plaintiff-Intervenor Northeast Ohio Coalition For The Homeless's Objections And Responses To Defendant Hamilton County Board Of Elections' First Request For Discovery* via U.S. mail on the following counsel of record:

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