UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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TRACIE HUNTER,	Case No. 1:10-cv-820
Plaintiff,	
	Motion Hearing
- v -	
	Monday, November 22, 2010
HAMILTON COUNTY BOARD OF ELECTIONS, et al.,	4:50 PM
Defendants.	Cincinnati, Ohio

. . . . . .

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN J. DLOTT, CHIEF JUDGE

APPEARANCES:

For the Plaintiff: JENNIFER L. BRANCH, ESQ.
Gerhardstein & Branch Co. LPA
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Cincinnati, Ohio 45202

For the Interventor Plaintiff Northeast Ohio Coalition for the Homeless:

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For the Intervenor Plaintiff Ohio Democratic Party:

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Proceedings recorded by stenography,
transcript produced by computer.

1 APPEARANCES (Continued):

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Alex Triantafilou
13 John Williams

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Sarah Fairweather, Esq.
15
Courtroom Deputy: William A. Miller
16
Court Reporter: Luke T. Lavin, RDR, CRR
17 838 Potter Stewart U.S. Courthouse
100 East Fifth Street
18 Cincinnati, Ohio 45202

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provisional balloting.

MR. STEVENSON: Yes.

THE COURT: Can we have that, please.

MR. STEVENSON: Yes.

THE COURT: Just one minute.

(Discussion off the record.)

(Sherry Poland is duly sworn by the courtroom deputy.)

DIRECT EXAMINATION

BY MR. STEVENSON:

Q. Would you state your name for us, please.

A. Sherry Poland, P-o-l-a-n-d.

Q. How are you employed, Ms. Poland?

A. I am the operations administrator for the Hamilton County Board of Elections.

Q. Were you so employed during the period up to November 2nd, 2010, and periods thereafter?

A. Yes.

Q. All right. You've been with the Board of Elections for how long?

A. Since March of 2004.

Q. During your tenure with the Board of Elections have you been called upon to review provisional ballots that have been cast in elections in Hamilton County?

A. Yes, I have.

Q. Could you tell the Court, please, what happens when the

Board of Elections receives provisional ballots from precincts on the evening of an election.

A. Sure. On the evening of the election we get what we refer to as a raw count. We physically count the number of envelopes that we have in our possession or returned from the precinct. And, I mean, that's because that's in the interest of the public. They want those numbers on election night, how many envelopes are out there.

Those envelopes are then locked in a secure location at the Board of Elections, and a day or two after election day we then assign a bipartisan team to verify the information contained on the provisional envelopes.

THE COURT: So that would have been the 11,000?

THE WITNESS: Yes. There was actually a little under 11,000.

THE COURT: Okay.

THE WITNESS: It was right around 10,500.

THE COURT: Okay.

Q. When the teams verify the information on the provisional ballot, do they make use of directives from the Secretary of State?

A. Yes, we do.

Q. Do they make use of local Board procedures as well?

A. Yes, we do.

Q. All right. Are both of the directives -- are both the

1 directives of the Secretary of State and the Board procedures,
2 in part, based upon the Northeast Coalition consent decree?
3 A. Yes.
4 Q. All right. Can you tell us, please, when you examine a
5 provisional envelope, what is it that you're looking for?
6 A. Sure. We're looking to see, first of all, that the voter
7 was registered in the state of Ohio. We also look to see that
8 the ballot was cast in the correct precinct. In looking, in
9 that review if it's determined that the voter did not cast the
10 ballot in the correct precinct, we then, per directive of the
11 Secretary of State, look to see, of those, which ones provided
12 Social Security numbers as the form of their ID on their
13 provisional envelope. We then pull those provisional envelopes
14 aside.
15 Q. Can I stop you for just a minute.
16 A. Sure.
17 Q. In the November 2nd, 2010, election, there has been
18 reference to the number of 849 provisional ballots.
19 A. Yes.
20 Q. Is that the total number of ballots that were cast in the
21 wrong precinct?
22 A. Correct.
23 Q. All right. So from that total number you then segregate
24 ballots that have Social Security numbers offered as a form of
25 ID?

A. That's correct.
Q. All right. And what happens to those ballots?
A. We then take those envelopes and look to see if any of those were cast in the correct location.
Q. Go ahead, please.
A. And we have -- that brings us down to a smaller subgrouping. Then we look to see if there's any --
THE COURT: No, wait. I'm confused.
THE WITNESS: Okay.
THE COURT: Start again with the eight.
THE WITNESS: Sure. So 849 provisional envelopes were determined that those voters cast those ballots in the incorrect precinct --
THE COURT: Okay.
THE WITNESS: -- or the wrong precinct.
THE COURT: Right.
THE WITNESS: Okay. We then look through those 849 and look to see if any of those voters provided Social Security numbers as their form of identification. We then take that group and look to see if any of them voted in the correct location but wrong precinct.
THE COURT: I thought that had already been done before you got to the 849.
THE WITNESS: No. The 849 is a total number of provisional envelopes that were cast in the wrong precinct.

THE COURT: Okay. And was that done then? Did you look for the Social Security number?

THE WITNESS: Yes.

THE COURT: And how many?

THE WITNESS: I don't have an exact number.

THE COURT: Okay.

THE WITNESS: We did not do a count out of the 849. We just separated those. Those individuals --

THE COURT: Okay.

THE WITNESS: -- provided their Social Security number, so those were separated. We then looked to see if any of those cast their ballot in the wrong precinct but the right location. We then looked to see if we had any demonstrated evidence of poll worker error.

Q. When you're looking at demonstrated poll worker error, can you tell us what you're looking for, please.

A. Sure. We go back to what we call the notes pages of our signature poll books. That is the place where poll workers are instructed to record any irregularities or any problems that they may have had on election day. They are trained to document that in the notes section in the signature poll book.

THE COURT: Now, wait. When you're looking for the demonstrated poll worker error, that's only in relation to the subset where they use the last four digits of the Social Security number and it's the wrong precinct but right location;

right?

THE WITNESS: That's correct.

THE COURT: Okay.

Q. Go ahead, please.

A. Okay. We then look to see if there was any evidence of poll worker error in the notes pages of the signature poll book. We also examine the provisional envelopes themselves, because sometimes a poll worker will write a note on the envelope itself.

Q. If you find evidence of poll worker error, what happens to the ballot?

A. We would then present that to the Board and, based on the directive from the Secretary of State, recommend that it be counted.

Q. All right. What about the other ballots where they did not offer their Social Security number?

A. There's no directive that we can count those ballots.

Q. All right. Now, are those envelopes examined for poll worker error also?

THE COURT: Now, which ones?

MR. STEVENSON: The ones where the Social Security number is not used.

THE COURT: Okay.

A. Yes. All of the provisional envelopes are reviewed to see if there's any notations from poll workers on them.

Q. And if there's a notation from a poll worker that it was a split precinct vote and he got the wrong ballot, what would happen then?
A. We would present that to the Board.
Q. All right. Would you describe for the Court what a split precinct is, please.
A. A split precinct is when there's two districts. It could be two congressional districts that are comprised within the same precinct. So some of the voters may live in the first congressional district in that precinct, while other voters in that precinct could live in the second congressional district.
Q. And if the voter got the wrong ballot in a split precinct, would some or all of his votes be counted?
A. I'm sorry. Can you repeat the question?
Q. If a voter got the wrong ballot in a split precinct, would some or all of those votes be tabulated and counted by the Board of Elections, to your knowledge?
A. I don't believe that we have had that happen in this election.
Q. All right.
A. In a split precinct.
Q. All right. Can you give us some other examples of poll worker error that's noted in the books and/or the ballots?
A. Sure. Sometimes the poll worker will make a note that they accidentally unplugged the scanner during the middle of the

1 day. In fact, when we went back to look for poll worker
2 evidence that they gave, that they allowed a voter to vote in
3 the wrong precinct, we actually found one instance of the
4 opposite, where the poll worker had recorded that they
5 instructed this voter that they were casting their ballot in
6 the incorrect precinct and tried to direct the voter to the
7 correct precinct but the voter refused and wanted to vote their
8 provisional ballot and casted it in that precinct.
9 So poll workers will write us notes of irregularities. We
10 see that a lot in elections.
11 Q. All right. With respect to the 26 or 27 ballots that were
12 counted that were referred to by Ms. Branch because they came
13 from the Board of Elections or voted at the Board of Elections,
14 can you describe what that process is, please.
15 A. Sure. When a voter appears at the Board of Elections, they
16 can vote what we call provisionally at the Board of Elections
17 28 days prior to election day. So if they fail to update the
18 Board of Elections with their change of address, they can come
19 down to the Board and vote provisionally. They come to the
20 counter and they will tell the election official behind the
21 counter, they will give them their ID, give them their name,
22 they will look them up in our voter registration system, verify
23 that they are registered.
24 If they have moved, they will look up their new address in
25 our voter registration system, record that, and then give them

1 the appropriate ballot.
2 Q. If the appropriate ballot -- who goes and retrieves the
3 appropriate ballot?
4 A. Normally we have several staff members; sometimes they're
5 temporary employees that are hired during election cycles. So
6 you'll have one staff person that's sitting at the counter
7 greeting the voter and looking that information up in our voter
8 registration system, and then you'll have another maybe
9 temporary staff person working behind them pulling the ballots
10 for them.
11 Q. Ms. Poland, voting at the Board of Elections is not like
12 voting on election day at a precinct; is that correct?
13 A. That's correct.
14 Q. There's not a poll book that you sign?
15 A. No.
16 Q. You're signing an application for either an absentee vote
17 or a provisional vote?
18 A. That's correct.
19 Q. All right. And you are wholly dependent upon an individual
20 who works for the Board of Elections to retrieve the proper
21 ballot?
22 A. That's correct. Voters that live in all 680 precincts may
23 come to the Board of Elections and cast their vote.
24 Q. So if a person who casts a ballot at the Board of Elections
25 gets a wrong precinct ballot, whose fault is that?

THE COURT: Okay.

MS. GENTRY: Nothing further, Your Honor.

THE COURT: All right. Then we'll adjourn the court. The Court will get an order out tonight. I can't tell you exactly when it's going to be, but it will be on ECF. We'll file it tonight so you can access it.

MS. BRANCH: Thank you, Judge.

THE COURT: Thank you.

COURTROOM DEPUTY: All rise. This court is now adjourned.

(Proceedings concluded at 8:05 PM.)

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EXHIBIT NUMBER:	MARKED
Defendants' Exhibit 1	111

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C E R T I F I C A T E

I, Luke T. Lavin, RDR, CRR, the undersigned, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Luke T. Lavin
Luke T. Lavin
Official Court Reporter

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