

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

SERVICE EMPLOYEES	:	
INTERNATIONAL :	:	
UNION, LOCAL 1, et al.,	:	Case No. 2:12-CV-562
	:	
Plaintiffs, :	:	
:	:	
v.	:	JUDGE ALGENON L. MARBLEY
:	:	
JON HUSTED, et al., :	:	Magistrate Terence P. Kemp
:	:	
Defendants.	:	
:	:	
THE NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, et al.,	:	Case No. 2:06-CV-896
	:	
Plaintiffs, :	:	
:	:	
v.	:	JUDGE ALGENON L. MARBLEY
:	:	
JON HUSTED, in his official capacity as	:	
Secretary of the State of Ohio,	:	Magistrate Judge Terence Kemp
:	:	
Defendant.	:	
:	:	
and :	:	
:	:	
STATE OF OHIO	:	
	:	
Intervenor-Defendant :	:	

ORDER

These are two related actions in this Court: *Service Employees’ International Union, Local 1, et. al. v. Husted, et. al.*, Case No. 2:12-cv-562 (“the SEIU case”) and *The Northeast Ohio Coalition for the Homeless, et. al. v. Husted & State of Ohio*, Case No. 2:06-cv-896 (“the

NEOCH case”). Before the Court is Defendants’ Motion to Modify the April 19, 2010 Consent Decree (“the Consent Decree”) in the *NEOCH* case.

Defendants filed a written Motion to Modify the Consent Decree on October 19, 2012. (*NEOCH* Dkt. 342) In that Motion, Defendants raised a concern about the equal protection of implications of Section III(5)(b)(v) in the Consent Decree in light of the injunctions granted by this Court on August 27, 2012 (*SEIU* Dkt. 67, *NEOCH* Dkt. 332) and October 26 (*SEIU* Dkt. 90, *NEOCH* Dkt. 344).¹ Defendants asked the Court to “clarify[]” that “the Secretary need not include this language in his Directive to the Boards.” (Dkt. 342 at 12-13) Defendants again raised this Motion at oral argument on October 24, 2012. Plaintiffs opposed the Motion. Both parties stipulated that an order should issue from the Court to clarify the matter. Parties represented to the Court that they would attempt to come to an agreement. Ultimately, parties were unable to reach agreement on the language of such an order. On October 26, 2012, parties jointly requested the Court decide the matter.

In light of the August 27, 2012 and October 26, 2012 injunctions issued by this Court, all otherwise valid provisional ballots in Ohio will be counted, irrespective whether they are cast in the “right location, wrong precinct” or “wrong location, wrong precinct.” Thus, Section III(5)(b)(v) of the Consent Decree which orders county boards of election to count “right location, wrong precinct” ballots only for provisional voters who identify themselves with the last four digits of their social security numbers (“SSN-4 voters”) is now superfluous. By allowing this section to remain in the Secretary of State’s directives to county boards of election, there is a risk of confusion and misapprehension by county boards of election that they are still

¹ For the equal protection analysis of the Consent Decree, see Section IV of this Court’s Order of October 26, 2012. (*SEIU* Dkt. 90, *NEOCH* Dkt. 344)

required to treat SSN-4 ballots differently from other provisional ballots when these ballots are cast in the wrong location or wrong precinct.

To minimize the risk of misunderstanding by the county boards of election the Court **GRANTS**, in part, Defendants' Motion to Modify April 19, 2010 Consent Decree. To remedy the inconsistency presented by Section III(5)(b)(v) of the Consent Decree, the Court **ORDERS**:

In light of two injunctions issued in *SEIU v. Husted*, Section III(5)(b)(v) of the April 19, 2010 Consent Decree has been removed for the purposes of the November 6, 2012 election. County boards of election are **ORDERED** to comply with the Directives that govern the counting of **ALL** provisional ballots cast in the wrong precinct, irrespective of whether they are cast in the correct polling place or an incorrect polling place.

IT IS SO ORDERED.

Algenon

s/Algenon L. Marbley
L. Marbley
United States District Judge

Dated: October 26, 2012