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DIRECTIVE 2007-37

December 14, 2007

TO: BOARDS OF ELECTIONS
Members, Directors & Deputy Directors

RE: Healthy Families Act - Initiative Petition – Proposing a Statute

An initiative petition proposing an addition to the Ohio Revised Code was filed in the Secretary of State's office on December 11, 2007.

Enclosed for review and certification by your office are part petitions that were circulated in your county. You must examine each part petition in accordance with the enclosed instructions. Please carefully read and study this directive and the accompanying instructions *before* you start your examination of the part petitions and signatures.

Reminders

- R.C. 3503.06 requires any circulator of a state issue petition to be a resident – but not an elector – of Ohio. If the circulator's address provided on a part petition is not an Ohio address, you must invalidate that part petition, and none of the signatures on that part petition are to be counted as valid.
- Because Ohio law bars persons who have been convicted of felony criminal offenses from circulating petitions (*see* R.C. 2961.01 and 2967.17), you must invalidate any part petition that was circulated by a person who has been convicted of a felony under the laws of this state, any other state or the United States. To verify whether a circulator has been convicted of a felony, you may seek the assistance of your county clerk of courts.
- Any part of a state issue petition is invalid if the board determines that one individual has affixed more than one signature to the part petition, *unless* the individual who signed the name of another elector did so as that elector's duly-appointed *attorney in fact* in accordance with R.C. 3501.382, or *unless* a circulator who is an Ohio elector signed his or her own petition, in which case, just the circulator's signature is invalid as a signer of the petition.
- In addition to verifying the validity of the individual signatures, you also must verify the validity of each part petition. Check each part petition to determine that the circulator's statement on the last page of the part petition has been properly completed; a part petition is invalid if the circulator's statement is not completed as required by law.

Protests

It continues to be prudent for boards to anticipate that their findings may be protested. Therefore, as soon as you complete (1) your certification of the part petitions and (2) the attached certification form, **please photocopy for your files the original part petitions**

marked with your notations. If a protest is filed, you will have a record of your individual and collective findings to review with your legal counsel.

Please notify the Elections Division of the Secretary of State's office **immediately** when a protest has been filed, fax a copy of the protest to Traci Washington (614-752-4360) and keep the elections attorney assigned to your county informed of the progress of the matter.

Returning the Petitions

You must determine the validity and sufficiency of these part petitions and return the originals to the Secretary of State's office, together with your certification, **no later than December 28, 2007.**

Important - Since no person may sign a petition more than once, it is imperative that boards maintain the names of those persons who signed the original part petitions in order to properly verify the signatures on the supplemental part petitions. It may be prudent to create a database list of the petition signers (both valid and invalid signatures), creating the following fields:

- 1. last name**
- 2. first name and middle initial**
- 3. address**
- 4. city, village or township**
- 5. date of signature**

Please return your completed certification form and all the part-petitions to this office in person or by using a trackable, third-party delivery method, such as certified U.S. Mail, U.S. Post Office Express Mail, UPS or FedEx.

If you have any questions concerning the handling of part petitions or the procedures set forth in this directive, please contact the elections attorney assigned to your county at (614) 466-2585. Thank you for your prompt assistance.

Sincerely,



Jennifer Brunner

Attachments

**Ohio Secretary of State's Instructions
to County Boards of Elections regarding
Examination of State Issue Petition**

(Ohio Constitution Art. II §§ 1-1g; Revised Code Chapters 3501., 3503., and 3519.)

CIRCULATORS

A. Qualifications

The circulator of a state initiative or referendum part petition need not be an Ohio elector but must be an Ohio resident in accordance with R.C. 3503.06(B).

No individual who has been convicted of a felony under the laws of this state, any other state or the United States may circulate a petition. (R.C. 2961.01(B), 2967.17(B)) To verify whether a circulator has been convicted of a felony, you may seek the assistance of your county clerk of courts.

B. Circulator's Statement

Each part petition must contain circulator's statement that is completed as required by law. (The circulator's statement may be identified on the part petition as the "statement of the solicitor.") The circulator's statement must include the following information:

1. The number of signatures witnessed by that circulator,
2. The signature of the circulator,
3. The circulator's address, and
4. The name *and* address (street name and number, city, and state; **or** post office box number, city, and state; **or** street name and number, and zip code; **or** post office box number and zip code) of employer of the circulator who has employed the circulator to circulate the part petition, **but only if the circulator is being employed to circulate the petition. In the absence of inconsistencies on the circulator statements circulated by the same individual or a protest being filed regarding paid circulators, the board accepts the part petition at face value.**

When the number of signatures on a part petition appears to differ from the number reported in the circulator's statement, the board must examine that part petition to determine the nature of the inconsistency. If the number of signatures reported as being witnessed by the circulator in the circulator's statement is:

- **Equal to or greater than** the total number of uncrossed out signatures on the part petition, **do not reject** the part petition because of the inconsistent signature numbers.

Example: The circulator's statement indicates that the circulator witnessed 22 signatures, but there are only 20 signatures on the petition.

- **Less than** the total number of uncrossed out signatures submitted on the part petition, **reject** the *entire* part petition.

Example: The circulator's statement indicates 20 signatures witnessed, but there are 22 signatures on the petition, none of which were crossed out prior to the petition being filed.

SIGNERS

A. Generally

Signers of a state issue petition must satisfy the requirements of R.C. 3519.10, which is set forth below:

Each signer of any initiative or referendum petition must be a qualified elector of the state. He shall place on such petition after his name the date of signing and the location of his voting residence, including the street and number in which such voting residence is located ***. Each signer may also print his name so as to clearly identify his signature. ***.

It is acceptable for another person to complete the date of signing and the location of the signer's voting residence on the petition, but one individual may not sign for another, unless via a designation of attorney in fact, as provided for in R.C. 3501.382. When one person signs for another, except pursuant to the attorney in fact provision in R.C. 3501.382, the entire part petition must be invalidated, because the circulator's statement is untrue.

B. Qualifications

Each person who signs a petition must be:

1. A qualified elector of Ohio, and
2. Registered to vote at the address provided on the petition as of the date the state issue part petition is *examined* by the board. (New voter registrations or changes of name or address filed with the Secretary of State at the time of the filing of the petition are enclosed with the petitions.) These must be processed before you verify signatures on the petitions.)

(R.C. 3501.38(A), 3519.10, and 3519.15)

C. Signatures

Except as provided in R.C. 3501.382 (elector's names signed by an attorney in fact), each signature of an elector who signs an initiative or referendum petition must be an original signature of that voter and must be written in ink. (R.C. 3501.38(B), 3519.051)

Authority to Appoint an Attorney in Fact – R.C. 3501.382:

A registered elector, who, by reason of disability, is unable to physically sign his or her name to a petition, may authorize a qualified individual as an attorney in fact to sign that elector's name to a petition, in accordance with the specific procedures required by that statute.

1. Marking valid signatures:

- a. If a signature is **valid**, please place a red check mark in the margin to the left of the signature on the petition paper.
- b. If a signature is **invalid**, please indicate why it is invalid, using the appropriate code symbol contained in these instructions (see below).
- c. No one may sign a petition more than once. Please place an identifying mark or insert a computer code on the elector's registration record to ensure that the elector's signature is not counted toward the same petition (such as a supplemental petition) more than once.
- d. It may be prudent to create a database list of the petition signers (both valid and invalid signatures), creating the following fields:
 - 1) last name
 - 2) first name and middle initial
 - 3) address
 - 4) city, village or township
 - 5) date of signature

2. One county per part petition:

Each part petition should contain signatures of electors of only one county. If any part petition contains signatures from more than one county, the Secretary of State determines the county from which the majority of signatures came, and only signatures from that county are to be counted; signatures from any other county are invalid. (R.C. 3519.10) When certifying the signatures, please include the out-of-county signatures in the list of invalid signatures for a petition that you are certifying as valid.

3. Signature requirements:

- a. The signature must match the signature on file with the board of elections. A board should not invalidate a signature because an elector signed using a derivative of his/her first name, if the board can confirm the identity of the elector. For identification purposes, the elector may print his/her name on the petition *in addition to* signing in cursive his/her name to the petition. A printed signature alone, with no cursive

signature, is allowed only if the elector's signature on file with the board is also printed. (R.C. 3501.011, 3501.38)

b. The signature must be written in ink or indelible pencil. (R.C. 3519.05)

c. The petition must contain the location of the elector's voting residence, which must:

- Include the house number and street name or RFD, and the appropriate city, village, or township. A post office box does NOT qualify as an elector's residence address.
- Match the elector's voting residence address on file with the board when the board examines the part petition. If an elector's address given on the petition differs from that on file with the board, then the board must invalidate the signature.

Note: For this reason, the boards must process all new, valid voter registrations and changes of address on existing registrations before verifying the signatures on the part petitions.)

- The petition should indicate the county in which the elector's address is located, but an elector's signature will not be invalidated if election officials can determine the proper county from other information provided on the petition paper. The elector's ward and precinct are **not** required.

4. Dates

R.C. 3501.38(C) and 3519.10 require that each signature be followed by the date it was affixed to the petition paper. Do **not** invalidate a signature solely because its date is out of sequence with other signatures.

5. Illegible Signature

A signature is illegible only if *both* the signature and address are unreadable, such that it is impossible for board personnel to check the signature against a voter registration record.

6. Restrictions on signing the name of another person

- a. Although a person having an elector's standard power of attorney cannot sign the elector's name to a petition, a qualified person who has been appointed as an elector's *attorney in fact* under R.C. 3501.382 may sign that elector's name to the petition paper in the elector's presence and at the elector's direction. You must compare the name signed on the petition by the attorney in fact to the document evidencing the attorney in fact status on file with your office.
- b. In each case where a person, other than a duly-authorized attorney in fact under R.C. 3501.382, signs a name other than his or her own to a petition, the board must invalidate the *entire* part petition.
- c. An elector's "non-signature information" – e.g., the elector's address, county, or the date of signing – may be added by a person other than the elector, with the elector's permission.

7. Ditto marks

Ditto marks may be used to indicate duplicate information (e.g., date, address or county).

CERTIFICATION

After you have examined all the parts of the state issue petition circulated in your county, you must certify your findings to the Secretary of State using the enclosed certification form.

After you make copies of the part petitions marked with your notations and your certification form, please return the original completed certification and part petitions to this office by a trackable method: e.g., in person or by certified U.S. Mail, U.S. Post Office Express Mail, UPS, or Fed EX. Please return the documents to:

Ohio Secretary of State
Elections Division
180 E Broad St - 15th Floor
Columbus OH 43215

Once all part petitions and reports have been returned by boards of elections, the Secretary of State will determine the validity and sufficiency of the petition and provide the constitutionally and statutorily required notices to the committee for the petitioners. If the Secretary of State determines that the petition is insufficient, the committee will have ten (10) additional days after notification to file additional signatures.

PROTESTS - R.C. 3519.16

- **Who may protest**

Any of the following persons may protest a board of elections' findings on the part petitions:

- a. The circulator of any part petition.
- b. The committee for the petitioners.
- c. Any elector.

- **Procedure**

A protest against the board's findings must be made in writing and filed with the board of elections. When such a protest has been filed, the board must, ***within three days*** after the protest has been filed, bring an action in the court of common pleas for the purpose of establishing the sufficiency or insufficiency of the signatures and the verification.

If a protest is filed, the board should contact the county prosecutor **immediately** and advise the prosecutor that time is of the essence. The findings of the court on a protest action should be certified, along with all petition papers, to the Elections Division as soon as possible after the protest has been finally determined.

Please notify the Elections Division immediately when a protest has been filed, fax a copy of the protest to Traci Washington (614-752-4360) and keep the election attorney assigned to your county informed of the progress of the court action.

CODE SYMBOLS FOR VALIDATING SIGNATURES ON PETITIONS

Each signature must be individually examined. If a signature is valid, please place a red check mark at the left margin beside it. After checking an entire part petition, please **write the number of valid signers** on the right side of the front page of each part petition and please **write the initials** of the board employee who checked the part petition under the number.

If a signature is not valid, please indicate the problem with it by using the following initials or, if no set of initials applies, an explanatory notation:

- CIR Circulator signed the part petition he or she was circulating. (This invalidates the circulator's signature as a signer, but not the entire part petition.)
- DUP "Duplication." The person has signed more than one part petition or twice on the same part petition.
- ILL "Illegible" applies only if both the signature and address are unreadable, so that it is impossible to check the signature against a voter registration record.
- NA "No address." The signer must have provided his/her complete address: house number and street name or RFD, and the appropriate city, village, or township. Failure to provide the name of the county of residence is not fatal *if* board officials can determine the county from the other information given. Ward and precinct information is not required.
- ND "No Date." The petition does not indicate the date on which the signature was affixed. (However, acceptable are: month-date-year, month-date, date out of sequence with other signers' dates, ditto marks.)
- NG "Not Genuine." The signature on the petition does not appear to be the genuine signature of the person whose signature it purports to be, compared to the signature on file with the board of elections as of the date the board checks the petition.
- NR "Not Registered." The signer is not registered to vote. Each person who signs a petition paper must be a qualified elector **as of the date the board examines the petition.**
- NRA "Not Registered Address." The address provided on the petition paper is not the address on file with the board of elections **as of the date the board examines the petition.**
- OC "Other County." The signer is a resident of some other county. **Do not cross out signature or address; instead, place code at left margin.**
- P "Pencil." The signature was written using a pencil *other than* an indelible pencil.

If the number of signatures on a part petition is **more than the number indicated** by the circulator, **the entire part petition is invalid.**

When invalidating an entire part petition, please indicate the reason for rejection on the front of that part petition and separate it from any valid part petition. **Please do not invalidate a part petition solely for the reason that it does not contain any valid signatures; it is a valid part petition, but it contains zero valid signatures.**

Finally, please fill out the certification form and forward it, with the part petitions, to the Secretary of State by personal delivery or by a method that provides for tracking of delivery.

