

DIRECTIVE 2010-38

March 2, 2010

TO: ALL COUNTY BOARDS OF ELECTIONS

RE: Supplemental Referendum Petition on certain sections of Am. Sub. H.B. 1

A supplemental petition was filed in the Secretary of State's office on February 8, 2010, to place on the statewide election ballot a referendum of Am. Sub. H.B. 1.

Enclosed for review and certification by your office are those part petitions that were circulated in your county. You must examine each part petition in accordance with the enclosed instructions. Please carefully read this directive and the accompanying instructions **before** you start your examination of the part petitions and signatures. R.C. 3519.16 requires boards to examine the petitions and **to return the petitions along with the report of the results of the examination within five days of receipt.**

Reminders

1. A federal court has ruled unconstitutional the provision of R.C. 3503.06(A) that required a circulator of a declaration of candidacy or nominating petition to be a resident of Ohio. By extension, the provision of R.C. 3503.06(B)(1) imposing an Ohio residency requirement on a circulator of any initiative and referendum petition is unconstitutional. See Advisory 2009-04 and Advisory 2009-06. **Therefore, you must not invalidate a part-petition for the reason that the circulator's address as set forth in the circulator's statement is outside of Ohio.**
2. As no person may sign a statewide issue petition more than once, it is imperative that boards determine whether any person who signed the original referendum petitions (Directive 2010-01) has signed the supplemental petition. **Any signature appearing on the supplemental petition which also appeared on the original petition must be invalidated.**
3. An individual is not permitted to sign a name other than his or her own name to a petition, *except* when the individual who signed the name of another elector did so as the elector's duly-appointed attorney in fact in accordance with R.C. 3501.382. (R.C. 3501.38(D)) If a board of elections determines that an individual who is not a duly-appointed attorney in fact signed the name of another elector, that signature must be rejected by the board of elections. Also, if the board determines that the circulator *knowingly* permitted an individual other than a duly-appointed attorney in fact to sign a name other than his/her own name to a petition, the board must invalidate the *entire* part petition. (R.C. 3501.38(F)).
4. Please note that if a circulator signed his or her own part petition just the circulator's signature is invalid as a signer of the petition.
5. 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.

6. Please note the simple rule that, if the number written by the circulator on the circulator's statement at the end of the part petition is *less than* the number of uncrossed out signatures on the part petition, the entire part petition is invalid. This is because the board cannot discern which signature was not witnessed by the circulator. It is wise to check the circulator's statement, i.e., the validity of the petition, *before* comparing signatures with those in your records to determine the number of valid signatures.
7. As Directive 2010-03 explained with regard to individuals with felony convictions serving as circulators of petitions:
 - a. An individual who was convicted of a felony under the laws of this state, any other state, or the United States **prior to** May 2, 2006, may circulate a declaration of candidacy and petition or a nominating, initiative, referendum or recall petition.
 - b. An individual who has been convicted of a felony under the laws of this state, any other state, or the United States **on or after** May 2, 2006, may circulate a declaration of candidacy and petition or a nominating, initiative, referendum or recall petition, **only if** that individual meets one of the following three qualifications:
 - (1) the individual has served his or her entire prison term and has not been placed under any post-release control sanctions;
 - (2) the individual has been granted a final release by the Adult Parole Authority pursuant to R.C. 2967.16(A) or R.C. 2967.16(B); or
 - (3) the individual has completed the period of a community control sanction or combination of community control sanctions that was imposed by the sentencing court.
 - c. In verifying part petitions, a circulator's statement may be accepted at face value absent "satisfactory evidence" that the statement is false in any respect. R.C. 3519.06(D). By extension, boards of elections should accept a circulator's eligibility to circulate petitions absent "satisfactory evidence" that the individual is ineligible to serve as a circulator.
 - d. If a board of elections is presented with satisfactory evidence that a circulator was ineligible, the board may invalidate the part petition. If a board determines that an individual's last felony conviction occurred before May 2, 2006, or if a board determines that an individual's last felony conviction occurred on or after May 2, 2006 but that he/she has been released from incarceration and/or supervision by the Ohio Adult Parole Authority or the probation department imposing the supervision as determined by the sentencing court, the circulator's statement may be accepted to allow for the signatures of the part petition circulated by that individual to be counted as valid. The board may feel free to seek the assistance of the county clerk of courts, the county prosecutor, the Ohio Adult Parole Authority, or any applicable corrections or law enforcement agency to obtain information related to the time frames and existence of convictions and any related incarceration and/or supervision information, including convictions from out-of-state courts for which there may be supervision in Ohio pursuant to an interstate compact.

Challenges/Protests

Article II, Section 1g of the Ohio Constitution was amended in 2008 to give the Ohio Supreme Court original, exclusive jurisdiction over all challenges to state issue petitions and the signatures on the petitions. Any challenge to a petition or a signature on a petition shall be filed

with Ohio Supreme Court not later than ninety-five days before the day of the election. With respect to this petition, that deadline is no later than July 30, 2010.

No protests may be filed with county boards of elections concerning state issue petitions. However, boards still have the statutory authority to investigate irregularities, nonperformance of duties, or violations of the election laws regarding this petition; to administer oaths, issue subpoenas, summon witnesses, and compel the production of evidence in connection with any such investigation; and to report the facts to the prosecuting attorney or the secretary of state. R.C. 3501.11(J).

Returning Certification Form and Petitions

You must determine the validity and sufficiency of these part petitions and return the part petitions and original certification form to the Secretary of State's office **no later than five days after receipt of the part petitions** either in person or by using a trackable, third-party delivery service such as certified U.S. Mail, U.S. Post Office Express Mail, UPS or FedEx.

Please submit a copy of your completed certification form as soon as completed to Denise Sherrod via one of the following two methods:

Fax: 614-485-7697

Email: dsherrod@sos.state.oh.us

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

Enclosure: Instructions