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DIRECTIVE 2011-24

July 22, 2011

To: COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS

Re: Withdrawal of Candidacy

SUMMARY

A person who withdraws his or her candidacy for office cannot subsequently file a new declaration of candidacy and petition, or nominating petition, or declaration of intent to be a write-in candidate for the same office at the same election.

DISCUSSION

This office has previously advised that a person who had filed a declaration of candidacy and petition, or a nominating petition, or a declaration of intent to be a write-in candidate could withdraw his or her candidacy and subsequently file a new declaration of candidacy and petition, or nominating petition, or declaration of intent to be a write-in candidate for the same office at the same election if the board of elections had not acted on the earlier filing and the applicable filing deadline had not passed.

After further review of the relevant statutes and the Ohio Supreme Court's decision in *State ex rel. Canales-Flores v. Lucas Co. Bd. of Elections* (2005), 108 Ohio St.3d 129, 2005-Ohio-5642, (see attached for a legal analysis of the statutes and the decision) we conclude that a person who withdraws his or her candidacy **cannot** file a new petition or declaration of intent to be a write-in candidate for the same office at the same election, even if the board of elections has not acted on the person's earlier filed document and the relevant filing deadline has not passed.

DIRECTION

Accordingly, a board of elections shall not accept for filing the declaration of candidacy and petition, nominating petition, or declaration of intent to be a write-in candidate of a person who already has filed, for the same office and at the same election, a declaration of candidacy and petition, nominating petition, or declaration of intent to be a write-in candidate. However, a person who has timely withdrawn his or her previously filed candidate petition or declaration of intent to be a write-in candidate may file, for the same election, a new petition or declaration of intent to be a write-in candidate for a different office.

If you have questions, please contact the Elections Counsel assigned to your county via the Elections Division, (614) 466-2585, or by e-mail.

Sincerely,



Jon Husted

Directive 2001-24
Legal Analysis

Several statutes are germane to the determination that a person who withdraws his or her candidacy *cannot* file a new petition or declaration of intent to be a write-in candidate for the same office at the same election, even if the board of elections has not acted on the person's earlier filed document and the relevant filing deadline has not passed. R.C. 3513.05, 3513.261, and 3513.041 govern the requirements for, and filing of, declarations of candidacy and petitions, nominating petitions, and declarations of intent to be a write-in candidate, respectively. These statutes contain language that specifically prohibits a board of elections from accepting new candidacy filings from a person who already had filed, for the same election, a declaration of candidacy and petition, or a nominating petition, or a declaration of intent to be a write-in candidate.

R.C. 3501.38 sets forth requirements that are applicable to candidate petitions. The statute requires that a candidate's petition be filed "as a single instrument." R.C. 3501.38(J). It also provides that a candidate petition, once filed, cannot be withdrawn, altered, corrected, or supplemented. R.C. 3513.38(I). Division (I)(2)(a) further provides that "[n]othing in this division prohibits a person from withdrawing as a candidate as otherwise provided by law." Thus, although a person cannot withdraw his or her petition seeking to become a candidate, the person can withdraw his or her candidacy for the office named in the petition. *See also* R.C. 3513.30.

Central to this discussion is R.C. 3513.052(G), which creates a statutory exception to the candidate filing restrictions of R.C. 3513.05, 3513.261, and 3513.041. Division (G) provides that a person who filed a petition or declaration of intent to be a write-in candidate for an office may "timely withdraw" as a candidate for the earlier filed office and file for a "subsequent office." Previous advice from this office relied on an interpretation of R.C. 3513.052(G) that expanded the ability to "timely withdraw" beyond the Supreme Court's decision in *Canales-Flores*. The Court clearly limited the applicability of R.C. 3513.052(G) to persons who want to avoid violating the prohibition against multiple office candidacies through the mechanism of a timely withdrawal of an initial candidacy for an office at the same election. The Court wrote:

R.C. 3513.052, however, does not support Canales-Flores's claim. The statute is expressly directed to forbidding persons from seeking *multiple offices* at the same election. *See R.C. 3513.052(A)*. *R.C. 3513.052(G)* provides a method for a person to avoid violating the multiple-office-candidacies prohibition of *R.C. 3513.052(A)* through the mechanism of a timely withdrawal of an initial candidacy for an office at the same election. Neither *R.C. 3513.261* nor *3513.05*, which by their plain language apply to more situations than does *R.C. 3513.052*, is limited to this circumstance. * * * Cf., e.g., *Choices for South-Western City Schools*, 108 Ohio St. 3d 1, 2005 Ohio 5362, 840 N.E.2d 582, at P53." (*Canales-Flores* at 135-136; emphasis in the original.)