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DIRECTIVE 2011- 40

December 16, 2011

**TO: COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, DEPUTY DIRECTORS**

RE: Instructions regarding the examination and verification of petitions from candidates for statewide office

SUMMARY

This Directive provides instructions on the examination and verification of candidate petitions that have been filed with the Ohio Secretary of State for the 2012 Primary Election and transmitted to the county boards of elections for examination and verification.

In lieu of issuing a separate Directive with each candidate's petition, this Directive is intended to apply to each petition that is filed with the Ohio Secretary of State and transmitted to county boards of elections for examination and verification.

Petition examination and verification must be complete, and the certification forms sent to the Secretary of State's office, not later than 4 p.m. on Tuesday, December 27, 2011.

DIRECTIONS

Please carefully read this Directive before you start examining the part-petitions sent to you by this office.

I. CIRCULATORS

A. Qualifications of Circulators

- **A circulator does not have to be an Ohio elector or an Ohio resident.¹**

Please note that, if the circulator is a qualified elector of Ohio, there is no requirement that the address of the circulator match the address on file with the board of elections. A board must not invalidate a part-petition solely because the address of the circulator in the circulator's statement differs from the address on file with the board of elections.

- **Each circulator must be a member of the political party named in the declaration of candidacy.**

¹ *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008).

A board of elections will determine a circulator's party affiliation as follows:

- **Not an Ohio Elector.** If the circulator is not an Ohio elector, the board of elections should accept as true the claim of political party membership that is included in the circulator's statement, unless the board has knowledge to the contrary.
- **Ohio Elector.** An Ohio elector who circulates another person's declaration of candidacy and petition for the nomination or election at a partisan primary must not have voted in any other party's primary election in the preceding two calendar years.²
The board of elections should examine the circulator's Ohio voting history using the statewide voter registration database. If the board determines that the circulator voted in another political party's primary election during the prior two calendar years, then the part-petition is invalid.
- **Candidate as circulator:** Candidates may circulate their own part-petition regardless of how they may have voted in the prior two calendar years. If the candidate does not hold an elective office, or if the candidate holds an elective office other than one for which candidates are nominated at a party primary, the candidate does not need to file any additional forms. If the candidate holds partisan public office, the candidate can still run for office for a different party, if the candidate has a filed declaration of intent to change political party affiliation (Form 10-Y).³
- **Convicted felons:** Some convicted felons are prohibited from circulating petitions.⁴ State law does not require a circulator to provide key data points that constitute "satisfactory evidence" that the person who circulated a petition is the same individual who may be listed in a county's local voter registration database as cancelled due to incarceration of a felony conviction. Thus, when verifying petitions, boards of elections should presume that a circulator is qualified to circulate petitions, unless there is "satisfactory evidence" that the individual is not qualified.

B. Circulator's Statement on Each Part-Petition:

- Must include the circulator's signature
- Must include the number of signatures witnessed by the circulator

² R.C. 3513.05, ¶7

³ R.C. 3513.191

⁴ Ohio Attorney General Advisory Opinion 2010-02

- **If the number of signatures reported in the statement is less than** the total number of uncrossed out signatures submitted on the part-petition, then the board must reject the entire part-petition.⁵

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. This part petition must be rejected.

- **If the number of signatures reported in the statement is equal to or greater than** the total number of signatures not crossed out on the part-petition, then the board does not reject the part-petition because of the inconsistent signature numbers.⁶ Instead, the board must review the validity of each signature as usual.

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

II. SIGNERS

A. Qualifications of Signers

- Must be a qualified elector of Ohio
- Must be registered to vote at the address provided on the petition as of the date that the petition was filed with the Secretary of State.⁷
 - Must be a member of the political party of the candidate named on the declaration of candidacy. For purposes of signing candidate petitions for these parties, the person signing is considered to be a member of a political party if the signer did not vote in any other party's primary election in the preceding two calendar years.⁸

B. Signatures

- Each signature must be an original signature of that voter.⁹
- The signature must match the signature on file with the board of elections. A board must 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.¹⁰ Some acceptable examples include Jim for John or Peg for Margret. Also, inclusion or omission of the voter's middle initial is not a reason to invalidate a signature.

⁵ *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, (2005).

⁶ *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167 (1992).

⁷ R.C. 3501.38(A)

⁸ R.C. 3513.05, ¶7

⁹ R.C. 3501.38(B)

¹⁰ *State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193 (1992).

- For identification purposes, the elector may print his or her name on the petition *in addition* to signing in cursive his or 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.¹¹
- The signature must be written in ink.¹²
- An elector's signature must not be invalidated solely because "non-signature information" was completed by another person (e. g., the elector's printed name, address, county, or the date of signing). Non-signature information may be added by a person other than the elector, at the direction and in the presence of the petition signer, which should be presumed unless there is evidence to the contrary.¹³
- No one may sign a petition more than once. If a person does sign a petition more than once, after the first signature has been marked valid, each successive occurrence of the signature must be invalidated.

C. Signers Address

- The petition must contain the elector's voting residence including the house number and street name or RFD number (rural free delivery), and the appropriate city, village, or township.
- The elector's ward and precinct are not required.
- A post office box does not qualify as an elector's residence address.
- If an elector's address given on the petition differs from that on file with the board, then the board must invalidate that signature.

D. Attorney in Fact

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 the elector's name to a petition in accordance with R.C. 3501.382.

A qualified person who has been appointed as an elector's attorney in fact may sign that elector's name to the petition paper in the elector's presence and at the elector's direction.¹⁴ The board must compare the attorney in fact's signature on the petition with the document on file with the Board office (Form 10-F or 10-G).

In order to sign a petition on behalf of a registered voter as that person's attorney in fact, the Board must have a completed Form 10-F or 10-G on file. Other types of power of attorney documents, filed with a court or some other agency, will not allow an individual

¹¹ R.C. 3501.011, 3501.38

¹² 3501.38(B)

¹³ *State ex rel. Jeffries v. Ryan*, 21 Ohio App.2d 241, 256 N.E.2d 716 (Ohio App.10 Dist. 1969).

¹⁴ R.C. 3501.382

to sign election documents on another's behalf. The proper documentation must be on file with the Board of Elections.

If a person, who has not been designated the attorney in fact for elections purposes, signs another person's name to a petition, then the Board must, at a minimum, invalidate that signature. If the Board determines that the circulator allowed someone who they knew was unqualified to sign on another person's behalf, then the entire part-petition must be invalidated.¹⁵

E. Dates

Each signature must be followed by the date it was affixed to the petition paper.¹⁶ The board must not invalidate a signature solely because its date is out of sequence with other signatures on the same part petition.

F. Illegible Signature

The board must invalidate illegible signatures. A signature is illegible only if both the signature and address are unreadable, such that it is impossible for board personnel to query the board's voter registration system to check the signature against a voter registration record.¹⁷

G. Ditto Marks

Ditto marks may be used to indicate duplicate information, e.g., date, address or county.¹⁸

H. One County per Part-Petition

Each part-petition should contain signatures of electors of only one county. The board must invalidate signatures from any other county.¹⁹

If any part-petition contains signatures from more than one county, then the Secretary of State determines the county with the most signatures on the part-petition, and only signatures from that county are to be reviewed. If, upon review by a county board of elections, the board believes that a part-petition was improperly forwarded to the county, the Director and Deputy Director should contact the Secretary of State's office, which will review the part-petition again.

I. Non-Genuine Signatures

A board of elections must not invalidate an entire part-petition based solely on the number of non-genuine signatures it contains. Only if a circulator knowingly allows an

¹⁵ R.C. 3501.38(F)

¹⁶ R.C. 3501.38(C)

¹⁷ *State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 926 N.E.2d 617 (2010).

¹⁸ *State ex rel. Donofrio v. Henderson*, 4 Ohio App.2d 183, 211 N.E.2d 854 (Ohio App. 7 Dist. 1965).

¹⁹ 3513.05, ¶9

unqualified person to sign a petition, should the entire petition be invalidated.²⁰

III. MARKING SIGNATURES

If a signature is valid, place a check mark in the margin to the left of the signature on the petition paper.

If a signature is invalid, indicate why it is invalid by writing in the margin to the left of the signature the appropriate code symbol for the reason the signature is invalid (see attached).

It is advisable to use a red ink pen for making marks by the board.

IV. CERTIFICATION

After the board staff has examined all the parts of the candidate petitions, **but no later than 4 p.m. on Tuesday, December 27, 2011**, the Director must certify the board's findings to the Secretary of State. Once the certification form has been submitted, county boards of elections must return the original part petitions to the Secretary of State's office no later than Wednesday, January 4, 2012.

A blank certification form is attached to this Directive. You must complete separate certification forms for each candidate for each office for which you are reviewing petitions. Completed certification forms must be sent to Melanie Poole via electronic mail to MPoole@sos.state.oh.us or via fax to 614-485-7697 by 4 p.m. on Tuesday, December 27, 2011

If you have any questions, please contact the Secretary of State's elections counsel assigned to your county.

Sincerely,



Jon Husted

²⁰ R.C. 3501.38

CODE SYMBOLS FOR VALIDATING SIGNATURES ON PETITIONS

Each signature must be individually examined. If a signature is valid, place a check mark at the left margin beside it.

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

- CIR Circulator signed as an elector on the part-petition he or she was circulating. (This invalidates the circulator's signature as a signer, but not the entire part-petition.)
- DUP "Duplicate signature." 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, such that it is impossible for board personnel to query the board's voter registration system to check the signature against a voter registration record.
- NA "No address." The signer's complete address must be provided: house number and street name or RFD, and the appropriate city, village, or township. 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 when 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.

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, indicate the reason for rejection on the front of that part-petition and separate it from any valid part-petitions. **Do not invalidate a part-petition for the sole reason that it does not contain any valid signatures; it is a valid part-petition, but it contains zero, or no, valid signatures.**

After checking an entire part-petition, write on the right side of the front page of each part-petition both the number of valid signers and the initials of the board employee who checked the part-petition.

