

DIRECTIVE 2009-21

December 31, 2009

To: ALL COUNTY BOARDS OF ELECTIONS
Members, Directors and Deputy Directors

Re: **Continued ballot access for minor political parties in Ohio**

Background

On September 6, 2006, the U.S. Court of Appeals for the Sixth Circuit found that Ohio's laws for political party formation and ballot access were unconstitutional.¹ Since that time, the Ohio General Assembly has not enacted a valid ballot access statute to allow its citizens to exercise their First Amendment political speech and associational rights to organize new political parties and to run candidates for office with the designation of any new political party. Although Sub. H.B. 260 contains provisions providing a new ballot access petition process for political parties, this bill, even if it is enacted, will not be effective by the February 18, 2010 filing deadline for the May 4, 2010 primary election.

In 2008, representatives of several political parties filed suit to obtain ballot access in Ohio for their presidential candidates and candidates for other offices.² The following political parties were granted ballot access in Ohio for the 2008 general election by court order or by agreement of the parties: the Constitution Party, the Green Party, the Libertarian Party, and the Socialist Party USA.³ The extent of the state's liability for attorney fees due to these successful lawsuits has not yet been determined.

Under R.C. 3517.01 (A)(1), political parties whose presidential candidate did not receive at least five percent of the vote at the general election cease to be political parties in Ohio. In the 2008 general election, only the presidential candidates of the Democratic Party and the Republican Party received at least five percent of the vote in Ohio. If the political parties that were granted ballot access in Ohio in 2008 by court order or agreement are denied ballot access again in

¹ *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (2006)(holding that the petition process for political party formation in R.C. 3517.01(A)(1) and the primary election requirement for political parties in Section 7, Article V of the Ohio Constitution violate the First Amendment to the U.S. Constitution).

² See, e.g., *Constitution Party of Ohio v. Brunner*, S.D. Ohio Case No. 2:08-cv-666; *Libertarian Party of Ohio v. Brunner*, 567 F.Supp.2d 1006 (S.D. Ohio 2008); *Moore v. Brunner*, S.D. Ohio Case No. 2:08-cv-224.

³ See Advisory 2008-17; Directive 2008-83.

2010, then it can be expected that they will again file in federal court to gain Ohio ballot access in 2010, which can be expected to result in favorable rulings for these political parties and, as a result, in the state being liable for additional legal fees. There is also the prospect for confusion and delay, which is antithetic to a smooth election process.

Discussion

Given that the General Assembly has not yet enacted a new ballot access statute following the September 6, 2006 court decision, and given the high likelihood of success on the merits of any new lawsuit to obtain ballot access, Ohio boards of elections are hereby instructed to continue to recognize these political parties and to grant candidates of these political parties ballot access in the 2010 election cycle.

Consequently, the following shall apply for the 2010 election cycle:

A. Recognized Major and Minor Political Parties

1. The recognized **major** political parties in Ohio are the Democratic Party and the Republican Party.
2. The recognized **minor** political parties in Ohio are the Constitution Party, the Green Party, the Libertarian Party, and the Socialist Party USA.

B. Minor Party Candidates Seeking Political Party Nomination at the Primary Election

1. Candidates seeking the nomination of a minor political party at the primary election must use the same Secretary of State prescribed forms as candidates for major political parties seeking nomination at the primary election.
2. Candidates of minor political parties must pay the same filing fee as candidates for the same office who are seeking the nomination of either of the major political parties.
3. The Secretary of State and boards of elections must accept for filing all facially valid declaration of candidacy and petitions of candidates of the Constitution, Democratic, Green, Libertarian, Republican, and Socialist Parties who file to seek party nomination at the primary election for any office for which nomination at a primary election is available. Any filed declaration of candidacy and petition is subject to verification by the board of elections prior to certification, as with any candidate petition.
4. Any candidate seeking political party nomination at a primary election must declare under penalty of election falsification that the candidate is a member of the political party whose nomination the candidate is seeking. This declaration is made in the declaration of candidacy, such as Secretary of State Form 2-G for candidates seeking political party nomination for a county office.
5. In accordance with R.C. 3517.013, **any elector** may seek political party nomination as a candidate of a minor political party in 2010, regardless of the elector's prior political affiliation, voting history, or if the elector holds public

elected office, regardless if the elector was appointed or elected to the public office as a nominee of a major political party.

6. Under R.C. 3517.014, candidates seeking political party nomination of a minor political party are not subject to challenges by poll workers at the primary election under R.C. 3513.19(A)(3) based upon prior political affiliation.

C. Signature Number and Signers of Candidate Petitions for Minor Political Party Candidates

1. Consistent with R.C. 3513.05, the minimum number of signatures for candidates of minor political parties seeking their party's nomination to public elective office at the primary election is **one-half** the minimum number of signatures required for candidates of major political parties. (Note: This lesser signature requirement does not apply to a declaration of candidacy and petition filed by a candidate seeking to be elected to a political party office such as the central committee of the party at the primary election. See section E.3., below.)
2. Any qualified elector may sign the declaration of candidacy and petition of a minor political party candidate seeking nomination at the primary election regardless of the elector's prior political affiliation under R.C. 3517.015. **Thus, the signature cannot be rejected by a board of elections under the seventh paragraph of R.C. 3513.05 based upon the elector's vote in another political party's primary election in the preceding two calendar years.**
3. All signers of declaration of candidacy and petitions of candidates seeking nomination or election at a primary election declare that they are members of a political party and make this declaration under penalty of election falsification under R.C. 3513.07. Consequently, signers of such declaration of candidacy and petitions must make their declaration of party membership in good faith and may not sign declaration of candidacy and petitions of candidates of different political parties for the same primary election. (Note: The signing by a qualified elector of a declaration of candidacy and petition for a candidate seeking party nomination or election at a primary election does not impact the eligibility of a qualified elector to sign the nominating petition of an independent candidate or a candidate for a nonpartisan office for which nomination at a primary election is not available (such as state board of education). Any qualified elector may sign the nominating petition of an independent candidate or a candidate for a nonpartisan office for which nomination in a primary election is not available, regardless of the elector's political affiliation.)

D. Circulators of Minor Political Party Candidate Petitions

1. Circulators of any candidate's petition **do not have to be Ohio residents or Ohio electors** under the ruling of the U.S. Court of Appeals for the Sixth Circuit in *Nader v. Blackwell*, 545 F.3d 459 (2008).
2. However, if the circulator of a declaration of candidacy and petition for a candidate seeking nomination or election at a primary election **is an Ohio elector**:

- a. The circulator must be a member of the same political party (major or minor) as the candidate (the circulator did not vote in a different political party's primary election within the preceding two calendar years under R.C. 3513.05 (seventh paragraph)), or
 - b. The circulator may be unaffiliated, that is, the circulator did not vote in any political party's primary election in the last two calendar years under R.C. 3513.05 (seventh paragraph).
3. Candidates may circulate their own petitions for public or party office under R.C. 3513.05 (tenth paragraph), R.C. 3513.191(C)(4), and R.C. 3517.013.

E. Candidates Seeking Election to an Office of a Minor Political Party

1. R.C. 3517.03 provides that a minor political party may elect controlling committees in an even-numbered year only if the party files a plan for party organization with the Secretary of State on or before the ninetieth day before the primary election. The ninetieth day before the 2010 primary election is February 3, 2010.
2. The plan must include a statement of the party offices to be elected and the procedure for qualification of candidates for those offices.
3. Under R.C. 3513.05 (sixth and seventh paragraphs), declaration of candidacy and petitions of candidates for election to a state or county central committee of a political party must be signed by five qualified electors who are members of the same political party as the candidate or who are not affiliated with any other political party. **Note that the signature requirement for candidate petitions for party central committee is the same for minor party candidates as it is for major party candidates for party office.**
4. The declaration of candidacy and petition form for candidates for central committee for minor political parties will depend upon the requirements appearing in the plan for party organization filed with the Secretary of State.
5. There is no filing fee for party central committee candidates under R.C. 3513.10(C).
6. The Secretary of State shall notify county boards of elections if a minor political party files a plan for party organization by the deadline.

F. Protests

1. R.C. 3513.05 provides that a protest may only be filed against a candidate for political party nomination or election at a primary election on or before the 64th day before the primary election (March 1, 2010), and such a protest must be filed by:
 - a. An elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate; or

- b. The controlling committee of the political party named in the candidate's declaration of candidacy.

G. Holding of a Primary Election for One or More Minor Political Parties

1. A board of elections must hold a primary election in an even-numbered year for a major or minor political party in a precinct if any candidate seeking the nomination of that political party is certified to the ballot for a political subdivision in which that precinct is located by the secretary of state or by the board of elections. *There is no authority in the Ohio Revised Code for not holding a primary election in an even-numbered year, even if there are no contested primary races.*
2. If the secretary of state or a board of elections certifies a candidate for party nomination by a political party at the primary election, then the board of elections must provide separate primary election ballots for any political party (major or minor) for the precinct(s) of the political subdivision for which the candidate seeks office and will appear on the ballot under R.C. 3513.13.
3. Under R.C. 3517.016, **any elector** may vote in the primary election of a new minor political party at the first primary election held by that party, and poll workers **may not challenge** an elector's ability to vote in the primary election of a new minor political party under R.C. 3513.19(A)(3) based upon the elector's prior political affiliation.

If you have any questions about this directive or its implementation, please contact the elections attorney in this office assigned to assist your county board of elections.

Sincerely,

Jennifer Brunner