

DIRECTIVE 2009-xx

December 29, 2009

TO: COUNTY BOARDS OF ELECTIONS

RE: Referendum Petition on certain sections of Am. Sub. HB 1

A petition was filed in the Secretary of State's office on December 20, 2009 to place on the November 2, 2010 statewide election ballot a referendum of certain sections of Am. Sub. H.B. 1.

Enclosed for review and certification by your office are the 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.

Reminders

- 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 shall not invalidate a part-petition for the reason that the circulator's address as set forth in the circulator's statement is outside Ohio.
- Ohio law bars persons who have been convicted of any felony under the laws of this state, another state or the United States from circulating initiative petitions, unless that individual's right to serve as a circulator has been restored pursuant to Ohio law. (See R.C. 2961.01(B) and R.C. 2967.17(B)). You must invalidate any part-petition which was circulated by a person who has been convicted of a felony whose right to serve as a circulator has not been restored pursuant to Ohio law. To verify whether a circulator has been convicted of a felony, you may seek the assistance of your county clerk of courts. If you determine that a felon circulated any part-petition you are examining, please provide the felon's name and address to the Elections Division promptly, so that the Elections Division may share that information with the other boards of elections examining parts of the petition.
- An individual is not permitted to sign a name other than his or her own to a petition, *except* when 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. (R.C. 3501.38(D)).

If it is determined that an individual who is not a duly-authorized *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 the non-authorized individual to sign a name other than his or her own to a petition, the board must invalidate the *entire* part-petition. (R.C. 3501.38(F)).

- Please note that if a circulator who is an Ohio elector signed, as an elector, any part-petition that he or she circulated, the board must invalidate the circulator's signature as an elector. However, this is not a reason for invalidating the entire part-petition.

- You must verify the validity of each part-petition in addition to verifying the validity of the individual signatures contained on the 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.

Important - Because 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 any potential 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 (if any).**
- 3. Street address (house number and street name).**
- 4. City, village or township.**
- 5. Date of signing.**

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 July 31, 2009.

No protests may be filed with county boards of elections concerning state issue petitions. However, the boards still have the statutory authority to investigate irregularities, nonperformance of duties, or violations of the election laws relative to this petition; administer oaths, issue subpoenas, summon witnesses, and compel the production evidence in connection with any such investigation; and 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 January 28, 2010** 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