

**Ohio Secretary of State's Instructions
to County Boards of Elections regarding
Examination of 2010 State MAJOR Political Party Candidate Petitions
(Revised Code Chapters 3501, 3503, and 3513)**

CIRCULATORS

A. Qualifications

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 an elector or resident of Ohio. (*See* Advisory 2009-04). However, under R.C. 3513.07, circulators of candidate petitions must list the circulator's permanent address. However, unlike signers of petitions, there is no basis in law for invalidating a part-petition if the address of a circulator who is an Ohio elector differs from the address on file with a board of elections.

Ohio Attorney General Opinion 2010-002 (issued January 15, 2010) interpreted R.C. 2961.01(B) and R.C. 2967.16(C) to conclude that persons who were convicted of felony offenses prior to May 2, 2006 are eligible to circulate petitions in Ohio. Additionally, persons who were convicted of felony offenses on or after May 2, 2006, who have served their entire sentence without any post-release control sanctions, who have been granted final release by the Ohio or another state's Adult Parole Authority, or who have completed their period of any community control sanctions (probation) may also circulate petitions in Ohio. You may seek the assistance of your county prosecutor and/or clerk of courts to determine whether a circulator who was convicted of a felony offense after May 2, 2006 is eligible to circulate a petition. Additionally, if you determine that a person who was convicted of a felony offense after May 2, 2006 is not eligible to circulate a petition, please report this information to the Elections Division of the Secretary of State's office. This will assist other boards of elections in determining the qualifications of circulators in their counties.

While circulators of any declaration of candidacy for a partisan candidate are not required to be Ohio electors, if the circulator is an Ohio elector he/she must be affiliated with the political party of the candidate named on that declaration of candidacy or be unaffiliated, *unless* the circulator is the candidate named in that petition and is exempted by R.C. 3513.191(C)(4) from the party affiliation rule contained in the seventh paragraph of R.C. 3513.05. For purposes of circulating a declaration of candidacy, an elector is considered affiliated with a political party of the candidate if the circulator *either*:

1. Voted in that party's primary election within the preceding two calendar years (2008 or 2009), or
2. Did not vote in any other party's primary election within the preceding two calendar years.

B. Circulator's Statement

Each part petition must contain a circulator's statement that is completed as required by law. The circulator's statement must include the following information:

1. The number of signatures witnessed by that circulator,
2. The signature of the circulator,
3. The circulator's permanent residence address (does **not** have to be an address in Ohio), and
4. The name *and* address -- e.g., street name and number, city, and state; or post office box number, city, and state; or street name and number, and zip code; or post office box number and zip code -- of the employer of the circulator who has employed the circulator to circulate the part petition, but only if the circulator is being employed to circulate the petition. **In the absence of inconsistencies on or between the circulator statements on part petitions circulated by the same individual or a protest filed regarding part petitions circulated by paid circulators, the board must accept the information contained in the part petition as it appears on its face.**

When the number of signatures on a part petition appears to differ from the number entered in the circulator's statement, the board must examine that part petition to determine the nature of the

inconsistency. If the **number of signatures reported** as being witnessed by the circulator in the circulator's statement is:

- **Equal to or greater than** the total number of signatures not crossed out on the part petition, do not reject the part petition because of the inconsistent signature numbers.

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

- **Less than** the total number of uncrossed out signatures submitted on the part petition, reject the *entire* part petition.

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.

SIGNERS

A. Generally

Signers of a declaration of candidacy or nominating petition must satisfy the requirements of R.C. 3501.38, which are set forth below:

1. Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. Each signer shall be a registered elector pursuant to R.C. 3503.11. **The facts of qualification shall be determined as of the date when the petition is filed with the Secretary of State.**
2. Signatures shall be affixed in ink. Each signer may also print the signer's name, so as to clearly identify the signer's signature.
3. Each signer shall place on the petition after the signer's name the date of signing and the location of the signer's voting residence, including the street and number if in a municipal corporation or the rural route number, post office address, or township if outside a municipal corporation. The voting address given on the petition shall be the address appearing in the registration records at the board of elections.
4. Except as otherwise provided in R.C. 3501.382 (attorney in fact), no individual shall sign or write any name other than his or her own name on any petition, and no individual may authorize another to sign for the him or her. If a petition contains the signature of an elector two or more times, only the first signature shall be counted.

It is acceptable for a signer to allow another person to complete the date of signing and the location of the signer's voting residence on the petition. However, one individual may not sign another person's name to a petition without having first been designated that person's attorney in fact in accordance with the specific provisions of R.C. 3501.382. If a person who has not been designated the attorney in fact signs another person's name to a petition, that signature must be rejected by the board of elections. If it is determined the circulator **knowingly allowed** a person who has not been designated the attorney in fact to sign another person's name to a petition, then the *entire* part-petition must be invalidated, because the circulator's statement is untrue (the circulator did not in fact witness the signing of all electors' signatures on the part petition, because the power of attorney signature is invalid as the signature of the elector in question). (R.C. 3501.38(F))

B. Qualifications

Each person who signs a petition must be:

1. A qualified elector of Ohio,
2. Registered to vote at the address provided on the petition as of the date the petition paper is filed with the Secretary of State's office (R.C. 3501.38 (A)), and
3. Affiliated with the political party of the candidate named on that declaration of candidacy. For purposes of signing a declaration of candidacy, an elector is considered affiliated with a political

party of the candidate if the circulator *either*:

- a. Voted in that party's primary election within the preceding two calendar years (2008 or 2009),
or
- b. Did not vote in any other party's primary election within the preceding two calendar years.

C. Signatures

Except as provided in R.C. 3501.382 (elector's name signed by an attorney in fact appointed specifically for this purpose – see boxed text below), each elector's signature must be the original signature of that voter and must be written in ink. (R.C. 3501.38(B))

Authority to Appoint an Attorney in Fact – R.C. 3501.382:

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 that elector's name to a petition, in accordance with the specific procedures required by that statute.

1. One county per part petition:

Each part petition should contain signatures of electors of only one county. If any part petition contains signatures from more than one county, the Secretary of State determines the county from which the majority of signatures came, and only signatures from that county are to be checked for validity and counted; signatures from any other county are invalid. (R.C. 3513.05) When certifying the number of signatures for each part petition, please include the out-of-county signatures in the list of invalid signatures for a petition that you are certifying as valid.

2. Signature requirements:

- a. To be declared valid, a signature on a part petition must match the signature on file with the board of elections. A board should 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. For identification purposes, the elector may print his/her name on the petition *in addition to* signing in cursive his/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. (R.C. 3501.011, 3501.38)
- b. The signature must be written in ink. (R.C.3501.38(B))
- c. The petition must contain the location of the elector's voting residence, which must:
 - Include the house number and street name or RFD, and the appropriate city, village, or township. A post office box does NOT qualify as an elector's residence address.
 - Be the same address as the elector's voting residence address on file with the board. As noted previously, the address on the petition paper must be the same address on file as of the date the petition was filed with the Secretary of State's office. If an elector's address written on the petition differs from that on file with the board, then the board must invalidate the signature.

Note: Boards of elections must process all new, valid voter registrations and changes of names and/or address to existing registrations before determining the validity of the signatures on the part petitions.)

- The petition should indicate the county in which the elector's address is located, but an elector's signature will not be invalidated if election officials can determine the proper county from other information provided on the petition paper. The elector's ward and precinct are **not** required.

3. Dates

R.C. 3501.38(C) requires that each signature be followed by the date it was affixed to the petition paper. Do **not** invalidate a signature solely because its date is out of sequence with other signatures.

4. Illegible Signature

A signature is illegible only if *both* the signature and address are unreadable, such that it is impossible for board personnel to check the signature against a voter registration record.

5. Restrictions on signing the name of another person

- a. Although a person having an elector's standard power of attorney cannot sign the elector's name to a petition, a qualified person who has been appointed as an elector's *attorney in fact* under R.C. 3501.382 may sign that elector's name to the petition paper in the elector's presence and at the elector's direction. You must compare the name signed on the petition by the attorney in fact to the document evidencing the attorney in fact status on file with the board of elections.
- b. In each case where a person, other than a duly-authorized attorney in fact under R.C. 3501.382, signs a name other than his or her own to a petition, the signature must be rejected by the board. If it is determined the circulator **knowingly allowed** a person who has not been designated the attorney in fact to sign another person's name to a petition, then the *entire* part petition must be invalidated, because the circulator's statement is untrue. (R.C. 3501.38(F)).
- c. An elector's "non-signature information" – e.g., the elector's address, county, or the date of signing – may be added by a person other than the elector, with the elector's permission.

6. Circulators signing part petitions that he/she circulated

Please note that if a circulator signed a part petition that he/she circulated, then only the circulator's signature is invalid as a signer of the petition.

7. Ditto marks

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

8. Marking valid signatures:

- a. If a signature is **valid**, please place a red check mark in the margin to the left of the signature on the petition paper.
- b. If a signature is **invalid**, please indicate why it is invalid, using the appropriate code symbol contained in these instructions (see below).
- c. No one may sign a petition more than once. Please place an identifying mark or insert a computer code on the elector's registration record to ensure that the elector's signature is not counted toward the same petition more than once.
- d. It may be prudent for you to create a database list of the petition signers (both valid and invalid signatures), creating the following fields:
 - Last name
 - First name and middle initial
 - Street address (house number and street name)
 - City, village or township
 - Date of signing

CERTIFICATION

After the board staff has examined all the parts of the candidate's petition circulated in your county, you must certify your findings to the Secretary of State using the enclosed certification form.

Please return the original completed certification form and part petitions to this office by a trackable method; e.g., in person or by certified U.S. Mail, U.S. Post Office Express Mail, UPS, or Fed EX. Please return the

documents **no later than March 3, 2010**, to:

Ohio Secretary of State
Elections Division
180 E Broad St - 15th Floor
Columbus OH 43215

Once all certification forms have been transmitted by boards of elections, the Secretary of State will determine the validity and sufficiency of the petition and notify the candidate or his/her committee.

CODE SYMBOLS FOR VALIDATING SIGNATURES ON PETITIONS

Each signature must be individually examined. If a signature is valid, please place a red check mark at the left margin beside it. After checking an entire part petition, please **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 under the number.

If a signature is not valid, please indicate the problem with it by using the following lettered codes or, if no lettered code applies, an explanatory notation:

- CIR Circulator signed as an elector the part petition he or she was circulating. (This invalidates the circulator's signature as a signer, but not the entire part petition.)
- DUP "Duplication." 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, so that it is impossible to check the signature against a voter registration record.
- NA "No address." The signer failed to provide a complete address. This means house number and street name or RFD, and the appropriate city, village, or township. Failure to provide the name of the county of residence does not invalidate the signature *if* board officials can determine the county from the other information given. Ward and precinct information is not required. Ditto marks are acceptable if they refer to an address for the elector that appears in the board of elections' records.
- 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, 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 part petition must be a qualified elector **as of the date the petition was filed with the Secretary of State's office.**
- NRA "Not Registered Address." The address provided on the part petition is not the address on file with the board of elections **as of the date the petition was filed with the Secretary of State's office.**
- OC "Other County." The signer is a resident of some other county. **Do not cross out signature or address; instead, place "OC" code at left margin.**
- P "Pencil." The signature was written using a pencil.
- WP "Wrong Party." The signer or circulator, based on his or her 2008 or 2009 primary voting history, is affiliated with a political party different than the candidate. (An unaffiliated and/or unregistered individual may circulate the petition).

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, please indicate the reason for rejection on the front of that part petition and separate it from any valid part petition. **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 no ("zero") valid signatures.**