

DIRECTIVE 2010-25

February 22, 2010

To: ALL COUNTY BOARDS OF ELECTIONS

Re: **Petition of David Pepper for Auditor of State**

Enclosed for your review and verification is David Pepper's declaration of candidacy and petition for statewide office of Auditor of State that was filed in the Secretary of State's office on **February 18, 2010**. The facts of qualification for signers and circulators of the part petitions are determined **as of the date the petition was filed** in the Secretary of State's office, that is: **February 18, 2010**. Please note that this differs from the standard used for the state issue part petitions you recently examined, for which those qualifications were determined based on the date a part petition was examined by the board, not the date the petition was filed.

You must examine the petitions according to the requirements of R.C. 3513.05 (requirements of declarations of candidacy), R.C. 3501.38 (rules governing petitions), R.C. 3501.011 (definition of "signature"), and the enclosed instructions. Your board must certify the validity and sufficiency of the petition papers by **March 1, 2010**. All petition papers and certification forms must be returned to this office by **March 3, 2010**, via a method that provides a record of sending, tracking while in transit, and receipt upon delivery. (Examples: Certified U.S. Mail, UPS, FedEx.) You also may return them in person.

When examining each part-petition, please remember that:

- o A **signer** of the subject declaration of candidacy must be a qualified elector whose qualifying voting address is located in the State of Ohio and must be affiliated with the **Democratic Party** (see below for more details on this issue).
- o 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. Consequently, a **circulator** of the subject declaration of candidacy is not required to be a qualified elector of Ohio. However, if the circulator is a qualified elector of Ohio, the circulator must be affiliated with the **Democratic Party**, *unless* the circulator is the candidate named in the petition's declaration of candidacy 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 **signing** or **circulating** a petition of candidacy for major political party nomination or election under R.C. 3513.05, an elector is considered to be a member of a political party of the candidate if the signer or circulator *either*:

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

We remind you that, although R.C. 3501.38(C) provides that a *signer's* address on a petition must match the signer's address on file with the board of elections, no such requirement extends to the addresses of *candidates* or *circulators*. (While this does not seem to be what would be the spirit of the law, it is the letter of the law, and until changed by the state legislature, we must follow this result.) This is because state law merely requires that a candidate for Auditor of State must be a qualified elector of the State of Ohio. Consequently, there is no basis in law for invalidating a part petition solely because the address of the candidate and/or circulator on that part petition differs from the address on file with a board of elections.

If you receive one or more part petition papers signed by a circulator who is an Ohio elector from another county, please contact that county's board of elections to confirm the circulator's registration and party affiliation.

If you have any questions concerning the petition or any part petition, please call the Elections Division at 614-466-2585. We appreciate your cooperation.

Sincerely,

Jennifer Brunner

Enclosure