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DIRECTIVE 2011-39

November 28, 2011

To: COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS

Re: **Supplemental Referendum Petition against Am. Sub. H.B. No. 194 of the 129th General Assembly**

SUMMARY

This Directive provides instructions on the examination and certification of the supplemental referendum petition filed against Am. Sub. H.B. No. 194. Please note that R.C.3519.16 requires county boards of elections to examine the supplemental part-petitions and report the results to the Secretary of State within five (5) days of receipt of the petitions. Therefore, each county board of elections must complete its examination and certification of the supplemental part-petitions consistent with the instructions outlined below and return its certification to the Secretary of State's office not later than five days after receipt of the petitions or 4 p.m. on December 6, 2011, whichever is earlier.

DIRECTIONS

On November 22, 2011, the Secretary of State's office received a supplemental referendum petition against Am. Sub. H.B. No. 194. **Please carefully read this Directive and Directives 2011-17 and 2011-22 before you start examining the supplemental part-petitions circulated in your county and sent to you by this office.** A copy of these Directives is attached for your convenience and available on the Secretary of State's website at <http://www.sos.state.oh.us/SOS/elections/electionofficials/Rules/current/2011directives.aspx>.

EXAMINING THE PART-PETITIONS AND SIGNATURES

Prior to verifying the validity of the individual signatures contained on a part-petition, the board of elections must verify the validity of that part-petition. Check each part-petition to determine whether the circulator's statement on the last page of the part-petition has been properly completed. The whole part-petition is invalid if the circulator's statement is not completed as required by law.

As a reminder, each person who signs a petition paper must be a qualified elector of the county in which the part-petition was circulated as of the date the part-petition is examined by the board of elections. R.C.3519.15. If the part-petition contains signatures from any other county, the part-petition is still valid, but the signatures from any other county cannot be counted. R.C.3519.10. Please read Directive 2011-17 for detailed information on the review of signatures.

No elector may sign a statewide issue petition more than once. A board must determine whether any elector who signed the original referendum petition also has signed the supplemental referendum petition. A board must invalidate any signature on the supplemental referendum petition if it also appeared on the original referendum petition. R.C.3519.16.

FULFILLING PUBLIC RECORDS REQUESTS

In order to satisfy the requirements of the Ohio Constitution (Article II, Section 1g) and the Revised Code (§3519.15), the Secretary will “forthwith” separate and transmit the part-petitions to the county boards of elections. To fulfill these legal responsibilities, the Secretary of State’s office will not be photocopying or imaging (i.e., scanning) any of the part-petitions prior to sending them to the counties for verification. County boards of elections are to determine the validity and sufficiency of the supplemental part-petitions within five (5) days.

Your county board of elections may receive one or more public records requests for copies of the part-petitions. Boards should consult with their statutory legal counsel, the county prosecuting attorney, before rejecting, fulfilling, or responding to any public records request. Boards should also review the information published by the Ohio Attorney General and State Auditor explaining Ohio’s public records law, which may be accessed via the following link:
<http://www.ohioattorneygeneral.gov/Sunshine.aspx/?from=nav>.

CERTIFICATION OF FINDINGS

As soon as you have determined the validity and sufficiency of all of the supplemental part-petitions sent to you and the validity and sufficiency of all of the signatures contained on all valid part-petitions, you must complete and return your certification form via fax or email to Melanie Poole at (614) 485-7697 or mpoole@OhioSecretaryofState.gov. **Your certification form must be received by the Secretary of State’s office no later than five days after receipt of the petitions or 4 p.m. on December 6, 2011, whichever is earlier.**

RETURNING THE PETITIONS

After you have faxed or emailed your completed certification form to Melanie Poole, you must return the original part-petitions to the Secretary of State’s office either in person or by a method that provides for tracking of delivery (e.g., certified U.S. Mail, Post Office Express Mail, UPS, or FedEx sent to the Ohio Secretary of State, 180 East Broad St., 15th Floor, Columbus, Ohio 43215). The original part-petitions must be received by the Secretary of State’s office no later than 4 p.m., December 8, 2011.

If you have any questions concerning the examination of the supplemental part-petitions, please contact the elections attorney assigned to your county at (614) 466-2585. Thank you for your continued hard work.

Sincerely,



Jon Husted

CERTIFICATION FORM

Supplemental Petition Filed November 22, 2011

Proposing a Referendum Election on Am. Sub. H.B. 194

On behalf of the _____ County Board of Elections, I hereby certify that the board has examined the enclosed part petitions. The numbers of valid and invalid signatures on the part petitions for the proposed referendum are as follows:

	PETITIONS	SIGNATURES
1. Number of valid part petitions.....	_____	
Number of valid signatures.....		_____
Number of invalid signatures		_____
2. Number of invalid part petitions	_____	
Number of signatures on invalid part petitions		_____
3. Total number of <i>part petitions</i> received (valid and invalid).....	_____	
4. Total number of <i>signatures</i> on part petitions (valid and invalid).....		_____

Signed: _____
 Director

 Date

This certification form must be completed and returned to the Secretary of State's office not later than five days after receipt of the petitions or 4 p.m. on December 6, 2011, whichever is earlier.

Please keep a copy of your completed Certification Form for your files.



JON HUSTED
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DIRECTIVE 2011-17

May 27, 2011

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

RE: Instructions Regarding the Examination and Verification of State Issue Petitions

SUMMARY:

This Directive provides County Boards of Elections with specific instructions on examining and validating statewide initiative, referendum, and constitutional amendment petitions consistent with R.C. 3501.11(K).

INSTRUCTIONS

I. CIRCULATORS

A. Qualifications

A circulator of an initiative or referendum petition governed by state law does not have to be an Ohio elector or an Ohio resident. (*Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008))

Some convicted felons are prohibited from circulating initiative or referendum petitions. (*Ohio Attorney General Advisory Opinion 2010-02*). State law does not require a circulator to provide key data points (e.g., date of birth, social security number, drivers license number, etc) that constitute "satisfactory evidence" that the individual who circulated a petition in any given county is indeed the same individual who may be listed in one county's local voter registration database as cancelled due to incarceration of a felony conviction.

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. Any protests against a circulator's qualifications should be made before the Ohio Supreme Court as described in Section VII below.

B. Circulator's Statement

Each part-petition must contain a circulator's statement (identified on the part-petition as

the “statement of the solicitor”) that includes the following completed information (R.C. 3519.05):

- The number of signatures witnessed by the circulator,
- The circulator’s signature,
- The circulator’s permanent residence address¹, which does not have to be an Ohio address, and
- If the circulator was employed to circulate the petition, then the employer’s name and address including street name and number, or post office box number, city, state, and zip code

The board must review each part petition to determine that information required as a part of the circulator’s statement is entered on each part petition. The board must accept the circulator statements of part-petitions at face value unless there are inconsistencies with the number of signatures witnessed (see below) or with information about the circulator across part petitions reviewed within a single county (i.e., the circulator writes different permanent residence addresses on different part petitions).

If the circulator reported witnessing fewer than the total number of uncrossed out signatures submitted on the part-petition, then the board must invalidate the entire part-petition (*Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 141, 841 N.E.2d 766, (Ohio 2005)).

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 circulator reported witnessing the same or more than the total number of signatures not crossed out on the part-petition, then the board must not invalidate the part-petition for this reason alone (*State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167, 602 N.E.2d 615 (Ohio 1992)). 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. PROCESSING VOTER REGISTRATIONS

¹ State law does not define “permanent residence address” for purposes of circulating issue petitions. A county board of elections should presume that the address provided by the circulator is the circulator’s permanent residence as the statement is signed under penalty of election falsification, which is a fifth degree felony. To the extent that an entity other than the board believes that the circulator’s written permanent residence address is not accurate, an informal objection or formal protest is not properly before a board of elections and should be filed with the Ohio Supreme Court as described in Section VII below.

All county boards of elections must process all new, valid voter registrations and changes of names and/or address to existing registrations received by the board or the Secretary of State's office as of the date the petition was filed with the Secretary of State before verifying the signatures on the part-petitions. (R.C. 3501.38(A), 3519.10, and 3519.15)

These registrations are effective as of the date filed with the Secretary of State. (R.C. 3501.38, 3503.19)

Registrations gathered as a part of the petition process are to be submitted to the office of the secretary of state or a county board of elections within ten days after that registration form is completed (R.C. 3599.11(B)(2)(a)). Any otherwise valid voter registration form received in violation of this section, but received by the close of registration, should be entered into the county's voter registration database.

III. SIGNERS

A. Qualifications

Each person who signs a petition must be a qualified elector of Ohio and registered to vote at the address provided on the petition as of the date the state issue part-petition is examined by the board. (R.C. 3519.10)

B. Signatures

Except as provided in R.C. 3501.382 (elector's name signed by an attorney in fact), each signature must be an original signature of that voter. (R.C. 3501.38(B), 3519.051)

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 (*State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193, 594 N.E.2d 576 (Ohio 1992)).

Example: Name derivatives are acceptable (Bob instead of Robert, Peg instead of Margaret) and lack of middle initial or inclusion of middle initial is acceptable.

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. (R.C. 3501.011, 3501.38, 3519.10)

The signature must be written in ink. (R.C. 3519.05; 3519.051)

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.

An elector's signature must not be invalidated solely because "non-signature information" (e.g., the elector's printed name, address, county, or the date of signing) was completed by another person. 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 (State ex rel. Jeffries v. Ryan, 21 Ohio App.2d 241, 256 N.E.2d 716 (Ohio App.10 Dist. 1969)).

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.

Note: Most software systems deployed by county boards of elections are capable of electronically recording decisions on the validity or invalidity of each signature on a petition and tracking for duplicate signatures over time (including in those instances where petitioners are permitted to file supplemental petitions after an initial finding by the Secretary of State that the petition lacks sufficient signatures needed to fulfill the requirement). These systems should be able to track more than one petition at a time. Additionally, these software systems should be able to produce an electronic file and a printed report of the names, addresses, and valid/invalid code for every signature reviewed by the board. If your county software system cannot provide any of these, or the board does not use that system component, please contact the Elections Administrator to ensure an adequate method that adequately and accurately records information to fulfill reporting and tracking standards.

C. 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 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. 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 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. (R.C. 3501.38(F))

D. Dates

Each signature must be followed by the date it was affixed to the petition paper. (R.C. 3501.38(C) and 3519.10)

The board must not invalidate a signature solely because its date is out of sequence with other signatures on the same part petition.

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

F. Ditto Marks

Ditto marks may be used to indicate duplicate information, e.g. date, address or county. *State ex rel. Donofrio v. Henderson*, 4 Ohio App.2d 183, 211 N.E.2d 854 (Ohio App. 7 Dist. 1965).

G. One County per Part-Petition

Each part-petition should contain signatures of electors of only one county. (R.C. 3519.10)

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.

The board must invalidate signatures from any other county. (R.C. 3519.10)

H. 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 unqualified person to sign a petition, should the entire petition be invalidated. (R.C. 3501.38)

IV. 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.

V. CERTIFICATION

After the board staff has examined all the parts of the statewide issue, referendum, or constitutional amendment petition circulated in your county, you must certify your findings to the Secretary of State. Once the certification form has been completed, county boards of elections must promptly return the form to the Secretary of State's office.

Once certification forms have been transmitted by all of the county boards of elections, the Secretary of State will determine the validity and sufficiency of the petition and provide the constitutionally and statutorily required notices to the committee for the petitioners. If the Secretary of State determines that the petition is insufficient, the committee will have ten additional days after notification to file additional signatures.

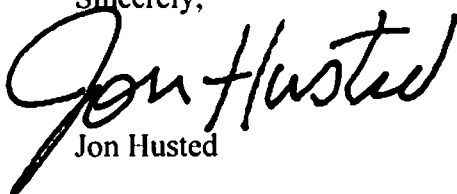
VI. CHALLENGES / PROTESTS

The Ohio Constitution as amended in 2008 provides that the Ohio Supreme Court has original, exclusive jurisdiction over all challenges to state issue petitions and signatures on those petitions. No protests may be filed with county boards of elections concerning state issue petitions. Any challenge to a petition or signature shall be filed with Ohio Supreme Court not later than ninety-five days before the day of the election.

It is not proper for a county board of elections to be influenced in its validation of part petitions or signatures contained on them by opinions, communications or information not originating from the Secretary of State's office or the board's statutory counsel: its county prosecuting attorney.

If you have any questions, please contact the elections attorney assigned to your county.

Sincerely,



Jon Husted

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.