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DIRECTIVE 2016-01

January 04, 2016

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: Re-Review of Ohio Drug Price Relief Act Part-Petitions

BACKGROUND

It has come to this Office's attention that several boards of elections have approved part-petitions on which it appears that a person other than the signer of the petition or the circulator may have, contrary to Ohio law, removed one or more signer's name from the part-petition prior to it being filed with the appropriate election official (i.e., striking a signature). Additionally, it appears that some circulators may have pre-affixed the number of signatures they purportedly witnessed prior to actually circulating the petition, potentially calling into question how many signatures the circulator properly witnessed and attested to in his or her circulator statement.

STRIKING A SIGNATURE

State law clearly restricts removal of a petition signer's name from a part-petition except in the following, limited circumstances:

- "The circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as a part of the petition,"¹; and
- "Any signer of a petition or an attorney in fact acting pursuant to section 3501.382 of the Revised Code on behalf of a signer may remove the signer's signature from that petition at any time before the petition is filed in a public office by striking the signer's name from the petition."²

These provisions of law exist to protect the integrity of the elections process and the circulator, who is required to attest under penalty of election falsification that the circulator witnessed every signature and that he or she believes all of the signatures witnessed are genuine and affixed by qualified electors. Most importantly, however, the witness and attestation requirements serve to protect the registered Ohio voters exercising their right under the state constitution to petition state government (in this case, to propose a state law for consideration by the General Assembly) from having their signature improperly removed from a part-petition.

¹ R.C. 3501.38(G).

² R.C. 3501.38(H).

Reviewing a large cross-section of part-petitions from across the state has revealed that a strikingly similar method of eliminating a petition signer's name exists across an alarmingly large number of part-petitions, thus raising a question of fact whether someone other than the petition signer or circulator may have illegally removed a petition signer's signature from part-petitions.

More specifically, it appears that this same or similar method of signature elimination (i.e., a thick, bold stroke of black ink) was used on part-petitions circulated by different individuals, some of whom were paid by different petition circulating firms. If true, a board of elections could conclude that there is sufficient evidence that a part-petition bearing such a bold strike-through was used to remove a signature contrary to Ohio law.

PRE-AFFIXING THE NUMBER OF SIGNATURES WITNESSED ON A CIRCULATOR STATEMENT

Ohio law requires every circulator of a part-petition to complete a statement affirmed under penalty of election falsification indicating the number of signatures contained on that part-petition, and that the circulator witnessed the affixing of every signature he or she reported thereon.³ This provision is "a substantial, reasonable requirement"⁴ and functions to prevent at least two types of petition fraud: (1) fraud resulting from signatures being placed on a part-petition after the circulator has executed the affirmation, and (2) fraud resulting from a circulator executing the affirmation with a number that is close to, or corresponds with, the number of pre-printed blank lines on the part-petition and subsequently leaving it in a public location or distributing it serially to friends and family to sign without the circulator being present to witness signatures.

The Ohio Supreme Court has accorded flexibility to circulators, providing that "...arithmetic errors will be tolerated, but only if the error does not promote fraud."⁵ The relevant example in the Election Official Manual recognizes that "arithmetic errors" may occur:

The circulator's statement indicates that the circulator witnessed 22 signatures, but there are only 20 signatures on the petition. If the number of signatures reported in the statement is equal to or greater than the total number of signatures not crossed out on the part-petition, then the board does not reject the part-petition because of the inconsistent signature numbers.⁶

By their nature, however, "arithmetic errors" should be isolated, unintentional oversights.

³ R.C. 3501.38(E)(1).

⁴ *State ex rel. Loss v. Bd. of Elections of Lucas Cty.*, 29 Ohio St. 2d 233 (1972).

⁵ *State ex rel. Citizens For Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St. 3d 167 (1992), interpreting *Loss*, Id.

⁶ [Ohio Election Official Manual, Chapter 11, page 9](#), discussing *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139 (2005).

The “over-reporting of signatures” (e.g., a circulator statement purporting to witness 28 signatures on a part-petition bearing only two signatures) is so strikingly prevalent in this submission that the suggestion that unintentional “arithmetic errors” are to blame strains credulity. This cannot be the result envisioned by case law; otherwise the exception would swallow the rule.

INSTRUCTIONS

Ohio law⁷ vests authority in the boards of elections to determine the validity of signatures contained on part-petitions of proposed initiated statutes. It is ultimately the Secretary of State, however, who must “determine and certify to the sufficiency of those petitions.”⁸

As such, my office is returning all part petitions to the boards of elections to conduct a re-review to determine whether or not the evidence on the part petitions themselves in each county is such that the board determines a signature was improperly removed in violation of R.C. 3501.38(G) and/or (H) or that the circulator’s statement is invalid under R.C. 3501.38(E)(1).

Boards of elections must complete this re-review, including any evidentiary hearings that they may believe necessary to complete their duties, and re-certify their findings to the Secretary of State’s Office no later than January 29, 2016. Boards of elections must follow the other relevant instructions of [Directive 2015-40](#) as a part of their re-review and re-certification process.

If you have any questions regarding this Directive, please contact the Secretary of State’s elections counsel assigned to your county at (614) 466-2585. Questions regarding issuing and serving subpoenas and/or conducting a lawful evidentiary hearing should be directed to the board’s legal counsel, the county’s prosecuting attorney.

Sincerely,



Jon Husted

⁷ R.C. 3501.11(K) and 3519.15.

⁸ R.C. 3501.05(K).