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DIRECTIVE 2016-34

September 14, 2016

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

Re: Instructions Regarding the Review, Examination, and Verification of the Supplementary Part-Petitions Proposing an Initiated Statute (Drug Price Relief Act)

SUMMARY

On September 9, 2016, the Ohio Supreme Court issued a decision in *State ex rel. Jones v. Husted*, Slip Opinion No. 2016-Ohio-5752. Consistent with that decision, the Secretary of State's Office accepted supplementary part-petitions filed by Ohioans for Drug Price Relief Act. If the part-petitions contain a sufficient number of valid signatures, the issue can appear on the ballot at the November 2017 General Election.

Each board of elections must complete its review, examination, and verification of the part-petitions consistent with the instructions regarding the number of signatures reported in the circulator's statement contained in this Directive and the "Instructions for the Examination and Verification of the Petition" contained in [Directive 2016-25](#) and return its certification to the Secretary of State's Office no later than NOON on Thursday, September 29, 2016.

CHECKING SIGNATURES ON THE PETITIONS

Please carefully read this Directive, the instructions regarding the number of signatures reported in the circulator's statement (below), and the "Instructions for the Examination and Verification of the Petition" provided in [Directive 2016-25](#) before you examine the part-petitions sent to your county.¹

As the instructions state, each county board 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 (i.e., Monday, September 12, 2016) before verifying the signatures on the part-petitions.² These registrations are effective as of the date filed with the Secretary of State.³

¹ R.C. 3501.11(K).

² R.C. 3501.38(A); 3519.15.

³ R.C. 3501.38; 3503.19.

A. Circulator's Statement

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

Signature undercounting: If the number of signatures reported in the circulator's statement is less than the total number of *uncrossed-out signatures* submitted on the part-petition (e.g., the circulator's statement indicates 20 signatures witnessed, but there are 22 signatures on the part-petition, *none of which were crossed out* prior to the petition being filed), then the board must reject the entire part-petition.⁴

Note: In determining whether the number of signatures reported by a circulator of a non-statewide candidate's part-petition matches the number of signatures on that part-petition, particularly with regard to crossed-out signatures, board of elections should take care so as to not make a determination that is "too technical, unreasonable, and arbitrary" given the unique fact set of that petition and information available to the board, if any.⁵

Signature over-counting: If the number of signatures reported in the circulator's statement is greater than the total number of *uncrossed-out signatures* on the part-petition (e.g., the circulator's statement indicates that the circulator witnessed 28 signatures, but there are only 5 signatures on the part-petition), then the board must reject the entire part-petition when the over-reporting of signatures on the circulator's statement appears "systemic" and numerous on part-petitions filed by one or more circulators within the county, or across several counties, for the same petition,⁶ unless the exception below applies.

Exception: The over-reporting error is the result of "minor or negligent miscounts"⁷ by the circulator "so long as there is no indication of fraud or material misrepresentation"⁸ or does not promote fraud.⁹ In this circumstance, the board must review the validity of each signature as usual.

⁴ *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139.

⁵ *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321; *State ex rel. Curtis v. Summit Cty. Bd. of Elections*, 144 Ohio St.3d 405.

⁶ "Systemic overcounts * * * are an open invitation to fraud * * *" and " * * * a part-petition of this type is invalid because, on its face, the attestation of the circulator is false: he or she did not witness the number of signatures indicated." *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, at ¶44.

⁷ *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, at ¶44.

⁸ *State ex rel. Curtis v. Summit Cty. Bd. of Elections*, Slip Opinion No. 2015-Ohio-3787, at ¶8, citing *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321.

⁹ *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167.

PART-PETITION BELONGS TO ANOTHER COUNTY

If you receive a part-petition that belongs to another county, please follow the process outlined below. **It is imperative that a copy of a part-petition belonging to another county is transmitted to the other county as quickly as possible for signature verification.**

In the event that a board receives a part-petition on which the majority of signatures on the part-petitions are in another county, that board of elections may not determine the validity of that part-petition or review the signatures contained on it. Instead, it must forward the original part-petition to the other county following the steps below and utilize the two spreadsheets provided and return them in the envelopes provided when all part-petitions are returned to the Secretary of State's Office:

1. Part-Petitions Sent Spreadsheet (Original Part-Petition(s)), and
2. Part-Petitions Received Spreadsheet (Emailed or Faxed Part-Petition(s)).

If a board of elections receives a part-petition(s) for another county, it should follow the steps below to send a copy of it to the correct county:

1. Contact the Director or Deputy Director at the other county board by phone to notify him or her that your board will be forwarding a copy of a part-petition(s) and determine if it should be emailed or faxed.
2. Log the transfer of the part-petition(s) being sent on the "Part-Petitions Sent" spreadsheet.
3. Send the copy of the part-petition(s) via either email or fax as agreed to.
4. Return the original part-petition(s) with the "Part-Petitions Sent" spreadsheet in the envelope provided and marked as such. When the board returns its checked part-petitions to the Secretary of State's Office, place this envelope on top of the checked part-petitions so it can be easily located and retrieved from the box.

If a board receives a part-petition from another county:

1. Log the part-petition(s) that the board received on the "Part-Petitions Received" spreadsheet.
2. Process the part-petition(s).
3. Return the emailed or faxed part-petition(s) with the "Part-Petitions Received" spreadsheet in the envelope provided and marked as such. When the board returns its checked part-petitions to the Secretary of State's Office, place this envelope on top of the checked part-petitions so it can be easily located and retrieved from the box.

Note: Even if a board does not send a part-petition(s) to another county and/or does not receive a copy of a part-petition from another county, the board must enter the county name and mark the box (X) in the top right hand corner of the spreadsheet and place it in the correct envelope. When the board returns its checked part-petitions to the Secretary of State's Office, place both envelopes on top of the checked part-petitions so they can be easily located and retrieved from the box.

SCANNING THE PETITIONS

After you have completed checking the signatures on the part-petitions, **you must electronically scan the relevant pages of each part-petition** (including at least the cover page, the pages containing signatures, and the page containing the circulator statement). A copy of the scanned images should be saved onto one or as many CDs, DVDs, thumb-drives, or other similar electronic media as may be necessary and a copy sent to the Secretary of State's Office along with the part-petitions and certification form. You must keep an electronic copy of the images for your records.

FULFILLING PUBLIC RECORDS REQUESTS

Your 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 prosecuting attorney, before rejecting, fulfilling, or responding to any public records request.

CERTIFICATION AND RETURN OF THE PETITIONS

As soon as you finish verifying the signatures on your county's part-petitions, you must return a completed certification form. The certification form must be completed and submitted electronically via Elect Collect by clicking the "Submit" button. The certification form also must be saved and printed. The Director must sign the certification form and return the signed certification form to Emily Bright via email to ebright@ohiosecretaryofstate.gov.

All certification forms must be received by NOON on Thursday, September 29, 2016.

Additionally, once the certification form has been submitted and a signed copy sent to Emily Bright, county boards of elections must promptly return the original part-petitions to the Secretary of State's Office, Elections Division, 180 East Broad Street, 15th Floor, Columbus, Ohio 43215, via trackable delivery method not later than Monday, October 3, 2016.

All part-petitions must be received by the Secretary of State's Office no later than Monday, October 3, 2016.

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.

Sincerely,



Jon Husted