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To: All County Boards of Elections

Re: Write-in candidacies not affected by *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006)

The office of the Secretary of State has received many inquiries from the boards of elections and from candidates since the office issued Advisory 2007-05 on June 4, 2007, informing the boards of elections of the United States Court of Appeals for the Sixth Circuit's interpretation of R.C. 3513.257 in *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006). The court held that independent candidates in Ohio must truly be unaffiliated with a political party and that claims of non-affiliation must be made in good faith. The federal court's interpretation of R.C. 3513.257 is binding Ohio law unless the Ohio General Assembly changes the law or the Supreme Court of Ohio concludes that the federal court misinterpreted Ohio law. It is unfortunate that many candidates in Ohio have been adversely affected by the court's interpretation of R.C. 3513.257; however, we, as election officials, are required to follow the law.

Several boards of elections have asked whether the *Morrison* decision applies to write-in candidates for the general election. Acting in my capacity as Ohio's chief elections officer, I do not interpret R.C. 3513.041 to require that write-in candidates for the general election be unaffiliated with a political party. Write-in candidates for the general election may be Democrats, Republicans, third party candidates, or non-affiliated (independent) candidates. Therefore, I conclude that the *Morrison* decision does not apply to write-in candidates for the general election, who are governed by R.C. 3513.041.

However, in deciding whether a person is eligible to run as a write-in candidate for any non-federal office,¹ the boards of elections must consider the prohibition in R.C.

¹ Federal offices include president, vice-president, U.S. House of Representatives, and U.S. Senate. The prohibition in R.C. 3513.041 against a person running as a write-in candidate if that person already filed to run for another office during the same election cycle/election year does not apply to a person seeking to run as a write-in candidate for a federal office.

3513.041² against a person running for multiple offices in the same election cycle/election year.³ R.C. 3513.041 specifically prohibits a person from **filing** and the boards of elections and the secretary of state from **accepting** a declaration of intent to be a write-in candidate for any non-federal office from any person who, for the same election cycle/election year, has already filed to run for another office (or is filling a vacancy on the ballot), unless that person timely withdrew his or her candidacy as further explained herein. For example, a person who filed a declaration of candidacy and petition to run as a Democrat for mayor in the primary election but whose petition was not certified by the board of elections due to an insufficient number of valid signatures could not later run as a write-in candidate for mayor or any other non-federal office at the general election. Similarly, a person who filed a nominating petition to run as an independent candidate for clerk of the municipal court but whose petition was not certified by the board of elections because the person voted in a party primary after filing the nominating petition could not later run as a write-in candidate for clerk of the municipal court or for any other non-federal office at the general election.

The only exception to the prohibition of R.C. 3513.041 is for a person who timely withdraws his or her candidacy under R.C. 3513.052(G) *before the board of elections acts* to disqualify the person's candidacy.⁴ For example, if a person filed a nominating petition to run as an independent candidate for city council and then withdrew his or her candidacy before the board of elections acted on it, then that person later may run as a write-in candidate for city council or any other office at the general election.

Advisory 2003-02 provided a different interpretation of R.C. 3513.041. However, Advisory 2003-02 was issued prior to the Ohio Supreme Court's decision in *State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 2005-Ohio-5642.

² The second paragraph of R.C. 3513.041 provides:

A board of elections shall not accept for filing the declaration of intent to be a write-in candidate of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate through party nomination at a primary election or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code, for any federal, state, or county office, if the declaration of intent to be a write-in candidate is for a state or county office, or for any municipal or township office, for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center, if the declaration of intent to be a write-in candidate is for a municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center.

³ I interpret the phrase "same election" in the second paragraph of R.C. 3513.041 to mean the same election *cycle*/the same election *year*. For example, in Ohio, all municipal offices are elected in odd-numbered years. Section 1, Article XVII, Ohio Constitution; R.C. 3501.02(D). Therefore, any election for a municipal office (whether a primary election or the general election) is part of the same election cycle/election year. Similarly, all county and state offices are elected in even-numbered years. Section 1, Article XVII, Ohio Constitution; R.C. 3501.02(C). Therefore, any election for a county or state office (whether a primary election or the general election) is part of the same election cycle/election year.

⁴ See *State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 2005-Ohio-5642, at ¶ 34.

Advisory 2006-02 informed the boards of elections of the *Canales-Flores* decision and suggested that the interpretation of R.C. 3513.041 in Advisory 2003-03 may be implicated. To avoid any confusion, I expressly conclude that the interpretation of R.C. 3513.041 in Advisory 2003-02 is no longer applicable. The boards of elections should instead interpret R.C. 3513.041 as stated in this Advisory (Advisory 2007-08).

If you have any questions or need additional information regarding this Advisory, then please contact the Elections Division legal staff assigned to your board at 614-466-2585 or by e-mail.

Sincerely,



Jennifer Brunner