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ADVISORY NO. 2007-16
November 16, 2007

To: Boards of Elections, Ballot Issue Committees, and Circulators of Statewide Issue Petitions

Re: Disclosure Requirements under R.C. 3517.12(B)

This Advisory is to notify boards of elections, ballot issue committees, and circulators of statewide issue petitions that as of November 16, 2007, the Secretary of State's office will depart from past practice and begin referring all violations of R.C. 3517.12(B) to the Ohio Elections Commission.

Revised Code 3517.12(B) requires that the circulator or the committee in charge of an initiative or referendum petition for the submission of a constitutional amendment or proposed law must, within thirty days after the petition papers are filed, file with the Secretary of State an itemized statement showing the full names and addresses of all circulators to whom payments or promises were made and the amounts paid to each circulator.¹

¹ R.C. 3517.12(B) provides, in full:

(B) The circulator or the committee in charge of an initiative or referendum petition, or supplementary petition for additional signatures, for the submission of a constitutional amendment, proposed law, section, or item of any law shall, within thirty days after those petition papers are filed, file with the secretary of state, on a form prescribed by the secretary of state, an itemized statement, made under penalty of election falsification, showing in detail the following:

- (1) All money or things of value paid, given, promised, or received for circulating the petitions;
- (2) All appointments, promotions, or increases in salary, in positions which were given, promised, or received, or to obtain which assistance was given, promised, or received as a consideration for work done in circulating petitions;
- (3) Full names and addresses, including street, city, and state, of all persons to whom such payments or promises were made and of all persons from whom such payments or promises were received;
- (4) Full names and addresses, including street, city, and state, of all persons who contributed anything of value to

In connection with a recent review of election forms prescribed by the Secretary of State, our office discovered that for the past several years, some ballot issue committees representing petitioners for various statewide initiatives or referenda have refused to fully complete Form No. 32-A, the prescribed form for disclosure required by R.C. 3517.12(B). Specifically, the committees and circulators have refused to separately list the full names and addresses of paid circulators and the amounts paid to each circulator, claiming that such disclosures are not required as a result of *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999).

In *Buckley*, the United States Supreme Court held unconstitutional a Colorado statute requiring the proponents of an issue petition to file the names, addresses, and county of voter registration of all circulators who were paid to circulate a petition, the amount paid per signature, and the total amount paid to each circulator. 525 U.S. at 201-04. The Court reasoned that Colorado's requirement "fore[ed] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts" and failed the "exacting scrutiny" standard that is necessary when compelled disclosure of campaign-related payments are at issue. *Id.* at 204.

Since the *Buckley* decision, some Ohio ballot issue committees and circulators of statewide issue petitions have refused to fully complete Form No. 32-A, citing the *Buckley* decision. In the past, the Secretary of State's office refrained from referring committees or circulators to the Ohio Elections Commission for failure to comply with the requirements of R.C. 3517.12(B). For the following reasons, however, I have instructed my staff to depart from that past practice.

First, R.C. 3501.05(N) requires the Secretary of State to report **any** violation of R.C. 3517.08 through R.C. 3517.13 to the Ohio Elections Commission "whenever the secretary of state has or should have knowledge of a failure to comply with or a violation of a provision in one of those sections." As the state's chief election officer, I have the duty to enforce all of Ohio's election laws. Because no court has decided that the **Ohio** disclosure requirements are unconstitutional, I must follow my statutory duties. Therefore, all violations of R.C. 3517.08 through R.C. 3517.13 –including R.C. 3517.12(B) – for which we believe there is probable cause to find a violation, will be referred to the Ohio Elections Commission.

Further, the Ohio General Assembly has made clear that it believes R.C. 3517.12(B) is constitutional. When construing a statute, paramount consideration is given to legislative intent. In 2006, seven years after the *Buckley* decision, the Ohio General Assembly amended R.C. 3517.12 but did not alter the requirement that ballot issue

be used in circulating the petitions, and the amounts of those contributions;

(5) Time spent and salaries earned while soliciting signatures to petitions by persons who were regular salaried employees of some person or whom that employer authorized to solicit as part of their regular duties.

If no money or things of value were paid or received or if no promises were made or received as a consideration for work done in circulating a petition, the statement shall contain words to that effect.

committees and/or circulators must separately disclose the full names and addresses of paid circulators along with the amount paid to each circulator. I must presume that the legislature was familiar with the *Buckley* decision in 2006, but nonetheless believed that Ohio's law was constitutional, thereby maintaining the requirement to separately list paid circulators. Accordingly, because the actions of the General Assembly appear to support a legislative intent that this statute passes constitutional muster under *Buckley*, and no court has decided Ohio's statute is unconstitutional, I find I have a the duty to report any violations of the law.

Finally, unlike the facts presented in the *Buckley* decision, Ohio may have a compelling interest in enforcing R.C. 3517.12(B). In *Buckley*, the Supreme Court stated that the benefit of revealing the names of paid circulators and the amounts paid to each circulator was "hardly apparent and ha[d] not been demonstrated" from the record as a whole. 525 U.S. at 203. In Ohio, however, forcing proponents of ballot initiatives to reveal the identities of their paid circulators may be more reasonably related to the following interests: combating circulator fraud abuse and providing the public with information about petition circulation. Because the purposes behind disclosure required by R.C. 3517.12(B) may be more apparent and demonstrable than interests served by Colorado's law, Ohio's disclosure requirements carry more weight when subjected to the U.S. Supreme Court's "exacting scrutiny" test.

Accordingly, the boards of elections, ballot issue committees, and circulators of statewide issue petitions are hereby advised that, as of November 16, 2007, my office will begin referring violations of R.C. 3517.12(B) to the Ohio Elections Commission. The Ohio Elections Commission, or the appropriate court of law, may then decide whether R.C. 3517.12(B)'s disclosure requirements are constitutional.

If local county or city ballot issue committees or circulators have similarly refused to separately list paid circulators and the amounts paid as required by R.C. 305.36 or R.C. 731.35, I advise boards of elections to begin referring such violations to the Ohio Elections Commission after consulting with their county prosecutor regarding "home rule" considerations relating to municipal and county charter provisions that may affect their statutory requirements.

If you have any questions about this Advisory, please contact the Elections Division and request to speak with your designated elections attorney.

Sincerely,



Jennifer Brunner