

ADVISORY 2009-04

May 18, 2009

To: All County Boards of Elections

Re: Circulator Requirements & New Forms

The purpose of this advisory is to inform the Ohio boards of elections of changes to Ohio election law concerning requirements for circulators of candidate petitions. These changes have resulted from the rulings of federal courts. These rulings also impact Ohio election law requirements for circulators of initiative and referendum petitions.

The federal court rulings impact the enforceability of several Ohio statutes. Under R.C. 3503.06(A), circulators of candidate petitions must be Ohio electors and Ohio residents. R.C. 3503.06(B)(1) requires circulators of initiative and referendum petitions to be Ohio residents. However, Ohio law does not require the circulators of local question petitions (such as local liquor options) to be Ohio electors or Ohio residents.

In a case last year concerning presidential candidates, the U.S. District Court for the Southern District of Ohio issued a preliminary injunction prohibiting the enforcement of the registration and residency requirements for circulators in R.C. 3503.06(A).¹ On October 29, 2008, the U.S. Court of Appeals for the Sixth Circuit also ruled that both the registration and the residency requirements for circulators of candidate petitions in R.C. 3503.06(A) are unconstitutional.² The U.S. Supreme Court recently declined to review a similar holding of the U.S. Court of Appeals for the Ninth Circuit invalidating Arizona's residency requirement for candidate petition circulators.³

Because the Sixth Circuit found that the residency requirement of R.C. 3503.06(A) for the circulators of candidate petitions is unconstitutional, the residency requirement for the circulators of initiative and referendum petitions in R.C. 3503.06(B)(1) is constitutionally suspect. The Sixth Circuit indicated that there is no legally significant difference between the circulators of candidate and issue petitions since the circulation of both types of petitions constitutes political speech.⁴

Moreover, other federal courts have concluded that similar bans on non-resident circulators of initiative and referendum petitions in other states are unconstitutional.⁵

¹ *Moore v. Brunner*, No. 2:08-cv-224, 2008 WL 2323530, at *5 (S.D. Ohio Jun. 2, 2008).

² *Nader v. Blackwell*, 545 F.3d 459 (C.A.6 2008).

³ *Brewer v. Nader*, 129 S.Ct. 1580, 2009 WL 578703, 77 USLW 3308 (U.S. Mar. 9, 2009).

⁴ *Nader*, 545 F.3d at 475-476.

⁵ See, e.g., *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (C.A.10 2008) (finding that Oklahoma's residency requirement for circulators of initiative and referendum petitions violated the First and Fourteenth Amendments to the U.S. Constitution).

Consequently, I conclude that **the residency requirement for circulators of initiative and referendum petitions in R.C. 3503.06(B)(1) is unenforceable.**⁶

Due to these changes to Ohio election law, the Secretary of State's office has revised the circulator statements in all Secretary of State prescribed forms to omit any requirement that the circulator be an Ohio elector or an Ohio resident. However, circulators still must provide their address so that they may be contacted regarding any issues concerning the petition.

Boards of elections should begin using the new prescribed forms immediately. The new forms may be found on the BOE Extranet at:

<http://server6.sos.state.oh.us/boe/electionsinfo/forms/forms.htm>

However, any candidates or petitioners who are currently circulating candidate or issue petitions may continue using the prior Secretary of State prescribed forms for filing for any race or issue for the 2009 General Election. Additionally, **no Ohio board of elections may invalidate a candidate or issue petition for the sole reason that the circulator of the petition is not an Ohio elector or an Ohio resident.**

If you have any questions please contact your assigned elections attorney at 614-466-2585.

Sincerely,

Jennifer Brunner

⁶ Any similar provisions of any Ohio municipal charter requiring circulators of candidate or issue petitions to be residents or electors of the municipality are also constitutionally suspect. However, I defer to the municipal legal authorities regarding the interpretation of their municipal charters.