

ADVISORY 2010-01

February 9, 2010

To: All County Boards of Elections

Re: February 8, 2010 Federal Court Order Temporarily Barring Boards of Elections from Disclosing Certain Public Records (Referendum Part-Petitions)

On Monday, February 8, 2010, the United States District Court in Columbus issued a temporary restraining order in the case, *Citizens in Charge, et al. v. Brunner, et al.*, S.D. Ohio No. 2:10-CV-95. Pursuant to the court's order, boards of elections should not provide members of the public copies of part-petitions of the LetOhioVote referendum petition that they may have in their possession until after February 18, 2010, the date on which the order will expire. You will be notified if this bar on public release of these referendum part-petitions is extended by the court beyond February 18, 2010.

As you may be aware, LetOhioVote.org is currently engaged in the process of petitioning to place on the November 2, 2010 statewide election ballot a referendum of certain sections of Am. Sub. H.B. 1. On December 20, 2009, LetOhioVote.org made its initial submission of referendum petitions (hereinafter, "LetOhioVote.org petitions"). These were distributed to the boards of elections on January 4, 2010, for review and certification. All boards of elections completed their review and certification and returned these petitions to the Secretary of State by January 28, 2010. Boards of elections may, however, have retained copies of the part-petitions in their offices. Boards may also have other referendum part-petitions, or copies of referendum part-petitions, in their possession.

On February 3, 2010, LetOhioVote.org and other parties filed a lawsuit challenging certain provisions of Ohio law related to the statewide initiative and referendum petition process. This lawsuit, *Citizens in Charge, et al. v. Brunner, et al.*, S.D. Ohio No. 2:10-cv-95, seeks several forms of relief, including an order prohibiting the Secretary of State and county boards of elections from disclosing petition signers' names and addresses in response to requests for this information made under the Ohio Public Records Act.

On February 8, 2010, the U.S. District Court denied the plaintiffs' request to prohibit disclosure of petition signers' names and addresses under the Public Records Act. However, the Court believed that the plaintiffs should have an opportunity to appeal that decision. The Court therefore issued a temporary ten-day order prohibiting public disclosure of referendum petitions, including the LetOhioVote.org referendum petition (and all part-petitions of the referendum) and the LetOhioVote.org supplemental petition (and all part-petitions of the supplemental referendum petition) that are now in the possession of the Secretary of State.

The Court specifically enjoined the county boards of elections from making referendum part-petitions available to the public, stating as follows:

“The Court further ORDERS that Defendant Jennifer Brunner, in her official capacity as Ohio Secretary of State, and the various Boards of Election are hereby enjoined from making referendum petitions available to the public, under Ohio public records law or otherwise, for a period of ten (10) days. Following this ten day period, the Secretary may disclose the petitions, unless otherwise ordered by the Court of Appeals for the Sixth Circuit or another court of competent jurisdiction.”

A copy of the Court’s order in its entirety is enclosed with this Advisory. You are advised not to provide to the public copies or originals of part-petitions of the referendum petition circulated by LetOhioVote during the period February 9, 2010 to February 18, 2010, the date the Court’s order expires, or until there is a further order of this or an appellate court, whichever occurs sooner. Please feel free to consult with your county prosecutor regarding the effect of this order in your particular situation.

If you or your prosecutor has any questions regarding this Advisory, please feel free to contact the elections attorney in the Secretary of State’s office assigned to assist your county board of elections.

Sincerely,

Jennifer Brunner