



# Jon Husted

## Ohio Secretary of State

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### **ADVISORY 2015-02**

May 27, 2015

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

Re: Minor Parties (Am. Sub. S.B. No. 193 (130<sup>th</sup> General Assembly))

### **SUMMARY**

This Advisory alerts boards of elections to law changes related to minor party recognition and minor party candidate filings that became effective pursuant to Am. Sub S.B. No. 193 (130<sup>th</sup> General Assembly). On March 16, 2015, the United States District Court for the Southern District of Ohio held that the bill does not violate the United States Constitution.<sup>1</sup> A challenge to Am. Sub. S.B. No. 193 under the Ohio Constitution remains pending.

### **DETERMINING A POLITICAL PARTY'S STATUS**

- Political parties in the state are either major political parties or minor political parties.<sup>2</sup>
- A **major** political party is a political party organized under the laws of the state whose candidate for governor or nominees for presidential electors received not less than 20% of the total vote cast at the most recent regular state election.<sup>3</sup>
- A **minor** political party is a political party organized under the laws of the state as a result of one of the following:
  - i. The minor party's candidate for governor or its nominees for presidential electors received less than 20% but not less than 3% of the total vote cast at the most recent regular state election; or
  - ii. A group of voters filed a party formation petition with the Secretary of State that satisfied the requirements of Revised Code 3517.01.<sup>4</sup>

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<sup>1</sup> *Libertarian Party of Ohio, et al., v. Husted*, S.D. Ohio, Case No. 2:13-cv-953 (March 16, 2015).

<sup>2</sup> Am. Sub. S. B., No. 193 eliminated an "intermediate political party."

<sup>3</sup> R.C. 3501.01(F)(1).

<sup>4</sup> R.C. 3501.01(F)(2).

## **ESTABLISHING A MINOR PARTY**

### **Percentage of Total Vote**

- The law provides a mechanism for a group to achieve minor political party status by fielding a candidate for governor or nominees for presidential electors and receiving a requisite number of votes:
  - In 2014, a political party whose candidate for governor received less than 20% but not less than 2% of the total vote cast for that office at the 2014 general election remains a minor political party for a period of four years after meeting these requirements.<sup>5</sup>
  - In 2015 and after, a political party whose candidate for governor or nominees for presidential electors receive less than 20% but not less than 3% of the total vote cast for such office at the most recent regular state election will remain a minor party for four years after meeting these requirements.<sup>6</sup>

### **Petition Process**

- The law also provides a mechanism for groups to become minor political parties by petition. To become a minor party by petition, a group must file a party formation petition with the Secretary of State.
- The party formation petition must:
  - i. Be signed by qualified electors equal to at least 1% of the total vote for governor or nominees for presidential electors at the most recent election for such office;
  - ii. Be signed by not fewer than 500 qualified electors from each of at least one-half of the congressional districts in the state;
  - iii. Declare the petitioners' intention of organizing a political party and of participating in the succeeding general election that occurs more than 125 days after the filing date;
  - iv. Designate a committee of not less than three nor more than five of the petitioners, who will represent the petitioners in all matters relating to the petition; and

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<sup>5</sup> Am. Sub. S.B. No. 193, 130<sup>th</sup> General Assembly, Section 4 (2013).

<sup>6</sup> R.C. 3501.01(F)(2)(a).

- v. Name the prospective political party in the declaration. The name must not be similar to that of an existing party name.<sup>7</sup>
- Upon filing the petition, the new political party comes into legal existence and is entitled to nominate candidates to appear on the ballot at the general election in odd or even-numbered years that occurs more than 125 days after the filing date.<sup>8</sup>
  - The Secretary of State must promptly transmit to each board of elections the separate petitions papers of that Board's county.<sup>9</sup>
  - Each board of elections must examine and determine the sufficiency of the signatures on the petition papers and return them to the Secretary of State not later than the 118<sup>th</sup> day before the general election. The petition papers must be submitted to the Secretary of State's Office along with the Board's certification of the validity or invalidity of the signatures on the petition.<sup>10</sup>
  - A written protest against the petition may be filed with the Secretary of State by any qualified elector not later than the 114<sup>th</sup> day before the general election.<sup>11</sup>
  - The Secretary of State must determine the sufficiency of the party formation petition and notify the committee designated in the petition of that determination not later than the 95<sup>th</sup> day before the general election.<sup>12</sup>

### **MINOR PARTY'S NOMINATION OF CANDIDATES**

- Each candidate or pair of joint candidates wishing to appear on the general election ballot as the nominee or nominees of the party that filed the party formation petition shall file a nominating petition not later than 110 days before the general election and not earlier than the day the applicable party formation petition is filed.<sup>13</sup>
- The nominating petition must both be on a form prescribed by the Secretary of State and include the name of the political party that submitted the party formation petition.<sup>14</sup> These nominating petition forms prescribed by the Secretary, Forms 4-C through 4-G are available online at the Secretary of State's [website](#).

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<sup>7</sup> R.C. 3517.01(A).

<sup>8</sup> R.C. 3517.012(A)(1). See also *Libertarian Party of Ohio*, Case No. 2:13-cv-953.

<sup>9</sup> R.C. 3517.012(A)(2)(a).

<sup>10</sup> R.C. 3517.012(A)(2)(b).

<sup>11</sup> The protest will be resolved in the same manner as specified under R.C. 3501.39. R.C. 3517.012(A)(2)(c).

<sup>12</sup> R.C. 3517.012(A)(2)(d).

<sup>13</sup> R.C. 3517.012(B)(1).

<sup>14</sup> With the exception of the provisions of Revised Code 3505.03, 3505.08, 3506.11, 3513.31, 3513.311, and 3513.312, the provisions of the Revised Code concerning independent candidates who file nominating petitions apply to candidates who file nominating petitions under this Revised Code section. R.C. 3517.012(B)(1).

- If the candidacy is to be submitted to electors throughout the entire state,<sup>15</sup> the nominating petition must be signed by at least 50 qualified electors who have not voted as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years.<sup>16</sup> The nominating petition for a candidacy to be submitted to electors throughout the entire state must be filed with the Secretary of State's Office.<sup>17</sup>
  - If the candidacy is to be submitted only to electors within a district, political subdivision, or portion thereof, the nominating petition must be signed by not less than five qualified electors who have not voted as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years.<sup>18</sup> The nominating petition for offices to be voted on by electors within a district or political subdivision comprised of more than one county but less than all counties of the state must be filed with the most populous county's board of elections according to the last federal decennial census.<sup>19</sup> The nominating petition for offices to be voted on by electors within a county or district smaller than a county must be filed with the board of elections for that county.<sup>20</sup>
- Each board of elections must examine and determine the sufficiency of the signatures not later than the 105<sup>th</sup> day before the general election.<sup>21</sup>
  - A written protest may be filed not later than the 100<sup>th</sup> day before the general election.<sup>22</sup>
  - The Secretary of State or the board of elections, as applicable, must determine whether the nominating petition is sufficient and notify the candidate and the committee designated in the party formation petition of that determination not later than the 95<sup>th</sup> day before the general election.<sup>23</sup>
  - The committee for a party that has submitted a sufficient party formation petition, must, not later than the 75<sup>th</sup> day before the general election, certify to the Secretary of State a slate of candidates consisting of candidates or joint candidates who submitted sufficient nominating petitions. The names of the candidates or joint candidates

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<sup>15</sup>This includes petitions for joint candidates for the offices of governor and lieutenant governor.

R.C. 3517.012(B)(2)(a).

<sup>16</sup>R.C. 3517.012(B)(2)(a).

<sup>17</sup>R.C. 3513.257(C).

<sup>18</sup>R.C. 3517.012(B)(2)(b).

<sup>19</sup>R.C. 3513.257(C).

<sup>20</sup>*Id.*

<sup>21</sup>R.C. 3517.012(B)(3)(a).

<sup>22</sup>The protest must be filed in the same manner as specified in R.C. 3513.263. R.C. 3517.012(B)(3)(b).

<sup>23</sup>R.C. 3517.012(B)(3)(c).

certified by the political party slate will appear on the ballot at the general election as the party's nominees for those offices.<sup>24</sup>

- If a candidate's nominating petition is insufficient or if the committee does not certify the candidate's name on the certified slate, the candidate will not appear on the ballot in the general election.<sup>25</sup>
- The slate certifying the candidates must:
  - i. Be on a form prescribed by the Secretary of State (the minor political party slate of certified candidates form, Form 4-B, is available online at the Secretary of State's [website](#);
  - ii. Be signed by all of the individuals on the committee designated in the party formation petition; and
  - iii. Not include more than one candidate for any public office or more than one set of joint candidates for the offices of governor and lieutenant governor.<sup>26</sup>
- If a party formation petition is insufficient, no candidate will appear on the ballot in the general election as that political party's nominee, regardless of whether any candidate's nominating petition is sufficient.<sup>27</sup>

If you have any questions concerning this Advisory, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

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<sup>24</sup> R.C. 3517.012(C)(1).

<sup>25</sup> R.C. 3517.012(C)(2).

<sup>26</sup> R.C. 3517.012(C)(1).

<sup>27</sup> R.C. 3517.012(C)(3).