

## **Chapter 16: STATEWIDE INITIATIVE & REFERENDUM**

Directive 2022-20

### **Section 16.01 Definitions**

#### **REFERENDUM**

A referendum is the presentation of a bill, recently passed by the Ohio General Assembly and signed into law by the Governor, to the voters of Ohio for approval or rejection. It begins when a petition is filed by a group of Ohio electors.

#### **INITIATIVE**

An initiative is the presentation of a proposed new statute or constitutional amendment to the voters of Ohio for their approval. The Ohio Constitution permits initiated statutes and initiated constitutional amendments as follows:

1. **Citizen-initiated statute:**

Ohio electors present voters with a newly-proposed Ohio statute. It begins when a petition is filed by a group of Ohio electors.

2. **Citizen-initiated constitutional amendment:**

Ohio electors present voters with a newly-proposed amendment to the Ohio Constitution. It also begins when a petition is filed by a group of Ohio electors.

3. **General Assembly-initiated constitutional amendment:**

The legislature passes a joint resolution to present a proposed constitutional amendment to voters. A General Assembly-initiated constitutional amendment does not require a petition since it is not citizen-driven.



## Section 16.02 Submission of Referendum or Initiative Petition

The issue committee must mark each part-petition with the name of the county in which it was circulated and a sequential number within that county's part-petitions. The issue committee must sort part-petitions by county prior to filing with the Secretary of State's Office.

The issue committee must provide the Secretary of State's Office with the name, address, phone number, and email of the chairperson of the committee and contact information for a designated representative of the committee.

The issue committee must file an electronic copy of the petition and an index of the electronic copy, along with a summary of the number of part-petitions filed per county and the number of signatures on each part-petition.<sup>1</sup>

The issue committee must also submit a blank, electronic copy of a part-petition.

The issue committee must pay a fee of \$25.<sup>2</sup>

## Section 16.03 Examining and Verifying State Issue Petitions

### CIRCULATORS

#### 1. Qualifications

When verifying petitions, boards of elections should presume that a circulator is qualified to circulate petitions unless there is "satisfactory evidence" that the individual is not qualified. Any protests against a circulator's qualifications should be made before the Ohio Supreme Court.

A circulator must be at least 18 years of age.<sup>3</sup> Some convicted felons are prohibited from circulating initiative or referendum petitions.<sup>4</sup> State law does not require a circulator to provide key data points (e.g., date of birth, Social Security number, driver license number, etc.) that constitute "satisfactory evidence" that the individual who circulated a petition in any given county is indeed the same individual who may be listed in one county's local voter registration database as cancelled due to incarceration of a felony conviction.

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<sup>1</sup> [R.C. 3519.16\(B\)](#).

<sup>2</sup> [R.C. 3513.10\(b\)\(2\)\(a\)](#).

<sup>3</sup> [R.C. 3503.06\(C\)](#).

<sup>4</sup> [Ohio Attorney General Advisory Opinion 2010-002](#).



## 2. Circulator's Statement

Each part-petition must contain a circulator's statement (identified on the part-petition as the "Statement of the Solicitor") that includes the following completed information:<sup>5</sup>

- The number of signatures witnessed by the circulator;
- The circulator's signature;<sup>6</sup>
- The circulator's permanent residence address;<sup>7</sup> and
- If the circulator was employed to circulate the petition, then the employer's name and address including street name and number, or post office box number, city, state, and ZIP code.

The board must review each part-petition to determine that information required as a part of the circulator's statement is entered on each part-petition. The board must accept the circulator's statement of part-petitions at face value unless there are inconsistencies with the number of signatures witnessed (see below) or with information about the circulator across part-petitions reviewed within a single county (i.e., the circulator writes a different permanent residence address on different part-petitions).

**Signature undercounting: Petitions may be filed where the number of signatures reported in the circulator's statement is less than** the total number of uncrossed-out signatures submitted on the part-petition (e.g., the circulator's statement indicates 20 signatures witnessed, but there are 22 signatures on the part-petition, none of which were crossed out prior to the petition being filed). In determining whether the number of signatures reported by a circulator of a part-petition matches the number of signatures on that part-petition, particularly with regard to crossed-out signatures, boards of elections should take care so as to not make a determination that is "too technical, unreasonable, and arbitrary" given the unique fact set of that petition and information available to the board, if any.<sup>8</sup> No board may invalidate a part-petition *solely* because a circulator statement includes a number that is lower

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<sup>5</sup> [R.C. 3519.05](#).

<sup>6</sup> Generally, signing or affixing a signature to an election-related document requires a person's written, cursive-style legal mark written in that person's own hand. However, a voter with a disability may personally affix their signature through the use of a reasonable accommodation, including the use of assistive technology or an augmentative device such as a signature stamp. See [R.C. 3501.011](#), [R.C. 3501.382\(F\)](#) and related [OAG 2015-012](#).

<sup>7</sup> State law does not define "permanent residence address" for purposes of circulating issue petitions. A county board of elections should presume that the address provided by the circulator is the circulator's permanent residence as the statement is signed under penalty of election falsification, which is a fifth-degree felony. To the extent that an entity other than the board believes that the circulator's written permanent residence address is not accurate, an informal objection or formal protest is not proper before a board of elections and should be filed with the Ohio Supreme Court.

<sup>8</sup> *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321; *State ex rel. Curtis v. Summit Cty. Bd. of Elections*, 144 Ohio St.3d 405.



than the number of signatures it actually contains,<sup>9</sup> so long as there is no indication of fraud or material misrepresentation.<sup>10</sup>

However, a circulator must indicate the number of signatures on the part-petition and attest under penalty of election falsification that they witnessed the affixing of every signature.<sup>11</sup> Thus, a Board may invalidate a part-petition when it has evidence that a circulator committed fraud.<sup>12</sup> Moreover, a Board must:

[i]Investigate irregularities... or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state....<sup>13</sup>

**Signature over-counting:** If the number of signatures reported in the circulator's statement is greater than the total number of uncrossed-out signatures on the part-petition (e.g., the circulator's statement indicates that the circulator witnessed 28 signatures, but there are only 5 signatures on the part-petition), then the board must reject the entire part-petition when the over-reporting of signatures on the circulator's statement appears "systemic" and numerous on part-petitions filed by one or more circulators within the county, or across several counties, for the same petition,<sup>14</sup> unless the exception below applies.

**Exception:** The over-reporting error is the result of "minor or negligent miscounts"<sup>15</sup> by the circulator "so long as there is no indication of fraud or material misrepresentation"<sup>16</sup> or does not promote fraud. In this circumstance, the board must review the validity of each signature as usual.<sup>17</sup>

Ohio law requires that on a circulator's statement for a statewide initiative or referendum petition (and a declaration of candidacy or nominating petition for a statewide candidate), "the circulator shall identify the circulator's name, the address of the circulator's permanent residence, and the name and address of

<sup>9</sup> See *State ex rel. Ferrara v. Trumbull Cty. Bd. Of Elections*, Slip Opinion No. 2021-Ohio-3156.

<sup>10</sup> See *Ohio Mfrs.' Assn. v. Ohioans for Drug Price Relief Act*, 147 Ohio St.3d 42, 2016-Ohio-3038, 59 N.E.3d 1274, ¶19.

<sup>11</sup> [R.C. 3501.38\(E\)\(1\)](#).

<sup>12</sup> "And nothing in [*Ferrara*] disturbs the litany of caselaw providing that evidence of fraud triggers full invalidation of a part-petition." *Ferrara* at ¶22.

<sup>13</sup> [R.C. 3501.11\(J\)](#).

<sup>14</sup> "Systemic overcounts \* \* \* are an open invitation to fraud \* \* \*" and "\* \* \* a part-petition of this type is invalid because, on its face, the attestation of the circulator is false: they did not witness the number of signatures indicated." *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, 149 Ohio St.3d 250, at ¶44.

<sup>15</sup> *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, 149 Ohio St.3d 250, at ¶44.

<sup>16</sup> *State ex rel. Curtis v. Summit Cty. Bd. of Elections*, 144 Ohio St.3d 405, at ¶8, citing *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321.

<sup>17</sup> *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167.



the person employing the circulator to circulate the petition, if any.”<sup>18</sup>

If a circulator identifies an employer on the circulator’s statement but does not provide a corresponding address, the board must **invalidate the entire part-petition**.<sup>19</sup> If no employer or address is provided, or if both the name of the employer and an address are provided, that aspect of the circulator’s statement is presumed, on its face, to be valid and sufficient.

## PROCESSING VOTER REGISTRATIONS

Each county board of elections must process all new, valid voter registrations and changes of names and/or addresses to existing registrations received by the board or the Secretary of State’s Office as of the date the petition was filed with the Secretary of State before verifying the signatures on the part-petitions.<sup>20</sup>

These registrations are effective as of the date the petition was filed with the Secretary of State.<sup>21</sup>

Registrations gathered as a part of the petition process are to be submitted to the office of the Secretary of State or a county board of elections within 10 days after that registration form is completed.<sup>22</sup> Any otherwise valid voter registration forms received in violation of this section, but received by the time the petition was filed should be entered into the county’s voter registration database.

## SIGNERS

### 1. Qualifications

Each person who signs a petition **must be** a qualified elector of Ohio **and** registered to vote at the address provided on the petition as of the date the state issue part-petition is examined by the board.<sup>23</sup>

### 2. Signatures

Except as provided in [R.C. 3501.382](#) (elector’s name signed by an attorney-in-fact or disabled voter using an assistive technology or an augmentative device), each signature must be an original signature of that voter.<sup>24</sup>

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<sup>18</sup> [R.C. 3501.38\(F\)\(1\)](#).

<sup>19</sup> [R.C. 3519.06\(A\)](#).

<sup>20</sup> [R.C. 3501.38\(A\)](#); [R.C. 3519.15](#).

<sup>21</sup> [R.C. 3501.38](#); [R.C. 3503.19](#).

<sup>22</sup> [R.C. 3599.11\(B\)\(2\)\(a\)](#).

<sup>23</sup> [R.C. 3519.10](#).

<sup>24</sup> [R.C. 3501.38\(B\)](#); [R.C. 3501.382](#); [R.C. 3519.051](#). Generally, signing or affixing a signature to an election-related document requires a person’s written, cursive-style legal mark written in that person’s own hand. However, a voter with a disability may personally affix their signature through the use of a reasonable accommodation, including the use of assistive technology or an augmentative device such as a signature stamp. See [R.C. 3501.011](#), [R.C. 3501.382\(F\)](#) and related.



The signature must match the signature on file with the board of elections.<sup>25</sup> A board must not invalidate a signature because an elector signed using a derivative of their first name, if the board can confirm the identity of the elector.<sup>26</sup>

**Example:** Name derivatives are acceptable (Bob instead of Robert, Peg instead of Margaret) and lack of middle initial or inclusion of middle initial is acceptable.

For identification purposes, the elector may print their name on the petition in addition to signing in cursive their name to the petition. A printed signature alone, with no cursive signature, is allowed only if the elector's signature on file with the board is also printed.<sup>27</sup>

The signature must be written in ink.<sup>28</sup>

The petition must contain the elector's voting residence including the house number and street name or rural free delivery (RFD) number, and the appropriate city, village, or township. The elector's ward and precinct **are not** required. A post office box **does not** qualify as an elector's residence address. If an elector's address given on the petition differs from that on file with the board, then the board **must invalidate** that signature.<sup>29</sup>

An elector's signature must **not be invalidated** solely because "non-signature information" (e.g., the elector's printed name, address, county, or the date of signing) was completed by another person. Non-signature information may be added by a person other than the elector, at the direction and in the presence of the petition signer, which should be presumed unless there is evidence to the contrary.<sup>30</sup>

No one may sign a petition more than once. If a person does sign a petition more than once, after the first signature has been marked valid, each successive occurrence of the signature must be invalidated.

**Note:** Most software systems deployed by county boards of elections are capable of electronically recording decisions on the validity or invalidity of each signature on a petition and tracking for duplicate signatures over time (including in those instances where petitioners are permitted to file supplemental petitions after an initial finding by the Secretary of State that the petition lacks sufficient signatures).

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<sup>25</sup> If a board of elections has conducted a hearing concerning the consideration of signatures on a candidate or issue petition, it must not disregard evidence produced at that hearing. See *State ex rel. Scott v. Franklin County Board of Elections*, 139 Ohio St.3d 171; "if undisputed evidence shows a nonmatching signature to be genuine, then the board must count the signature even if it does not match the elector's legal mark on the voter-registration record" *State ex rel. Crawl v. Delaware Cty. Bd. of Elections*, 144 Ohio St.3d 346, (O'Connor, C.J., concurring); *State ex rel. Burroughs v. Summit Cty. Bd. of Elections*, 145 Ohio St.3d 220.

<sup>26</sup> *State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193, 594 N.E.2d 576 (Ohio 1992).

<sup>27</sup> [R.C. 3501.011](#); [R.C. 3501.38\(B\)](#); [R.C. 3519.10](#).

<sup>28</sup> [R.C. 3519.051](#); [R.C. 3501.38\(B\)](#). See also footnote 20.

<sup>29</sup> [R.C. 3501.38\(C\)](#); [R.C. 3519.10](#).

<sup>30</sup> *State ex rel. Jeffries v. Ryan*, 21 Ohio App.2d 241, 256 N.E.2d 716 (Ohio App.10 Dist. 1969).



These systems should be able to track more than one petition at a time. Additionally, these software systems should be able to produce an electronic file and a printed report of the names, addresses, and valid/invalid code for every signature reviewed by the board. If your county software system cannot provide any of these, or the board does not use that system component, please contact the Elections Division to ensure an adequate method that adequately and accurately records information to fulfill reporting and tracking standards.

### 3. **Attorney-In-Fact**

Generally, signing or affixing a signature to an election-related document requires a person's written, cursive-style legal mark written in that person's own hand. However, a voter with a disability may personally affix their signature through the use of a reasonable accommodation, including the use of assistive technology or an augmentative device such as a signature stamp.<sup>31</sup>

A registered elector who, by reason of disability, is unable to physically sign their name to a petition may also authorize a qualified individual as an attorney-in-fact to sign the elector's name to a petition.<sup>32</sup>

In order to sign a petition on behalf of a registered voter as that person's attorney-in-fact, the board must have a completed Secretary of State Form [10-F](#) or [10-G](#) on file. Other types of power of attorney documents, filed with a court or some other agency, will not allow an individual to sign election documents on another's behalf. The proper documentation must be on file with the board of elections.

A qualified person who has been appointed as an elector's attorney-in-fact under [R.C. 3501.382](#) may sign that elector's name to the petition paper in the elector's presence and at the elector's direction. The board must compare the attorney-in-fact's signature on the petition with [Form 10-F](#) or [10-G](#) on file with the board.

If a person, who has not been designated the attorney-in-fact for elections purposes, signs another person's name to a petition, then the board must, at a minimum, invalidate that signature. If the board determines that the circulator knowingly permitted an unqualified person to sign on another person's behalf, then the entire part-petition must be invalidated.<sup>33</sup>

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<sup>31</sup> [R.C. 3501.011](#); [R.C. 3501.382\(F\)](#); [OAG 2015-012](#).

<sup>32</sup> [R.C. 3501.382](#).

<sup>33</sup> [R.C. 3501.38\(F\)](#).



#### 4. **Dates**

Each signature must be followed by the date it was affixed to the petition paper.<sup>34</sup>

The board must not invalidate a signature solely because its date is out of sequence with other signatures on the same part-petition.

#### 5. **Illegible Signature**

The board must invalidate illegible signatures. A signature is illegible only if both the signature and address are unreadable, such that it is impossible for board personnel to query the board's voter registration system to check the signature against a voter registration record.<sup>35</sup>

#### 6. **Ditto Marks**

Ditto marks may be used to indicate duplicate information, e.g. date, address, or county.<sup>36</sup>

#### 7. **One County per Part-Petition**

Ohio law requires part-petitions to contain signatures of electors from only one county. If a part-petition contains signatures from more than one county, the board must first determine the county with the most signatures.

- If the majority of the signatures are from the board's county, it may proceed to process, review, and verify all signatures on the part-petition. The board must invalidate any signatures from other counties.
- If the majority of the signatures are from a different county, the board must not process the petitions. If the petition is for a race that is not statewide, contact the board with the most signatures and the board for the county that is most populous for the specific type of petition filing. At a minimum, the board that improperly received the part-petition must transfer the part-petition to the Director or Deputy Director of the board with the majority of the signatures on the part petition. In the case of statewide races or issues, refer to the directive that accompanies the specific petitions.

#### 8. **Non-Genuine Signatures**

A board of elections must not invalidate an entire part-petition based solely on the number of non-genuine signatures it contains. If a circulator **knowingly** allows an unqualified person to sign a part-petition, the entire petition must be invalidated.<sup>37</sup>

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<sup>34</sup> [R.C. 3501.38\(C\)](#); [R.C. 3519.10](#).

<sup>35</sup> *State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 926 N.E.2d 617 (Ohio 2010).

<sup>36</sup> *State ex rel. Donofrio v. Henderson*, 4 Ohio App.2d 183, 211 N.E.2d 854 (Ohio App. 7 Dist. 1965).

<sup>37</sup> [R.C. 3501.38\(F\)](#).



## MARKING SIGNATURES

If a signature is **valid**, place a check mark in the margin to the left of the signature on the petition paper.

If a signature is **invalid**, indicate why it is invalid by writing in the margin to the left of the signature the appropriate code symbol for the reason the signature is invalid (see the following).

It is advisable for board employees to use a red ink pen for making marks.

## CODE SYMBOLS FOR VALIDATING SIGNATURES ON PETITIONS

Each signature must be individually examined. If a signature is valid, place a check mark at the left margin beside it.

If a signature is not valid, please indicate the reason by using the following code symbols or, if none apply, an explanatory notation:

**CIR** "Circulator." Signed as an elector on the part-petition they were circulating. (This invalidates the circulator's signature as a signer, but not the entire part-petition.)

**DUP** "Duplicate signature." The person has signed more than one part-petition or twice on the same part-petition.

**ILL** "Illegible." Applies only if **both** the signature and address are unreadable, such that it is impossible for board personnel to query the board's voter registration system to check the signature against a voter registration record.

**NA** "No address." The signer's complete address must be provided: House number and street name or RFD, and the appropriate city, village, or township. Ward and precinct information is not required.

**ND** "No Date." The petition does not indicate the date on which the signature was affixed. (However, acceptable are: Month-date-year, month-date, date out of sequence with other signers' dates, and ditto marks.)

**NG** "Not Genuine." The signature on the petition does not appear to be the genuine signature of the person whose signature it purports to be when compared to the signature on file with the board of elections as of the date the board checks the petition.

**NR** "Not Registered." The signer is not registered to vote. Each person who signs a petition paper must be a qualified elector as of the date the board examines the petition.

**NRA** "Not Registered Address." The address provided on the petition paper is not the address on file with the board of elections as of the date the board examines the



petition.

**OC** “Other County.” The signer is a resident of some other county. Do not cross out signature or address. Instead, write the code symbol in the left margin.

**P** “Pencil.” The signature was written using a pencil.

If the number of signatures on a part-petition is more than the number indicated by the circulator, the entire part-petition is invalid.

When invalidating an entire part-petition, indicate the reason for rejection on the front of that part-petition and separate it from any valid part-petitions. **Do not invalidate a part-petition for the sole reason that it does not contain any valid signatures; it is a valid part-petition, but it contains zero, or no, valid signatures.**

After checking an entire part-petition, write on the right side of the front page of each part-petition both the number of valid signatures and the initials of the board employee who checked the part-petition.

## CERTIFICATION

After the board staff has examined all the part-petitions of the statewide issue, referendum, or constitutional amendment petitions circulated in its county, the board must certify its findings to the Secretary of State on a certification form.

County boards of elections must return verified part-petitions to the Secretary of State’s Office not less than 110 days before the election, and the Secretary of State’s Office must determine the sufficiency of signatures by the 105th day before the election.<sup>38</sup>

Once certification forms have been received from all of the county boards of elections, the Secretary of State will determine the validity and sufficiency of the petition and provide the constitutionally- and statutorily-required notices to the committee for the petitioners.

If a petition is found to have an insufficient number of valid signatures, the issue committee is permitted 10 additional days from the date the Secretary of State’s Office notifies the issue committee of the discrepancy to collect and to file supplemental signatures. If the Secretary of State determines that the signatures on the petition are insufficient, the Secretary of State will simultaneously:

- Post the electronic version of the supplemental petition on the Secretary of State’s website. The Secretary of State’s Office will prescribe a form for use with the submission of supplementary part-petitions by an issue group when the original petitions are found to have an insufficient number of valid signatures. The Secretary of State’s Office must make the form available in paper and

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<sup>38</sup> [R.C. 3519.16\(E\)](#).



electronic form simultaneously when notifying the issue committee that the original petition filing lacked sufficient valid signatures. Each issue group's form will have a unique identifier, and supplemental signatures may only be collected on that form in the 10 days after the Secretary of State's Office has notified the issue group of the lack of sufficient valid signatures.<sup>39</sup>

- ❑ Notify the chairperson of the petition committee of the insufficiency and provide an electronic and paper form of the supplemental petition form.
- ❑ Transmit the supplemental petition form to boards of elections. Boards of elections must provide a paper or electronic copy of the form to any person upon request.<sup>40</sup>

## ADDITIONAL SIGNATURES

If the committee, or any person acting on behalf of the committee, submits additional signatures, the signatures must be on the supplemental petition form provided by the Secretary of State and only signatures that were signed and collected during the 10-day period to collect and submit additional signatures may be submitted.<sup>41</sup>

County boards of elections have eight days from receipt of supplemental signatures to verify their sufficiency and return them to the Secretary of State's Office. The Secretary of State's Office must determine the sufficiency of supplemental signatures by the 65th day before the election.<sup>42</sup>

## CHALLENGES/PROTESTS

The Ohio Supreme Court has original, exclusive jurisdiction over all challenges to state issue petitions and signatures on those petitions.<sup>43</sup> No protests may be filed with county boards of elections concerning state issue petitions. Any challenge to a petition or signature shall be filed with Ohio Supreme Court not later than 95 days before the day of the election.<sup>44</sup>

It is not proper for a county board of elections to be influenced in its validation of part-petitions or signatures contained on them by opinions, communications, or information not originating from the Secretary of State's Office or the board's statutory legal counsel, its county prosecuting attorney.

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<sup>39</sup> [R.C. 3519.16\(F\)](#).

<sup>40</sup> [R.C. 3519.05\(D\)](#); [R.C. 3519.16\(F\)](#).

<sup>41</sup> [R.C. 3519.16\(F\)](#).

<sup>42</sup> [R.C. 3519.16\(F\)](#).

<sup>43</sup> [Art. II, §1g of the Ohio Constitution](#); [R.C. 3519.16](#).

<sup>44</sup> [Art. II, §1g of the Ohio Constitution](#).