

IN THE SUPREME COURT OF OHIO

STATE EX REL. MARK H. CURTIS : **Supreme Court Case No. 2015-1426**

Relator, :

v. :

SUMMIT COUNTY BOARD OF :
ELECTIONS, :

ORIGINAL ACTION IN
MANDAMUS – Expedited Election
Case Under S.Ct.
Prac. R. 12.08

Respondent. :

RESPONDENT’S MERIT BRIEF

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MEMORANDUM IN SUPPORT

STATEMENT OF FACTS

On June 26, 2015, Mark H. Curtis (hereinafter “Mr. Curtis”) filed a nominating petition and statement of candidacy for member of the Twinsburg City School District with the Summit County Board of Elections (hereinafter “Board”). The Part Petition 1 attached hereto as Exhibit 1, (hereinafter “Petition 1”) contained twenty-one (21) signatures. There were two signatures in block No. seven (7). The top signature in block No. seven (7) was determined by the Board to not be stricken. See Affidavit of Joseph P. Masich attached hereto as Exhibit 1. Specifically, there is no **visible** crossing out of the signature.

LAW AND ARGUMENT

I. PROPOSITION OF LAW NO. 1: THE BOARD OF ELECTIONS DID NOT ABUSE ITS DISCRETION IN RELYING ON R.C. 3501.38(E) AND THE OHIO SECRETARY OF STATE DIRECTIVE NO. 2014-02 TO INVALIDATE MARK H. CURTIS' PART-PETITION

Petition 1 was rejected by the Board because the Board observed twenty-one (21) signatures, but the circulator statement states there are twenty (20) signatures. It is not abuse of discretion for a board to reject a part petition because there are more signatures on the petition than is represented by the circulator. *State ex rel. Wilcoxson v. Harsman*, 2010-Ohio-4048, ¶ 30 (2nd Dist. Montgomery). See also *State ex rel. Loss v. Bd. of Elections of Lucas Cty.*, 29 Ohio St.2d 233, 281 N.E.2d 186 (1972).

For a writ of mandamus to issue, Relator must establish the following:

- i. A clear legal right to the requested relief;
- ii. A clear legal duty on the part of respondents to grant it; and
- iii. The lack of an adequate remedy in the ordinary course of the law.

State ex rel. Allen v. Warren Cty. Bd. Of Elections, 115 Ohio St.3d 186, 2007-Ohio-4752, 874 N.E.2d 507, ¶8. To establish a clear legal right to the requested relief, the first requirement, Relator must prove that the board of elections engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law. *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, ¶ 9, quoting *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 140, 2005-Ohio-5795, 841 N.E.2d 766, 767, ¶ 8 (2005) citing *State ex rel. N. Olmsted v. Cuyahoga Cty. Bd. of Elections* (2001), 93 Ohio St.3d 529, 532, 757 N.E.2d 314.

Mr. Curtis claims that unless Petition 1 violates the requirements of Chapter 3513, the Board is required to accept the Petition. (compl. ¶18). Mr. Curtis contends that Petition 1 did not violate the requirements of chapter 3513 because to the best of his knowledge and belief Earl Shaffer was not a “qualified elector” so he correctly omitted Earl Shaffer when he attested that only 20 signatures were on Petition 1. (compl. ¶¶ 20 – 23). However, Mr. Curtis could have stricken the signature himself. R.C. 3501.38(G) states “[t]he circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as part of the petition.” Mr. Curtis, as the candidate, assumes the responsibility for his petitions. Board member Williams summarized the matter when he stated “it’s incumbent upon him or her with their authority to remove any ambiguity, which didn’t happen.” See Relator’s Exhibit 3, Pg. 19:13-14. Mr. Curtis’ rationale is almost identical to the rationale which was rejected by a federal judge in *State ex rel. Applegate v. Franklin Cty. Bd. of Elections*, S.D. Ohio No. C2-08-092, 2008 WL 341300, *4 (Feb. 6, 2008).

R.C. 3501.38(E) requires that “On each petition paper the circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification that he witnessed the affixing of every signature...” This Court in *Rust* held that when the circulator indicated the number of signatures to be less than the number actually contained on the petition then the entire part petition must be invalidated. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 140, 2005-Ohio-5795, 841 N.E.2d 766, 768, ¶ 8 (2005).

In the instant case, there were twenty-one (21) signatures on the Petition 1, including Earl Shaffer’s signature. However, when filing Petition 1 with Respondents, he indicated that the petition contained only twenty (20) signatures. Mr. Curtis indicated that there were only twenty (20) signatures when there were twenty-one (21) signatures. This indication clearly violated the requirement that he indicate the exact number of signatures on the petition. Mr. Curtis’ statement of twenty (20) signatures on a petition containing twenty-one (21) signatures is in violation of the statute and in violation of the holding in *Rust*. *Rust* indicates that a Board of Elections does not err when it relies on statutes and the Secretary of State’s interpretation thereof when deciding whether to accept petitions. *Rust at* ¶ 13. In the instant case, the Board relied on R.C. 3501.38(E) in denying the petition because they discovered that two signatures occupied the same line, making the indication of signatures less than the actual signature count on the document. Furthermore, courts are to defer to the Board’s decision unless it determines that the board committed error in applying the statutory language or the Secretary of State’s interpretation of the statute. *Id.* Unless this Court were to determine that Respondent’s committed error in application of the statute, their determination of the petition should stand.

II. PROPOSITION OF LAW NO. 2: THE BOARD OF ELECTIONS DID NOT BELIEVE THE SIGNATURE AT ISSUE WAS STRUCK AFTER THE BOARD HEARD FROM MARK H. CURTIS

The transcript from August 28th, attached to Mr. Curtis's brief as exhibit 3, reveals that the board members were not convinced there was any strike to the petition as shown below.

Pg. 13:9-13 "MR. ARSHINKOFF: There's no -- there's no attempt to cross out here. MR. MASICH: The law also provides for Mr. Curtis, as the circulator, to cross out unqualified signature lines."

Pg. 13:20-21 "MR. ARSHINKOFF: Well, it may. I – I just looked at it. There's no cross-out."

Pg. 13:24-14:1 MR. GORBACH: Well, I can't -- I can't tell what the signature is or if there is a cross-out or if there wasn't;..."

Pg. 15:24-25 "MR. ARSHINKOFF: The cross-out would go all the way across."

Mr. Curtis failed to persuade the board that the signature was crossed out. This differentiates this case from *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321, 323, 181 N.E.2d 888, 890 (1962), in which this Court held that when presented with a "plausible explanation" under oath, the members of the board were under a duty to make a decision independent of the Secretary of State. In our case, the circulator had the duty and the obligation to ensure the signature that he did not want the Board to verify was struck. Furthermore, it has been held that an affidavit, cannot cure a defect in the nominating petition. *State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 131-132 (2005). Mr. Curtis did not strike the signature. Therefore the Board acted properly in invalidating Petition 1.

CONCLUSION

In light of the circumstances, Mr. Curtis has no right for a mandamus to issue in this case because his petition clearly violates the statutory provisions of R.C. 3501.38(E). For the reasons

stated above, Respondent respectfully requests this Court deny Relator's complaint for a writ of mandamus.

Respectfully submitted,

SHERRI BEVAN WALSH
Prosecuting Attorney

/s/ Colleen Sims _____

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Counsel for Respondent Summit County
Board of Elections

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2015 a copy of the foregoing instrument was filed electronically. Notice of this filing will be sent to all parties by email, specifically to attorney for Relator at dandrews@dayketterer.com.

/s/Colleen Sims _____

COLLEEN SIMS (0069790)
Assistant Prosecutor
Civil Division

APPENDIX

**AFFIDAVIT OF JOSEPH P. MASICH
SUMMIT COUNTY BOARD OF ELECTIONS**

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

I, Joseph P. Masich, having been cautioned and duly sworn, and over the age of eighteen (18), deposes and states as follows:

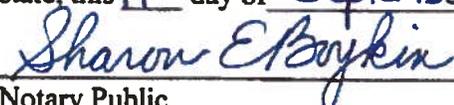
- 1) I am employed at the Summit County Board of Elections as its Director and have been so since March 6, 2012.
- 2) My work address is 470 Grant Street, Akron, Ohio 44311.
- 3) Attached hereto as Masich Exhibit 1 is a true and accurate copy of Ohio Secretary of State Directive No. 2014-02, dated January 30, 2014, addressed to all Directors of all County Board of Elections.
- 4) According to section B of the above-referenced directive, if the number of signatures reported is less than the total number of uncrossed out signatures submitted on the part-petition, then the Board must reject the entire part-petition.
- 5) The part petition of Relator Mark H. Curtis filed with the Board of Elections on June 26, 2015 at 1:37 p.m., beginning with the signature of Dianne M. Curtis was rejected in compliance with section B of the above-referenced directive in that the petition contained twenty-one (21) signatures. The number reported, twenty (20), was less than the total number of uncrossed out signatures. A copy of the part petition is attached hereto as Masich Exhibit 2.
- 6) Attached hereto as Masich Exhibit 3 are documents kept by the Summit County Board of Elections in the ordinary course of business showing that the part petition was checked. Relator submitted six (6) part petitions containing one hundred and three (103) signatures. Due to the fact that part petition #1 was determined to be invalid, the number of signatures remaining to be reviewed was eighty three (83). There were seventeen (17) invalid signatures on those remaining parts; therefore the amount of valid signatures verified by the Board of Elections is sixty-six (66). ORC 3513.254 requires Relator have seventy-five (75) valid signatures in order to be certified to the November 3, 2015 General Election ballot as a candidate for City of Twinsburg School Board of Education.

FURTHER AFFIANT SAYETH NAUGHT.



Joseph P. Masich

Sworn to and subscribed before me, a notary public in and for said county and state, this 14th day of September, 2015.



Notary Public



Sharon E. Boykin
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 04/01/2017



Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

DIRECTIVE 2014-02

January 30, 2014

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

Re: Instructions Regarding the Examination and Verification of Petitions from Candidates for
Statewide Office

SUMMARY

This Directive provides instructions on the examination and verification of candidate petitions that have been filed with the Ohio Secretary of State for the 2014 Primary Election and transmitted to the county boards of elections for examination and verification.

In lieu of issuing a separate Directive with each candidate's petition, this Directive is intended to apply to each petition that is filed with the Ohio Secretary of State and transmitted to county boards of elections for examination and verification.

Petition examination and verification must be complete, and the certification forms sent to the Secretary of State's Office, not later than 4:00 p.m. on Friday, February 14, 2014. The original part-petitions must be returned to the Secretary of State's Office by a trackable delivery method no later than Friday, February 21, 2014.

DIRECTIONS

Please carefully read this Directive before you start examining the part-petitions sent to you by this office.

INSTRUCTIONS

I. CIRCULATORS

A. Qualifications of Circulators

- A circulator must be at least 18 years of age.¹
- A circulator does not have to be an Ohio elector or an Ohio resident.²

¹ R.C. 3503.06(C)

² *Citizens in Charge v. Husted*, Case No. 2:13-cv-00935 (S.D. Ohio, Nov. 13, 2013).

- **Each circulator must be a member of the political party named in the declaration of candidacy.**

A board of elections will determine a circulator's party affiliation as follows:

- **Not an Ohio Elector:** If the circulator is not an Ohio elector, the board of elections should accept as true the claim of political party membership that is included in the circulator's statement, unless the Board has knowledge to the contrary.
- **Ohio Elector:** An Ohio elector who circulates another person's declaration of candidacy and petition for the nomination or election at a partisan primary must not have voted in any other party's primary election in the preceding two calendar years.³ The board of elections should examine the circulator's Ohio voting history using the statewide voter registration database. If the Board determines that the circulator voted in another political party's primary election during the prior two calendar years, then the part-petition is invalid.
- **Candidate as circulator:** A candidate may circulate his/her part-petition regardless of how he/she may have voted in the prior two calendar years. If the candidate does not hold an elective office, or if the candidate holds an elective office other than one for which candidates are nominated at a party primary, the candidate does not need to file any additional forms. If the candidate holds partisan public office, the candidate can still run for office for a different party, if the candidate has filed a declaration of intent to change political party affiliation (Form 10-Y).⁴
- **Convicted felons:** Some convicted felons are prohibited from circulating petitions.⁵ State law does not require a circulator to provide key data points that constitute "satisfactory evidence" that the person that circulated a petition is the same individual who may be listed in a county's local voter registration database as cancelled due to incarceration of a felony conviction. Thus, 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.

³ R.C. 3513.05, ¶7

⁴ R.C. 3513.191

⁵ Ohio Attorney General Advisory Opinion 2010-02

B. Circulator's Statement on Each Part-Petition

- Must include the circulator's signature, name, address of the circulator's residence, and the name and address of the person employing the circulator to circulate the petition, if any.⁶

Note: If the circulator is a qualified elector of Ohio, there is no requirement that the address of the circulator match the address on file with the board of elections. A Board must not invalidate a part-petition solely because the address of the circulator in the circulator's statement differs from the address on file with the board of elections.

- Must include the number of signatures witnessed by the circulator.
- **If the number of signatures reported in the statement is less than** the total number of uncrossed out signatures submitted on the part-petition, then the Board must reject the entire part-petition.⁷

Example: The circulator's statement indicates 20 signatures witnessed, but there are 22 signatures on the petition, none of which were crossed out prior to the petition being filed.

- **If the number of signatures reported in the statement is equal to or greater than** the total number of signatures not crossed out on the part-petition, then the Board does not reject the part-petition because of the inconsistent signature numbers.⁸ Instead, the Board must review the validity of each signature as usual.

Example: The circulator's statement indicates that the circulator witnessed 22 signatures, but there are only 20 signatures on the petition.

II. SIGNERS

A. Qualifications of Signers

- Must be a qualified elector of Ohio.⁹
- Must be registered to vote at the address provided on the petition as of the date that the petition was filed with the Secretary of State.¹⁰

⁶ R.C. 3501.38(E)(1)

⁷ *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139 (2005).

⁸ *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167 (1992).

⁹ R.C. 3501.38(A)

¹⁰ R.C. 3501.38(A)

- Must be a member of the political party of the candidate named on the declaration of candidacy. For purposes of signing candidate petitions for these parties, the person signing is considered to be a member of a political party if the signer did not vote in any other party's primary election in the preceding two calendar years.¹¹

B. Signatures

- Each signature must be an original signature of that voter.¹²
- The signature must match the signature on file with the board of elections. A Board must not invalidate a signature because an elector signed using a derivative of his/her first name if the Board can confirm the identity of the elector.¹³ Some acceptable examples include Jack for John or Peg for Margaret. Also, inclusion or omission of a voter's middle initial is not a reason to invalidate a signature.
- For identification purposes, the elector may print his or her name on the petition *in addition* to signing in cursive his or her 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.¹⁴
- The signature must be written in ink.¹⁵
- An elector's signature must not be invalidated solely because "non-signature information" was completed by another person (e.g., the elector's printed name, address, county, or the date of signing). Non-signature information may be added by a person other than the elector.¹⁶
- 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.

C. Address of a Signer

- 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.

¹¹ R.C. 3513.05, ¶7

¹² R.C. 3501.38(B)

¹³ *State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193 (1992).

¹⁴ R.C. 3501.38(B), R.C. 3501.011

¹⁵ R.C. 3501.38(B)

¹⁶ *State ex rel. Jeffries v. Ryan*, 21 Ohio App.2d 241, 256 N.E.2d 716 (Ohio App. 10 Dist. 1969).

- If an elector's address given on the petition differs from that on file with the Board, then the Board must invalidate that signature unless the signer has provided the elector's residence information in a format that is consistent with postal regulations as opposed to the political subdivision on file with the board of elections (e.g., writing "Columbus" as the city when the elector's political subdivision is "Perry Township"). A Board must not reject a signature solely based on this difference.

D. Attorney in Fact

A registered elector who, by reason of disability, is unable to physically sign his or her name to a petition may authorize a qualified individual as an attorney in fact to sign the elector's name to a petition as provided in law.¹⁷

A qualified person who has been appointed as an elector's attorney in fact may sign that elector's name to the petition paper in the elector's presence and at the elector's direction.¹⁸ The Board must compare the attorney in fact's signature on the petition with the document on file with the board office (Form 10-F or 10-G).

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 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.

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 allowed someone who they knew was unqualified to sign on another person's behalf, then the entire part-petition must be invalidated.¹⁹

E. Dates

Each signature must be followed by the date it was affixed to the petition paper.²⁰ The Board must not invalidate a signature solely because its date is out of sequence with other signatures on the same part-petition.

F. 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

¹⁷ R.C. 3501.382

¹⁸ R.C. 3501.382

¹⁹ R.C. 3501.38(F)

²⁰ R.C. 3501.38(C)

personnel to query the board's voter registration system to check the signature against a voter registration record.²¹

G. Ditto Marks

Ditto marks may be used to indicate duplicate information, e.g., date, address, or county.²²

H. One County per Part-Petition

Each part-petition should contain signatures of electors of only one county. The Board must invalidate signatures from any other county.²³

If any part-petition contains signatures from more than one county, then the Secretary of State determines the county with the most signatures on the part-petition, and only signatures from that county are to be reviewed. If, upon review by a county board of elections, the Board believes that a part-petition was improperly forwarded to the county, the Director and Deputy Director should contact Laura Pietenpol via email to LPietenp@OhioSecretaryofState.gov for the Secretary of State's Office to review the part-petition again.

I. 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. Only if a circulator knowingly allows an unqualified person to sign a petition, should the entire petition be invalidated.²⁴

III. 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 attached).

It is advisable to use a red ink pen for making marks by the Board.

²¹ *State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 926 N.E.2d 617 (Ohio 2010).

²² *State ex rel. Donofrio v. Henderson*, 4 Ohio App.2d 183, 211 N.E.2d 854 (Ohio App. 7 Dist. 1965).

²³ R.C. 3513.05, ¶9

²⁴ R.C. 3501.38(F)

IV. CERTIFICATION

After the board staff has examined all the parts of the candidate petitions, **but no later than 4:00 p.m. on Friday, February 14, 2014**, the Director must certify the Board's findings to the Secretary of State. Once the certification form has been submitted, county boards of elections must promptly return the original part-petitions to the Secretary of State's Office, 180 East Broad Street, 15th Floor, Columbus, 43215, via a trackable delivery method no later than Friday, February 21, 2014.

A blank certification form is attached to this Directive. You must complete separate certification forms for each candidate for each office for which you are reviewing petitions. **Completed certification forms must be sent to Laura Pietenpol via electronic mail to LPietenp@OhioSecretaryofState.gov by 4:00 p.m. on Friday, February 14, 2014.**

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

Sincerely,


Jon Husted

000008

CERTIFICATION FORM

2014 Statewide Candidate Filing

On behalf of the County Board of Elections, I hereby certify that the numbers of valid and invalid signatures on the part-petitions for the candidate named below are as follows:

Name of candidate:

Political party:

Office sought:

	Part-Petitions	Signatures
1. Number of valid part-petitions		
2. Number of valid signatures on valid part-petitions		
3. Number of invalid signatures on valid part-petitions		
4. Number of invalid part-petitions		
5. Number of signatures on invalid part-petitions		
6. Total number of part-petitions received (valid & invalid)		
7. Total number of signatures on part-petitions (valid & invalid)		

Signed: _____
Director

Date

This certification form must be received by Laura Pietenpol via email to LPietenp@ohiosecretaryofstate.gov no later than 4 p.m. on Friday, February 14, 2014.

Please keep a copy of your completed Certification Form for your files.

CODE SYMBOLS FOR INVALIDATING SIGNATURES ON PETITIONS

Each signature must be individually examined. If a signature is valid, please place a red check mark at the left margin beside it. After checking an entire part petition, please **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 under the number.

If a signature is not valid, please indicate the reason for rejecting the signature by using one of the following abbreviations or, if no abbreviation applies, an explanatory notation:

- CIR Circulator signed as an elector the part petition he or she was circulating. (This invalidates the circulator's signature as a signer, but not the entire part petition.)
- DUP "Duplicate." 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, so that it is impossible to check the signature against a voter registration record.
- NA "No address." The signer must have provided his/her complete address: house number and street name or RFD, and the appropriate city, village, or township. Failure to provide the name of the county of residence is not fatal *if* board officials can determine the county from the other information given. 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, 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, 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, place code at 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, please indicate the reason for rejection on the front of that part petition and separate it from any valid part petition. **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 no ("zero") valid signatures.**

150707
1
Invalid

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MEMBER OF THE BOARD OF EDUCATION
CITY, LOCAL OR EXEMPTED VILLAGE SCHOOL DISTRICT**

To be filed with the Board of Elections not later than 4 p.m. of the 90th day before the general election.
Revised Code 3501.38, 3513.254, 3513.261, 3513.263

NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY BEFORE PETITIONS ARE CIRCULATED.

STATEMENT OF CANDIDACY

I, MARK H. CURTIS, the undersigned, hereby declare under penalty of election falsification that my voting residence address is 10472 WOODCHUCK CT., Ohio 44087; and I am a qualified elector in the school district.

I further declare that I desire to be a candidate for election to the office of Member of the Board of Education of the TWINSBURG CITY School District in Summit County, Ohio, for the: (check one) full term, or unexpired term ending _____, at the general election to be held the 3rd day of November, 2015.

I further declare that I am an elector qualified to vote for the office I seek.

Dated this 6th day of APRIL, 2015.
(Signature of Candidate)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

I, _____, hereby designate the persons named below as a committee to represent me:

NAME	RESIDENCE

2015 JUN 26 PM 1:37
BOARD OF ELECTIONS
AKRON, OHIO
3450 CB

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate MARK H. CURTIS as a candidate for election to the office of Member of the Board of Education of the TWINSBURG CITY School District for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<i>Mark H. Curtis</i>	10472 Woodchuck Ct.	Twinsburg	Summit	4/11/15
2.	<i>Kathleen Thyer</i>	3575 Navillus Tr Reminderville	Reminderville	Summit	4/11/15
3.	<i>LaRae</i>	11254 Heritage Dr Twinsburg	Twinsburg	Summit	4/11/15
4.	<i>Beth Ann Blackwell</i>	9791 Firelands Dr	Twinsburg	Summit	4/11/15
5.	<i>Paul Baker</i>	2930 Embury St Twinsburg, OH	Twinsburg	Summit	4/11/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
6.	<i>[Signature]</i>	1571 Woodchuck Ct	Twinsburg	Summit	4-18-15
7.	<i>[Signature]</i>	10460 Woodchuck	Twinsburg	Summit	4-13-15
8.	<i>[Signature]</i>	2591 Ailing Drive	Twinsburg	Summit	4-13-15
9.	<i>[Signature]</i>	1495 Iris Glen Dr.	Twinsburg	Summit	4-13-15
10.	<i>[Signature]</i>	10326 Smugglers	Reminderville	Summit	4/15/15
11.	<i>[Signature]</i>	1282 Waldo Way	Twinsburg	Summit	4/15/15
12.	<i>[Signature]</i>	10418 Bedeadow Dr.	Twinsburg	Summit	4/15/15
13.	<i>[Signature]</i>	10258 BELMEADOW DR.	TWINS	Summit	4/15/15
14.	<i>[Signature]</i>	1771 Lockwood Ave	Twinsburg	Summit	4/17/15
15.	<i>[Signature]</i>	11327 Heritage	Twinsburg	Summit	4-18-15
16.	<i>[Signature]</i>	11254 Heritage Dr	Twinsburg	Summit	4-22-15
17.	<i>[Signature]</i>	9586 Theunung	Twinsburg	Summit	4/22/15
18.	<i>[Signature]</i>	9584 "	"	"	"
19.	<i>[Signature]</i>	3006 Country Club	Twinsburg	Summit	4/22/15
20.	<i>[Signature]</i>	988 Bulmire	Twinsburg	Summit	4/22/15

CIRCULATOR STATEMENT – Must be completed and signed by circulator
 I, MARK H CURTIS, declare under penalty of election falsification that I
 (Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 20 signatures; that I witnessed the affixing of every signature; that all signatures were to
 (Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

[Signature]
 (Signature of Circulator)
 10472 WOODCHUCK CT
 (Permanent residence address)
 TWINSBURG, OH 44087
 (City or Village, State and Zip Code)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

County Board of Elections
 Form 3-T Nominating Petition For Board of Education

Statement of Candidacy of _____
 Candidate for _____
 Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____ Ohio,
 This _____ day of _____
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

Summit County Board of Elections
SUMMIT COUNTY BOARD OF ELECTIONS
470 GRANT STREET
AKRON, OHIO 44311

Petition ID: 150707 Receipt ID: 3450

Description: MARK H CURTIS TWINSBURG CITY SCHOOL BOARD OF EDUCATION

Jurisdiction

District TWIN Type School
Candidate
MARK H CURTIS

Number of Required Signatures 75
Number of Valid Signatures 66

Filing Date: 06/26/15 Start Date: 04/02/15 End Date: 06/26/15

Verified Part Petitions: 6
Circulator Signature Count: 103
Verified Signature Count: 83
Valid Signature Count: 66

Detail of Invalid Signatures

- 7 -- INVALID: Not qualified - Not an elector
 - 2 -- INVALID: Duplicate - Signer has signed before
 - 7 -- INVALID: Signature does not match
 - 1 -- INVALID: Address does not agree

 - 1 Invalid Part Petitions with 20 Circulator count and 0 lines used
- PETITION PENDING: Required number of signatures NOT validated

Candidate Name: Mark H. Curtis

signatures needed 75

Office: Twinsburg - School Board

Subdivision Twinsburg
School Board

Yellow Card Name: Mark H. Curtis

Party: Dem ___ Rep ___ Other ___ Non-Partisan

Filing Deadline: 8/5

Enter on candidate spreadsheet on G drive

Give filing fee to Lance
~~Pinky~~

Proofread: no s/p

<input checked="" type="checkbox"/> time stamped?	<input checked="" type="checkbox"/> candidate nominating portion correct?
<input checked="" type="checkbox"/> is the correct petition form used?	<input checked="" type="checkbox"/> check circulator residency
<input checked="" type="checkbox"/> at least one original candidate signature?	<input checked="" type="checkbox"/> check to see if circulator is a felon
<input checked="" type="checkbox"/> check candidate residency & party affiliation	<input checked="" type="checkbox"/> circulator signatures -- all original?
<input checked="" type="checkbox"/> term commencing date correct?	<input checked="" type="checkbox"/> circulator signature count agrees with actual?
<input checked="" type="checkbox"/> date of election correct?	<input checked="" type="checkbox"/> petition signatures -- anyone sign for another?

Enter on Candidate Filing System

Enter on TRIAD # parts filed 6

signatures filed 103

Check signatures #1: s/p initials Dem ___ Rep

valid 66 # invalid 17

Print Signature Report #3 JAB

parts checked 66
checked parts 276

Check signatures #2: no initials ___ Dem Rep

valid 66 # invalid 17
66 17

Double check (Dem & Rep team) all invalid signatures when preliminary check determines that the candidate does NOT have enough valid signatures.

Print Summary Report

Give Yellow Card to Ballot Layout

Discrepancies/Comments:

Part 4 - Missing day of election & (zip code on part 4)
6 - missing whole date of election

Part 1 - Invalid circulator count disagrees - INV

CANDIDATE FILING CHECKLIST

SUMMIT COUNTY BOARD OF ELECTIONS

For a review of all candidate petition requirements please review the Secretary of State publication, "Ohio Candidate Requirement Guide," provided to you at the time you receive your petition. If you need to refer to this guide we can loan you an office copy.

Candidates are responsible for completing petition forms correctly and filing them prior to the deadline. Failure to do so may disqualify candidate. You may wish to check your signatures using our public access prior to turning them in. This service is provided on a "first come, first serve" basis.

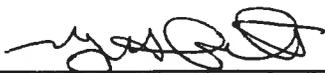
The checklist below covers only the most frequent problems associated with petition filing. Please review and sign this checklist prior to filing.

We strongly urge you to fill more than the minimum number of signatures needed to allow for voters who are not registered, have moved, printed their name, etc.

1. Was the top portion (Declaration of Candidacy) of all part petitions filled out, signed and dated BEFORE signatures were obtained?
2. Is the date of the election correct?
3. Does at least one part-petition that you intend to file have an original signature?
4. Is the bottom portion (Petition for Candidate) of all part petitions filled out?
5. Are signatures legible? If not, and you recognize the name, please pencil the name in above the signature.
6. Did your signers include their complete street address & date of signing? (P.O. Boxes are not acceptable addresses.)
7. Turn the petition over. Did the circulator sign his/her name and address?
8. Are all circulator signatures original?
9. Is the number of signatures filled in on the back of the petition? Does this number match the number of actual signatures?
10. Do two or more signatures appear to be signed by the same person? If so, this may disqualify the entire part-petition.
11. Does the candidate understand the residency requirements outlined in the Ohio Candidate Requirement Guide or subdivision charter?
12. Please let us know, before the certification board meeting, if you would like your name to appear on the ballot different than your name on your petition.

Candidate's Acknowledgement: The information above is provided to you as a service. Relying solely on the advice of a board of elections does not relieve a candidate from the obligation to learn, know and understand the law governing elections. Please read the Ohio Candidate Requirement Guide for additional information.

I have received the above checklist and am ready to file my petitions:



Candidate's Signature
(May be signed by person filing for the candidate)

6/26/15

Date

Optional: E-Mail Address: _____

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Phone: _____

Cell: _____

2010 WL 3366193

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Second District, Montgomery County.

STATE of Ohio, ex rel., C.
Ralph WILCOXSON, II, Relator

v.

Steven P. HARSMAN, Director Montgomery
County Board of Elections, et al., Respondents.

No. 24095. | Decided Aug. 26, 2010.

Synopsis

Background: Candidate for juvenile judge for court of common pleas filed petition for writ of mandamus, seeking to compel the Board of Elections and its director to certify him as a candidate and to place his name on general election ballot for upcoming election, and seeking order declaring unconstitutional the statute setting forth qualifying conditions for independent political candidates.

Holdings: The Court of Appeals held that:

[1] Board of Elections did not abuse its discretion in invalidating certain signatures on candidate's nominating petitions;

[2] candidate had standing to assert a constitutional challenge to statute setting forth qualifying conditions for independent candidates; and

[3] statute setting forth qualifying conditions for independent political candidates did not violate First or Fourteenth Amendment.

Petition denied; matter dismissed.

Attorneys and Law Firms

C. Ralph Wilcoxson, Dayton, OH, Relator, Pro Se.

Victor T. Whisman, Dayton, OH, for respondent.

Steven P. Harsman, Dayton, OH, for Respondent.

Opinion

PER CURIAM.

*1 ¶ 1 On June 11, 2010, C. Ralph Wilcoxson, II, filed a complaint for a writ of mandamus. Wilcoxson seeks a writ of mandamus compelling Respondents, Steven P. Harsman, Director of the Montgomery County Board of Elections, et al., to certify Wilcoxson as an independent candidate for Juvenile Judge in the Montgomery County Common Pleas Court and place his name on the general election ballot for the November 2, 2010 election. Wilcoxson further seeks an order declaring R.C. 3513.257 unconstitutional for the “extra-conditional qualifications” imposed on independent political candidates.

¶ 2 On June 21, 2010, Respondents filed a “Motion for Partial Dismissal of Relator’s Claims.” There, Respondents argued that this Court lacked subject matter jurisdiction to consider the constitutional challenge posited by Wilcoxson, where the underlying complaint is in the nature of a request for declaratory relief. As a result, Respondents claimed that this Court was prohibited from reviewing the constitutional question without the complaint being served upon the attorney general, and the attorney general being provided an opportunity to be heard on the matter. See *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 115 Ohio St.3d 126, 2006–Ohio–4588; *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St.3d 131, 876 N.E.2d 953, 2007–Ohio–5699; *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 857 N.E.2d 88, 2006–Ohio–5439.

¶ 3 Wilcoxson filed a response to Respondents’ motion for partial dismissal on June 30, 2010, arguing that the constitutionality of a statute may be challenged by mandamus in circumstances like the present one because he is seeking to compel official action rather than prevent it, and the alternative remedy—seeking declaratory judgment in the trial court—would be inadequate. See *State ex rel. Brown v. Summit Cty. Bd. of Elections* (1989), 46 Ohio St.3d 166, 545 N.E.2d 1256; *State ex rel. Zupancic v. Limbach* (1991), 58 Ohio St.3d 130, 133, 568 N.E.2d 1206. On July 12, 2010, Respondents filed a reply brief.

¶ 4 Finding Wilcoxson’s argument well-taken, this Court overruled Respondents’ motion for partial dismissal on July 23, 2010.

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{¶ 5} Evidentiary hearings were held before the court on July 28, 2010 and August 3, 2010 on the issue of whether Respondents abused their discretion in refusing to certify Wilcoxson's candidacy due to invalid signatures on his nominating petitions. On August 16, 2010, arguments were made by the parties on the issue of whether R.C. 3513.257 should be declared unconstitutional for the burden it imposes on independent political candidates seeking to appear on the general election ballot.

{¶ 6} Upon due consideration of the foregoing, we find that Respondents did not abuse their discretion in refusing to certify Wilcoxson's candidacy based upon an insufficient number of valid signatures on his nominating petitions. We further find that R.C. 3513.257 imposes reasonable, nondiscriminatory qualifying conditions on independent candidates consistent with the State's interest in regulating the election process and, therefore, is not unconstitutional.

I. Nominating petitions

*2 {¶ 7} To be entitled to the requested writ of mandamus, Wilcoxson must establish a clear legal right to the relief requested, i.e., a clear legal right to the placement of his name on the November 2, 2010 general election ballot; a clear legal duty on the part of Respondents to perform the acts, i.e., a corresponding duty of the board of elections and its members to place Wilcoxson's name on the ballot; and the lack of a plain and adequate remedy in the ordinary course of law. *State ex rel. Grounds v. Hocking Cty. Bd. of Elections*, 117 Ohio St.3d 116, 881 N.E.2d 1252, 2008-Ohio-566, at ¶ 10, citing *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 875 N.E.2d 578, 2007-Ohio-5346, at ¶ 8. As the election at issue is less than three months away, the court is inclined to find that Wilcoxson lacks an adequate remedy in the ordinary course of law. *Id.*, citing *State ex rel. Columbia Res. Ltd. v. Lorain Cty. Bd. of Elections*, 111 Ohio St.3d 167, 855 N.E.2d 815, 2006-Ohio-5019, at ¶ 28.

{¶ 8} In order to establish the clear legal right and legal duty, as provided above, Wilcoxson must further “ ‘prove that the board of elections engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law.’ “ *State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 907 N.E.2d 300, 2009-Ohio-1716, at ¶ 11, quoting *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 841 N.E.2d 766, 2005-Ohio-5795, at ¶ 8. Wilcoxson does not raise claims of fraud or corruption, so the dispositive issue is whether Respondents abused their

discretion or clearly disregarded the applicable law when determining that Wilcoxson's nominating petitions lacked the number of valid signatures necessary to place his name on the November 2, 2010 general election ballot.

{¶ 9} R.C. 3501.38 sets forth the rules governing nominating petitions filed with a board of elections for the purpose of becoming a candidate for office. In relevant part, this statute provides the following:

{¶ 10} “All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code relating to them, be governed by the following rules:

{¶ 11} “(A) Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. Each signer shall be a registered elector pursuant to section 3503.11 of the Revised Code. The facts of qualification shall be determined as of the date when the petition is filed.

{¶ 12} “(B) Signatures shall be affixed in ink. Each signer may also print the signer's name, so as to clearly identify the signer's signature.

{¶ 13} “(C) Each signer shall place on the petition after the signer's name the date of signing and the location of the signer's voting residence, including the street and number if in a municipal corporation or the rural route number, post office address, or township if outside a municipal corporation. The voting address given on the petition shall be the address appearing in the registration records at the board of elections.

*3 {¶ 14} “(D) Except as otherwise provided in section 3501.382 of the Revised Code, no person shall write any name other than the person's own on any petition. Except as otherwise provided in section 3501.382 of the Revised Code, no person may authorize another to sign for the person. If a petition contains the signature of an elector two or more times, only the first signature shall be counted.

{¶ 15} “(E)(1) On each petition paper, the circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification

that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code. On the circulator's statement for a declaration of candidacy or nominating petition for a person seeking to become a statewide candidate or for a statewide initiative or a statewide referendum petition, the circulator shall identify the circulator's name, the address of the circulator's permanent residence, and the name and address of the person employing the circulator to circulate the petition, if any.

{¶ 16} “(2) As used in division (E) of this section, ‘statewide candidate’ means the joint candidates for the offices of governor and lieutenant governor or a candidate for the office of secretary of state, auditor of state, treasurer of state, or attorney general.

{¶ 17} “(F) Except as otherwise provided in section 3501.382 of the Revised Code, if a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures on the paper.”

{¶ 18} Here, Wilcoxson's complaint alleges the following with respect to Respondents' invalidation of signatures on his nominating petitions:

{¶ 19} “15. On May 20, 2010, Relator received written notice from the Board of Elections that they had voted not to certify the petitions ‘due to insufficient Valid Signatures.’ The notice was signed by Steven P. Harshman, Director and Betty J. Smith, Deputy Director.

{¶ 20} “16. Relator contacted the Montgomery County Board of Elections and received a report detailing the signatures that were stricken as invalid.

{¶ 21} “17. Relator's review of the report revealed several errors made by the Montgomery County Board of Elections.

{¶ 22} “18. Respondent, Montgomery County Board of Elections failed to count valid signatures of registered voters in Montgomery County, Ohio.

{¶ 23} “19. Respondent failed to diligently search its database and verify signatures as required by O.R.C. § 3513.263.

*4 {¶ 24} “20. Respondent improperly and incorrectly invalidated signatures based on petition dates.

{¶ 25} “21. Respondent improperly invalidated signatures and failed to properly check voter addresses.

{¶ 26} “22. Respondent improperly invalidated signatures and failed to check elector status.

{¶ 27} “23. The Montgomery County Board of Elections has engaged in an abuse of discretion in failing to certify the Relator's petitions.”

{¶ 28} During the hearing before this Court on July 28, 2010 and August 3, 2010, Wilcoxson submitted a number of exhibits, including 154 nominating petitions reviewed by Respondents. At the same time, both parties submitted joint exhibits, also including Wilcoxson's 154 nominating petitions. The petitions submitted as joint exhibits, however, also included printouts of board records that included registration cards, address searches and/or name searches for each signature that was invalidated.

{¶ 29} Upon review of the 154 nominating petitions entered into evidence as joint exhibits, we do not find that Respondents abused their discretion in determining that Wilcoxson's nominating petitions did not contain the required number of valid signatures to place his name on the general election ballot.

[1] {¶ 30} Relator's Exhibit 1/Page 1 of Joint Exhibit A, a detailed report of Wilcoxson's petitions and the signatures contained therein, provides that 154 part petitions were verified containing a total of 2157 signatures. Four part petitions containing a total of 47 signatures were invalidated because (1) the circulator failed to list her address; (2) the circulator's name could not be verified with the signature on file at the board of elections; (3) the number of signatures on the petition was more than the number of signatures indicated in the Circulator's Statement; and (4) a number of signatures on the petition appeared to be fraudulent. See Joint Exhibit E. Under the authority of R.C. 3501.38(E)(1) & (F), we do not find Respondents abused their discretion in invalidating these four part petitions.

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[2] {¶ 31} The report provides that 63 signatures were invalidated for miscellaneous reasons: lined out; erasable—not indelible; address missing; date missing; date precedes collection; date follows collection; illegible; signer has signed before; or signer is the circulator. We find that Respondents did not abuse their discretion as to 45 of the signatures, with 18 being questionable, an abuse of discretion, conceded or excluded from review due to insufficient evidence. See R.C. 3501.38(A), (B), (C), & (D).

[3] {¶ 32} The report provides that 299 signatures were invalidated because the signer was not a registered elector. We find that Respondents did not abuse their discretion as to 248 of the signatures, with 51 being questionable, an abuse of discretion, conceded or excluded from review due to insufficient evidence. See R.C. 3501.38(A).

*5 [4] {¶ 33} The report provides that 158 signatures were invalidated because the signature on the petition did not match the signature on record at the board of elections. We find that Respondents did not abuse their discretion as to 129 of the signatures, with 29 being questionable, an abuse of discretion, conceded or excluded for review due to insufficient evidence. See R.C. 3501.38(B). See, also, *State ex rel. Rogers v. Taft* (1992), 64 Ohio St.3d 193, 196, 594 N.E.2d 576 (finding no abuse of discretion where printed “signatures” on petitions were invalidated because they did not match the signature on file at the board of elections).

[5] {¶ 34} Finally, the report provides that 185 signatures were invalidated because the address on the petition did not match the address on file at the board of elections. We find that Respondents did not abuse their discretion as to 154 of the signatures, with 31 being questionable, an abuse of discretion, conceded or excluded from review due to insufficient evidence. See R.C. 3501.38(C).

{¶ 35} Of the 705 signatures invalidated by Respondents in total, the court ultimately finds that 576 of these invalidations are clearly not an abuse of discretion. When these 576 invalidations are subtracted from the total number of signatures submitted by Wilcoxson, this leaves him with no more than 1581 valid signatures, which is well short of the 1893 signatures required under R.C. 3513.257. In other words, even if all of the remaining 129 signatures invalidated by Respondents should have been allowed, instead, his total—1581—would be well short of the required number. Thus, there is no need for this Court to determine whether any of these 129 invalidations constituted an abuse of discretion.

{¶ 36} Having found that Respondents neither abused their discretion nor clearly disregarded applicable law when invalidating 576 signatures on Wilcoxson's nominating petitions, we conclude, on this issue, that Wilcoxson has failed to show he has a clear legal right to an order compelling Respondents to certify his candidacy and place his name on the November 2, 2010 general election ballot as an independent candidate for Juvenile Judge in the Montgomery County Common Pleas Court.

II. R. C. 3513.05 and 3513.257

{¶ 37} Before turning to the issue of whether R.C. 3513.257 should be declared unconstitutional for the alleged heightened qualifying conditions imposed upon independent political candidates, we address Respondents' claims that (1) Wilcoxson lacks standing to assert a constitutional challenge to the signature requirement in R.C. 3513.257 because he, in fact, collected more than the statutory required number, and (2) this Court lacks jurisdiction to consider a constitutional challenge where the Ohio Attorney General was not served a copy of the complaint and joined as a party.

[6] {¶ 38} With respect to the former claim, simply because Wilcoxson turned in a number of signatures beyond the statutory requirement does not prove that he was not injured and, therefore, has no standing to challenge R.C. 3501.257. We find that standing must be based on the number of valid signatures the candidate submits. Thus, standing is demonstrated in the present matter by the fact that Wilcoxson ended up with less than the statutory required number of signatures after Respondents reviewed his nominating petitions.

*6 {¶ 39} Insofar as Respondents have reasserted their claim that the Ohio Attorney General must have been made a party to this action, the court has addressed this issue in overruling Respondents' motion for partial dismissal. Nevertheless, such argument shall be deemed moot for the reasons that follow.

[7] {¶ 40} Wilcoxson contends that he is entitled to extraordinary relief in mandamus because R.C. 3513.257 imposes an onerous and disparate signature requirement for independent candidates to appear on the general election ballot when compared to the signature requirement for major party candidates and minor party candidates under R.C. 2513.05 to appear on their party's primary ballot. In considering this claim, we must keep in mind that “[s]tatutes are presumed to be constitutional unless shown beyond a

reasonable doubt to violate a constitutional provision.’ “*State ex rel. Watson v. Hamilton Cty. Bd. of Elections* (2000), 88 Ohio St.3d 239, 242, 725 N.E.2d 255, quoting *State ex rel. Huntington Ins. Agency, Inc. v. Duryee* (1995), 73 Ohio St.3d 530, 535, 653 N.E.2d 349; *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 351, 352, 639 N.E.2d 31. Thus, doubts concerning the constitutionality of R.C. 3513.257 must be resolved in the statute’s favor. *Id.*, citing *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 538, 706 N.E.2d 323.

{¶ 41} Under R.C. 3513.257, Wilcoxson was required to submit nominating petitions containing valid signatures of “at least one percent of qualified electors voting in the last gubernatorial election who reside within the district, political subdivision or portion thereof where the election is to be held.” *Miller v. Lorain Cty. Bd. of Elections (C.A.6, 1998)*, 141 F.3d 252, 254. In other words, R.C. 3513.257 requires that Wilcoxson obtain at least 1893 valid signatures to appear on the general election ballot. By comparison, major party candidates, *in seeking party nomination to be voted for at a primary election*, are required under R.C. 3513.05 to submit nominating petitions “signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member.” Under the statute, minor party candidates must obtain a minimum number of signatures equal to “one-half the minimum number provided in this section,” i.e., twenty-five. Wilcoxson’s argument, therefore, is that it is inherently more burdensome for an independent candidate to gather signatures of one percent of the total electorate voting in the last gubernatorial election than it is for a major or minor party candidate to win the votes of a plurality in his or her party’s primary. See *Jenness v. Fortson* (1971), 403 U.S. 431, 440, 91 S.Ct. 1970, 29 L.Ed.2d 554.

{¶ 42} In order to determine the constitutionality of R.C. 3513.257, this Court must apply the modified balancing test adopted by the United States Supreme Court in voting and ballot access cases. See *Burdick v. Takushi* (1992), 504 U.S. 428, 433–34, 112 S.Ct. 2059, 119 L.Ed.2d 245; see, also, *Watson*, 88 Ohio St.3d at 243, 725 N.E.2d 255; *State ex rel. Purdy v. Clermont Cty. Bd. of Elections* (1997), 77 Ohio St.3d 338, 343–44, 673 N.E.2d 1351. “Under this test, in deciding whether a state election law violates First and Fourteenth Amendment constitutional rights, [this Court] must first weigh the character and magnitude of the burden the law imposes on those rights against the interests the state contends justify that burden, and consider the extent to which the state’s

interests necessitate the burden. *Anderson v. Celebrezze* (1983), 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547, 558. Regulations imposing severe burdens on voters’ and candidates’ rights must be narrowly tailored to serve a compelling state interest, while lesser burdens require less exacting review, and a state’s important regulatory interests usually justify reasonable, nondiscriminatory restrictions. See *Timmons v. Twin Cities Area New Party* (1997), 520 U.S. 351, 358–359, 117 S.Ct. 1364, 1370, 137 L.Ed.2d 589, 598.” *Watson*, at 243, 725 N.E.2d 255.

*7 {¶ 43} In accordance with the modified balancing, our first inquiry is whether R.C. 3513.257 severely burdens First and Fourteenth Amendment constitutional rights. “[A] law severely burdens voting rights if it discriminates based on political content instead of neutral factors or if there are few alternative means of access to the ballot.” *Id.*, citing *Citizens for Legislative Choice v. Miller (C.A.6, 1998)*, 144 F.3d 916, 921. The burden imposed on independent candidates by R.C. 3513.257 is based on political affiliation by the simple fact that it is associated with party affiliation. However, it is ill-founded to say that the statute “discriminates based on political content” by a comparison of its signature requirements for candidates to appear on the general election ballot to the requirements of R.C. 3513.05 for candidates to appear on a party’s primary election ballot. Independent candidates are guaranteed a place on the general election ballot upon satisfying R.C. 3513.257. Major and minor party candidates, however, are only guaranteed a place on their party’s primary election ballot, a first step in the process of securing a place on the general election ballot. Once on the primary election ballot, said candidates must rally the support of a plurality of their party to win the primary. Only upon winning the primary do said candidates begin the process of garnering support from the entire population for the race on the general election ballot.

{¶ 44} Furthermore, alternative routes are available to an independent candidate seeking to get his or her name on the general election ballot. A candidate may enter the primary of a political party despite the apparently ideological differences he or she may have to the party’s current views. See *Jenness v. Fortson* (1971), 403 U.S. 431, 440, 91 S.Ct. 1970, 29 L.Ed.2d 554, fn. 25 (finding that American political history is filled with examples of parties changing their “ideological direction because of the influence and leadership of those with unorthodox or ‘radical’ views”). Also, a candidate may organize a new political party, as defined by R.C. 3517.01. Such new party comes into legal existence on the date it files

its declaration to organize with the secretary of state. At that time, the party is entitled to hold a primary election. R.C. 3517.012. We note that the signature requirement necessary to organize a new party is equivalent to the signature requirement an independent candidate must meet to obtain a place on the general election ballot, i.e., at least one percent of the total vote for governor or nominees for presidential electors at the most recent election. R.C. 3517.01.

{¶ 45} Accordingly, we find that R.C. 3513.257 does not impose a severe burden on voters' and candidates' constitutional rights. Consequently, we now must turn to the alternative inquiry under *Burdick* and determine whether the nominating qualifications in R.C. 3513.257 are reasonable to justify the State's interest in regulating its election process.

*8 {¶ 46} In *Burdick*, the Supreme Court advanced that "when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." 504 U.S. at 433-34, quoting *Anderson*, 460 U.S. at 788. Under the rational basis standard, "a party challenging the constitutionality of legislation cannot prevail where the rationality of that legislation is at least debatable." *Cook v. Wineberry Deli, Inc.* (July 17, 1991), Summit App. No. 14841, 1991 WL 131485, at *7, citing *Minnesota v. Clover Leaf Creamery Co.* (1981), 449 U.S. 456, 464, 101 S.Ct. 715, 66 L.Ed.2d 659. In other words, this Court must defer to the legislature on the issue of constitutionality. *Morris v. Savoy* (1991), 61 Ohio St.3d 684, 692, 576 N.E.2d 765.

{¶ 47} On a large scale, the State certainly has a legitimate interest in creating an election process that avoids voter confusion, ballot overcrowding, or frivolous candidacies. *Purdy*, 77 Ohio St.3d at 344, 673 N.E.2d 1351. Specific to this purpose is its interest "in requiring some preliminary showing of a significant modicum of support" before printing the name of a political candidate on the ballot. *Jenness*, 403 U.S. at 442; see, also, *Anderson*. 460 U.S. at 788, fn. 9 (providing that "[t]he State has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates"); *Williams v. Rhodes* (1968), 393 U.S. 23, 33, fn. 9, 89 S.Ct. 5, 21 L.Ed.2d 24 (stating that a signature requirement of one percent of the electorate equates to a "relatively lenient" requirement for obtaining ballot position).

{¶ 48} Here, this winnowing process to eliminate overcrowded ballots begins for an independent candidate at the time he declares his candidacy. The legislature has concluded that requiring said candidate to demonstrate support from the electorate can be achieved by obtaining valid signatures from a mere one percent of the qualified electors within the district, political subdivision, or portion thereof where the election is to be held who voted for the office of governor at the most recent election for that office. We find that Wilcoxson has not demonstrated this to be an unreasonable requirement. The fact that major and minor party candidates have a lesser burden to gain access to their party's primary does not reflect a less onerous winnowing process. In the end, campaigning, etc., in an effort to draw support for one's candidacy, does not guarantee a major or minor party candidate's position on the general election ballot.

{¶ 49} Moreover, the one percent signature requirement has been considered and adopted by the legislature in other ballot access contexts. As stated above, a person wishing to organize a new party must submit a petition to the secretary of state "signed by qualified electors equal in number to at least one percent of the total vote for governor or nominees for presidential electors at the most recent election." R.C. 3517.01. Candidates for office from the newly formed party are then entitled to hold a primary election, regulated by the candidacy requirements outlined in R.C. 3513.05. We find Wilcoxson's candidacy as an independent analogous to one of a newly formed party. In a reasonable, nondiscriminatory fashion, the legislature has set forth like signature requirements to obtain access to the ballot.

*9 {¶ 50} Based on the foregoing, this Court finds that Wilcoxson has failed to overcome the strong presumption of constitutionality afforded R.C. 3513.257. The State's interest in avoiding overcrowded ballots and voter confusion, in conjunction with a candidate's duty to show support for his or her candidacy, justifies the reasonable signature requirement for independent candidates under R.C. 3513.257 to appear on the general election ballot.

{¶ 51} Accordingly, Wilcoxson is not entitled to the requested extraordinary relief in mandamus. The June 11, 2010 complaint for a writ of mandamus is hereby DENIED, and this matter is DISMISSED.

SO ORDERED.

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United States District Court,
S.D. Ohio,
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STATE ex rel Ralph APPLGATE, Plaintiff,
v.
FRANKLIN COUNTY BOARD OF
ELECTIONS, et al., Defendants.

No. C2-08-092. | Feb. 6, 2008.

Attorneys and Law Firms

Ralph A. Applegate, Columbus, OH, pro se.

OPINION AND ORDER

EDMUND A. SARGUS, JR., District Judge.

*1 On January 31, 2008, Plaintiff, Ralph A. Applegate, proceeding *pro se*, filed a Verified Complaint, Motion for Temporary Restraining Order and Motion for Preliminary Injunction. This matter is now before the Court for consideration of Plaintiff's Motion for Temporary Restraining Order ("TRO"). Plaintiff moves the Court pursuant to [Federal Rule of Civil Procedure 65](#) for an Order directing Defendants, the Franklin County Board of Elections, as well as its director, Matthew M. Damschroeder and Board Members, Michael F. Colley, Kimberly E. Marinello, Carolyn C. Petree and David S. Anthony ("Defendants"), in effect, to certify his candidacy in the 2008 primary as a Republican for the Fifteenth Congressional District of Ohio.¹ Defendants have filed their Memorandum in Opposition. The Court also considers Plaintiff's response submitted to the Court on February 5, 2008. For the reasons that follow, Plaintiff's Motion is denied.

I.

On December 10, 2007, Plaintiff filed petitions with the Franklin County Board of Elections ("Board") seeking to be placed on the 2008 primary ballot as a

Republican candidate for the Fifteenth Congressional District of Ohio. (Dennis L. White Aff. ¶ 4). Plaintiff presented nine (9) part-petitions with signatures to the Board.

On January 11, 2008, the Board met in special session for purposes of certifying the validity and sufficiency of the candidates to appear on the March 4, 2008 primary election ballot. (White Aff. ¶ 5.) Upon recommendation of staff findings that Plaintiff's petitions lacked sufficient minimum valid signatures, the Board did not certify Plaintiff's candidacy. The Board found Plaintiff's petitions contained discrepancies between the number of signatures that were certified as having been witnessed by the circulator and the number of actual signatures appearing on eight (8) of Plaintiff's nine (9) petitions. Specifically, the Board found as follows:

twenty-two (22) signatures were affixed to part petition number 000024, of which four (4) had been struck, yielding eighteen (18) potential valid signatures, while the circulator stated that the part petition contained only eight (8) signatures; twenty-two (22) signatures were affixed to part petition number 000025, while the circulator stated that the part petition contained only fifteen (15) signatures; twenty-one (21) signatures were affixed to part petition number 000026, while the circulator stated that the part petition contained only 13 signatures; twenty-two (22) signatures were affixed to part petition number 000028, of which one (1) had been struck, yielding twenty-one (21) potential valid signatures, while the circulator stated that the part petition contained only six (6) signatures; twenty-two (22) signatures were affixed to part petition number 000029, of which one (1) had been struck, yielding

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twenty-one (21) potential valid signatures, while the circulator stated that the part petition contained only fourteen (14) signatures; twenty-two (22) signatures were affixed to part petition number 000030, of which three (3) had been struck, yielding nineteen (19) potential valid signatures, while the circulator stated that the part petition contained only eleven (11) signatures; eighteen (18) signatures were affixed to part petition number 000031, of which two (2) had been struck, yielding sixteen (16) potential valid signatures, while the circulator stated that the part petition contained only twelve (12) signatures; eleven (11) signatures were affixed to part petition number 000032, while the circulator stated that the part petition contained only ten (10) signatures.

*2 (White Aff., ¶ 6.)

According to Defendants, the Ohio Secretary of State Election Official Manual states that “[i]f the number indicated (on the circulator’s statement) is less than the actual number of signatures, the entire part-petition shall be invalidated.” (White Aff. ¶ 6.²)

According to his Verified Complaint, Plaintiff has over twenty years of experience with Ohio’s elections laws. He gathered the signatures for the petitions himself and “check[ed] and rechecked[ed]” the signatures as he collected them. (Compl., ¶ 10.) Plaintiff notes that the Circulator Statement on each of the petitions provides in pertinent part:

I, _____, declare under penalty of election falsification ... that I am the circulator of the foregoing petition containing _____ (number) signatures; that I witnessed the affixing of

every signature; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be....

(Compl., ¶ 11); (White Aff. Exh. B.) Each petition also contains a statement that “whoever commits election falsification is guilty of a felony of the fifth degree.” (*Id.*)

Plaintiff maintains that he knew that several³ of the 178 signatures on his nine part-petitions were, or likely were invalid. (Compl., ¶ 13.)⁴ He contends that he could not, therefore, truthfully declare that each of the signatures on the part-petitions was “the signature of the person whose signature it purports to be....” To do so, according to Plaintiff, would have caused him to commit the felony of election falsification. (Compl., ¶¶ 13-14.) Plaintiff therefore did not count the names of those individuals whose signatures he knew to be invalid, and revised his Circulator Statement to reflect the number of “valid” signatures that each part-petition contained.

Nonetheless, because of the discrepancies in the signatures, as discussed above, the Board did not certify Plaintiff’s candidacy for the 2008 primary ballot. The Board sent a letter via first class mail on January 11, 2008, to Plaintiff informing him that the Board did not certify his candidacy for the 2008 primary ballot. (Compl., ¶ 20); (White Aff., ¶ 7.)

Plaintiff appealed the decision to the Board on January 18, 2008.⁵ (Compl., ¶ 23.) The Board heard Plaintiff’s appeal at a special session on January 23, 2008. (White Aff., ¶ 8.) The Board denied Plaintiff’s request to be certified for the March 4, 2008 primary election without written opinion.

Plaintiff filed his Complaint with this Court eight (8) days later, on January 31, 2008. Plaintiff alleges that the Board violated his due process and equal protection rights under the Fifth and Fourteenth Amendment to the United States Constitution. (Compl. ¶ 5.) Plaintiff seeks a writ of mandamus compelling the Board to certify Plaintiff to the 2008 primary ballot; a declaratory judgment that the Board’s rejection of his candidacy was “arbitrary, capricious, and

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unconstitutional”; and preliminary and permanent injunctions prohibiting the Board from conducting the March 4, 2008 primary election until this case is resolved. (Compl.¶¶ 29-31.)

*3 Under Ohio law, the primary election date is March 4, 2008. Pursuant to Ohio Revised Code § 3509.01, absentee voting for the 2008 primary begins on Friday, February 8, 2008, twenty-five days before the primary election.⁶

II.

Upon an application for a temporary restraining order, the Court must consider the following four factors: “(1) whether the plaintiff has established a substantial likelihood or probability of success on the merits; (2) whether there is a threat of irreparable harm to the plaintiff; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by granting injunctive relief.” *Hamilton's Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir.2007)(quoting *City of Littleton v. Z.J. Gifts D-7, L.L.C.*, 541 U.S. 774, 784 (2004)); see also *Sandison v. Michigan High School Athletic Assoc. Inc.*, 64 F.3d 1026, 1030 (6th Cir.1995). The four factors are to be balanced and are not prerequisites that must be satisfied. Instead, “these factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements.” *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 859 (6th Cir.1992).

III.

A. Likelihood of Success on the Merits

Plaintiff challenges Ohio Revised Code § 3501.38 on the basis that it deprives him of due process and equal protection as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. In this case, therefore, Plaintiff asserts that the circulator-statement requirement of Ohio Revised Code § 3501.38 is unconstitutional. The Court concludes that Plaintiff has not demonstrated a substantial likelihood of success on the merits of his claims.

Although he has not cited the statute, presumably Plaintiff seeks to state of cause of action in this Court

under 42 U.S.C. § 1983. To prevail under § 1983, Plaintiff must establish (1) that he was deprived of a right secured by the Constitution or the laws of the United States, and (2) that the deprivation was caused by a person acting under color of state law. *Moore v. City of Paducah*, 890 F.2d 831, 833-34 (6th Cir.1989). To evaluate Plaintiff's § 1983 claims in this case, the Court considers whether Plaintiff's constitutional rights were violated when he was compelled to comply with Ohio Revised Code § 3501.38(E)(1).

Each state has a legitimate interest to protect the integrity of its political processes from frivolous or fraudulent candidacies, and is not constitutionally obligated to provide instantaneous access to the ballot. *Jenness v. Fortson*, 403 U.S. 431, 432 (1971). Legislative limitations to ballot access arise from Article I of the Constitution authorizing the states to prescribe “the Times, Places, and Manner of holding Elections for Senators and Representatives.” U.S. Const. Art. I, § 4, cl. 1. The mere existence of restrictions on ballot access, therefore, raises no issue of validity unless they violate prohibitions elsewhere in the Constitution. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968). “Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; ‘as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)(quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

*4 When deciding whether a state election law violates First⁷ and Fourteenth Amendment associational rights, the Court must weigh the “ ‘character and magnitude’ “ of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Burdick*, at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less taxing review, and a state's “ ‘important regulatory interests’ “ will usually be enough to justify “ ‘reasonable,

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nondiscriminatory restrictions.’ “ *Id.* at 434 (quoting *Anderson*, at 788).

Under Ohio law, a board of elections must reject an invalid petition and refuse to certify the petitioner's candidacy for the ballot. *State ex rel. Loss v. Bd. of Elections of Lucas County*, 29 Ohio St.2d 233, 281 N.E.2d 186 (Ohio 1972). Under the terms of Ohio Revised Code § 3501.38(E)(1), on each petition paper:

[T]he circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code. On the circulator's statement for a declaration of candidacy or nominating petition for a person seeking to become a statewide candidate or for a statewide initiative or a statewide referendum petition, the circulator shall identify the circulator's name, the address of the circulator's permanent residence, and the name and address of the person employing the circulator to circulate the petition, if any.

Ohio Rev.Code § 3501.38(E)(1). Further, the statute provides:

(F) Except as otherwise provided in section 3501.382 of the Revised Code, if a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition

paper, that petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures on the paper.

(G) The circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as a part of the petition.

Ohio Rev.Code § 3501.38(F) & (G).

Plaintiff did not “strike” the signatures he subjectively believed to be invalid, as required by Ohio Revised Code § 3501.38(G). Instead, he calculated the number of signatures he considered valid, and inserted that number in his circulator's declaration. A review of the part-petition reveals that, as to most of the signatures Plaintiff believed to be invalid, he inserted the word “no” at the end of the line containing the signature, without striking it, so as to indicate that he did not wish to present it as part of the petition, as required by Ohio Revised Code § 3501.38(G). Thus, as it stands, the number of signatures indicated by the Plaintiff, as the circulator, is less than the actual number of signatures on the part-petition. As such, each of these part-petitions is invalid.

*5 Ohio law requires that the circulator of a petition paper indicate the number of signatures on each petition paper. Ohio Rev.Code § 3501.38(E)(1). This requirement that the circulator indicate the number of signatures contained on the petition paper is established as a “ ‘substantial, reasonable requirement.’ ” “ *State ex rel. Citizens for Responsible Taxation v. Scioto County Bd. Of Elections*, 65 Ohio St.3d at 172, 602 N.E.2d 615 (Ohio 1992) (quoting *State ex rel. Loss v. Lucas County Bd. of Elections*, 29 Ohio St.2d 233, 234, 281 N.E.2d 186 (Ohio 1992)).

The Ohio Secretary of State has instructed boards of elections that Ohio Revised Code § 3501.38 “requires that if the number indicated by the circulator is less than the actual number of signatures, the entire part-petition must be invalidated.” *Rust v. Lucas County Bd. of Elections*, 108 Ohio St.3d 139, 142, 841 N.E.2d 766 (Ohio 2005). In *Rust*, the petitioner lodged the precise argument raised by Plaintiff in the instant matter:

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Rust claims that the reason the circulators' statements specified a number of signatures less than the number of signatures contained on the part-petitions was that he had realized that an unqualified person had signed the part-petitions and he did not want to violate the [R.C. 3501.38\(E\)\(1\)](#) requirement that "all signers were to the best of the circulator's knowledge and belief qualified to sign." But Rust could have complied with all of the requirements of [R.C. 3501.38\(E\)\(1\)](#) by striking the signatures of persons he had discovered to be unqualified before submitting the petition to the board of elections. See [R.C. 3501.38\(G\)](#) ("The circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as part of the petition"); *State ex rel. Oster v. Lorain Cty. Bd. of Elections* (2001), 93 Ohio St.3d 480, 484, 756 N.E.2d 649. Thus, Rust was not left without any remedy when he discovered, before filing the petition, that an unqualified person had signed it.

Rust, 93 Ohio St.3d at 141, 756 N.E.2d at 768-69. "The purpose of this requirement is to protect against signatures being added after the circulator's statement is made." *Id.*

Clearly, Plaintiff's petitions did not meet the requirements of [Ohio Revised Code § 3501.38\(E\)\(1\)](#). All but one of the part-petitions submitted by Plaintiff contained discrepancies with respect to the number of signatures. On eight of the nine part-petitions, the number of signatures certified as witnessed by circulator is less than the number of actual signatures on the petition.

As stated by the Sixth Circuit:

There is no bright-line test to determine when a state oversteps its bounds and impermissibly infringes on the constitutional rights of voters.... Courts must undertake the difficult task of considering and weighing the asserted injury to fundamental constitutional rights, the precise interest of the state in the regulation at issue, and the extent to

which it is necessary to burden important rights in order to achieve any important state interests.... When a state promulgates a regulation which imposes a severe burden on individuals' rights, that regulation will only be upheld if it is narrowly drawn to advance a state interest of compelling importance. However, the state's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

*6 *Lawrence v. Blackwell*, 430 F.3d 368, 372-73 (6th Cir.2005) (internal quotations and citations omitted).

For purposes of considering emergency injunctive relief, the Court concludes that [Ohio Revised Code § 3501.38\(E\)\(1\)](#), as applied in this case, is within Ohio's constitutional authority to regulate elections. Accordingly, because the Court finds that the reasonable and nondiscriminatory burdens imposed by [Ohio Revised Code § 3501.38](#) on Plaintiff's First and Fourteenth Amendment rights are justified by Ohio's important regulatory interests, Plaintiff has not demonstrated a substantial likelihood of success on the merits.

B. Irreparable Harm to Plaintiff

Plaintiff has not demonstrated that he will likely prevail in establishing a constitutional violation. Without such a showing, he is unable to demonstrate irreparable injury.

C. Substantial Harm to Others and the Public Interest

As set forth above, the State of Ohio has a strong interest in preserving the integrity of its election process. Where a court must decide whether to issue a temporary restraining order weeks before an election, the Supreme Court has counseled that, "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an

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election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 127 S.Ct. 5, 7 (2006).

The Court concludes that substantial harm will befall others, primarily Ohio voters, and that the public interest will be harmed if the injunction is granted. Neither the voters nor the public interest is served by a TRO before an imminent election. *Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999, 1012 (6th Cir.2006). “There is also a strong public interest in permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote.... [T]here is a strong public interest in smooth and effective administration of the voting laws that militates against changing the rules in the middle

of the submission of absentee ballots.” *Id.* (citing *Summit County Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir.2004)).

IV.

For the foregoing reasons, Plaintiff's Motion for Temporary Restraining Order is **DENIED**.

IT IS SO ORDERED.

All Citations

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Footnotes

- 1 A *pro se* litigant's pleadings must be, and in this instance are construed liberally and have been held to less stringent standards than formal pleadings drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). To the extent, however, that Plaintiff seeks a writ of mandamus in this Court to compel Defendants to place his name on the ballot as a candidate for a particular office in the March 4, 2008 election, the writ will not lie to review the determination by a Board of Elections that a candidate is ineligible to assume the office he seeks or that his petition is invalid, in the absence of allegations of fraud, corruption, abuse of discretion, or a clear disregard of statutes or applicable legal principles. *Brockington v. Rhodes*, 396 U.S. 41, 43-44 (1969)(citing *State ex rel. Flynn v. Board of Elections*, 164 Ohio St. 193, 129 N.E.2d 623 (Ohio 1955), overruled on other grounds, *State, ex rel. Schenck, v. Shattuck*, 1 Ohio St. 3d 272, 439 N.E.2d 891 (Ohio 1982)). The Court does not review the Motion as to Plaintiff's request for injunctive relief.
- 2 White's Affidavit indicates that the Manual or the page within the Manual on which this statement is made, is attached to his affidavit. It is not.
- 3 Plaintiff variously references that 87 signatures were invalid (Compl., ¶ 13); a “few” were invalid (Compl., ¶ 16); and, ultimately, that only 91 of the 178 were valid (Compl., ¶¶ 18-19 .)
- 4 Although it is somewhat unclear from his Verified Complaint, Plaintiff seems to indicate that he was denied access to Defendant's computer records, “in violation of his constitutional rights,” so that he could confirm the voter registration records against the signatures he collected. (Compl., ¶ 16.)
- 5 White attests that Plaintiff appealed the decision on January 16, 2008. (White Aff., ¶ 8.)
- 6 [Section 3509.01](#) provides that “[t]hose ballots shall be designated as ‘Absent Voter's Ballots’ and shall be printed and ready for use on the thirty-fifth day before the day of the election, except that those ballots shall be printed and ready for use on the twenty-fifth day before the day of a presidential primary election.” [Ohio Rev.Code § 3509.01](#).
- 7 Although Plaintiff does not mention the First Amendment in his Verified Complaint, the Court notes that his right to seek office emanates from the constitutional protections afforded there, including the right to associate and to express his political opinions.