Supreme Court of Ohio Clerk of Court - Filed June 22, 2016 - Case No. 2016-0313

IN THE SUPREME COURT OF OHIO

The Ohio Manufacturers' Association, et al.,	:	**Case No: 2016-0313**
	:	
Relators,	:	**Original Action under Section 1g, Article II of the Ohio Constitution**
	:	
v.	:	
	:	
Ohioans for Drug Price Relief Act, et al.	:	
	:	
Respondents.	:	

EVIDENCE OF PETITION RESPONDENTS – VOLUME III

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Counsel for Respondent Secretary Husted

EVIDENCE OF PETITION RESPONDENTS – VOLUME III

Petition Respondents hereby file Volume III of their Evidence in the instant case:

Attachments to Exhibit 14, Deposition Transcript of Matthew Damschroder

Respectfully submitted,

/s/ Donald J. McTigue_____
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Evidence of Petition Respondents – Volume III was served by e-mail on June 22, 2016, upon the following:

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/s/ Derek S. Clinger
Derek S. Clinger (0092075)

ATTACHMENTS TO PETITION RESPONDENTS' EXHIBIT 14

(Attachments to Deposition Transcript of Matthew Damschroder, Chief of Staff to Secretary of State Jon Husted)

EXHIBIT
1
PENGAD 800-631-6989

J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. Broad Street, 16th Floor, Columbus OH 43215
614.466.2655 / Toll Free: 877.767.6446 / Fax: 614.644.0649
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DIRECTIVE 2005-33
December 1, 2005

TO: BOARDS OF ELECTIONS
Members, Directors & Deputy Directors

RE: SmokeFree Ohio Initiative Petition Proposing a Statute

An initiative petition proposing an addition to the Ohio Revised Code was filed by SmokeFreeOhio in my office on November 17, 2005. Enclosed for certification by your office are the part-petitions that were circulated in your county.

You must examine each part-petition in accordance with the enclosed instructions. **Please read those instructions carefully *before* you start your examination and have each examiner do the same.**

In addition to checking the signatures, you also must verify the validity of each part-petition. Check each part-petition to determine that the circulator's statement (i.e., the statement of solicitor on the last page of the part –petition) has been properly completed, because a part-petition is invalid if the circulator's statement is not properly completed. Do not invalidate a part-petition because the issuance statement, the circulator compensation statement, or the employer identification statement is blank, incomplete, or improperly filled out, or because the circulator is not an elector or resident.

Pursuant to R.C. 3519.06(E), a part-petition for a state issue is invalid if the board finds that one person has affixed more than one signature to the part-petition. Therefore, with respect to state issue petitions, a board is not required to investigate the circumstances to determine whether the circulator knowingly or unknowingly allowed a person to affix more than one signature.

As soon as your certification of these part-petitions is complete, return the completed form and all valid and invalid part-petitions to our office. These must be returned by a trackable method, such as certified mail, UPS or FedEx, or in person.

Before returning the original part-petitions to this office, you should make copies of them, in the event that a protest is filed in your county.

You must review and return these part-petitions to this office, together with your certification, no later than December 22, 2005. My office as required by Article II §1b of the Ohio Constitution is required to transmit the statute proposed by the petition to the General Assembly by the first day of session, which is January 3, 2006.

Important - ***Since no person may sign a petition more than once, it is imperative that boards maintain the names of those persons who signed the original part-petitions in order to properly verify the signatures on the supplemental part-petitions.***

If you have any question concerning the handling of part-petitions or procedures to be followed, please contact the Elections Division at (614) 466-2585.

Sincerely,

J. Kenneth Blackwell

Attachments

Ohio Secretary of State's
Instructions to County Boards of Elections re:
Examination of State Initiative Petitions

(Ohio Constitution Art. II, sections 1-1g; R.C. Chapter 3519.;
R.C. 3501.011, 3501.38, and 3501.381)

CIRCULATORS

♦ Qualifications

The circulator of a state initiative petition need not be an Ohio elector, and need not even be an Ohio resident. Only one person may circulate a part-petition.

♦ Circulator Statement ("Statement of Solicitor")

Each part-petition must contain a properly completed circulator's statement (which is contained on the last page of the part-petition, and identified as the "statement of the solicitor") that:

1. includes the number of signatures witnessed by that circulator,
2. is signed by that circulator, and
3. contains the circulator's address.

When the number of signatures on a part-petition appears to differ from the number reported in the circulator's statement, the board must examine that part-petition to determine the nature of the inconsistency. If the number of signatures reported in the circulator's statement is:

- **equal to or greater than** the total number of signatures on the part-petition, do not reject the part-petition because of the inconsistent signature numbers.

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

- **less than** the total number of signatures submitted on the part-petition, reject the *entire* part-petition.

  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.

SIGNERS

♦ Qualifications

Each person who signs a petition must be:

1. A qualified elector of Ohio, and
2. Registered to vote at the address provided on the petition as of the date the petition is *examined* by the board. (R.C. 3519.10 and R.C. 3519.15)

- **Signatures**

1. Marking Valid Signatures:
   a. If a signature is **valid**, place a red check mark in the margin to the left of the signature on the petition paper.
   b. If a signature is **invalid**, indicate why it is invalid, using the appropriate code symbol contained in these instructions (see below).
   c. No one may sign a petition more than once. Place an identifying mark or insert a computer code on the elector's registration record to ensure that the elector's signature is not counted toward the same petition (such as a supplemental petition) more than once.
2. Each part-petition should contain signatures of electors of only one county. However, if any part-petition containing signatures from more than one county is filed, the Secretary of State determines the county from which the majority of signatures came, and only signatures from that county are to be counted; signatures from any other county are invalid. (R.C. 3519.10)
3. Signature Requirements:
   a. The signature must match the signature on file with the board of elections. A board should 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. For identification purposes, the elector may print his/her name on the petition *in addition to* signing in cursive his/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. (R.C. 3501.011, 3501.38)
   b. The signature must be written in ink or indelible pencil. (R.C 3519.05)
   c. The petition must contain the location of the elector's voting residence, which must:
      - Include the house number and street name or RFD, and the appropriate city, village, or township. A post office box does NOT qualify as an elector's residence address.
      - Match the elector's voting residence address on file with the board when the board examines the part-petition. If an elector's address given on the petition differs from that on file with the board, then the board must invalidate the signature. **(NOTE: Therefore, the boards must process all new, valid voter registrations and changes of address on existing registrations, before verifying the signatures on the part-petitions.)**

      The petition should indicate the county in which the elector's address is located, but an elector's signature will not be invalidated if election officials can determine the proper county from other information provided on the petition paper. The elector's ward and precinct are **not** required.
   d. Each signature must be followed by the date it was affixed, but do **not** invalidate a signature solely because its date is out of sequence with other signatures.
   e. A signature is illegible only if *both* the signature and address are unreadable, such that it is impossible to check the signature against a voter registration record.
   f. ***No one may sign the name of any other person to a petition.***
      - In each case where a person signs a name other than his or her own to a petition, the board must invalidate the entire part-petition.

- A person having an elector's power of attorney **cannot** sign the elector's name to a petition.
- Non-signature information -- such as the elector's address, county or the date of signing -- may be added by a person other than the elector, if done with the elector's permission.

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

DO NOT INVALIDATE A PART-PETITION FOR ANY OF THE FOLLOWING REASONS:

1. Do not invalidate a part-petition solely for the reason that it contains no valid signatures; it is a valid part-petition, but it contains zero valid signatures.

2. Do not invalidate a part-petition if the information about "issuance" at the beginning of the petition that calls for the number of the petition, the name of the solicitor to whom it was issued, and the date of issuance is blank, incomplete, or otherwise improperly filled out.

3. Do not invalidate a part-petition if the circulator compensation statement (the statement that appears before the signers' signatures calling for how much the circulator receives or expects to receive and from whom) is blank, incomplete, or otherwise improperly filled out.

4. Do not invalidate a part-petition if the employer information statement (the statement that appears at the bottom of the last page, directly below the statement of solicitor) is blank or incomplete, does not match or correspond with the information provided by the circulator in the compensation statement, or is otherwise improperly filled out.

CERTIFICATION

After a board of elections has checked all the part-petitions it received, it must certify its findings to the Secretary of State using the enclosed certification form provided by the Elections Division. Return the completed form and the part-petitions only by a trackable method (e.g., UPS, Fed EX, etc.) or in person to: Ohio Secretary of State, Elections Division, 180 E. Broad St., 15th Floor, Columbus, OH 43215.

Once all part-petitions and reports have been returned by the boards, the Secretary of State will determine the validity and sufficiency of the initial filing and make the constitutional and statutory notification to the committee for the petitioners. If the Secretary of State determines that the originally-filed petition is insufficient, the committee will have 10 additional days after notification to file additional signatures.

- **PROTESTS - R.C. 3519.16**

1. Who may protest

Any of the following persons may protest a board's findings on the part-petitions:

a. The circulator of any part-petition.
b. The committee for the petitioners.
c. Any elector.

2. Procedure if a protest is filed

A protest against the board's findings must be made in writing and filed with the board of elections. When such a protest has been filed, the board must, *within three days* after the protest has been filed, bring an action in the court of common pleas for the purpose of establishing the sufficiency or insufficiency of the signatures and the verification.

If a protest is filed, the board should contact the county prosecutor immediately; advise the prosecutor that time is of the essence. The findings of the court on a protest action should be certified, along with all petition papers, to the Elections Division as soon as possible after the protest has been finally determined. *Please notify the Elections Division immediately when a protest has been filed, fax a copy of the protest to the Division, and keep the Division informed of the progress of the court action.*

◆ INSTRUCTIONS & CODE SYMBOLS FOR VALIDATING SIGNATURES ON PETITIONS

Election officials must individually examine each signature.

- If a signature is **valid**, place a red check mark at the left margin beside it.
- If a signature is **invalid**, indicate at the left margin beside it why it is invalid by using the following initials or, if no set of initials fits, an explanatory notation:

CIR	Circulator signed the part-petition he or she was circulating. (This invalidates the circulator's signature as a signer, but not the entire part-petition.)
DUP	"Duplication." The person has signed more than one part of the same 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 provide 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. The 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 of out 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 *other than* an indelible pencil.

After checking each petition paper:

- Place the number of VALID signatures on the RIGHT side of the FRONT page, below the Secretary of State's stamped petition number.
- Place the initials of the petition checker under the number of valid signatures.

When invalidating an entire part-petition:

- Indicate the reason for rejection on the front of the part-petition.
- Place the invalid part-petition(s) on the top of the part-petitions the board is returning.
- Do **not** invalidate a part-petition solely for the reason that it contains no valid signatures.

Finally, fill out the certification form and forward it, with the part-petitions, to the Secretary of State.

JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 EAST BROAD STREET, 16TH FLOOR
COLUMBUS, OHIO 43215 USA
TEL: 1-877-767-6446 FAX: 1-614-644-0649
WWW.SOS.STATE.OH.US

EXHIBIT
2
PENGAD 800-631-6989

DIRECTIVE 2010-01
January 4, 2010

TO: COUNTY BOARDS OF ELECTIONS

RE: Referendum Petition on certain sections of Am. Sub. HB 1

A petition was filed in the Secretary of State's office on December 20, 2009 to place on the November 2, 2010 statewide election ballot a referendum of certain sections of Am. Sub. H.B. 1.

Enclosed for review and certification by your office are those part petitions that were circulated in your county. You must examine each part petition in accordance with the enclosed instructions. Please carefully read this directive and the accompanying instructions **before** you start your examination of the part petitions and signatures.

Reminders

1. A federal court has ruled unconstitutional the provision of R.C. 3503.06(A) that required a circulator of a declaration of candidacy or nominating petition to be a resident of Ohio. By extension, the provision of R.C. 3503.06(B)(1) imposing an Ohio residency requirement on a circulator of any initiative and referendum petition is unconstitutional. See Advisory 2009-04 and Advisory 2009-06. Therefore, you must not invalidate a part-petition for the reason that the circulator's address as set forth in the circulator's statement is outside Ohio.
2. Because Ohio law bars persons who have been convicted of felony criminal offenses from circulating petitions (see R.C. 2961.01 and 2967.17), you must invalidate any part petition which was circulated by a person who has been convicted of a felony under the laws of this state, any other state or the United States. To verify whether a circulator has been convicted of a felony, you may seek the assistance of your county clerk of courts.
3. An individual is not permitted to sign a name other than his or her own name to a petition, *except* when the individual who signed the name of another elector did so as the elector's duly-appointed attorney in fact in accordance with R.C. 3501.382. (R.C. 3501.38(D)) If a board of elections determines that an individual who is not a duly-appointed attorney in fact signed the name of another elector, that signature must be rejected by the board of elections. Also, if the board determines that the circulator *knowingly* permitted an individual other than a duly-appointed attorney in fact to sign a name other than his/her own name to a petition, the board must invalidate the *entire* part petition. (R.C. 3501.38(F)).
4. Please note that if a circulator signed his or her own part petition just the circulator's signature is invalid as a signer of the petition.
5. In addition to verifying the validity of the individual signatures, you also must verify the validity of each part petition. Check each part petition to determine that the circulator's statement on the last page of the part petition has been properly completed. A part petition is invalid if the circulator's statement is not completed as required by law.
6. Please note the simple rule that, if the number written by the circulator on the circulator's statement at the end of the part petition is *less than* the number of uncrossed out signatures on the part petition, the entire part petition is invalid. This is because the

board cannot discern which signature was not witnessed by the circulator. It is wise to check the circulator's statement, i.e., the validity of the petition, *before* comparing signatures with those in your records to determine the number of valid signatures.

Important **- Because no person may sign a petition more than once, it is imperative that boards maintain the names of those persons who signed the original part-petitions in order to properly verify the signatures on any potential supplemental part-petitions.**

It may be prudent to create a database list of the petition signers (both valid and invalid signatures), creating the following fields:

1. **Last name.**
2. **First name and middle initial (if any).**
3. **Street address (house number and street name).**
4. **City, village or township.**
5. **Date of signing.**

Challenges/Protests

Article II, Section 1g of the Ohio Constitution was amended in 2008 to give the Ohio Supreme Court original, exclusive jurisdiction over all challenges to state issue petitions and the signatures on the petitions. Any challenge to a petition or a signature on a petition shall be filed with Ohio Supreme Court not later than ninety-five days before the day of the election. With respect to this petition, that deadline is July 30, 2010.

No protests may be filed with county boards of elections concerning state issue petitions. However, the boards still have the statutory authority to investigate irregularities, nonperformance of duties, or violations of the election laws relative to this petition; administer oaths, issue subpoenas, summon witnesses, and compel the production evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state. R.C. 3501.11(J).

Returning Certification Form and Petitions

You must determine the validity and sufficiency of these part-petitions and return the part-petitions and original certification form to the Secretary of State's office **no later than January 28, 2010** either in person or by using a trackable, third-party delivery service such as certified U.S. Mail, U.S. Post Office Express Mail, UPS or FedEx.

Please submit a copy of your completed certification form as soon as completed to Denise Sherrod via one of the following two methods:

Fax: 614-485-7697

Email: dsherrod@sos.state.oh.us

If you have any questions concerning the handling of part petitions or the procedures set forth in this directive, please contact the elections attorney assigned to your county at (614) 466-2585. Thank you for your prompt assistance.

Sincerely,

Jennifer Brunner

Ohio Secretary of State's Instructions
to County Boards of Elections regarding
Examination of State Issue Petitions

(Ohio Constitution Art. II §§ 1-1g; Revised Code Chapters 3501, 3503, and 3519.)

CIRCULATORS

A. Qualifications

A federal court has ruled unconstitutional the provision of R.C. 3503.06(A) that required a circulator of a declaration of candidacy or nominating petition to be a resident of Ohio. By extension, the provision of R.C. 3503.06(B)(1) imposing a similar residency requirement on a circulator of any initiative or referendum petition is unconstitutional. (*See* Advisory 2009-04 and Advisory 2009-06). Consequently, a circulator of an initiative or referendum petition governed by state law need not be either an Ohio elector or an Ohio resident.

No individual who has been convicted of a felony under the laws of this state, any other state or the United States may circulate a declaration of candidacy and petition or a nominating, initiative, referendum or recall petition, unless that individual's conviction has been expunged, sealed, or subject to a pardon or unless the individual's right to serve as a circulator has been restored pursuant to Ohio law. (*See* R.C. 2961.01(B), 2967.16(C)). To verify whether a circulator has been convicted of a felony, you may seek the assistance of your county clerk of courts.

B. Circulator's Statement

Each part petition must contain a circulator's statement that is completed as required by law. (The circulator's statement may be identified on the part petition as the "statement of the solicitor.") The circulator's statement must include the following information:

1. The number of signatures witnessed by that circulator,
2. The signature of the circulator,
3. The circulator's permanent residence address (does **not** have to be an address in Ohio), and
4. The name *and* address -- e.g., street name and number, city, and state; or post office box number, city, and state; or street name and number, and zip code; or post office box number and zip code -- of the employer of the circulator who has employed the circulator to circulate the part-petition, but only if the circulator is being employed to circulate the petition. **In the absence of inconsistencies on the circulator statements circulated by the same individual, the board accepts the part petition at face value.**

When the number of signatures on a part petition appears to differ from the number reported in the circulator's statement, the board must examine that part petition to determine the nature of the inconsistency. If the number of signatures reported as being witnessed by the circulator in the circulator's statement is:

- **Equal to or greater than** the total number of signatures not crossed out on the part petition, do not reject the part petition because of the inconsistent signature numbers.

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

- **Less than** the total number of uncrossed out signatures submitted on the part-petition, reject the *entire* part petition.

  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.

SIGNERS

A. Generally

Signers of a state issue petition must satisfy the requirements R.C. 3519.10:

> Each signer of any initiative or referendum petition must be a qualified elector of the state. He shall place on such petition after his name the date of signing and the location of his voting residence, including the street and number in which such voting residence is located, ... *** Each signer may also print his name so as to clearly identify his signature. ***

It is acceptable for a signer to allow another person to complete the date of signing and the location of the signer's voting residence on the petition. However, one individual may not sign another person's name to a petition without having first been designated that person's attorney in fact in accordance with the provisions of R.C. 3501.382. If a person who has not been designated the attorney in fact signs another person's name to a petition, that signature must be rejected by the board of elections. If it is determined the circulator *knowingly* allowed a person who has not been designated the attorney in fact to sign another person's name to a petition, then the *entire* part petition must be invalidated, because the circulator's statement is untrue. (R.C. 3501.38(F))

B. 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. **NOTE WELL:** New voter registrations or changes of name or address filed with the Secretary of State at the time of the filing of the petition are enclosed with the petitions. These registrations are effective as of the date filed with the Secretary of State, and you **must process all of them *before*** you verify signatures on the petitions. (R.C. 3501.38(A), 3519.10, and 3519.15)

C. Signatures

Except as provided in R.C. 3501.382 (elector's name signed by an attorney in fact), each signature of an elector who signs an initiative or referendum petition must be an original signature of that voter and must be written in ink. (R.C. 3501.38(B), 3519.051)

> Authority to Appoint an Attorney in Fact – R.C. 3501.382:
>
> 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 that elector's name to a petition, in accordance with the specific procedures required by that statute.

1. **One county per part petition:**
   Each part petition should contain signatures of electors of only one county. If any part petition contains signatures from more than one county, the Secretary of State determines the county from which the majority of signatures came, and only signatures from that county are to be counted; signatures from any other county are invalid. (R.C. 3519.10) When certifying the signatures, please include the out-of-county signatures in the list of invalid signatures for a petition that you are certifying as valid.

2. **Signature requirements:**
   a. The signature must match the signature on file with the board of elections. A board should 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. For identification purposes, the elector may print

his/her name on the petition *in addition to* signing in cursive his/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. (R.C. 3501.011, 3501.38)

b. The signature must be written in ink. (R.C 3519.05; 3519.051)

c. The petition must contain the location of the elector's voting residence, which must:

- Include the house number and street name or RFD, and the appropriate city, village, or township. A post office box does NOT qualify as an elector's residence address.
- Match the elector's voting residence address on file with the board when the board examines the part petition. If an elector's address given on the petition differs from that on file with the board, then the board must invalidate the signature.

  Note: **The boards must process all new, valid voter registrations and changes of names and/or address to existing registrations *before* verifying the signatures on the part petitions.)**

- The petition should indicate the county in which the elector's address is located, but an elector's signature will not be invalidated if election officials can determine the proper county from other information provided on the petition paper. The elector's ward and precinct are **not** required.

3. Dates

R.C. 3501.38(C) and 3519.10 require that each signature be followed by the date it was affixed to the petition paper. Do **not** invalidate a signature solely because its date is out of sequence with other signatures.

4. Illegible Signature

A signature is illegible only if *both* the signature and address are unreadable, such that it is impossible for board personnel to check the signature against a voter registration record.

5. Restrictions on signing the name of another person

a. Although a person having an elector's standard power of attorney cannot sign the elector's name to a petition, 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. You must compare the name signed on the petition by the attorney in fact to the document evidencing the attorney in fact status on file with your office.

b. In each case where a person, other than a duly-authorized attorney in fact under R.C. 3501.382, signs a name other than his or her own to a petition, the signature must be rejected by the board. If the board determines that the circulator knowingly allowed a person who has not been designated as an attorney in fact to sign another person's name to a petition, then the *entire* part petition must be invalidated, because the circulator's statement is untrue. (R.C. 3501.38(F)).

c. An elector's "non-signature information" – e.g., the elector's address, county, or the date of signing – may be added by a person other than the elector, with the elector's permission.

6. Ditto marks

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

7. Marking valid signatures:

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

b. If a signature is **invalid**, please indicate why it is invalid, using the appropriate code symbol contained in these instructions (see below).

c. No one may sign a petition more than once. Please place an identifying mark or insert a computer code on the elector's registration record to ensure that the elector's signature is not counted toward the same petition (such as a supplemental petition) more than once.

d. It may be prudent for you to create a database list of the petition signers (both valid and invalid signatures), creating the following fields:
   - Last name
   - First name and middle initial
   - Street address (house number and street name)
   - City, village or township
   - Date of signing

CERTIFICATION

After the board staff has examined all the parts of the state issue petition circulated in your county, you must certify your findings to the Secretary of State using the enclosed certification form.

Please return the original completed certification form and part-petitions to this office by a trackable method; e.g., in person or by certified U.S. Mail, U.S. Post Office Express Mail, UPS, or Fed EX. Please return the documents **no later than January 28, 2010**, to:

Ohio Secretary of State
Elections Division
180 E Broad St - 15th Floor
Columbus OH 43215

Once all certification forms have been transmitted by 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 the Secretary of State determines that the petition is insufficient, the committee will have ten (10) additional days after notification to file additional signatures.

CHALLENGES/PROTESTS

The Ohio Constitution as amended in 2008 provides that the Ohio Supreme Court has original, exclusive jurisdiction over all challenges to state issue petitions and signatures on those petitions. Any challenge to a petition or signature shall be filed with the Ohio Supreme Court not later than ninety-five days before the day of the election; with respect to this petition, the deadline is July 30, 2010.

No protests may be filed with county boards of elections concerning state issue petitions.

CODE SYMBOLS FOR VALIDATING 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 signers** and **the initials** of the board employee who checked the part petition under the number.

If a signature is not valid, please indicate the problem with it by using the following initials or, if no set of initials 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 "Duplication." 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.**

CERTIFICATION FORM

Filed December 20, 2009

Proposing a Referendum Election on Certain Sections of Am. Sub. H.B. 1

On behalf of the _____ County Board of Elections, I hereby certify that the board has examined the enclosed part petitions. The numbers of valid and invalid signatures on the part petitions for the proposed referendum are as follows:

	PETITIONS	SIGNATURES
1. Number of valid part petitions	_____	
Number of **valid** signatures		_____
Number of **invalid** signatures		_____
2. Number of invalid part petitions	_____	
Number of signatures on invalid part petitions		_____
3. **Total** number of ***part petitions*** received (valid and invalid)	_____	
4. **Total** number of ***signatures*** on part petitions (valid and invalid).....		_____

Signed: _____
Director

_____
Date

Certification forms and petitions must be submitted to the Secretary of State's office no later than January 28, 2010.

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

Chapter 11

Petitions

Directive 2015-33

EXHIBIT
3
PENGAD 800-631-6989

Jon Husted
Ohio Secretary of State

SECTION 1.03 PETITIONS GENERALLY

The board of elections reviews candidate petitions and most issue petitions for validity and sufficiency.[1] The Secretary of State prescribes certain candidate and issue petition forms as required by law and many other frequently used petition forms as a courtesy. The Secretary of State's forms are provided in PDF format on the Secretary of State's website. The board must ensure that, if it is providing petition forms to candidates or issue groups, it is providing the most current version of the prescribed form.[2] Forms are updated promptly in response to law changes, so it is imperative that boards pull petitions directly from the Secretary of State's website when providing them to the public.

A. Candidate Petitions[3]

The statutes prescribing the form of candidate petitions generally require substantial compliance.

When there is an error or omission on a petition form, the Secretary of State, in the case of a statewide candidate, or the board of elections, in the case

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1 R.C. 3501.11(K).

2 R.C. 3501.38(L).

3 R.C. Chapter 3513.

of all other candidates, must determine whether the prospective candidate substantially complied with the form of the petition.

In determining whether a prospective candidate substantially complied with the form of the petition, the inquiry is typically fact-specific. The board should consult with its legal counsel, the county prosecutor, when reviewing petitions.

The board also should check municipal charters for additional requirements and qualifications for candidates seeking a municipal office.

B. Local Question and Issue Petitions

The board must review, examine, and certify the sufficiency and validity of a local question and issue petitions. Sometimes the governing legal provisions vest another public office with the initial responsibility of certifying the sufficiency and validity of the petition before the petition comes to the board of elections. The board should check municipal charters for additional requirements and qualifications for initiated ordinances and referendums.

The Secretary of State's office publishes two resources that help boards of elections, taxing authorities, and the public gain a general overview of the laws governing ballot questions and issues. *The Ohio Ballot Questions and Issues Handbook: A Guide for Board of Elections, Taxing Authorities and Political Subdivisions to Placing Questions and Issues on the Ballot*, along with the *Guide to Local Liquor Options Elections* both contain summaries of the statutes relevant to different types of ballot questions and issues. Both resources are accessible via the Secretary of State's website.

C. Petition Pre-Checks

No board of elections shall pre-check any petition to determine the petition's validity and sufficiency before such time as the original petition has been filed, along with the appropriate filing fee, with a board of elections, the

Secretary of State's Office, or other public office as provided by law.[4]

While pre-checks may appear to be a public service that potential candidates might rely on to improve their chances of being certified to the ballot, in reality, pre-checks provide a false sense of security for candidates and issue groups. It is a well-established principle of Ohio election law that the candidate is solely responsible for ensuring that his or her own petition satisfies the requirements of law. Candidates and issue groups are obligated to investigate, learn, and know the law governing the election process.[5]

To assist prospective candidates and issue petitioners, the Secretary of State's Office provides uniform guidance to through several free publications, including the Ohio Candidate Requirement Guide, the Guide to Local Liquor Option Elections, the Ohio Presidential Guide, The Ohio Ballot Questions and Issues Handbook, and the Campaign Finance Handbook. This office also prescribes many of the forms used by candidate and issue petitioners. Boards can, and should, be helpful to potential candidates and issue petitioners by providing them with copies of these guides as well as information about the process of filing and the process elections officials will follow once the filing deadline has expired. With this information, and the public access terminals provided by many boards of elections, candidates have the tools to check their own petitions.

However, it is imprudent for a board of elections to engage in a practice that allows any candidate or petitioner to believe that his or her petition is valid

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4 *State ex rel. McMillan v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 186, 1992 -Ohio -85 (candidate's reliance on the misinformation of the board employee does not estop the board from removing a candidate's name from the ballot); *State ex rel. Shaw v. Lynch* (1991), 62 Ohio St.3d 174, 176-177 (estoppel does not apply against election officials in the exercise of governmental functions); *State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections* (1977), 51 Ohio St.2d 173 (candidate could not file necessary part petition after having filed other petition papers); *State ex rel. Svete v. Bd. of Elections* (1965), 4 Ohio St.2d 16 (advice by board of elections deputy clerk that nominating petition appeared to be in order does not stop the board of elections from declaring such petitions to be invalid).

5 *State ex rel. Chevalier v. Brown* (1985), 17 Ohio St.3d 61, 63; *State ex rel. Sturgill v. Lorain Cty. Bd. of Elections* (Ohio App. 9 Dist., 2005), 164 Ohio App.3d 272, 2005 -Ohio- 5660; *State ex rel. Donegan v. Cuyahoga Cty. Bd. of Elections* (2000), 136 Ohio App.3d 589, 595.

and sufficient before the petition is filed, because, if the board subsequently determines that the petition is invalid, then the board must reject it regardless of whether the board staff previously pre-checked the identical petition. The practice of pre-checking petitions has resulted in some boards of elections being accused of incompetence, political favoritism, and misconduct.

SECTION 1.02 GENERAL RULES FOR VERIFYING CANDIDATE AND ISSUE PETITIONS

Reviewing Declarations of Candidacy

As mentioned above, the statutes prescribing the form of candidate petitions generally require substantial compliance. When there is an error or omission on a petition form, the Secretary of State, in the case of a statewide candidate, or the board of elections, in the case of all other candidates, must determine whether the prospective candidate substantially complied with the form.

A. Candidate Name

If any person desiring to become a candidate for public office has had a change of name within five years immediately preceding the filing of the person's declaration of candidacy, the person's declaration of candidacy and petition shall both contain, immediately following the person's present name, the person's former names.[6] This does not apply to a name change due to marriage.[7]

B. Office

The statement of candidacy signed by the prospective candidate must identify the office sought so that both the electors signing the petition and the board of elections are able ascertain from the petition which office the candidate seeks.

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[6] *Martinez v. Cuyahoga Cty. Board of Elections*, 2006 WL 847211; *McLaughlin v. Cuyahoga Cty. Bd. of Elections*, 156 Ohio App.3d 98.

[7] R.C. 3513.06.

C. Term

Ohio law requires each person filing a declaration of candidacy or a nominating petition as a candidate for the unexpired term of any office to designate the date on which that unexpired term ends.[8]

D. Date of the Election

The purpose of the date of the election on a declaration of candidacy is to inform those signing the petition as to the election at which the candidate seeks to be on the ballot. The board must determine whether those signing the petition understand which election is at issue.[9]

E. Candidate Signature[10]

A candidate must sign the statement of candidacy.

The question of whether the prospective candidate signed the statement of candidacy before the petition was circulated is a question of fact for the members of the board of election to decide.

It is only necessary for the candidate to sign one part-petition paper, but the declaration of candidacy so signed shall be copied on each other separate petition paper before the signatures of electors are placed on it.

F. Nominating Petition Portion

The question of whether the board may certify a prospective candidate's petition when the "Nominating Petition" portion of the form is incomplete is a substantial compliance decision for the board of elections to make in consultation with its legal counsel, the county prosecuting attorney.

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8 R.C. 3513.08; R.C. 3513.28.

9 *Hill v. Cuyahoga County Bd. of Elections*, 68 Ohio St.2d 39 (1981); *State ex rel. Stewart v. Clinton Cty. Bd. of Elections*, 124 Ohio St.3d 584.

10 R.C. 3513.09.

G. Verifying the Validity of Part-Petitions

Prior to verifying the validity of individual signatures contained on a part-petition, the board of elections must verify the validity of that part-petition. Check each part-petition to determine whether the circulator's statement on the last page of the part-petition has been properly completed. The entire part-petition is invalid if the circulator's statement is not completed as required by law.

H. Fulfilling Public Records Requests

Boards of elections may receive one or more public records requests for copies of the part-petitions for particular candidate or issue. Boards should consult with their statutory legal counsel, the county prosecuting attorney, before rejecting, fulfilling, or responding to any public records request.

SECTION 1.03 CIRCULATOR STATEMENTS

A. Qualifications of Circulators:

- A circulator must be at least 18 years of age.[11]
- A circulator is not required to be an Ohio elector or an Ohio resident.
- Each circulator of a candidate petition 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.

[11] R.C. 3503.06(C); *Citizens in Charge v. Husted*, Case No. 2:13-cv-00935 (S.D. Ohio, Mar. 16, 2015).

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.[12] 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.

B. Candidate as Circulator

A candidate may circulate his or her own part-petition regardless of how he or 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*).[13]

C. Convicted Felons

Some convicted felons are prohibited from circulating petitions.[14] However, state law does not require a circulator to provide key data points (e.g., date of birth, Social Security number, driver's license number, etc.) 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.

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[12] *R.C. 3513.05, ¶7*.

[13] *R.C. 3513.191*.

[14] *Ohio Attorney General Advisory Opinion 2010-02*.

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.

D. Circulator's Statement on Each Part-Petition[15]

Each part-petition must contain a circulator's statement that includes the following completed information:

- circulator's signature,
- the number of signatures witnessed by the circulator,
- and, for a *statewide* candidate or issue petition:
  - circulator's name,
  - address of the circulator's residence[16] , and
  - the name and address of the person employing the circulator to circulate the petition, if any.

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.

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 statements of part-petitions

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15 R.C. 3501.38(E)(1).

16 State law does not define "permanent residence address" for purposes of circulating issue petitions. A 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 properly before a board of elections and should be filed with the Ohio Supreme Court as described in Section VI below.

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 different permanent residence addresses on different part-petition).

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.*[17]

> **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.[18] 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.
>
> **Note**: In determining whether the number of signatures reported by a circulator of a non-statewide candidate's petition matches the number of signatures on that part petition, particularly with regard to crossed-out signatures, board 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.[19]

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[17] *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 841 N.E.2d 766 (2005).

[18] *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167, 602 N.E.2d 615 (1992).

[19] *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321, 181 N.E.2d 888 (1962); *State ex rel. Curtis v. Summit Cty. Bd. of Elections*, Slip Opinion No. 2015-Ohio-3787.

For a statewide petition, 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.[20] 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.

SECTION 1.04 PROCESSING VOTER REGISTRATION FORMS

When processing a statewide petition, each county board of elections must process all new, valid voter registrations and changes of name and/or address 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.[21]

For petitions filed with the board of elections, each board first must process all new, valid voter registrations and changes of name and /or address to existing registrations received by the board as of the date the petition was filed with the county board of elections' office.

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[20] R.C. 3519.06(A).

[21] R.C. 3501.38(A); R.C. 3519.15.

SECTION 1.05 SIGNERS

A. Qualifications of Signers

- Must be a qualified elector of Ohio.[22]
- Must be registered to vote at the address provided on the petition as of the date that the petition was filed with the applicable office.[23] For statewide issue petitions, the date the board of elections examines the petition.[24]
- If signing a petition for a candidate seeking nomination in a partisan primary, 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 voted in that party's primary election, or did not vote in any other party's primary election, in the preceding two calendar years.[25]
- A 17-year old who will be 18 years old by the election at which the candidate or issue will appear on the ballot, and is properly registered to vote, may sign a petition.[26]

B. Signatures[27]

- Each signature *must be* an original signature of that voter.[28]

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22 R.C. 3501.38(A).
23 R.C. 3501.38(A).
24 R.C. 3519.15.
25 R.C. 3513.05, ¶7.
26 R.C. 3503.06(A).
27 R.C. 3501.011.
28 R.C. 3501.38(B).

- The signature must match the signature on file with the board of elections.[29] 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.[30] 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.[31]
- The signature must be written in ink.[32]
- 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.[33]
- 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

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[29] 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*, 2014-Ohio-1685; "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. Crowl v. Delaware Cty. Bd. of Elections*, Slip Opinion No. 2015-Ohio-4097 (O'Connor, C.J., concurring); *State ex rel. Burroughs v. Summit Cty. Bd. of Elections*, Slip Opinion No. 2015-Ohio-4122.

[30] *State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193, 594 N.E.2d 576 (1992).

[31] R.C. 3501.38(B).

[32] R.C. 3501.38(B).

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

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). 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 determine a method that adequately and accurately records information to fulfill reporting and tracking standards.

C. Address of a Signer

The petition must contain the elector's voting residence address, 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.
- The elector's room or apartment number is 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 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.[34]

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.[35] 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.[36]

E. Dates

Each signature must be followed by the date it was affixed to the petition paper.[37] The board *must not invalidate* a signature solely because its date is out of sequence with other signatures on the same part-petition.

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[34] R.C. 3501.382.

[35] R.C. 3501.382.

[36] R.C. 3501.38(F).

[37] R.C. 3501.38(C).

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 personnel to query the board's voter registration system to check the signature against a voter registration record.[38]

G. Ditto Marks

Ditto marks may be used to indicate duplicate information, e.g., date, address, or county.[39]

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.[40]

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.[41]

SECTION 1.06 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 as follows:

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38 *State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 2010-Ohio-1374.

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

40 R.C. 3513.05, ¶9; R.C. 3519.10.

41 R.C. 3501.38(F).

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 petition is filed or, for a statewide issue petition, as of the date that 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 petition is filed, or for a statewide issue petition, 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.

WP "Wrong Party." The circulator or signer is of a different political party than the party listed on the declaration of candidacy.

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

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 under the number.

SECTION 1.07 FILING

A. Where to File Declarations of Candidacy, Nominating Petitions, and Question or Issue Petitions[42]

For an office or issue submitted to electors throughout the entire state, including a petition for joint candidates for the offices of governor and lieutenant governor, petitions are filed with the Secretary of State's Office.

For an office or issue submitted only to electors within a county or within a district or subdivision or part thereof smaller than a county, petitions are filed with the board of elections of the county.

For an office or issue submitted only to electors of a district or subdivision or part of a subdivision that overlaps into more than one county, petitions

[42] R.C. 3513.05; R.C. 3513.261.

are filed with the board of elections of the county containing the major portion of the population. The most-populous county of districts for Congress, State Senate, State Representative, State Board of Education and Court of Appeals districts is listed at the end of the Candidate Requirement Guide. If an Educational Service Center (ESC) district overlaps into more than one county, the petitions are filed in the county in which the ESC's administrative office is located.

B. Unfair Political Campaign Activities Notice

At the time a person files a declaration of candidacy, nominating petition, or declaration of intent to be a write-in candidate, the Secretary of State or the board of elections shall furnish that person with a copy of R.C. 3517.21, which sets forth various unfair political campaign activities. Each person who receives the copy shall acknowledge its receipt in writing.[43]

[43] R.C. 3513.33. Please note the decision in *Susan B. Anthony List v. Ohio Elections Commission*, Case No. 1:10-cv-00720 (S.D. Ohio Western Division, Sept. 11, 2014).

EXHIBIT
4

PENGAD 800-631-6989

Chapter 14 Statewide Initiative & Referendum

Directive 2015-36

Jon Husted
Ohio Secretary of State

SECTION 1.01 DEFINITIONS

A. 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.

B. 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 1.02 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 e-mail 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.[1]

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

The issue committee must pay a fee of $25.[2]

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1 RC 3519.16(B).

2 R.C. 3513.10(B)(2)(a).

SECTION 1.03 EXAMINING AND VERIFYING STATE ISSUE PETITIONS

A. 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.[3] Some convicted felons are prohibited from circulating initiative or referendum petitions.[4] State law does not require a circulator to provide key data points (e.g., date of birth, Social Security number, driver's 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.

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:[5]

- The number of signatures witnessed by the circulator;
- The circulator's signature;

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3 R.C.3503.06(C).

4 Ohio Attorney General Advisory Opinion 2010-002.

5 R.C. 3519.05.

- The circulator's permanent residence address[6]; 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 addresses on different part-petitions).

If the circulator reported witnessing fewer than the total number of uncrossed out signatures submitted on the part-petition, then the board **must invalidate 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. This part-petition must be rejected.

If the circulator reported witnessing the same or more than the total number of signatures not crossed out on the part-petition, **then the board must not invalidate** the part-petition for this reason alone.[8] Instead, the board must review the validity of each signature as usual.

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6 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 properly before a board of elections and should be filed with the Ohio Supreme Court.

7 *Rust v. Lucas Cty. Bd. of Elections,* 108 Ohio St.3d 139, 141, 841 N.E.2d 766, (Ohio 2005).

8 *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections,* 65 Ohio St.3d 167, 602 N.E.2d 615 (Ohio 1992).

Example: The circulator's statement indicates that the circulator witnessed 22 signatures, but there are only 20 signatures on the petition. The part-petition should not be rejected for this reason alone.

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 the person employing the circulator to circulate the petition, if any."[9]

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.**[10] 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.

B. 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.[11]

These registrations are effective as of the date the petition was filed with the Secretary of State.[12]

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9 R.C. 3501.38(E)(1).

10 R.C. 3519.06(A).

11 R.C. 3501.38(A); R.C. 3519.15.

12 R.C. 3501.38; R.C. 3503.19.

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.[13] 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.

C. 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.[14]

2. Signatures

Except as provided in R.C. 3501.382 (elector's name signed by an attorney-in-fact), each signature must be an original signature of that voter.[15]

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.[16]

> **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 his or her name on the petition in addition to signing in cursive his or her name to the petition. A

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[13] R.C. 3599.11(B)(2)(a).

[14] R.C. 3519.10.

[15] R.C. 3501.38(B); R.C. 3519.051.

[16] *State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193, 594 N.E.2d 576 (Ohio 1992).

printed signature alone, with no cursive signature, is allowed only if the elector's signature on file with the board is also printed.[17]

The signature must be written in ink.[18]

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.[19]

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.[20]

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.

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17 R.C. 3501.011; R.C. 3501.38(B); R.C. 3519.10.

18 R.C 3519.051; R.C. 3501.38(B).

19 R.C.3501.38(C); R.C. 3519.10

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

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). 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

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.[21]

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.

[21] *R.C. 3501.382*.

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.[22]

4. Dates

Each signature must be followed by the date it was affixed to the petition paper.[23]

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.[24]

6. Ditto Marks

Ditto marks may be used to indicate duplicate information, e.g. date, address, or county.[25]

7. 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. If any part-petition contains signatures from more than one county, then the Secretary of State determines the county with the most signatures

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22 R.C. 3501.38(F).

23 R.C. 3501.38(C); R.C. 3519.10.

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

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

on the part-petition, and only signatures from that county are to be reviewed.[26]

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 the Secretary of State's Office for additional instructions.

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.[27]

D. 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.

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[26] R.C. 3519.10.

[27] R.C. 3501.38(F).

E. 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 he or she was 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.

F. 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.[28]

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[28] RC 3519.16(E).

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 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.[29]
- 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.[30]

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[29] R.C. 3519.16(F).

[30] R.C. 3519.05(D); R.C. 3519.16(F).

G. 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.[31]

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.[32]

H. Challenges/Protests

The Ohio Supreme Court has original, exclusive jurisdiction over all challenges to state issue petitions and signatures on those petitions.[33] 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.[34]

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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31 R.C. 3519.05(F).

32 RC 3519.16(F).

33 Art.II, §1g of the Ohio Constitution; R.C. 3519.16.

34 Art.II, §1g of the Ohio Constitution.

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PENGAD 800-631-6989
EXHIBIT
5

DIRECTIVE 2015-40
December 23, 2015

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

Re: Instructions Regarding the Review, Examination, and Verification of the Petition Proposing an Initiated Statute (Ohio Drug Price Relief Act)

SUMMARY

This Directive provides instructions to county board of elections on the review, examination, and verification of signatures on the petition proposing an initiated statute.[1] Each board of elections must complete its review, examination, and verification consistent with the instructions outlined in this Directive and return its certification to the Secretary of State's Office no later than noon on December 30, 2015. Please note that the Secretary of State's Office is open until 5:00 p.m. on December 24, 2015, and county boards of elections are encouraged to return certification forms at any time prior to December 30, 2015.

PETITION SUBMITTED

The Secretary of State's Office received a petition for an initiated statute on Tuesday, December 22, 2015. Boards of elections must examine each part-petition in order to determine the number of qualified electors who signed it.

CHECKING SIGNATURES ON THE PETITIONS

Before checking any petition, the board must review the instructions contained in Chapter 11 of the Election Official Manual (Directive 2015-33) regarding the review of circulator's statements and signatures and marking signatures.

Prior to verifying the validity of individual signatures contained on a part-petition, the board of elections must verify the validity of that part-petition. Check each part-petition to determine whether the circulator's statement on the last page of the part-petition has been properly completed. The entire part-petition is invalid if the circulator's statement is not completed as required by law.

PART-PETITION BELONGS TO ANOTHER COUNTY

If you receive a part-petition that belongs to another county, please follow the process outlined below. It is imperative that a copy of a part-petition belonging to another county is transmitted to the other county as quickly as possible for signature verification.

[1] R.C. 3501.11(K).

In the event that a board receives a part-petition on which the majority of signatures on the part-petitions are in another county, that board of elections may not determine the validity of that part-petition or review the signatures contained on it. Instead, it must forward the original part-petition to the other county following the steps below and utilize the two spreadsheets provided and return them in the envelopes provided when all part-petitions are returned to the Secretary of State's Office:

1. Part-Petitions Sent Spreadsheet (Original Part-Petition(s))
2. Part-Petitions Received Spreadsheet (Emailed or Faxed Part-Petition(s))

If a board of elections receives a part-petition(s) for another county, it should follow the steps below to send a copy of it to the correct county:

1. Contact the Director or Deputy Director at the other county board by phone to notify him or her that your board will be forwarding a copy of a part-petition(s) and determine if it should be emailed or faxed.
2. Log the transfer of the part-petition(s) being sent on the "Part-Petitions Sent" spreadsheet.
3. Send the copy of the part-petition(s) via either email or fax as agreed to.
4. Return the original part-petition(s) with the "Part-Petitions Sent" spreadsheet in the envelope provided and marked as such. When the board returns its checked part-petitions to the Secretary of State's Office, place this envelope on top of the checked part-petitions so it can be easily located and retrieved from the box.

If a board receives a part-petition from another county:

1. Log the part-petition(s) that the board received on the "Part-Petitions Received" spreadsheet.
2. Process the part-petition(s).
3. Return the emailed or faxed part-petition(s) with the "Part-Petitions Received" spreadsheet in the envelope provided and marked as such. When the board returns its checked part-petitions to the Secretary of State's Office, place this envelope on top of the checked part-petitions so it can be easily located and retrieved from the box.

Note: Even if a board does not send a part-petition(s) to another county and/or does not receive a copy of a part-petition from another county, the board must mark the box (X) in the bottom right hand corner of the spreadsheet and place it in the correct envelope. When the board returns its checked part-petitions to the Secretary of State's Office, place both envelopes on top of the checked part-petitions so they can be easily located and retrieved from the box.

FULFILLING PUBLIC RECORDS REQUESTS

Your board of elections may receive one or more public records requests for copies of the part-petitions. Boards should consult with their statutory legal counsel, the prosecuting attorney, before rejecting, fulfilling, or responding to any public records request.

SCANNING THE PETITIONS

After you have completed checking the signatures on the part-petitions, you should electronically scan the relevant pages of each part-petition (including at least the cover page, the pages containing signatures, and the page containing the circulator statement). A copy of the scanned images should be saved onto one or as many CDs, DVDs, thumb-drives, or other similar electronic media as may be necessary and a copy sent to the Secretary of State's Office along with the part petitions and certification form. You must keep an electronic copy of the images for your records.

CERTIFICATION AND RETURN OF THE PETITIONS

As soon as you finish verifying the signatures on your county's part-petitions, you must return your completed certification form. The certification form must be completed and submitted electronically via Elect Collect by clicking the "Submit" button. The certification form must also be saved and printed. The Director must sign the certification form and return the signed certification form to Emily Bright via email to Ebright@ohiosecretaryofstate.gov.

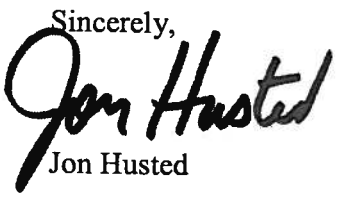
All certification forms must be received by NOON on December 30, 2015.

After you have sent your certification form to Emily Bright, you must return all part-petitions to the Secretary of State's Office, Elections Division, 180 East Broad Street, 15th Floor, Columbus, Ohio 43215, via a trackable delivery method, no later than Monday, January 4, 2016.

All part-petitions must be received by the Secretary of State's Office no later than Monday, January 4, 2016.

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

Sincerely,



Jon Husted

EXHIBIT
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6

IN THE SUPREME COURT OF OHIO

The Ohio Manufacturers' Association, et al.,	:	
Relators,	:	Case No. 2016-0313
v.	:	**Original Action under Article II, Section 1g of the Ohio Constitution**
Ohioans for Drug Price Relief Act, *et al.*,	:	
Respondents.	:	

RESPONDENT OHIO SECRETARY OF STATE'S RESPONSE TO PETITON RESPONDENTS' INTERROGATORIES AND REQUESTS FOR PRODUCTION

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Counsel for Respondent
Ohio Secretary of State Jon Husted

Pursuant to S.Ct.Prac.R. 14.01(C)(2) and Rules 26, 33, and 34 of the Ohio Rules of Civil Procedure, Respondent Ohio Secretary of State Jon Husted hereby responds to Petition Respondents' Interrogatories and Requests for Production of Documents, which were served on April 25, 2016.

GENERAL OBJECTIONS

1. Respondent Secretary Husted objects to these Interrogatories to the extent they seek information protected by the attorney-client privilege and work product doctrine.

2. Respondent Secretary Husted objects to these interrogatories to the extent that they are overbroad, unduly burdensome, vague, duplicative, or not reasonably calculated to lead to the discovery of admissible evidence.

3. Respondent Secretary Husted objects to these Interrogatories to the extent they fail to comply with or seek to alter the rights and obligations imposed by the Ohio Rules of Civil Procedure or local rules.

4. Respondent Secretary Husted objects to these Interrogatories to the extent that they seek information not in Respondent Secretary Husted's possession or control.

5. Respondent Secretary Husted objects to these Interrogatories to the extent the information sought is publicly available, is already in Petition Respondents' possession, or is in the possession or control of third parties.

6. Respondent Secretary Husted expressly reserves all objections as to competency, relevancy, materiality, and admissibility of the answers contained herein and any objections to future discovery requests.

7. Respondent Secretary Husted states that he is responding to these discovery requests to the best of his present knowledge and belief and expressly reserves the right to amend, alter, revise, and/or supplement his responses. No response shall be construed as a waiver of any further objection.

8. Respondent Secretary Husted hereby incorporates each of these general objections into each and every specific response to each of the Requests listed below.

SPECIFIC RESPONSES AND OBJECTIONS

INTERROGATORY #1

Please provide the date, time, form and a synopsis of any and all communications with any attorney or employee of the law firm of Bricker & Eckler LLP concerning the Petition or the Act.

ANSWER: Respondent Secretary Husted has previously provided communications regarding the Petition and the Act with the law firm of Bricker & Eckler LLP in a public records request to Petition Respondents' counsel. All oral communications below are reported to the best of the individual or individuals within the office's recollection. The following communications have been identified in response to Interrogatory No. 1:

- March 8, 2016, 12:16 and 12:17 PM emails (two) from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email provided Ms. Yano with documents responsive to her public records request for part-petitions.

- On or about March 8, 2016, phone call between Marjorie Yano, an associate at Bricker & Eckler LLP, and David Bowling, Elections Counsel for the Ohio Secretary of State's office. During the phone call, Ms. Yano made a public records request for part-petitions.

- February 29, 2016, 12:25 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email provided Ms. Yano with documents responsive to her public records request for part-petitions.

- On or about February 29, 2016, phone call between Marjorie Yano, an associate at Bricker & Eckler LLP, and David Bowling, Elections Counsel for the Ohio Secretary of State's office. During the phone call, Ms. Yano made a public records request for part-petitions.

- February 9, 2016, 5:16 PM email from Marjorie Yano, an associate at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email provided Mr. Bowling with a question related to the documents Mr. Bowling sent to Ms. Yano earlier in the day.

- February 9, 2016, 3:44 PM email from Marjorie Yano, an associate at Bricker &

Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for certain part-petitions.

- February 9, 2016, 1:43 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for correspondence sent to or received from boards of election regarding the Drug Price Relief Act.

- February 9, 2016, 9:32, 9:34, 9:36, and 9:36 AM emails (four) from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. These emails were in response to a public records request from Ms. Yano for post-review part-petitions from Licking County.

- February 5, 2016, 3:30 PM email from Marjorie Yano, an associate at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for post-review part-petitions from Licking County.

- February 5, 2016, 3:16 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for the recertification forms of the Petition from certain counties.

- February 5, 2016, 1:36 PM email from Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office, to Christopher Slagle, a partner at Bricker & Eckler LLP. This email was a courtesy copy of the signature verification letter issued to petitioners and the letter transmitting the Drug Price Relief Act to the General Assembly.

- February 4, 2016, 6:48 PM email from Marjorie Yano, an associate at Bricker & Eckler LLP. This email was to follow up on a public records request for the recertification forms of the Petition from certain counties.

- February 2, 2016, 11:07 AM email from Marjorie Yano, an associate at Bricker & Eckler LLP. This email was a public records request for the recertification forms of the Petition from certain counties.

- January 28, 2016, 9:40 AM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for the recertification forms of the Petition received by the Secretary's office from the county boards of elections.

- January 28, 2016, 9:36 AM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler

LLP. This email was in response to a public records request submitted by Ms. Yano for additional documents that the county boards of elections submitted along with the recertification forms of the Petition.

- January 27, 2016 Memorandum from Bricker & Eckler LLP to the Ohio County Boards of Elections, carbon copying Ohio Secretary of State Jon Husted. This memorandum purports to provide "additional relevant information" concerning the Petition "that the Petitioning Committee's communications omitted."

- January 27, 2016, 3:23 PM email from Marjorie Yano, an associate at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for documents that the county boards of election submitted along with the recertification forms of the Petition.

- January 27, 2016, 3:20 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for the recertification forms of the Petition received by the Secretary's office from the county boards of elections.

- January 26, 2016, 1:33 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for the Form 15 filed by Direct Democracy Unlimited.

- January 26, 2016, 1:07 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for certification forms.

- January 26, 2016, 11:28 AM email from Marjorie Yano, an associate at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for the Form 15 filed by Direct Democracy Unlimited.

- January 22, 2016, 5:29 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Marjorie Yano, an associate at Bricker & Eckler LLP. This email was in response to a public records request submitted by Ms. Yano for the recertification forms of the Petition received by the Secretary's office from the county boards of elections.

- January 21, 2016, 6:26 PM email from Marjorie Yano, an associate at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was to follow up on a prior public records request submitted to the Secretary's office for the recertification forms of the Petition submitted to the Secretary's office from the county boards of elections.

- January 14, 2016, 1:25 PM email from Marjorie Yano, an associate at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for the recertification forms of the Petition received by the Secretary's office from the county boards of elections.

- On or about January 7, 2016, approximately two phone calls between Christopher Slagle, a partner at Bricker & Eckler LLP, and other employees of Bricker & Eckler LLP, and Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office, Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office, and Matthew Walsh, Legislative Counsel for the Ohio Secretary of State's office. During these phone calls, Mr. Slagle and others at Bricker & Eckler, who attended boards of election hearings on the part-petitions, relayed the testimony and results of these hearings to Mr. Christopher, Ms. Kuruc, and Mr. Walsh.

- January 5, 2016, 3:49 PM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Christopher Slagle, a partner at Bricker & Eckler LLP. This email was an acknowledgement to a public records request submitted by Mr. Slagle.

- January 5, 2016, 11:14 AM email from Christopher Slagle, a partner at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for all communications related to the Drug Price Relief Act.

- December 31, 2015, 9:57 and 9:58 AM emails (two) between David Bowling, Elections Counsel for the Ohio Secretary of State's office, and Christopher Slagle, a partner at Bricker & Eckler LLP. These emails provide documents responsive to Mr. Slagle's December 24, 2015 public records request.

- December 30, 2015 letter from Christopher Slagle, a partner at Bricker & Eckler LLP, to Ohio Secretary of State Jon Husted. This letter was sent to the Secretary regarding alleged inconsistencies in the part-petitions submitted for the Petition to the Ohio Secretary of State's office by the county boards of elections.

- December 30, 2015, 5:02 PM email from Christopher Slagle, a partner at Bricker & Eckler LLP, to Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office. This email attached a letter to Ohio Secretary of State Jon Husted and spreadsheets. All attached documents concerned issues with the part-petitions identified by Bricker & Eckler LLP.

- December 30, 2015, 11:07 and 11:09 AM emails (two) between David Bowling, Elections Counsel for the Ohio Secretary of State's office, and Christopher Slagle, a partner at Bricker & Eckler LLP. These emails provide documents responsive to Mr. Slagle's December 24, 2015 public records request.

- December 29, 2015, 11:46 AM email from David Bowling, Elections Counsel for the Ohio Secretary of State's office, to Christopher Slagle, a partner at Bricker & Eckler LLP. This email was a public records response to Mr. Slagle's request for county certification information sent to the Secretary of State's office from the county boards of election.

- On or about December 24, 2015, phone call between Christopher Slagle, a partner at Bricker & Eckler LLP, and other employees of Bricker & Eckler LLP, and Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office, Matthew Damschroder, Assistant Secretary of State and Chief of Staff for the Ohio Secretary of State's office, Craig Forbes, Deputy Chief of Staff for the Ohio Secretary of State's office, and Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office. During the phone call, Mr. Slagle and other employees of Bricker & Eckler LLP informed the employees from the Secretary of State's office of some potential issues identified in the part-petitions.

- December 24, 2015, 2:57 PM email from Christopher Slagle, a partner at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for the certification information sent to the Secretary of State's office from the county boards of election.

- December 23, 2015, 7:07 PM email from Christopher Slagle, a partner at Bricker & Eckler LLP, to Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office. This email follows up on the phone call Mr. Slagle and Mr. Christopher had earlier in the day. This email details some of the potential issues identified in the part-petitions.

- December 23, 2015 phone call between Christopher Slagle, a partner at Bricker & Eckler LLP, and Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office. During the phone call, Mr. Slagle informed Mr. Christopher of some potential issues identified in the part-petitions.

- December 22, 2015, 2:44 PM email from Christopher Slagle, a partner at Bricker & Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email clarified Mr. Slagle's public records request submitted to Mr. Bowling on December 22, 2015 at 1:12 PM.

- December 22, 2015 phone call between Christopher Slagle, a partner at Bricker & Eckler LLP, and Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office. During the phone call, Mr. Christopher acknowledged receipt of Mr. Slagle's public records request submitted on December 22, 2015 at 1:12 PM. Mr. Christopher also informed Mr. Slagle that documents responsive to his public records request should be available later that day.

- December 22, 2015, 1:12 PM email from Christopher Slagle, a partner at Bricker &

Eckler LLP, to David Bowling, Elections Counsel for the Ohio Secretary of State's office. This email was a public records request for a complete electronic copy of the filing made by the proponents of the Ohio Drug Price Relief Act and a copy of the overview distribution spreadsheet accompanying the filing indicating the gross number of signatures and petitions filed and associated distribution among Ohio's eighty-eight counties.

INTERROGATORY #2

Please provide the date, time, form and a synopsis of any and all communications with any member or employee of the Ohio General Assembly concerning the Petition or the Act.

ANSWER: Respondent Secretary Husted transmitted the Petition to the General Assembly on February 4, 2016. A letter from Secretary Husted to Speaker Cliff Rosenberger, President Keith Faber, Minority Leader Fred Strahorn, and Minority Leader Joe Schiavoni was sent on February 4, 2016 indicating that the Secretary was transmitting the Petition, albeit with reservations. In addition to the letter sent directly to Speaker Rosenberger, President Faber, Leader Strahorn, and Leader Schiavoni, Craig Forbes, Deputy Chief of Staff for the Ohio Secretary of State's office, emailed a copy of the letter to Mike Lenzo, Frank Strigari, Bethany Sanders, and Sarah Cherry on February 4, 2016. Mr. Forbes also placed a phone call on or around February 4, 2016 to Mr. Lenzo and Mr. Strigari informing them that the transmittal letter was forthcoming.

INTERROGATORY #3

Please provide the date, time, form and a synopsis of any and all communications with any board member, officer, employee, or representative of The Ohio Manufacturers' Association concerning the Petition or the Act.

ANSWER: At this time, Respondent Secretary Husted has not identified any

communications responsive to this request.

INTERROGATORY #4

Please provide the date, time, form and a synopsis of any and all communications with any board member, officer, employee, or representative of The Ohio Chamber of Commerce concerning the Petition or the Act.

ANSWER: At this time, Respondent Secretary Husted has not identified any communications responsive to this request.

INTERROGATORY #5

Please provide the date, time, form and a synopsis of any and all communications with any board member, officer, employee, or representative of the Pharmaceutical Research and Manufacturers of America concerning the Petition or the Act.

ANSWER: At this time, Respondent Secretary Husted has not identified any communications responsive to this request.

INTERROGATORY #6

Please provide the date, time, form and a synopsis of any and all communications between or among the Secretary, the Secretary's employees, agents, or representatives, or other persons acting on the Secretary's behalf or under the Secretary's control concerning the Petition or the Act.

ANSWER:

OBJECTION: Defendant objects on the ground that this Request is overbroad.

Defendant objects to this Interrogatory on the ground that it asks for information that is subject to the attorney-client privilege.

RESPONSE: Based on the above-offered objection, Respondent Secretary Husted will produce responsive, non-privileged documents in a timely manner.

INTERROGATORY #7

Please provide the date, time, form and a synopsis of any and all communications between or among the Secretary, the Secretary's employees, agents, or representatives, or other persons acting on the Secretary's behalf or under the Secretary's control concerning the law firm of Bricker & Eckler LLP, The Ohio Manufacturers' Association, The Ohio Chamber of Commerce, and/or the Pharmaceutical Research and Manufacturers of America concerning the Petition or the Act.

ANSWER:

OBJECTION: This Interrogatory calls for duplicative information that has already been provided.

RESPONSE: *See* Interrogatory Responses #1, 2, 3, 4, 5, and 6.

INTERROGATORY #8

Please provide the date, time, form and a synopsis of any and all communications with any other person concerning the Petition or the Act.

ANSWER: On February 4, 2016 at 9:42 AM, David Bowling, Elections Counsel for the Ohio Secretary of State's office, received an email from Joseph Walker, a reporter for the Wall Street Journal, seeking public records for communications between the Secretary's

office and the Pharmaceutical Research and Manufacturers Association, its representatives, and Bricker & Eckler LLP. On February 4, 2016 at 12:38 PM, David Bowling, Elections Counsel for the Ohio Secretary of State's office, responded to that email acknowledging the request.

INTERROGATORY #9

Please provide the date, time, form and a synopsis of any and all communications with any person concerning Ohio Secretary of State Directive 2016-01.

ANSWER:

OBJECTION: Defendant objects on the ground that this Interrogatory is overbroad.

RESPONSE: The following communications have been identified in response to Interrogatory No. 9:

- January 29, 2016, 10:39 AM email (and attached letter and spreadsheet) from Emily Bright, Elections Assistant for the Ohio Secretary of State's office, to Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office, and Laura Pientenpol, Deputy Elections Administrator for the Ohio Secretary of State's office. This email included the results from the Franklin County Board of Elections' review pursuant to Directive 2016-01.

- January 28, 2016 letter from Marques Binnette, Assistant Prosecuting Attorney in Huron County, to Sharon Locke, Director of the Huron County Board of Elections. This letter is an advisory opinion on how the Huron County Board of Elections should proceed pursuant to Directive 2016-01.

- January 27, 2016 Memorandum from Bricker & Eckler LLP to the Ohio County Boards of Elections, carbon copying Ohio Secretary of State Jon Husted. This memorandum purports to provide "additional relevant information" concerning the Petition "that the Petitioning Committee's communications omitted."

- January 26, 2016, 3:57 PM email (and attached letter and spreadsheet) from Emily Bright, Elections Assistant for the Ohio Secretary of State's office, to Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office. This email

included the results from the Butler County Board of Elections' review pursuant to Directive 2016-01.

- January 26, 2016, 3:22 PM email (and attached letter) from Emily Bright, Elections Assistant for the Ohio Secretary of State's office, to Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office. This email included additional documentation provided by the Fayette County Board of Elections.

- January 22, 2016, 1:37 PM email (and attached letter) from Laura Pietenpol, Deputy Elections Administrator for the Ohio Secretary of State's office, to Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office. This email noted that Greene County submitted their certification report consistent with Directive 2016-01.

- January 13, 2016 letter from Kenneth W. Oswalt, Licking County Prosecuting Attorney, to Secretary Husted. This letter included the results from the Licking County Board of Elections' review pursuant to Directive 2016-01.

- January 12, 2016 letter (and attached spreadsheet) from Mary Lynne Birck, Assistant Prosecuting Attorney in Clermont County, to Secretary Husted responding to Directive 2016-01.

- January 11, 2016, 10:22 AM email from Steve Wildermuth to Bill Freytag, Deputy Director of the Richland County Board of Elections. This email discusses Directive 2016-01 and the process for complying with Directive 2016-01.

- January 7, 2016, 9:45 AM email from Craig Forbes, Deputy Chief of Staff for the Ohio Secretary of State's office, to Matthew Walsh, Legislative Counsel for the Ohio Secretary of State's office, Jack Christopher, Deputy Assistant Secretary of State and General Counsel for the Ohio Secretary of State's office, Matthew Damschroder, Assistant Secretary of State and Chief of Staff for the Ohio Secretary of State's office, and Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office. This email was a copy of the email sent from Respondent Petition Committees' counsel, Don McTigue, Corey Colombo, and Derek Clinger, to the County Boards of Elections regarding their interpretation of Directive 2016-01.

- January 7, 2016, 9:37 AM email from Meghan Lee, Deputy Director of the Meigs County Board of Elections, to Rachel Kasper, Elections Counsel for the Ohio Secretary of State's office. The email sought guidance in light of Directive 2016-01.

- January 6, 2016, 8:27 AM email from Michele Lockard, from the Pickaway County Board of Elections, to Rachel Kasper, Elections Counsel for the Ohio Secretary of State's office. The email sought to discuss Directive 2016-01.

- January 5, 2016, 2:37 PM email from Laura Pietenpol, Deputy Elections

Administrator for the Ohio Secretary of State's office, to the County Boards of Elections. This email described the submission process for certification forms.

- January 4, 2016, 2:27 PM email from Pat Wolfe, Elections Administrator for the Ohio Secretary of State's office, to the County Boards of Elections. This email attached Directive 2016-01.

INTERROGATORY #10

Identify all statewide initiative petitions proposing a law to the Ohio General Assembly that have been filed with the Ohio Secretary of State's office since January 1, 1991, including: (1) the date the petition was filed with the Secretary of State's office, and, if applicable, (2) the date the proposed law was transmitted by the Secretary of State to the General Assembly, including and identifying any such law that was transmitted to the General Assembly on a conditional or contingent basis.

ANSWER:

OBJECTION: Respondent Secretary Husted objects to this Interrogatory on the ground that this request is overbroad.

RESPONSE: The document attached to these Interrogatory responses as Attachment "A" provides information responsive to Interrogatory No. 10.

INTERROGATORY #11

For any statewide initiative, referendum, or supplementary petition filed with the Ohio Secretary of State's office since January 1, 1991, identify any petition that contained part-petitions that, upon completion of the review performed by the boards of elections, were returned or re-submitted to the boards of elections, by the Secretary of State, for an additional review.

ANSWER:

OBJECTION: Respondent Secretary Husted objects to this Interrogatory on the ground that this request is overbroad.

RESPONSE: Respondent Secretary Husted assumed office on January 10, 2011. The Secretary's office is unaware of any petition containing part-petitions that, upon completion of the review performed by the boards of elections, were returned to the boards.

INTERROGATORY #12

Identify any analysis, since January 1, 1991, regarding the date that the Secretary of State is obligated under Article II, Section 1b of the Ohio Constitution to transmit laws proposed by initiative petition to the General Assembly.

ANSWER:

OBJECTION: This Interrogatory calls for the release of information protected by the attorney-client privilege.

RESPONSE: Based on the above-offered objection, Respondent Secretary Husted offers no response.

INTERROGATORY #13

For any statewide initiative, referendum, or supplementary petition filed with the Ohio Secretary of State's office since January 1, 1991, identify any review, analysis, or data of signatures that were struck out from any number of part-petitions.

ANSWER:

OBJECTION: Respondent Secretary Husted objects to this Interrogatory on the ground that this request is overbroad, confusing, and ambiguous.

RESPONSE: Respondent Secretary Husted has previously provided a number of part-petitions to Petition Respondents' counsel pursuant to a public records request. Respondent Secretary Husted will provide any additional responsive documents in a timely manner.

INTERROGATORY #14

For any statewide initiative, referendum, or supplementary petition filed with the Ohio Secretary of State's office since January 1, 1991, identify all part-petitions that contain struck out signatures.

ANSWER:

OBJECTION: Respondent Secretary Husted objects to this Interrogatory on the ground that this request is overbroad. This is a burdensome request and would require an unreasonable expenditure of time and resources.

RESPONSE: Respondent Secretary Husted has previously provided a number of part-petitions to Petition Respondents' counsel pursuant to a public records request.

INTERROGATORY #15

For any statewide initiative, referendum, or supplementary petition filed with the Ohio Secretary of State's office since January 1, 1991, identify any review, analysis, or data of discrepancies in the number of actual signatures appearing on the part-petitions compared to the number of signatures attested to in the corresponding circulator statements.

ANSWER:

OBJECTION: Respondent Secretary Husted objects to this Interrogatory on the ground that this request is overbroad, confusing, and ambiguous. Respondent Secretary Husted also objects to this Interrogatory to the extent i calls for the release of information protected by the attorney-client privilege.

RESPONSE: Respondent Secretary Husted will provide any responsive, non-privileged documents in a timely manner.

INTERROGATORY #16

For any statewide initiative, referendum, or supplementary petition filed with the Ohio Secretary of State's office since January 1, 1991, identify any part-petitions that contain circulator statements that attest to a number of signatures appearing on the part-petition that is higher than the actual number of signatures appearing on the part-petition.

ANSWER:

OBJECTION: Respondent Secretary Husted objects to this Interrogatory on the ground that this request is overbroad. Collecting, sorting, and reviewing documents from a 25 year span to respond to this Interrogatory would be unreasonably burdensome in both time and expense.

RESPONSE: Subject to the foregoing objections, Respondent Secretary Husted has previously provided a number of part-petitions to Petition Respondents' counsel pursuant to public records requests. Respondent Secretary Husted will provide any additional responsive documents that the Secretary is able to reasonably gather in a timely manner.

INTERROGATORY #17

Please state the name, address, telephone number and e-mail address of each person consulted or who provided information in preparing responses to these interrogatories.

ANSWER:

OBJECTION: This Interrogatory calls for information protected by attorney-client privilege.

RESPONSE: Subject to the foregoing objection, two individuals answered the interrogatories: (1) David Bowling, Elections Counsel for the Ohio Secretary of State's office, (2) Jack Christopher, Deputy Assistant Secretary of State for the Ohio Secretary of State's office, (3) Craig Forbes, Deputy Chief of Staff, (4) Carolyn Kuruc, Senior Elections Counsel for the Ohio Secretary of State's office, and (5) Matthew Walsh, Legislative Counsel for the Ohio Secretary of State's office.

INTERROGATORY #18

Please identify by date of execution, subject matter, and end date, each contract and contract extension with the law firm of Bricker & Eckler LLP to provide legal services to the Secretary or his office on any matter.

ANSWER: The Office of the Ohio Attorney General possess the special counsel contracts requested in Interrogatory No. 18. However, based upon Ohio Attorney General Assignment Letters in the possession of the Ohio Secretary of State's office, the following have been identified:

- Amended Assignment Letter of November 10, 2015 assigning Bricker & Eckler

LLP to represent the Secretary's office in *State ex rel. Walker, et al. v. Husted*, Case No. 2015-1371 (Ohio Supreme Court 2015).

- Assignment Letter of August 26, 2015 assigning Bricker & Eckler LLP to represent the Secretary's office in *State ex rel. Walker, et al. v. Husted*, Case No. 2015-1371 (Ohio Supreme Court 2015).
- Assignment Letter of January 30, 2015 assigning Bricker & Eckler LLP to represent the Secretary's office and provide labor advice.
- Assignment Letter of September 18, 2012 assigning Bricker & Eckler LLP to represent the Secretary's office in *Lieberman v. Husted*, Case No. 3:12-CV-297.
- Assignment Letter of August 15, 2012 assigning Bricker & Eckler LLP to represent the Secretary's office in *Obama for America v Husted*, Case No. 2:12-CV-636.

Bowling, David

From: Slagle, Christopher <CSlagle@bricker.com>
Sent: Tuesday, December 22, 2015 2:44 PM
To: Bowling, David
Cc: Christopher, Jack; Slagle, Christopher
Subject: RE: OH - Drug Price Relief Act / Request for Electronic Petition Copies - Signature & Petition Totals and County Distribution

Follow Up Flag: Follow up
Flag Status: Completed

David – I just had a quick discussion with Jack Christopher and he suggested I follow up on our request for the electronic petition copies. I understand the physical process is continuing, but the electronic copies should be available this afternoon – likely on CDs. From our end, CDs are fine or whatever format the materials are most easily available for you to transmit. Just let me know – our IT folks are prepared to accept in any form. Whatever is easiest for you. And, that our staff is able to receive the information at any time today, including after hours if needed. Just let me know if you have an anticipated time and we will make it work. Thanks again David. Talk to you soon. - CS

From: Slagle, Christopher
Sent: Tuesday, December 22, 2015 1:12 PM
To: 'dbowling@ohiosecretaryofstate.gov'
Cc: 'JChristopher@ohiosecretaryofstate.gov'; Slagle, Christopher
Subject: OH - Drug Price Relief Act / Request for Electronic Petition Copies - Signature & Petition Totals and County Distribution

Good afternoon, David. I understand that earlier today proponents of the Ohio Drug Price Relief Act filed signatures for the citizen initiated statute with the Secretary of State's office. Our firm is monitoring the issue in Ohio and requests pursuant to the Ohio Public Records Act, RC 149.43, a complete electronic copy of the filing made today, December 22, 2015. We also would request a copy of the overview distribution spreadsheet that accompanies the filing indicating the gross number of signatures and petitions filed and associated distribution among Ohio's 88 counties. We understand those materials are filed electronically with the Secretary of State – we would be willing to accept those materials in associated electronic form (whether CD, thumb drive, or web link upload, whatever is the easiest for you). And, we understand given the nature of the electronic copies that are filed that the information is available relatively quickly – we would like to receive the information as quickly as practicable.

Certainly, to the extent there are any reasonably associated costs with receiving the information, we would ensure such reimbursement.

If you have any questions, please let me know. Thanks very much David – look forward to discussing with you and hearing from you hopefully yet this afternoon. Thanks very much. - CS

Bricker & Eckler
ATTORNEYS AT LAW

Christopher N. Slagle
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Think green — please print only if necessary.

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EXHIBIT
8

PENGAD 800-631-6989

Bowling, David

From: Slagle, Christopher <CSlagle@bricker.com>
Sent: Wednesday, December 23, 2015 7:07 PM
To: Christopher, Jack
Cc: Slagle, Christopher; Tunnell, Kurtis; Armstrong, Maria
Subject: Follow up / Drug Price Relief Act examples
Attachments: FRANKLIN_1_000280.pdf; BROWN_000045.pdf; GEAUGA_000055.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Jack – thanks for taking a couple minutes to discuss a few questions we had earlier today. We thought it might be helpful to highlight with examples of the petitions issues we are wondering about.

Franklin County Petition (attached). The first is the questionable marking out of signatures in bold, black marker, but yet the signature totals attested by the circulator does not change – in what clearly appears to have been done by someone other than the circulator, in contravention of Ohio law where only a signor or circulator can make modifications to a petition. Of the 3,400 petitions we have reviewed in multiple counties, nearly 64 percent of the petitions have this type of issue included.

Brown County Petition, Geauga County Petition (attached). The second troubling issue is where the circulator attests in the circulator statement to having witnessed 28 signatures, but there only 1 signature is included actually on the petition (Brown County). The Geauga County petition includes both the first issue – a bold signature strike through – and an attestation of 28 signatures. Here, it seems clearly evident that the circulator did not make the strike out and did not truthfully complete the circulator statement. There are myriad reasons for the circulator statement and it seems clear that there are rampant issues with circulators attesting to a full petition and the actual signature included at only 1 or 2. Certainly, the law provides that if the number attested to is greater than the actual number, the petition is good. But, Ohio law surely could never have been intended to apply to this situation – are the circulators actually witnessing the signatures? Signing and attesting to the circulator page first and then collecting signatures? If the circulator statement are not truthfully attested to under Ohio law, what else may be happening? Of the 3,400 petitions we have checked as of today, this issue of attesting to 28 signatures while only having 1 signature actual appears on 50 percent of the petitions. Across all counties.

It seems clear that both of these issues were systematically orchestrated across this entire initiative. While we have only worked through about 1/3 of the petitions, the issues are significantly present and across all the counties.

Anyway, thought it might be helpful to have an example or two of what we are seeing as you continue internal discussions. Thanks Jack – look forward to discussing more tomorrow. - C

Bricker & Eckler
ATTORNEYS AT LAW

Christopher N. Slagle
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215
Direct Dial 614.227.8826 | **cslagle@bricker.com** | **v-card** | **www.bricker.com**

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Christopher, Jack

From:	Slagle, Christopher <CSlagle@bricker.com>
Sent:	Wednesday, December 30, 2015 5:02 PM
To:	Christopher, Jack
Cc:	Slagle, Christopher; Armstrong, Maria; Tunnell, Kurtis
Subject:	Drug Price Relief Act - Issues of Concern w/in Petitions (December 2015)
Attachments:	Drug Price Relief Act 2015 - Altered Petition Issues.XLSX; Drug Price Relief Act 2015 - False Circulator Statement Issue.XLSX; LTRSOS12302015.pdf
Importance:	High

Jack – please find attached our letter and associated data of issues and concerns on the recently filed Drug Price Relief Act. For your review and consideration. We look forward to working with you on the attached. Certainly, let us know if you have any questions in advance. Thanks. - CS

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ATTORNEYS AT LAW

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Christopher N. Slagle
614.227.8826
cslagle@bricker.com

December 30, 2015

The Honorable Jon A. Husted
Secretary of State
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215

Re: Ohio Drug Price Relief Act Petition

Dear Secretary Husted:

On behalf of our client, PhRMA, we respectfully request your consideration of several issues that suggest violations of Ohio law and potentially fraudulent practices in connection with the Ohio Drug Price Relief Act petition (the "Petition") filed on December 22, 2015. We would appreciate your review and instruction to the Boards of Elections regarding two statistically and legally significant issues:

1. False Circulator Affidavits: A sizable percentage of the part-petitions contain false circulator affidavits because they attest, under penalty of election falsification, to having witnessed significantly more signatures than actually appear on the actual part petition. There appears to have been a systemic, widespread practice of falsifying the circulators' attestation across the state and by numerous circulators who declared under penalty of election falsification that they were the circulator of "the foregoing petition paper containing 28 signatures. . ." although the part-petitions contain only one or two signatures. See attached Exhibit A listing the 6,435 part-petitions (containing 40,612 signatures) that include this type of false certification.

Failure to provide an accurate number of signatures gathered renders a part-petition invalid. Ohio law requires, in mandatory terms, that the circulator of a petition "**shall indicate the number of signatures contained on it**, and shall sign a statement made under penalty of election falsification. . ." R.C. 3501.38(E) (emphasis added). "No initiative or referendum part-petition is properly verified if it appears on the face thereof. . . [that the circulator's] statement is false in any respect." R.C. 3519.06(D).

Ohio law requires **strict** compliance with these provisions and courts have recognized on numerous occasions that the requirement for circulators to accurately list the number of signatures witnessed is a reasonable requirement that protects against a fraudulent practice of signatures being added later.

The Ohio Election Official Manual ("OEM"), and the Ohio case law on which it is based, allow room for minor discrepancies and a plausible

explanation for a miscount. However, the BOEs should only accept a circulator's statement at face value **unless there "are inconsistencies with the number of signatures witnessed."** There are significant, blatant, discrepancies clearly apparent on the face of 6,435 part-petitions filed by Petitioners. Petitioners have taken the limited reasonable latitude permitted in a fair election scheme to an intentionally abusive extreme.

Both the OEM and numerous Ohio court decisions consistently support a reasonable approach that allows circulators to demonstrate that their part-petition should not be rejected where: 1) the signature discrepancies in the circulator's statement were minor and isolated; and 2) a reasonable explanation was provided by the circulator to the BOE. However, there should be distinction between a minor, explainable counting error on a single part-petition and a systemic, wide-spread falsification on thousands of part-petitions. Circulators are required to attest to the number of signatures on a part-petition under penalty of election law. They should not be permitted to attest to a fabricated number and then leave the petition open for other signatures to be added after the fact. Allowing such a practice to occur renders the statutory requirement for a circulator to witness signatures effectively meaningless. Consistent with Ohio law, every part-petition which contains more or fewer signatures than were attested to, and for which no plausible and lawful explanation is provided, should be rejected. We respectfully urge you to instruct the BOEs accordingly.

2. Altered Petitions. A review of the part-petitions also reveals that a significant number of petitions appear to have been altered by someone other than the circulator or the signer. Attached at Exhibit B is a comprehensive list of the 5598 part-petitions (118,574 signatures) which contain signatures that were clearly stricken by someone other than the circulators or signer. R.C. 3501.38 (G) and (H) authorize only three people to strike signatures from a petition before it is filed: 1) the circulator; 2) the signer; or 3) an attorney in fact acting pursuant to R.C. 3501.382. Here, it is apparent that some other person struck these signatures, and, thus, unlawfully altered the petition such that the petition cannot not be properly verified.

R.C. 3519.06 (C) provides that: "No initiative or referendum part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence. . . That the statement is altered by erasure, interlineation, or otherwise . . . ." Except in the rare situations noted above and specifically authorized by law, it is of the utmost importance that petitions cannot be altered before they are submitted to any election official. Otherwise, the requirement for a circulator attestation (or for circulators at all) is significantly undermined.

There is no doubt that petition circulation has become a big business in Ohio, significantly for out of state individuals and petition companies. However, that lucrative money-maker for out of state entities with little regard for Ohio law cannot be allowed to undermine the integrity of our elections process or usurp the authority of Ohio BOEs or your Office. Statutes are clear that the BOEs - and not out of state, money-making, petition circulation companies - are entrusted and authorized to verify petition signatures and strike those that do not qualify. R.C. 3501.11(K) imposes the duty to review, examine, and certify the sufficiency and validity of

petition signatures upon the BOEs and not on any other entity, public or private. Numerous courts have determined that it is incumbent on the BOEs to determine the validity of any signature on a part-petition.

Thus, only the signer, circulator, or attorney in fact may strike a signature from a part-petition before it is filed. And only the BOEs have the statutory authority to determine the validity of a signature on a part-petition. Those fundamental requirements have been repeatedly violated on this Petition and call the validity of these part-petitions into question. We respectfully urge you to instruct the BOEs to disqualify any part-petition that has been improperly altered in this fashion. At the very least, BOEs should conduct a review of these stricken signatures to determine if the electors involved authorized their attorney-in-fact to strike their signatures as permitted by R.C. 3501.382.

As the chief elections officer for Ohio, the Secretary has the duty to "compel the observance by election officers in the several counties of the requirements of the elections laws." R.C. 3501.05(M). In furtherance of this duty, you have the statutory power and duty to issue directives and advisories to the county boards as to the proper methods of carrying out their duties. R.C. 3501.05(B). Both the county boards and the Secretary have the power and authority to reject any initiative petition that violates *any* requirement established by law. R.C. 3501.39(A)(3). We respectfully ask you to direct the BOEs, consistent with Ohio law and with protecting the sanctity of the ballot and electors' signatures, to strike those part-petitions that demonstrate the issues outlined above.

Additionally, we respectfully ask that you refrain from certifying the petition and/or transmitting the Petition to the General Assembly until such time as a thorough investigation of these issues can be conducted. This investigation would allow time for determining whether the Petition actually contains the requisite number of lawful signatures, or alternatively whether any supposedly requisite number of signatures was achieved solely through fraud and violations of Ohio election laws. R.C. 3501.05(N)(1) clearly empowers the Secretary to investigate "the administration of election laws, fraud, and irregularities in elections in any county."

Moreover, until such time as the Secretary can investigate and determine the sufficiency of the Petition, the Secretary cannot and should not transmit the Petition to the General Assembly. The plain language of Article II, Section 1b of the Ohio Constitution states that the Secretary "shall transmit" the Petition to the General Assembly only "[w]hen . . . there shall have been filed with the [Secretary] a petition signed by three per centum of the electors **and verified as herein provided**" (emphasis added). *See Mahaffey v. Blackwell*, 10th Dist. No. 06-AP-963, 2006-Ohio-5319, ¶ 33 (the Constitution requires the Secretary to act to transmit the initiated law to the General Assembly only upon the filing of a petition with the requisite number of signatures that is "verified as provided herein"). The Petition must first be "verified" before it can be transmitted to the General Assembly, which involves confirming the "correctness, truth, or authenticity by oath or affidavit" of the signatures and part-petitions. *See* Black's Law Dictionary at 1561 (6th ed. 1990).

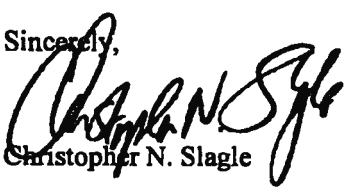
In *Cappelletti v. Celebreeze*, 58 Ohio St.2d 395, 396 (1979), the Ohio Supreme Court recognized that the phrase "verified as herein provided" as used throughout Article II of the Constitution requires the Secretary "as chief elections officer to first determine that the petition contains the purported signatures of [3 percent] of the electors of the state, for that requirement is fundamental to the constitutional reservation of the right of initiative to the people." The Supreme Court then expressly "reject[ed] relators' argument that the presumption of sufficiency of the petition and its signatures, contained in Section 1g of Article II eliminates the further steps of determining whether the petition has been properly verified and establishing the eligibility of the signers as electors." *Id.* at 396-97. The Secretary and the boards of elections are plainly permitted to look behind the face of the Petition, especially where, as here, there is *prima facie* evidence of a significant amount of fraud and irregularities.

Moreover, Judge French in *Mahaffey*, 2006-Ohio-5319, citing *Cappelletti*, stated that proof of an invalid part-petition or signatures may be established "in various ways," and that board review of the signatures is but one method of proving or disproving the sufficiency of the signatures. *Id.* at ¶¶ 37-40. Furthermore, the Supreme Court in *State ex rel. Scioto Downs, Inc. v. Brunner*, 123 Ohio St.3d 24, 27 (2009), implicitly found that the Secretary may use the results of his investigatory power under R.C. 3501.05(N)(1) to invalidate part-petitions so long as that power is exercised before the constitutional deadline for his sufficiency determination, which is mid-July (105 days before the election).

While the Secretary may be acting in a ministerial duty in transmitting the Petition to the General Assembly **once sufficiency has been determined**, the Secretary has a corresponding duty to **not** transmit the Petition if sufficiency is in question. A duty to transmit to the General Assembly arises only where first the Secretary has verified that the Petition contains the requisite number of **valid** signatures. *See Cappelletti*, 58 Ohio St.2d at 398 (Supreme Court refused to issue writ and held that there was no clear legal duty for Secretary to transmit the petition to the General Assembly or certify a deficiency because protests involving investigation of signatures and petitions were ongoing). If fraud and violations of law indicate that the Petition fails to contain the requisite number of valid signatures, then it is incumbent upon the Secretary not to transmit the Petition to the General Assembly. Any other result leads to a perversion of the democratic process and an incentive to engage in election fraud.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,



Christopher N. Slagle

CNS

9800704v3

Erin E. Ley

From: Daniel Murry
Sent: Wednesday, August 26, 2015 5:22 PM
To: Armstrong, Maria
Cc: 'jchristopher@ohiosecretaryofstate.gov'; Damian Sikora; Michael Hall; Erin E. Ley; Kathy Davis; Bridget E. Coontz
Subject: State ex rel. Walker, et al. v. Husted - Special Counsel Assignment

Outside Counsel
Office 614-466-8240
Fax 614-728-2392

30 East Broad Street, 16th Floor
Columbus, OH 43215
www.OhioAttorneyGeneral.gov

August 26, 2015

Dear Maria,

Bricker & Eckler has been appointed Special Counsel to represent Ohio Secretary of State in a mandamus action regarding *State ex rel. Walker, et al. v. Husted.* Please contact Jack Christopher, General Counsel (614-728-5639), to begin work immediately. Damian Sikora, Section Chief of Constitutional Offices, will be responsible for ongoing oversight of this engagement on behalf of the Attorney General. Pursuant to your retention agreement, this is your assignment letter.

The budget for this matter is $20,000 and the hourly rate is $225. The AGO# is 6339. Ohio Secretary of State will compensate you for your services. You are required to bill monthly using the TyMetrix online billing system. TyMetrix 360 Website.

Please note that all subsequent or new legal matters first require the approval of the Attorney General's Office before they may be billed under the AGO number designated in this Assignment Letter. This assignment will terminate June 30, 2016, unless terminated earlier by the Attorney General's Office.

Please do not hesitate to contact the Outside Counsel Section (614-466-8240) should you have any questions.

Thank you for your service.

Sincerely,

Mike DeWine
Ohio Attorney General

Michael Hall

Michael J. Hall
Director of Outside Counsel
Outside Counsel Webpage

cc: Jack Christopher
Damian Sikora

MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Outside Counsel
Office 614-466-8240
Fax 614-728-2392

30 E. Broad Street, 17th Floor
Columbus, OH 43215

November 10, 2015

AMENDED ASSIGNMENT LETTER

Dear Ms. Armstrong,

Attached please find a list of special counsel matters for Ohio Secretary of State that Ohio Attorney General Mike DeWine has assigned to Bricker & Eckler for fiscal year 2016. This is your amended assignment letter.

Your firm may receive additional assignments throughout the fiscal year. If your firm is assigned a matter after the date of this letter, you will receive a single matter assignment letter via email. The Outside Counsel Section will not send an updated list after each new assigned matter.

The budgets and billing rates for your firm's assigned matters are detailed in the attached list. If applicable, assignments are contingent upon Controlling Board approval. The state client will compensate your firm for your services. You are required to bill monthly using the TyMetrix online billing system. TyMetrix 360 Website.

Please note that all subsequent or new legal matters first require the approval of the Attorney General's Office before they may be billed under the AGO number(s) designated in this Assignment Letter. This assignment will terminate June 30, 2016, unless terminated earlier by the Attorney General's Office.

Please do not hesitate to contact the Outside Counsel Section (614-466-8240) should you have any questions.

Thank you for your service.

Sincerely,

Mike DeWine
Ohio Attorney General

Michael Hall

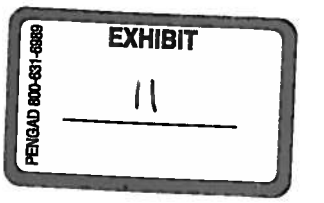
Michael J. Hall
Director of Outside Counsel
Outside Counsel Webpage

cc: Jack Christopher
Damian Sikora

Assignment Summary by Attorney

Secretary of State

	Client Name	Case Name	Rate	Budget	AAG
Armstrong, Maria J. (Bricker & Eckler)					
AGO-6339 2016	Secretary of State	State ex rel. Walker, et al. v. Husted	225/hr	$35,000.00	Damian Sikora
		Report total assignments: 1		$35,000.00	



RETENTION AGREEMENT

This Retention Agreement (hereinafter this "Retention Agreement") is entered into by and between the Ohio Attorney General (the "Attorney General") and the undersigned ("Special Counsel").

RECITALS

WHEREAS, the Attorney General, pursuant to R.C. 109.07, is empowered to appoint Special Counsel to represent the State in civil actions, criminal prosecutions or other proceedings in which the State is a party or directly interested; and

WHEREAS, the purpose of this Retention Agreement is to set forth the terms for the appointment and retention of Special Counsel, who shall provide legal services, as requested by the Attorney General, to the State of Ohio, its offices, boards, departments, commissions, colleges, universities and retirement systems; and

WHEREAS, the specific legal services that Special Counsel is requested to provide will be set forth in one or more Special Counsel Assignment Letters (each an "Assignment Letter") and such services shall be rendered in accordance with the terms and conditions of this Retention Agreement.

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein and for other valuable consideration, the Attorney General and Special Counsel (each individually, a "Party", and collectively the "Parties") hereby agree as follows:

Article I
TERM

The appointment of Special Counsel and this Retention Agreement shall terminate on June 30, 2017, unless earlier terminated as provided herein (the "Termination Date"). No services rendered by Special Counsel after the Termination Date shall be authorized or payable without an additional written agreement from the Attorney General.

Article II
SERVICES

Section 1. Scope of Appointment

Special Counsel shall conduct any and all legal work assigned by the Attorney General. Work hereunder shall be performed in a professional manner consistent with the accepted standards for practice in the legal profession including, but not limited to, the Ohio Supreme Court Rules for the Government of the Bar, the Ohio Rules of Professional Conduct (hereinafter, the "Rules") and the rules governing the conduct of attorneys in any other applicable jurisdiction.

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Section 2. Assignment and Delegation of Work

Special Counsel may assign legal work to those individuals set forth in Special Counsel's response to the Attorney General's Request for Qualifications (the "RFQ Response") or any individual employed by Special Counsel or the law firm with which Special Counsel is affiliated. Further, Special Counsel may only delegate work to other attorneys, legal professionals or firms with the advance written approval of the Attorney General.

In the event that Special Counsel delegates work to other firms, the compensation of such firms shall be a matter beyond the scope of this Retention Agreement to be negotiated in writing between Special Counsel and those firms prior to the commencement of any work by such firms, and shall be paid by Special Counsel. A copy of such compensation agreement shall be provided to the Attorney General. Neither the Client nor the Attorney General shall be liable for any fees, compensation or expenses to be paid to other firms retained by Special Counsel. Special Counsel agrees to indemnify, defend, and hold harmless the Attorney General and the State of Ohio against any claim for reimbursement of fees, costs or expenses asserted by any firm retained by Special Counsel.

All firms to whom Special Counsel may delegate work under this Section must have qualifications and experience to perform the work requested, and shall work under the supervision and control of Special Counsel. Although delegation may be permitted as provided herein, delegation shall not relieve Special Counsel of any responsibility or liability for the work performed hereunder. No provision of this Section shall be construed to allow Special Counsel to subcontract with, hire, or retain any law firm for the performance of legal services under this Retention Agreement without the prior written consent of the Attorney General.

Section 3. Attorney-Client Relationship and Relationship of the Parties

The Attorney General is the chief law officer of the State of Ohio and, as such, is the legal representative of the State, including its various agencies, boards, departments, commissions, colleges, universities and retirement systems. Special Counsel is being appointed hereunder to provide legal services on behalf of the Attorney General to an assigned client or clients (each, a "Client"), as specified in the Assignment Letter. Special Counsel shall render services pursuant to this Retention Agreement as an independent contractor. Special Counsel, whether for purposes of applications of R.C. Chapter 102, Section 9.86 or Section 9.87, or for any other purpose, shall not be regarded as "in the employment of," or as an employee of, the Attorney General or the Client. An attorney-client relationship shall exist between Special Counsel and the Client. Special Counsel shall follow the direction, guidance, rules and policies of the Attorney General in its performance under this Retention Agreement. In all pleadings, notices and/or correspondences created pursuant to the work performed hereunder, Special Counsel shall indicate that such document is prepared by Special Counsel in its position as special counsel for the Attorney General.

During the term of this appointment, Special Counsel shall be engaged by the Attorney General solely on an independent contractor basis, and Special Counsel shall therefore be responsible for all of Special Counsel's business expenses, including, but not limited to, employee's wages and

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salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

Article III
CASE MANAGEMENT

Section 1. Reporting to the Attorney General

A. Quarterly Status Reports

Unless otherwise required by this Retention Agreement or by the Attorney General's Director of Outside Counsel or designee, Special Counsel shall submit quarterly status reports to the Director of Outside Counsel (electronically at specialcounsel@ohioattorneygeneral.gov), Client, and the Section Chief or other identified Assistant Attorney General in the related Assignment Letter not later than the fifth (5th) day of the months of January, April, July and October. Status reports must be identified by AGO number provided in the Assignment Letter and include: a description of each matter assigned; a report on the current status of the particular cases, transactions, or advice involved; any significant events that have occurred since the previous status report; a prospective analysis of any significant future events, along with a section containing the current budget for the assignment; the amount billed to date; the amount currently unbilled; an estimate on any new work under this assignment (if any); and a budget estimate for the next quarter. Special Counsel shall not be compensated for the time spent preparing and sending status reports without prior written approval by the Attorney General.

B. Significant Event Updates

Certain significant events during the course of representation are time-sensitive and require Special Counsel's timely report to the Attorney General. In such an event, Special Counsel shall immediately inform the Director of Outside Counsel, and applicable Section Chief or other designee identified in the Assignment Letter, and submit a Significant Event Update when a criterion set forth below is met, or upon the request of the Attorney General or his designee. Any event is "significant" if it involves:

1. Recovery sought against the Client (or which the State is seeking) in an amount equal to or above $500,000;
2. An important and/or novel legal or constitutional issue;
3. Injunctive relief that would be extremely detrimental to the State;
4. An issue that is likely to generate significant media or high public interest;
5. Possibility of filing a cert petition arises and whenever an opposing party has filed a cert petition;
6. All federal district court final judgments and interlocutory appealable orders;
7. Where Special Counsel, the opposing party, or a federal district court seeks to certify a state law question to the Ohio Supreme Court;
8. Where en banc rehearing might be sought with the Sixth Circuit; or
9. Potential administrative or rule-making appeals to any federal appeals court.

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C. Communication of Significant Dates and Deadlines

Special Counsel shall timely inform the applicable Section Chief or other designee identified in the Assignment Letter via email of the scheduled date for any of the following, if applicable:

1. Pleadings
2. Dispositive motions
3. Court decisions and rulings
4. Schedule for hearings
5. Trials
6. Formal Settlement negotiation
7. Appeal or Notice of an Appeal

Upon the filing of any pleading, Special Counsel shall timely provide a time-stamped copy via email of such filing to the Section Chief or other designee identified in the Assignment Letter.

D. Communication Regarding Case Initiation, and Settlement

The Attorney General shall approve both the initiation of litigation on behalf of the State, and commencement of formal settlement negotiations of claims on behalf of the State, as well as any final settlement. Special Counsel understands and agrees that the initiation of litigation on behalf of the State and all final settlements must receive the prior approval of the Attorney General. Special Counsel shall confer with the Section Chief early on in the settlement negotiation process. Without limitation, Special Counsel agrees to confer with the Attorney General about the following matters when applicable:

1. Confidentiality provisions in settlement agreements
2. The Ohio Constitution's biennial limitation
3. Indemnification provisions
4. Release language
5. Naming of the State as a party

Section 3. Confidentiality/Public Records Act

Special Counsel agrees to adhere to Ohio's Public Records Act, R.C. 149.43, and maintain all public records in accordance with state law, including any applicable record retention and destruction requirements. Special Counsel shall consult with and obtain the approval of the Attorney General before responding to any public records request. Moreover, Special Counsel shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act ("FERPA") and/or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as the same may be amended or modified from time to time.

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Section 4. Media Statements

Neither Special Counsel nor any partner, associate, employee or any other person assisting with the work contemplated by this Retention Agreement shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Retention Agreement without first obtaining approval of the Attorney General's Director of Outside Counsel or Director of Communications. This Retention Agreement specifically excludes any right or ability on the part of Special Counsel to speak on behalf of the Attorney General to any member of the news media. Provided, however, the restrictions in this Section 4 shall not apply to any professional or other publication of (i) the fact that Special Counsel is representing or has represented a Client as to a specific matter (the "Representation") and (ii) the nature of the Representation.

Article IV
COMPENSATION

Special Counsel shall only be compensated for the satisfactory performance of the services provided as set forth herein and in the Assignment Letter. In view of the personal nature of the services to be rendered, the Attorney General shall be the sole judge of the adequacy of those services.

Special Counsel shall be compensated on an hourly basis unless otherwise specified in the Assignment Letter. The hourly rates shall be established by the Attorney General in the Assignment Letter.

Special Counsel shall not be compensated in excess of the express amount within the Assignment Letter or Amended Assignment Letter (the "Budget Limit"), or in excess of the hourly rate established by the Attorney General, without first receiving an Amended Assignment Letter from the Attorney General.

In providing legal services under this Retention Agreement, Special Counsel shall act with reasonable diligence and promptness in the representation of the Client in a cost-effective and efficient manner. Special Counsel may bill for reasonable travel time subject to Attorney General and Client approval. The Attorney General will not approve compensation for Special Counsel's actions that do not meet this standard, including but not limited to the following: clerical or administrative work; introductory work, such as familiarizing and training new attorneys regarding factual and legal issues; or, legal research into areas of law for which the Attorney General's Office is uniquely qualified to provide a cost-effective answer, such as public records or sovereign immunity. Additional restrictions on billing and/or compensation may be provided in the Assignment Letter, or by the Client. The Client and the Attorney General reserve the right to disapprove specific charges in Special Counsel's bill that the Client or the Attorney General do not find reasonable, appropriate, or within the scope of legal representation, contemplated by the Client and the Attorney General under the terms of the Assignment Letter.

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Except for expenses and reimbursements as outlined in this Retention Agreement, no other compensation shall be paid to Special Counsel, except as otherwise provided in the Assignment Letter. Special Counsel shall only be compensated by the assigned Client upon the final approval of Special Counsel invoices, by the Director of Outside Counsel as set forth in Article VII of this Agreement.

It is expressly understood and agreed by the Parties that none of the rights, duties or obligations described in this Retention Agreement shall be binding on either Party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio.

In the event that any other comparable client negotiates a lower fee structure for comparable services, Special Counsel shall promptly notify the Attorney General and shall extend the lower negotiated rate to the Attorney General retroactively to the first date the lower rate was offered to another client. Should Special Counsel fail to provide the Attorney General the lower negotiated rate within ninety (90) days, Special Counsel shall be required to reimburse the Attorney General the difference between the amount the Attorney General was charged under its original rate as set forth in the Assignment Letter and the amount the Attorney General would have been charged under the lower negotiated rate. This paragraph shall not apply to pro bono work or work done for charitable clients.

Article V
BUDGET LIMITS

Special Counsel understands that it is Special Counsel's responsibility to monitor its budget limit(s) monthly. Special Counsel must notify the Director of Outside Counsel and the Client via email or telephone promptly when Special Counsel reasonably believes billings under the Assignment Letter will exceed 80% of the applicable Budget Limit.

Article VI
EXPENSES AND REIMBURSEMENTS

Section 1. Advancement of Expenses and Costs

Special Counsel shall advance all litigation costs, expenses and disbursements, including expert witness fees and costs, deposition costs, and document production. Neither the Client nor the Attorney General shall advance payment for any services rendered or costs, expenses or disbursements incurred.

Section 2. Expenses/Format

Special Counsel shall only be reimbursed for necessary expenses incurred in the performance of Special Counsel's duties in accordance with the terms of this Retention Agreement and the Assignment Letter. Reimbursement shall only be provided for invoices submitted with proper receipt documentation.

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All expenses should be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense, and (3) a detailed description of the expense. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the three requirements listed above.

Section 3. Receipts

All receipts shall be retained for at least one (1) full year following the Termination Date and shall be made available to the Attorney General and the Client upon request or as otherwise set forth herein.

Section 4. Maximum Reimbursement

Unless otherwise expressly approved by the Attorney General in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section 2, above, and only as follows:

A. Paralegals / Law Clerks / Litigation Support Staff

Reimbursement for the services of paralegals, law clerks, summer associates, litigation support staff, nurse practitioners and other legal assistants shall be made at Special Counsel's normal billing rate, not to exceed the greater of One Hundred Dollars ($100.00) per hour or sixty percent (60%) of the hourly rate specified for attorneys in the Assignment Letter. In no event shall the hourly billing rate for such individuals exceed One Hundred Seventy-Five Dollars ($175.00) per hour without prior written consent of the Attorney General prior to invoicing. No reimbursement shall be made for information technologies, case managers, secretaries, docket clerks/managers or librarians, nor for any work deemed clerical/administrative in nature.

B. Experts

Special Counsel shall be reimbursed for retention of outside experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General.

C. Travel

Approval of travel expenses for reimbursement to Special Counsel is subject to the State of Ohio Travel Policy as set forth by the State's Office of Budget and Management and found at O.A.C. 126-1-02. Subject to Attorney General and Client approval, Special Counsel shall be reimbursed for mileage at the rate of $.52 per mile per the State of Ohio Travel Policy. See http://obm.ohio.gov/MiscPages/TravelRule. Subject to Attorney General and Client approval, Special Counsel shall be reimbursed for lodging, meals, and incidentals at Per Diem Rates. See http://www.gsa.gov/portal/category/100120.

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D. Photocopying/Document Imaging/Electronic Storage

In-house photocopying/document imaging (including faxing, scanning and color copies) shall be reimbursed at Special Counsel's actual expense, not to exceed fifteen cents ($0.15) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/ document imaging/electronic storage shall be reimbursed at actual cost if receipts are provided at the time of invoicing. Special Counsel shall strive to find the most cost efficient method of storing records electronically, whether in the normal course of preparing the Client's file, or for the purpose of transmitting records to the Client or another party. The Client and the Attorney General reserve the right to decrease the reimbursement amount charged by Special Counsel to store records on compact disks (CD), external drives, flash drives, or such other applicable technology if it is determined that a less expensive method was reasonably available to Special Counsel.

E. Priority / Overnight Mail

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are included with the invoice. In no event shall Special Counsel be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

F. Other Expenses

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized on an invoice with receipts attached at the time of invoicing. Routine expenses such as office supplies, word processing or secretarial costs are not reimbursable. Special Counsel shall obtain the Attorney General's approval before incurring any individual expense exceeding Five Thousand and 00/100 Dollars ($5,000.00), other than airfare as set forth above, as well as any other extraordinary or unusual expenses or significant category of expenses incurred in fulfilling the terms of this Retention Agreement.

Article VII
INVOICES

Special Counsel shall submit to the Attorney General's TyMetrix web-based invoicing system monthly invoices for services rendered under each Assignment Letter. During the months specified in Article III, Section 1.A of this Retention Agreement, Special Counsel shall submit the corresponding quarterly status report at the same time as the monthly invoice. For the months in which a status report is required, invoices submitted without a corresponding status report shall be considered incomplete and shall not be eligible for compensation. Any invoices submitted when a status report is past due shall be considered incomplete and shall not be eligible for compensation. Compensation for services rendered shall be computed from the electronic invoice. The Director of Outside Counsel or his designee will then forward approval notification to the Client for payment as approved by the Attorney General.

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For purposes of R.C. 126.30, the required payment date of a Special Counsel invoice may be enforceable, but only after the Client first receives a proper approval notification prepared by the Attorney General. Special Counsel shall not submit invoices for work performed prior to the previous two (2) fiscal years. No invoices received after such date shall be eligible for compensation.

Unless approved otherwise by the Director of Outside Counsel or his designee, Special Counsel shall submit all invoices electronically through the TyMetrix 360 (T360) e-billing system used by the Attorney General. Special Counsel shall clearly identify the name or initials of the attorney or paralegal and titles of other experts who performed work on a given assignment, the date the services were rendered, a detailed description of the services rendered, and the number of hours worked on all invoices submitted through the T360 e-billing system.

If the Attorney General finds discrepancies or errors in a Special Counsel invoice, an adjustment to the invoice will be made and may be viewed, along with the reason for the adjustment, by Special Counsel in the T360 e-billing system with the amount approved for payment by the Client reflecting such adjustment. Invoices submitted in excess of the Budget Limit for the assignment or in contradiction of any billing guidelines set forth by the Attorney General may be rejected in their entirety upon submission. The Attorney General may also request that Special Counsel submit a corrected invoice. Special Counsel shall not resubmit any invoice unless requested to do so by the Attorney General.

Article VIII
OTHER TERMS AND CONDITIONS

Section 1. Equal Opportunity

In the hiring of employees for the performance of work under this Retention Agreement, Special Counsel agrees not to discriminate on the basis of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation or gender identity, characteristics, or expression in the employment of a person qualified and available to perform the work to which this Retention Agreement relates.

Special Counsel further agrees not to discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Retention Agreement on account of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation, or gender identity, characteristics or expression.

R.C. 125.111 requires any company doing business with the State of Ohio to maintain a written affirmative action program addressing employment practices. The law further requires that this plan be filed annually with the Department of Administrative Services, Equal Opportunity Division.

Special Counsel represents that it has a written affirmative action program and has filed a description of the affirmative action program with the Equal Opportunity Division of the Ohio

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Department of Administrative Services. Compliance and the liability for non-compliance with R.C. 125.111(B) is the sole responsibility of Special Counsel.

When retaining individuals, companies or firms to aid in the performance of work under this Retention Agreement, Special Counsel is responsible for obtaining the representation of each contractor abides by the requirements of this Section. Contractors and subcontractors must agree not to discriminate on the basis of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation or gender identity, characteristics, or expression in the employment of a person qualified and available to perform the work to which this Retention Agreement relates. Additionally, contractors, subcontractors and any person acting on behalf of any contractor or subcontractor in any manner may not discriminate against, intimidate, or retaliate against any employee hired for the performance of work in relation to this Retention Agreement on account of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation, or gender identity, characteristics or expression.

Section 2. Jurisdiction and Choice of Law

This Retention Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Only Ohio courts shall have jurisdiction over any action or proceeding concerning the Retention Agreement and/or performance hereunder. Special Counsel hereby irrevocably consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

Section 3. Indemnification

Special Counsel agrees to indemnify and hold the Attorney General and the Client harmless and immune from any and all Claims (as hereinafter defined) for injury or damage arising from this Retention Agreement that are attributable to Special Counsel's own actions or omissions or those of its partners, associates, officers, employees, subcontractors, suppliers, third parties utilized by Special Counsel, or joint ventures while acting under this Retention Agreement. Claims shall mean any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving collection activities. Special Counsel shall bear all costs and fees associated with defending the Attorney General and the Client against any such claims.

Section 4. Termination

A. Termination by the Parties

The Attorney General reserves the right to modify or cancel the appointment and/or terminate this Retention Agreement at any time, in its sole discretion, and without cause or duty of explanation. Special Counsel may terminate this appointment and this Retention Agreement upon thirty (30) days' written notice to the Attorney General. If there is pending litigation, termination on the part of Special Counsel shall not be effective unless Special Counsel first obtains leave of court to terminate its representation in the matter.

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B. Compensation in the Event of Termination

In the event this Retention Agreement is terminated by either Party, Special Counsel shall be paid for all properly documented services and expenses rendered prior to termination at the agreed upon rate. Invoices for such services and expenses with required receipts shall be submitted in accordance with Article VI of this Retention Agreement.

C. Transfer of Work

If Special Counsel is removed from any case or matter, Special Counsel agrees to effectuate a speedy and efficient transfer of the work and to cooperate fully with the Director of Outside Counsel. Special Counsel agrees to protect the Client's interests in any transfer of work. The Attorney General or Client may withhold final payment to Special Counsel if Special Counsel fails to transfer all files, documents and materials when so requested by the Attorney General.

Section 5. Campaign Finance Compliance

Special Counsel hereby certifies that neither Special Counsel nor, to Special Counsel's knowledge, any of Special Counsel's partners, officers, directors, or shareholders, nor the spouses of any such persons, have made contributions in excess of the limitation specified in R.C. 3517.13.

Special Counsel shall, at all times, have a completed, notarized Affidavit of Eligibility on file with the Attorney General's Outside Counsel Section. Failure to provide a completed, notarized Affidavit of Eligibility may result in termination of the Special Counsel appointment.

Section 6. Compliance with Rules of Professional Conduct

Special Counsel represents and warrants that the attorneys listed on Special Counsel's RFQ Response are currently licensed to practice in, and in good standing before the bar of, the jurisdiction or jurisdictions listed on the RFQ Response (each an "Admission Jurisdiction"). If, during the appointment as Special Counsel, a complaint is issued against Special Counsel or any attorney providing services pursuant to this Retention Agreement, alleging a violation of the Supreme Court Rules for the Government of the Bar of Ohio, or the applicable rules governing the state bar in any Admission Jurisdiction, or the Rules, then Special Counsel must give timely written notice, with a copy via email, of such complaint to the Director of Outside Counsel. Such notice must include the nature of the allegations set forth in the complaint.

Section 7. Conflicts of Interest and Ethics Compliance

Special Counsel represents and warrants that, as of the date of this Retention Agreement, Special Counsel has no conflict of interest that has not been consented to in writing under the Rules in undertaking Special Counsel's representation hereunder. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises pursuant to Rule 1.7 of the Ohio Rules of Professional Conduct, then Special Counsel will give timely written notice to the Client and the Attorney General. Special Counsel must request and obtain a written consent or waiver prior to

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undertaking representation adverse to any agencies, boards, departments, commissions, colleges, universities or retirement systems if either Special Counsel or any attorney in Special Counsel's firm is then engaged under an Assignment Letter to represent such agency, board, department, commission, college, university or retirement system.

Special Counsel represents, warrants and certifies that, to Specials Counsel's knowledge, it and its partners, associates, employees, and other persons assisting with the legal work contemplated by this Retention Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws set forth in R.C. Chapter 102 and R.C. §§2921.01, 2921.42, 2921.421, and 2921.43. Special Counsel further represents, warrants, and certifies that neither Special Counsel, nor any of its partners, associates, employees or other persons assisting with the legal work contemplated by this Retention Agreement will do any act that is inconsistent with such laws.

Section 8. Findings for Recovery

Special Counsel warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If the warranty is deemed to be false, this Retention Agreement is void ab initio, and Special Counsel must immediately repay to the State of Ohio any funds paid under this Retention Agreement.

Section 9. Insurance

Special Counsel shall maintain, or cause to be maintained at no cost or expense to the Attorney General, adequate professional liability insurance in accordance with Gov. Bar R. III §4. Unless otherwise stated, such insurance shall remain in force at all times from the date hereof through the term of this Retention Agreement, with companies authorized to do business in Ohio with an A.M. Best or Fitch Rating of at least "A" unless otherwise approved in writing by the Attorney General.

Special Counsel warrants that it will comply with all conditions of each policy to assure that each policy is kept in full force and effect. Any and all insurance claims must be made on a timely basis as required in the conditions of each policy.

Section 10. Compliance with Law

Special Counsel agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances in the conduct of the work hereunder.

Section 11. Miscellaneous

A. Counterparts

This Retention Agreement may be executed in one or more counterpart(s), each of which shall be an original and all of which shall constitute one and the same instrument.

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B. Severability of Terms and Conditions

If any provision of this Retention Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality and enforceability of all other provisions of this Retention Agreement shall not in any way be affected or impaired unless such severance would cause this Retention Agreement to fail of its essential purpose.

C. Waiver of Terms and Conditions

Failure to enforce or insist on compliance with any of the terms and conditions of this Retention Agreement by the Attorney General shall not constitute a waiver or relinquishment of any such term or condition of the Retention Agreement on the part of the Attorney General but the same shall remain at all times in full force and effect.

D. Entire Agreement / Integration

This Retention Agreement, and any Assignment Letter issued pursuant to the Retention Agreement, constitute the entire understanding of the Parties. Both Parties agree that there is no other understanding or agreement other than the terms expressly stated herein or in the Assignment Letter.

E. Amendment or Modification

No amendment or modification of this Retention Agreement shall be effective against either Party unless such amendment or modification is set forth in writing and signed by both Parties.

F. Headings

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Retention Agreement or in any other way to affect the validity, construction or interpretation of any of the provisions of this Retention Agreement.

G. Conflict

In the event of conflict between the terms of this Retention Agreement and the terms of any Assignment Letter, the terms of the Assignment Letter shall control.

[Remainder of Page Intentionally Left Blank]

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The undersigned represent that they are authorized to enter into this Retention Agreement. The undersigned acknowledge they have read and understand all terms set forth herein. By affixing their signatures below, the Parties evidence their intent to be bound hereto.

OHIO ATTORNEY GENERAL

By: Michael Hall

Name: Michael Hall

Title: Director of Outside Counsel

Date: 6/26/15

SPECIAL COUNSEL

Firm: Bricker & Eckler, LLP

By: Maria J. Armstrong

Name: MARIA J. ARMSTRONG

Title: Partner

Date: 6/22/15

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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

PENGAD 800-631-6989
EXHIBIT
12

DIRECTIVE 2016-01
January 04, 2016

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

Re: Re-Review of Ohio Drug Price Relief Act Part-Petitions

BACKGROUND

It has come to this Office's attention that several boards of elections have approved part-petitions on which it appears that a person other than the signer of the petition or the circulator may have, contrary to Ohio law, removed one or more signer's name from the part-petition prior to it being filed with the appropriate election official (i.e., striking a signature). Additionally, it appears that some circulators may have pre-affixed the number of signatures they purportedly witnessed prior to actually circulating the petition, potentially calling into question how many signatures the circulator properly witnessed and attested to in his or her circulator statement.

STRIKING A SIGNATURE

State law clearly restricts removal of a petition signer's name from a part-petition except in the following, limited circumstances:

- "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,"[1]; and

- "Any signer of a petition or an attorney in fact acting pursuant to section 3501.382 of the Revised Code on behalf of a signer may remove the signer's signature from that petition at any time before the petition is filed in a public office by striking the signer's name from the petition."[2]

These provisions of law exist to protect the integrity of the elections process and the circulator, who is required to attest under penalty of election falsification that the circulator witnessed every signature and that he or she believes all of the signatures witnessed are genuine and affixed by qualified electors. Most importantly, however, the witness and attestation requirements serve to protect the registered Ohio voters exercising their right under the state constitution to petition state government (in this case, to propose a state law for consideration by the General Assembly) from having their signature improperly removed from a part-petition.

---

[1] R.C. 3501.38(G).
[2] R.C. 3501.38(H).

Reviewing a large cross-section of part-petitions from across the state has revealed that a strikingly similar method of eliminating a petition signer's name exists across an alarmingly large number of part-petitions, thus raising a question of fact whether someone other than the petition signer or circulator may have illegally removed a petition signer's signature from part-petitions.

More specifically, it appears that this same or similar method of signature elimination (i.e., a thick, bold stroke of black ink) was used on part-petitions circulated by different individuals, some of whom were paid by different petition circulating firms. If true, a board of elections could conclude that there is sufficient evidence that a part-petition bearing such a bold strike-through was used to remove a signature contrary to Ohio law.

PRE-AFFIXING THE NUMBER OF SIGNATURES WITNESSED ON A CIRCULATOR STATEMENT

Ohio law requires every circulator of a part-petition to complete a statement affirmed under penalty of election falsification indicating the number of signatures contained on that part-petition, and that the circulator witnessed the affixing of every signature he or she reported thereon.[3] This provision is "a substantial, reasonable requirement"[4] and functions to prevent at least two types of petition fraud: (1) fraud resulting from signatures being placed on a part-petition after the circulator has executed the affirmation, and (2) fraud resulting from a circulator executing the affirmation with a number that is close to, or corresponds with, the number of pre-printed blank lines on the part-petition and subsequently leaving it in a public location or distributing it serially to friends and family to sign without the circulator being present to witness signatures.

The Ohio Supreme Court has accorded flexibility to circulators, providing that "...arithmetic errors will be tolerated, but only if the error does not promote fraud."[5] The relevant example in the Election Official Manual recognizes that "arithmetic errors" may occur:

> The circulator's statement indicates that the circulator witnessed 22 signatures, but there are only 20 signatures on the petition. 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.[6]

By their nature, however, "arithmetic errors" should be isolated, unintentional oversights.

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[3] R.C. 3501.38(E)(1).

[4] *State ex rel. Loss v. Bd. of Elections of Lucas Cty.*, 29 Ohio St. 2d 233 (1972).

[5] *State ex rel. Citizens For Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St. 3d 167 (1992), interpreting *Loss*, Id.

[6] Ohio Election Official Manual, Chapter 11, page 9, discussing *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139 (2005).

The "over-reporting of signatures" (e.g., a circulator statement purporting to witness 28 signatures on a part-petition bearing only two signatures) is so strikingly prevalent in this submission that the suggestion that unintentional "arithmetic errors" are to blame strains credulity. This cannot be the result envisioned by case law; otherwise the exception would swallow the rule.

INSTRUCTIONS

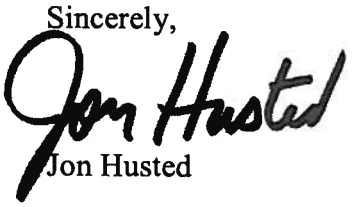
Ohio law[7] vests authority in the boards of elections to determine the validity of signatures contained on part-petitions of proposed initiated statutes. It is ultimately the Secretary of State, however, who must "determine and certify to the sufficiency of those petitions."[8]

As such, my office is returning all part petitions to the boards of elections to conduct a re-review to determine whether or not the evidence on the part petitions themselves in each county is such that the board determines a signature was improperly removed in violation of R.C. 3501.38(G) and/or (H) or that the circulator's statement is invalid under R.C. 3501.38(E)(1).

Boards of elections must complete this re-review, including any evidentiary hearings that they may believe necessary to complete their duties, and re-certify their findings to the Secretary of State's Office no later than January 29, 2016. Boards of elections must follow the other relevant instructions of Directive 2015-40 as a part of their re-review and re-certification process.

If you have any questions regarding this Directive, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585. Questions regarding issuing and serving subpoenas and/or conducting a lawful evidentiary hearing should be directed to the board's legal counsel, the county's prosecuting attorney.

Sincerely,



Jon Husted

[7] R.C. 3501.11(K) and 3519.15.
[8] R.C. 3501.05(K).

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

PENGAD 800-631-6989
EXHIBIT
13

January 5, 2016

The Honorable Cliff Rosenberger
Speaker, Ohio House of Representatives
77 South High St., 14th Floor
Columbus, Ohio 43215

The Honorable Keith Faber
President, Ohio Senate
Statehouse, 2nd Floor
Columbus, Ohio 43215

The Honorable Fred Strahorn
Minority Leader, Ohio House of Representatives
77 South High St., 14th Floor
Columbus, Ohio 43215

The Honorable Joe Schiavoni
Minority Leader, Ohio Senate
Statehouse, 3rd Floor
Columbus, Ohio 43215

Re: Fresh Start Act Proposed Initiated Statute

Dear Speaker Rosenberger, President Faber, and Minority Leaders Strahorn and Schiavoni:

This office has certified that the petition proposing the Fresh Start Act Initiated Statute meets requirements of Ohio Constitution Article II, Section 1b and 1g; and therefore, pursuant to Ohio Constitution Article II, Section 1b, I am transmitting the full text of the proposed law to the General Assembly for its consideration.

Should you have any questions, please feel free to contact Craig Forbes at (614) 644-1373.

Sincerely,

Jon Husted

Jon Husted

Enclosure

cc: Brad Young, House Clerk
Vincent Keeran, Senate Clerk

FULL TEXT OF LAW

Be it Enacted by the People of the State of Ohio that Section 2953.37 of the Ohio Revised Code shall be amended to provide as follows:

[New language is underlined, repealed language is struck through, and unchanged language is not underlined and not struck through]

2953.37 Expungement of certain convictions for offenses no longer unlawful

(A) As used in this section:

(1) "Expunge" means to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

(2) "Official records" has the same meaning as in section 2953.51 of the Revised Code.

(3) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.

(4) "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

(B) Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and who is authorized by division (H)(2)(a) of that section to file an application under this section for the expungement of the conviction record, or any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of a section of chapter 2925 of the Revised Code that is no longer a criminal offense in Ohio or a violation of section 2923.01 (conspiracy), 2923.02 (attempt to commit an offense), 2923.03 (complicity), 2923.24 (possessing criminal tools) or 2923.32 (corrupt activity) of the Revised Code to the extent that it relates to an offense under chapter 2925 of the Revised Code that is no longer a criminal offense in Ohio, may apply to the sentencing court for the expungement of the record of conviction, and any person who is or was adjudicated to be a delinquent child based on conduct that was an offense under chapter 2925 of the Revised Code, or under section 2923.01, 2923.02, 2923.03, 2923.24, or 2923.32 of the Revised Code to the extent that the adjudication relates or related to conduct prohibited under chapter 2925 of the Revised Code, if committed by an adult, may apply to the juvenile court that made the adjudication for expungement of the adjudication if such conduct is no longer a criminal offense in Ohio. The person may file the application at any time on or after September 30, 2011. The application shall do all of the following:

(1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense or adjudication as a delinquent child, and the court in which the conviction occurred or the plea of guilty or adjudication was entered;

(2) Include evidence that the offense was a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and that the applicant is authorized by division (H)(2)(a) of that section to file an application under this section or evidence that the offense was a violation, or would have been if committed by an adult, of a section of chapter 2925 of the Revised Code that is no longer a criminal offense in Ohio or a violation of section 2923.01 (conspiracy), 2923.02 (attempt to commit an offense),

2923.03 (complicity), 2923.24 (possessing criminal tools) or 2923.32 (corrupt activity) of the Revised Code to the extent that it relates to an offense under chapter 2925 of the Revised Code that is no longer a criminal offense in Ohio;

(3) Include a request for expungement of the record of conviction or record of adjudication of that offense under this section.

(C) Upon the filing of an application under division (B) of this section and the payment of the fee described in division (D)(3) of this section if applicable, the court shall set a date for a hearing within a reasonable time and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. The court shall hold the hearing scheduled under this division.

(D)(1) At the hearing held under division (C) of this section, the court shall do each of the following:

(a) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, or whether the applicant has been convicted of or pleaded guilty to a violation of a section of chapter 2925 of the Revised Code or a violation of section 2923.01 (conspiracy), 2923.02 (attempt to commit an offense), 2923.03 (complicity), 2923.24 (possessing criminal tools) or 2923.32 (corrupt activity) of the Revised Code to the extent that it relates to an offense under chapter 2925 of the Revised Code and whether the conduct that was the basis of the violation is no longer a criminal offense in Ohio, or whether the applicant has been adjudicated to be a delinquent child based on conduct that was an offense under chapter 2925 of the Revised Code, or under section 2923.01, 2923.02, 2923.03, 2923.24, or 2923.32 of the Revised Code to the extent that the adjudication relates or related to conduct prohibited under chapter 2925 of the Revised Code, if committed by an adult, and whether conduct is no longer a criminal offense in Ohio;

(b) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011;

(c) If the prosecutor has filed an objection in accordance with division (C) of this section, consider the reasons against granting the application specified by the prosecutor in the objection and any response by the applicant;

(d) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged against the legitimate needs, if any, of the government to maintain those records.

(2)(a) The court ~~may~~ shall order the expungement of all official records pertaining to the case and the deletion of all index references to the case and, if it does order the expungement, shall send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (D)(1) of

this section, determines both of the following:

(i) That the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as it existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, or that the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011, or that the applicant has been convicted of or pleaded guilty to a violation of a section of chapter 2925 of the Revised Code or a violation of section 2923.01 (conspiracy), 2923.02 (attempt to commit an offense), 2923.03 (complicity), 2923.24 (possessing criminal tools) or 2923.32 (corrupt activity) of the Revised Code to the extent that it relates to an offense under chapter 2925 of the Revised Code that is no longer a criminal offense in Ohio, or that the applicant has been adjudicated to be a delinquent child based on conduct that was an offense under chapter 2925 of the Revised Code, or under section 2923.01, 2923.02, 2923.03, 2923.24, or 2923.32 of the Revised Code to the extent that the adjudication related to conduct prohibited under chapter 2925 of the Revised Code, if committed by an adult, and that is no longer a criminal offense in Ohio;

(ii) That the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea or adjudication expunged are not significantly outweighed by any legitimate needs of the government to maintain those records.

(b) The proceedings in the case that is the subject of an order issued under division (D)(2)(a) of this section shall be considered not to have occurred and the conviction or guilty plea or adjudication of the person who is the subject of the proceedings shall be expunged. The record of the conviction or adjudication shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code or a determination under section 2923.125 or 2923.1212 of the Revised Code of eligibility for a concealed handgun license. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

(c)(1) If an applicant moving for expungement under this section is, at the time of the application, still subject to any sanction, detention or sentence that was imposed, in whole or part, for the violation or conduct, the application for expungement may also include an additional request for an order of discharge, release, modification or other appropriate relief from the sanction, detention or sentence. The request for an additional order of relief may be filed at the same time as the application for an order of expungement or at any time after that application has been filed prior to the court hearing to be held under division (c) of this section. When requesting an order of relief in addition to expungement, the applicant shall identify the basis for the applicant's claim of being still subject to a sanction, detention or sentence based, in whole or in part, on a conviction or adjudication for conduct that is no longer a criminal offense in Ohio, and request that the court to vacate or set aside that sanction, detention or sentence or grant other appropriate relief.

(2) If an application under this section requests an order of relief in addition to expungement, the court shall notify the prosecutor for the case of the request and the prosecutor may file with the court a response to the request prior to the date set for the hearing on the application for

expungement. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the request for an order or relief in addition to expungement.

(3) If the court determines an order of expungement is to be granted under division (d) of this section, the court shall then consider any request for additional relief by determining if the applicant is still subject to any sanction, detention or sentence that was based, in whole or in part, upon a conviction or adjudication for conduct that is no longer a criminal offense in Ohio. The court shall enter judgment denying additional relief if the court determines the applicant is not still subject to any sanction, detention or sentence that was based upon, in whole or in part, a conviction or adjudication for conduct that is no longer a criminal offense in Ohio. The court shall enter judgment that vacates or sets aside or modifies any sanction, detention or sentence that it determines was based, in whole or in part, upon a conviction or adjudication for conduct that is no longer a criminal offense in Ohio. The court may resentence the applicant if the sentence, detention or sanction also related a conviction or adjudication for conduct that is not the subject of the application for expungement.

(4) Any order of relief in addition to an order of expungement granted under this division shall restore to the person who is the subject of the order of relief all rights and privileges forfeited based on the conviction or adjudication not otherwise restored by termination of the sentence, detention or sanction or by final release on parole or post-release control.

(f) The attorney general shall develop a public media advisory that summarizes the expungement and additional relief procedures established under this section. Within thirty days after the adoption of this section, the attorney general shall provide a copy of the advisory to each daily newspaper published in this state and each television station that broadcasts in this state. The attorney general may provide the advisory in a tangible form, an electronic form, or both.

(g)(1) With respect to any person, including, but not limited to, a consumer reporting agency, that acquires records of conviction or adjudication as a delinquent child from any governmental entity, that governmental entity shall not make available to such person information concerning such records of conviction or adjudication that have been expunged pursuant to this section.

(2) Each person, including, but not limited to, a consumer reporting agency, that has acquired records of conviction or adjudication as a delinquent child from any governmental entity shall, prior to disclosing such records, (1) obtain from that governmental entity, on a monthly basis or on such other schedule as the governmental entity may establish, any updated records of conviction, adjudication or other information available for the purpose of complying with this section, and (2) update its records of conviction or adjudication to permanently delete such expunged records. Such person shall not further disclose such expunged records.

(3) A person may not be questioned in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, with respect to any conviction or adjudication expunged under this section.

(h) Upon request by an applicant when filing an application under division (b) of this section, or upon the filing of any objections by the prosecutor to the application, the court may appoint legal counsel to represent the applicant upon a finding that the applicant is indigent and that fair and effective consideration of the application will be aided by the providing counsel for the application.

PENGAD 800-631-6989
EXHIBIT
14

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

January 3, 2012

The Honorable William G. Batchelder
Speaker, Ohio House of Representatives
77 South High St., 14th Floor
Columbus, Ohio 43215

The Honorable Thomas E. Niehaus
President, Ohio Senate
Statehouse, 2nd Floor
Columbus, Ohio 43215

The Honorable Armond Budish
Minority Leader, Ohio House of Representatives
77 South High St., 14th Floor
Columbus, Ohio 43215

The Honorable Capri S. Cafaro
Minority Leader, Ohio Senate
Statehouse, 3rd Floor
Columbus, Ohio 43215

Re: Dog Auction Proposed Initiated Statute

Dear Speaker Batchelder, President Niehaus, and Minority Leaders Budish and Cafaro:

A petition for a proposed initiated statute regarding dog auctions was filed in my office on December 22, 2011, more than ten days prior to the commencement of a session of the General Assembly. The petition purports to contain the number of signatures required by law and those signatures will be verified by January 13, 2012. As required by Ohio Constitution Article II, Section 1b, I am transmitting to the General Assembly a part-petition including the full text of the proposed initiated statute.

Should you have any questions, please feel free to contact me or my Chief Elections Counsel, Betsy Luper Schuster, at (614) 466-2585.

Sincerely,

Jon Husted

Jon Husted

Enclosure

Cc: Tom Sherman, House Deputy Clerk
Vincent Keeran, Senate Clerk

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

January 10, 2012

Mr. Donald J. McTigue
McTigue & McGinnis LLP
550 East Walnut Street
Columbus, Ohio 43215

Dear Mr. McTigue:

As attorney of record for Mary O'Connor Shaver of Lewis Center, James Tew of Delaware, Veronica Dickey of Massillon, and Matthew Ditchey of Youngstown, collectively the committee to represent petitioners proposing an initiated statute first to be submitted to the 129th General Assembly (the "Committee"), please be advised of the following:

> The Secretary of State's office has received reports from those counties having performed petition review and signature verification for the petition that the Committee filed with this office on December 22, 2011 proposing an initiated statute first to be submitted to the 129th General Assembly. Pursuant to Article II, Sections 1b and 1g, of the Ohio Constitution and sections 3501.05(K) and 3519.16 of the Ohio Revised Code, I hereby certify that petitioners have submitted a total of 115,209 valid signatures on behalf of the Referendum and that signatures from 51 counties meet or exceed one and one-half percent (1.5%) of the total number of votes cast for the office of governor in the respective counties at the last gubernatorial election. The requirements of Article II, Sections 1b and 1g, of the Ohio Constitution are thereby not fully satisfied. Accordingly, the Committee shall be allowed ten additional days after the date of this notification for the filing of additional signatures to the petition.

If you have any questions about this certification, please contact my Chief Elections Counsel, Betsy Luper Schuster, at 614-466-2585.

Sincerely,

Jon Husted

cc: Members of the Committee

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

January 27, 2012

Mr. Donald J. McTigue
McTigue & McGinnis LLP
550 East Walnut Street
Columbus, Ohio 43215

Dear Mr. McTigue:

As attorney of record for Mary O'Connor Shaver of Lewis Center, James Tew of Delaware, Veronica Dickey of Massillon, and Matthew Ditchey of Youngstown, collectively the committee to represent petitioners proposing an initiated statute first to be submitted to the 129th General Assembly (the "Committee"), please be advised of the following:

> The Secretary of State's office has received reports from those counties having performed petition review and signature verification for the petition that the Committee filed with this office on December 22, 2011, and supplemented by petitions filed on January 20, 2012, proposing an initiated statute first to be submitted to the 129th General Assembly. Pursuant to Article II, Sections 1b and 1g of the Ohio Constitution and sections 3501.05(K) and 3519.16 of the Ohio Revised Code, I hereby certify that petitioners have submitted a total of 118,115 valid signatures on behalf of the initiated statute and that signatures from 51 counties meet or exceed one and one-half percent (1.5%) of the total number of votes cast for the office of governor in the respective counties at the last gubernatorial election. Accordingly, the requirements of Article II, Sections 1b and 1g of the Ohio Constitution are thereby fully satisfied.

If you have any questions about this certification, please contact my Chief Elections Counsel, Betsy Luper Schuster, at 614-466-2585.

Sincerely,

Jon Husted

cc: Members of the Committee

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

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EXHIBIT
15

February 23, 2015

Director Michele Lockard
Deputy Director Melanie Willeford
Pickaway County Board of Elections
141 West Main Street, Suite 800
Circleville, Ohio 43113

Re: Tie Vote on February 11, 2015 on Motion to Invalidate Josh Ford's Nominating Petition for City Council

Dear Director Lockard and Deputy Director Willeford:

On February 11, 2015, the Pickaway County Board of Elections (the Board) met for the purpose of certifying candidates and issues to the May 5, 2015 primary election ballot. Chairperson Winner made a motion to certify the candidacy of Josh Ford for third ward councilman in the City of Circleville. Board Member Lynch seconded the motion. Board Members Bensonhaver and Welsh voted against the motion to certify Mr. Ford's candidacy. Pursuant to R.C. 3501.11(X), the tie vote of the Board was submitted to the Secretary of State for a decision.

Mr. Ford filed with the Board a declaration of candidacy seeking to be a candidate for a full term as a city council member from the third ward in the City of Circleville. His declaration of candidacy consisted of two part-petitions. One part-petition contained 21 signatures. The other part-petition contained eight signatures. The circulator statement on each part-petition, however, stated that each part-petition contained 25 signatures.

Board Members Bensonhaver and Welsh submit that because the number of signatures reflected in the circulator statement on each part-petition does not match the actual number of signatures on the part-petitions, the petitions should be invalidated. They argue that, if the failure to enter the number of signatures in the circulator statement is grounds for invalidation, then the failure to enter the correct number of signatures likewise must be grounds for invalidation.

Board Members Winner and Lynch contend that the petitions should not be invalidated because the number of signatures reported in the circulator statements is greater than the total number of signatures on the part-petitions. They cite to past directives from this office stating that a Board should not invalidate a part-petition when the circulator attests to witnessing more than the number of actual signatures on the part-petition.

A person who seeks to have his or her name certified to the ballot as a candidate for municipal office must file with the appropriate board of elections a nominating petition and statement of candidacy that complies with the applicable requirements of Ohio law. One of those

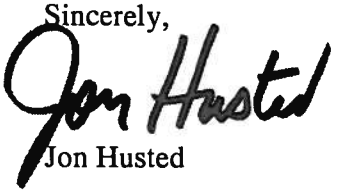
requirements is that the circulator of a part-petition must sign a statement under penalty of election falsification attesting to, among other things, the number of signatures contained on the part-petition.[1]

The circulator statement on each of Mr. Ford's part-petitions includes the number of signatures witnessed by the circulator. It is well-settled law that a board of elections cannot reject a part-petition solely because the circulator statement indicates that it contains more signatures than it does.[2] Further, I have consistently instructed boards of elections that when examining and verifying candidate petitions:

> 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. 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.[3]

In light of this instruction and the long-standing case law, I break the tie in favor of validating Mr. Ford's petition and certifying him as a candidate for third ward councilman in the City of Circleville.

Sincerely,



Jon Husted

cc: Members of the Pickaway County Board of Elections

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[1] R.C. 3501.38(E).
[2] *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167 (1992).
[3] Directive 2014-02; Directive 2013-17; Directive 2011-40.

Kasper, Rachel

From: Meghan Lee <meigsboemeghan@gmail.com>
Sent: Thursday, January 07, 2016 9:37 AM
To: Kasper, Rachel
Subject: Ohio Drug Price Relief Act Petitions

Good morning,

We received our Ohio Drug Price Relief Act Petitions yesterday. Both the Director and I have read Directive 2016-01 and are unsure of what actions you want us to perform. We would appreciate some advice on the matter.

Thank you,

Meghan Lee
Deputy Director
Meigs County Board of Elections

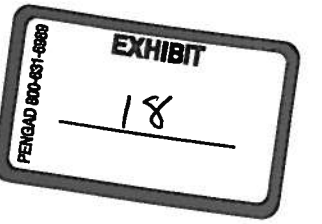
Kasper, Rachel

From: Pickaway
Sent: Wednesday, January 06, 2016 8:27 AM
To: Kasper, Rachel
Subject: Directive 2016-01

Rachel,

Please give us a call when you have a minute about Directive 2016-01. Would like to discuss.

Thanks,
Michele
Pickaway
740-474-8077



Seskes, Brandi

From: Shelby County Board of Elections <shelby@ohiosecretaryofstate.gov>
Sent: Tuesday, January 05, 2016 10:47 AM
To: Seskes, Brandi
Subject: Directive 2016-01

Categories: Blue Category

Brandi,

In re reviewing the petitions I am confused.....how do I determine who crossed out signatures? I am not comfortable with changing valid petitions to invalid based on crossed out names.....

Also on the circulator statement without witnessing the person filling it out how do we again change? I feel this opens us up for lawsuits.....

If we are to change numbers is there a new certification form?
Thanks
dawn

EXHIBIT
19
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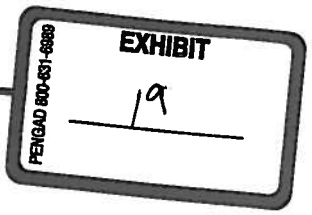


Seskes, Brandi

From: Tuckerman, Barbara <tuckerman@co.sandusky.oh.us>
Sent: Wednesday, January 06, 2016 12:19 PM
To: Seskes, Brandi
Subject: petitions here

Categories: Red Category

What are we to do with these petitions? Must we go over all of them again or just look for something in particular?

Barbara Tuckerman

Seskes, Brandi

From: Tuckerman, Barbara <tuckerman@co.sandusky.oh.us>
Sent: Tuesday, January 05, 2016 9:55 AM
To: Seskes, Brandi
Subject: Holy Toledo

Categories: Red Category

Brandi,

Understanding we have basically nothing to do the State sends back petitions to be examined again.

Questions: Blacked out lines...how can we determine who blacked them out? IMPOSSIBLE!

The 28 number on the back would be our call to disallow the entire petition if that number isn't at least close?

Does state law not read it is the Secretary of State who certify these petitions.

Was the job of originally sorting and looking them over done by the blind?

Later,

Barb

Working with only one clerk who is new and Lisa.

Seskes, Brandi

From: Pietenpol, Laura
Sent: Thursday, January 07, 2016 10:00 AM
To: Seskes, Brandi
Subject: FW: Reporting Certification Form - Re-Review of Ohio Drug Price Relief Act Part-Petitions

See below

From: Tuckerman, Barbara [mailto:tuckerman@co.sandusky.oh.us]
Sent: Thursday, January 07, 2016 9:06 AM
To: Pietenpol, Laura
Subject: RE: Reporting Certification Form - Re-Review of Ohio Drug Price Relief Act Part-Petitions

Once again what are we looking for? What question are we trying to answer?
Barb

From: Pietenpol, Laura [mailto:LPietenp@ohiosecretaryofstate.gov]
Sent: Tuesday, January 05, 2016 2:37 PM
To: All Counties
Cc: BOE Contacts
Subject: Reporting Certification Form - Re-Review of Ohio Drug Price Relief Act Part-Petitions
Importance: High

Director and Deputy Director:

The Secretary of State's Office has shipped the Ohio Drug Price Relief Act part-petitions to boards today. Per Directive 2016-01 boards must conduct a re-review of the part-petitions and certify your results.

As soon as you complete the re-review on your county's part-petitions, you must return your completed certification form (attached). The attached certification form must be completed and submitted electronically via Elect Collect by clicking the "Submit" button. The certification form must also be saved and printed. The Director must sign the certification form and return the signed certification form to Emily Bright via email to Ebright@ohiosecretaryofstate.gov.

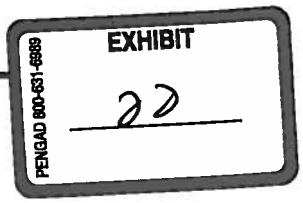
All certification forms must be received by NOON on January 29, 2016.

After you have sent your certification form to Emily Bright, you must return all part-petitions to the Secretary of State's Office, Elections Division, 180 East Broad Street, 15th Floor, Columbus, Ohio 43215, via a trackable delivery method, no later than Tuesday, February 2, 2016.

All part-petitions must be received by the Secretary of State's Office no later than Tuesday, February 2, 2016.

Thank you.

Seskes, Brandi



From: Tuckerman, Barbara <tuckerman@co.sandusky.oh.us>
Sent: Monday, January 11, 2016 10:29 AM
To: Seskes, Brandi
Subject: one more time

Categories: Red Category

Good morning Brandi,

Your office sent all the petitions back with only a comment to review them. When we first checked them we used the SOS instructions for
checking them, the same instructions we have followed for all petitions. There are no detailed instructions for this review.
I have however received a phone call and written instructions from the attorney for the pharma people. Since when should we follow
directions from ANYONE except your office? I have made several requests for some directions from your office and it seems no one is reading my
e-mails.
At this time there are only two Board Members in town, one has yet to be appointed and the other is in Florida.
So far the consensus is our authority comes directly and only from the SOS.

So one more time...WHAT DO WE DO WITH THESE PETITIONS?

BARB

Seskes, Brandi

From: Pietenpol, Laura
Sent: Wednesday, January 27, 2016 11:28 AM
To: Seskes, Brandi
Subject: FW: re-review of state petitions

Please see below....

Laura Pietenpol

Deputy Elections Administrator
Office of the Secretary of State Jon Husted
180 E. Broad St., 15th Floor
Columbus, OH 43215
Phone: 1-614 466-6826
Fax: 1-614-485-7645

From: Hartley, Lisa [mailto:hartley@co.sandusky.oh.us]
Sent: Wednesday, January 27, 2016 9:20 AM
To: Pietenpol, Laura
Subject: re-review of state petitions

Could you please give me a call regarding the re-review of state petitions when you get a chance.....I will be out to lunch between 1 and 2:15.

Thanks!
Lisa
419-334-6182

Kuruc, Carolyn

From: Pietenpol, Laura
Sent: Friday, January 22, 2016 1:37 PM
To: Kuruc, Carolyn
Cc: Kasper, Rachel
Subject: FW: Certification Form
Attachments: Initial Filing Certfication Form Directive 2016-01.pdf; SOS Letter Re-Review of Ohio Drug Price Act Part-Petitions.pdf

Carrie,

Greene County did submit the 2016-01 certification report (attached). Please see the letter submitted by Greene County regarding re-review.

Thanks!

Laura Pietenpol

Deputy Elections Administrator
Office of the Secretary of State Jon Husted
180 E. Broad St., 15th Floor
Columbus, OH 43215
Phone: 1-614 466-6826
Fax: 1-614-485-7645

From: Bright, Emily
Sent: Friday, January 22, 2016 11:21 AM
To: Pietenpol, Laura
Subject: FW: Certification Form

From: McCoy, Llyn [mailto:lmccoy@co.greene.oh.us]
Sent: Friday, January 22, 2016 11:19 AM
To: Bright, Emily
Subject: Certification Form

Llyn McCoy
Director, Greene County Board of Elections
(937) 562-6174

Jon Husted
Ohio Secretary of State

INITIAL FILING - CERTIFICATION FORM - Directive 2016-01

Petition Filing: December 22, 2015
Initiative Petition Proposing an Addition to the Ohio Revised Code
Ohio Drug Price Relief Act

On behalf of the Greene County Board of Elections, I hereby certify that the numbers of valid and invalid signatures on the part-petitions for the proposed addition to the Ohio Revised Code named above are as follows:

1. Number of **valid** part-petitions	250
2. Number of **valid** *signatures* on **valid** part-petitions	2,764
3. Number of **invalid** *signatures* on **valid** part-petitions	994
4. Number of **invalid** *part-petitions*	0
5. Number of signatures on **invalid** *part-petitions*	0
6. **Total** number of ***part-petitions*** received (valid & invalid)	250
7. **Total** number of ***signatures*** on part-petitions (valid & invalid)	3,758

Director's Signature: Llyn McCoy Date: 01/22/2016

Click on the submit button below to send your data electronically. This signed certification form must be received by Emily Bright via email at Ebright@ohiosecretaryofstate.gov no later than 12 noon on Friday, January 29, 2016.

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

RECEIVED
SECRETARY OF STATE
1/22/2016 10:34 AM
RECEIPT NO.
53194

Almost Done!

Name: Llyn McCoy
Phone: (937) 562-6174
Enter (111) 222-3333 as 1112223333

E Mail: lmccoy@co.greene.oh.us
Enter a valid email address e.g. name@somewhere.com

GREENE COUNTY BOARD OF ELECTIONS
551 Ledbetter Road, Xenia, Ohio 45385
937-562-6170 Phone
937-562-6171 Fax
www.co.greene.oh.us

Board Members
Brenda Lewis, Chair
Doris Adams
Anne Gerard
Robert Wood

Director
Llyn McCoy

Deputy Director
Denise Percival

January 22, 2016

Ms. Rachel Kasper
Elections Counsel
OHIO SECRETARY OF STATE
180 E. Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Rachel:

RE: Re-Review of Ohio Drug Price Relief Act Part-Petitions (Director 2016-01)

The Greene County Board of Elections met with Elizabeth Ellis, Civil Division Chief of the Greene County Prosecutor's Office during a regularly scheduled board meeting held January 19, 2016, to discuss Directive 2016-01 Re-Review of Ohio Drug Price Relief Act Part-Petitions. Board members in attendance included Robert Wood, Acting Chair, Doris Adams and Anne Gerard.

At said meeting, it was the opinion of legal counsel that under statute the Greene County Board of Elections has no authority to perform a re-review of petitions once they have been submitted to the Secretary of State. Therefore, the following action was taken:

> *Ms. Doris Adams made a motion for the Greene County Board of Elections to follow the advice of legal counsel thus no re-review of the Ohio Drug Price Relief Act part-petitions will be performed. Ms. Anne Gerard seconded the motion. The motion passed unanimously via acclamation vote.*

Respectfully,

GREENE COUNTY BOARD OF ELECTIONS
Robert Wood, Acting Chair
Doris Adams
Anne Gerard

cc: Elizabeth Ellis, Civil Division Chief, Greene County Prosecutor's Office
Llyn McCoy, Director, Greene County Board of Elections

PENGAD 800-631-6989
EXHIBIT
25

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

February 4, 2016

The Honorable Cliff Rosenberger
Speaker, Ohio House of Representatives
77 South High St., 14th Floor
Columbus, Ohio 43215

The Honorable Keith Faber
President, Ohio Senate
Statehouse, 2nd Floor
Columbus, Ohio 43215

The Honorable Fred Strahorn
Minority Leader, Ohio House of Representatives
77 South High St., 14th Floor
Columbus, Ohio 43215

The Honorable Joe Schiavoni
Minority Leader, Ohio Senate
Statehouse, 3rd Floor
Columbus, Ohio 43215

Re: Ohio Drug Price Relief Act Proposed Initiated Statute

Dear Speaker Rosenberger, President Faber, and Minority Leaders Strahorn and Schiavoni:

Pursuant to Article II, Section 1b, I am transmitting, effective today, the full text of the Ohio Drug Price Relief Act (DPRA) proposed law to the Ohio General Assembly for its consideration.

However, I do so with reservations.

Despite having gathered the vast majority of their signatures by mid-November 2015, petitioners waited until December 22, 2015 to file with my office, pursuant to Article 2, Section 1b of the Ohio Constitution, an initiative petition purporting to contain 171,205 signatures proposing an addition to the Ohio Revised Code. The next day, I forwarded the part-petitions to the county boards of elections for review. Because petitioners waited so long to file their petitions, I instructed the county boards of election to complete their review no later than December 30, 2015—an uncommonly quick turn-around time.

Subsequently, my office became aware of an unprecedented quantity of suspicious "strikethroughs" of signatures on the part-petitions and other factual circumstances suggesting improper, potentially fraudulent circulator attestations—evidence that I simply cannot ignore. To clarify, this does not appear to be a case of just a few "irregularities," or "math errors," or random "strikethroughs" in a few, isolated counties across the state.

Rather, an initial review uncovered that a strikingly similar method of crossing out a petition signer's name (a bold, black marker) existed on an alarmingly large number of part-petitions in virtually every county in the state. Add to that what appeared to be a widespread, intentional effort to permit circulators to over-report the number of signatures they actually witnessed by claiming to witness as many signatures as there are lines on the petition form when the part-petition actually contained only a few signatures, thereby skirting the requirement that a circulator actually witness each signature and *then* write down the exact number of signatures witnessed.

Consequently, based on my authority as Chief Elections Officer of the state, and my statutory responsibility to "determine and certify to the sufficiency" of statewide petitions[1], I issued Directive 2016-01 and instructed all 88 county boards of elections to conduct a more thorough review of all part-petitions, suggesting evidentiary hearings in consultation with their county prosecutors, and report their findings by January 29, 2016.

A number of counties did conduct a thoughtful review of the petitions circulated in their counties according to the Directive and some conducted quasi-judicial hearings to elicit testimony from petition circulation management companies and petition circulators. The sworn testimony they have shared paints a picture of how the laws protecting the integrity of the sacred right to petition one's government were abused in this instance.

In my opinion, the Cuyahoga County Board of Elections produced the most sufficient and probative evidence in their review of the part-petitions. Cuyahoga County's evidence included sworn testimony from Ms. Pamela Lauter of Ohio Petitioning Partners, LLC, who referred to a purging process called "purging the deck" to improperly strike the signatures of others, undertaken primarily at the behest of the petition company PCI Consultants, Inc.

According to Ms. Lauter:

- *"PCI was the head contractor for the State of Ohio," explaining that PCI Consultants, Inc. has instructed them to strike signatures on petitions prior to filing, usually with a black washable marker.*
- *"...it's called purging the deck."*
- *"So someone other than the circulator was striking the petitions?" "That would be me...Yes."*

[1] R.C. 3501.05(K).

The political action committee (PAC) supporting this petition effort (Ohioans for Fair Drug Prices) underscores Ms. Lauter's contention that PCI Consultants, Inc., a California company, is, indeed, the head contractor in the State of Ohio, under whose direction all the other petitioning companies involved in this petition effort operated. According to campaign finance details filed last week, Ohioans for Fair Drug Prices paid $743,473.20 to PCI Consultants, Inc. (out of a total $799,941.95) for signature gathering. There were no other petition companies on their report.

PCI Consultants, Inc. website bills them as the "largest and most successful full service petition and field management firm in the country." Indeed they earned nearly $750,000 in Ohio alone for this effort. In a message to prospective customers, PCI boldly admits that they "...actively cross off all invalid signatures by hand" with their own "proprietary database system."[2]

I believe the evidence confirms my suspicion that, at some high level of this campaign, the order was given to strike thousands of petition signatures—ignoring Ohio laws that exist to protect the integrity of the elections process and to safeguard the right of the Ohio voter whose choice it is to sign in support of an initiative, and who may not want his or her name illegally removed from a petition.

Ohio law is clear that (1) ONLY the signer of a petition (or the signer's designated attorney-in-fact[3]) or the circulator of a petition may remove a petition signer's name from a part-petition[4], and (2) it is the duty of election officials, not a petition company, to determine whether a signature is valid.[5] Ohio law further provides that no part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence, that the statement is altered by erasure, interlineation, or otherwise, or that the statement is false in any respect.[6]

Based on the reliable, substantive evidence my office has received from Cuyahoga County, I am invalidating all the signatures on every part-petition that was circulated by the petition companies DRW Campaigns, LLC and Ohio Petitioning Partners, LLC in Cuyahoga County. It is unlikely that these improper petition practices by DRW and OPP under the direction of PCI were limited only to those petitions circulated in Cuyahoga County. Indeed, Ms. Lauer testified that she performed the same interlineation activity in other counties. Absent similar sworn testimony before those county boards of elections, I lack sufficient evidence to invalidate part-petitions beyond those in Cuyahoga County where the testimony was actually presented.

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[2] Interestingly, petitioners could have jeopardized their own efforts by illegally striking signatures. One county prosecutor reported in a letter submitted to me along with their number of certified signatures that only 79% of the stricken signatures were truly invalid.
[3] R.C. 3501.382.
[4] R.C. 3501.38(G) and (H).
[5] R.C. 3501.05(K), R.C. 3501.11(K).
[6] R.C. 3519.06.

Nevertheless, as mentioned above, pursuant to Ohio Constitution Article II, Section 1b, the petition proposing the Ohio Drug Price Relief Act Initiated Statute is hereby transmitted as of this day to the General Assembly with 96,936 valid signatures.

Sincerely,

Jon Husted

Jon Husted

Enclosure

cc: Brad Young, House Clerk
Vince Keeran, Senate Clerk

FULL TEXT OF LAW

Be it Enacted by the People of the State of Ohio that the following chapter and section are added to Title I of the Revised Code.

Chapter 194: Drug Price Relief

Section 194.01

(A) Title.
This Act shall be known as "The Ohio Drug Price Relief Act" (the "Act").

(B) Findings and Declarations.
The People of the State of Ohio hereby find and declare all of the following:

(1) Prescription drug costs have been, and continue to be, one of the greatest drivers of rising health care costs in Ohio.
(2) Nationally, prescription drug spending increased more than 800 percent between 1990 and 2013, making it one of the fastest growing segments of health care.
(3) Spending on specialty medications, such as those used to treat HIV/AIDS, Hepatitis C, and cancers, are rising faster than other types of medications. In 2014 alone, total spending on specialty medications increased by more than 23 percent.
(4) The pharmaceutical industry's practice of charging inflated drug prices has resulted in pharmaceutical company profits exceeding those of even the oil and investment banking industries.
(5) Inflated drug pricing has led to drug companies lavishing excessive pay on their executives.
(6) Excessively priced drugs continue to be an unnecessary burden on Ohio taxpayers that ultimately results in cuts to health care services and providers for people in need.
(7) Although Ohio has engaged in efforts to reduce prescription drug costs through rebates, drug manufacturers are still able to charge the State more than other government payers for the same medications, resulting in a dramatic imbalance that must be rectified.
(8) If Ohio is able to pay the same prices for prescription drugs as the amounts paid by the United States Department of Veterans Affairs, it would result in significant savings to Ohio and its taxpayers. This Act is necessary and appropriate to address these public concerns.

(C) Purposes and Intent.

The People of the State of Ohio hereby declare the following purposes and intent in enacting this Act:

(1) To enable the State of Ohio to pay the same prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs, thus rectifying the imbalance among government payers.
(2) To enable significant cost savings to Ohio and its taxpayers for prescription drugs, thus helping to stem the tide of rising health care costs in Ohio.
(3) To provide for the Act's proper legal defense should it be adopted and thereafter challenged in court.

(D) Drug Pricing.

(1) Notwithstanding any other provision of law and insofar as may be permissible under federal law, neither the State of Ohio, nor any state department, agency or other state entity, including, but not limited to, the Ohio Department of Aging, the Ohio Department of Health, the Ohio Department of Insurance, the Ohio Department of Jobs and Family Services, and the Ohio Department of Medicaid, shall enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug or agree to pay, directly or indirectly, for a prescribed drug, unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, or any other discounts or credits, as determined by the purchasing department, agency or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

(2) The price ceiling described in subsection (1) above also shall apply to all programs where the State of Ohio or any state department, agency or other state entity is the ultimate payer for the drug, even if it did not purchase the drug directly. This includes, but is not limited to, the Ohio Best Rx Program and the Ohio HIV Drug Assistance Program. In addition to agreements for any cash discounts, free goods, volume discounts, rebates, or any other discounts or credits already in place for these programs, the responsible department, agency or entity shall enter into additional agreements with drug manufacturers for further price reductions so that the net cost of the drug, as determined by the purchasing department, agency or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

(3) All state departments, agencies and other state entities that enter into one or more agreements with the manufacturer of any drug for the purchase of prescribed drugs or agreement to pay directly or indirectly for prescribed drugs shall implement this section no later than July 1, 2017.

(4) Each such department, agency or other state entity, may adopt administrative rules to implement the provisions of this section and may seek any waivers of federal law, rule, or regulation necessary to implement the provisions of this section.

(5) The General Assembly shall enact any additional laws and the Governor shall take any additional actions required to promptly carry out the provisions of this section.

(E) Liberal Construction.

This Act shall be liberally construed to effectuate its purpose.

(F) Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. If this Act and another law are approved by the voters at the same election with one or more conflicting provisions and this Act receives fewer votes, the non-conflicting provisions of this Act shall go into effect.

(G) Legal Defense.

If any provision of this Act is challenged in court, it shall be defended by the Attorney General of Ohio. The People of Ohio, by enacting this Act, hereby declare that the committee of individua's

responsible for the circulation of the petition proposing this Act ("the Proponents") have a direct and personal stake in defending this Act from constitutional or other challenges. In the event of a challenge, any one or more of the Act's Proponents shall be entitled to assert their direct and personal stake by defending the Act's validity in any court of law, including on appeal. The Proponents shall be indemnified by the State of Ohio for their reasonable attorney's fees and expenses incurred in defending the validity of the challenged Act. In the event that the Act or any of its provisions or parts are held by a court of law, after exhaustion of any appeals, to be unenforceable as being in conflict with other statutory or constitutional provisions, the Proponents shall be jointly and severally liable to pay a civil fine of $10,000 to the State of Ohio, but shall have no other personal liability to any person or entity.

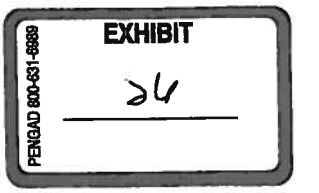

EXHIBIT A

Affidavit of Matthew Walsh

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

TRACY L. JONES, et al.,	:	
Plaintiffs,	:	Case No. 2:16-cv-00038
v.	:	**Judge Michael H. Watson**
OHIO SECRETARY OF STATE JON HUSTED, et al.,	:	**Magistrate Judge Norah McCann King**
Defendants.	:	

DECLARATION OF MATTHEW WALSH

I, Matthew Walsh, hereby declare that:

1. Since February 2014, I have served as Legislative Counsel for Ohio Secretary of State Jon Husted. Prior to my position as Legislative Counsel, I served as Elections Counsel for the Secretary from November 2012 to February 2014.

2. As Legislative Counsel for the Secretary of State, my job duties include assisting in lawsuits filed against the office and monitoring legislation introduced by the Ohio General Assembly. In my position as Elections Counsel, I frequently communicated with boards of elections on a variety of election related topics.

3. As counsel for the Secretary of State, I am familiar with Ohio's election laws.

4. In Ohio, petitioners attempting to receive consideration of an initiative petition must gather 91,677 signatures from valid electors. This number represents three percent of the total vote cast for the office of governor at the last gubernatorial election.

5. A review of the "Ohio Drug Price Relief Act" part-petitions found that over 90% of the signatures gathered for the initiative petition were collected at least six weeks prior to the December 22, 2015 filing of the part-petitions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on my personal knowledge.

Executed this 22 day of January 2016, in Columbus, Franklin County, Ohio.

Matthew Walsh
Legislative Counsel

MICHAEL T. GMOSER
BUTLER COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION

GOVERNMENT SERVICES CENTER • 10TH FLOOR
P.O. BOX 515 • 315 HIGH ST. • HAMILTON, OH 45012-0515

January 25, 2016

EXHIBIT
27
PENGAD 800-631-6989

Hon. John Husted
Secretary of the State of Ohio
180 E. Broad St., Floor 16
Columbus, OH 43215

Re: ***Re-Review of Part-Petitions for Ohio Drug Price Relief Act***

Dear Secretary Husted:

Pursuant to your Directive 2016-01, the Butler County Board of Elections re-reviewed the part-petitions for the Ohio Drug Price Relief Act which purported to contain signatures from electors residing in Butler County.

Your Directive described concerns relating to a pattern of variance between the circulator's statement of the number of signatures contained on each part-petition and the actual number of signatures. You specifically raised the question as to whether a similar method of striking names with a heavy black marker on the various part-petitions might indicate the presence of fraudulent activity by the circulators either by completing the Circulator's Statement before the signatures were affixed or by the striking of signatures after the Circulator's Statement was executed.

Attached is a spreadsheet prepared by the Butler County Board of Elections to document its re-review of the part-petitions you returned to the Board in accordance with Directive 2016-01. As you can see, 79.59% of the signatures which were marked out on these part-petitions were determined by the Board to be facially invalid and would have been determined invalid by the Board if they had not been stricken.

Based on its review, the Board is unable to conclude that the variance between the circulator's statement of the number of signatures contained on each part-petition and the actual number of signatures alone gives rise to an inference of fraud or material misrepresentation. The Board is hopeful that this information is helpful to you in reaching a decision as to the validity of the petitions.

If you require additional information or have questions concerning preparation of the attachment, please feel free to contact the Board of Elections at your convenience.

Sincerely Yours,

Roger S. Gates
Assistant Prosecuting Attorney

Enc.
cc: Diane Noonan, Director
Jocelyn Bucaro, Deputy Director

PHONE 513-887-3474 • FAX 513-887-3748
WWW.COUNTYPROSECUTOR.ORG