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.*,	:	
	:	
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.	:	

OHIO SECRETARY OF STATE'S AMENDED MERIT BRIEF

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OHIO SECRETARY OF STATE'S AMENDED MERIT BRIEF

I. INTRODUCTION

With respect to the Ohio Drug Price Relief Act (the "Proposed Initiative"), Ohio Secretary of State Jon Husted has, at all times, acted pursuant to and in compliance with the Ohio Constitution and Ohio law. The Ohio Constitution and Ohio law are clear: the Secretary of State is required to verify the sufficiency of all statewide initiated statute petitions before he transmits such petitions to the General Assembly.

After the Proposed Initiative was filed with Secretary Husted, the Secretary, pursuant to Ohio law, "forthwith" separated and sent the part-petitions to the various county boards of elections. After the Secretary received the part-petitions back from the boards, two widespread petition irregularities became apparent in counties across the State. First, in a large number of cases, part-petitions contained circulator statements "swearing" that the circulator witnessed the affixing of each of 28 signatures on a part-petition, contradicting the fact that the corresponding part-petitions contained much fewer signatures, often times as few as one signature. Second, on hundreds of part-petitions across the State there appeared a consistent, large black line striking out signatures on part-petitions, suggesting a concerted effort by someone other than the signer, the signer's attorney-in-fact, or the circulator to remove signatures. Both of these irregularities

violate Ohio law.

Because of these irregularities, Secretary Husted instructed the boards to conduct a re-review of the part-petitions. After that re-review, the Proposed Initiative maintained a sufficient number of valid signatures to be verified. Accordingly, pursuant to the Ohio Constitution, the Secretary then transmitted the Proposed Initiative to the General Assembly. This action concluded the Secretary's duties with respect to the Proposed Initiative.

While the Proposed Initiative was pending in the General Assembly, Relators brought this action challenging its sufficiency. During discovery, the Secretary produced thousands of pages of documents and produced two of its senior employees (Matthew Damschroder, Assistant Secretary of State and Chief of Staff, and Jack Christopher, Deputy Assistant Secretary of State and General Counsel) for depositions.[1] The Secretary has at all times acted pursuant to and in compliance with the Ohio Constitution and Ohio law.

II. STATEMENT OF FACTS

Ohio law permits the adoption or amendment of a law proposed by initiative petition. Ohio Constitution, Article II, Section 1(b). After preliminary determinations by the Attorney General and the Ohio Ballot Board, the "initiated statute" process begins when a proposed initiative is filed with the Secretary of State along with the signatures equaling three percent of the State's electors in the most recent gubernatorial election. *Id.* In addition, the filed signatures must represent 1.5% of the electors from the most recent gubernatorial election within each of 44 separate counties. Ohio Constitution, Article II, Section 1(g). Petitioners here were required to

[1] Many of the questions during the two depositions related not to this matter, but rather to the *Jones* litigation in state and federal court, where any discovery was then, and is now, premature because there were pending motions to dismiss in each of the proceedings. *State ex rel. Jones v. Husted*, S.Ct. No. 2016-0455 (this Court dismissed the case on June 15, 2016); *Jones, et al. v. Husted*, No. 2:16-cv-00438 (S.D. Ohio) (the Secretary filed a motion to dismiss on June 6, 2016). The Secretary objects to all questions and discovery that are premature and improper.

gather 91,677 valid signatures from qualified Ohio electors, plus fulfill the 1.5% constitutional requirement in 44 separate counties. Exhibit A, Affidavit of Carrie Kuruc, ¶ 4.

On December 22, 2015, a petition committee representing the Proposed Initiative filed with the Secretary of State approximately 10,029 part-petitions purporting to contain 171,205 signatures. *Id.*, ¶ 5. The next day, the Secretary issued Directive 2015-40 to each county board of elections. Exhibit B, Directive 2015-40. That Directive provided instructions about the review, examination, and certification of the signatures submitted. *Id.* The Secretary directed the boards to certify the results of their petition review by December 30, 2015. *Id.*

As required by R.C. 3519.15, upon the filing of the petitions, the Secretary separated and sent "forthwith" the part-petitions to the county boards for their review. Once the Secretary's office received the certifications back from the various counties, however, inconsistencies involving an inordinately large number of signatures appearing on part-petitions from counties across Ohio became apparent. Exhibit A, Affidavit of Carrie Kuruc, ¶ 7. These irregularities can be summed up in two distinct, yet equally problematic, ways: (1) the appearance that, contrary to law, someone *other* than the signer, the signer's attorney-in-fact, or the circulator removed a signer's name from the part-petition; and (2) the likelihood that circulators improperly "pre-affixed" the number of signatures they purported to witness prior to actually witnessing any signatures or even circulating a particular part-petition. *Id.*; Exhibit C, Directive 2016-01. These inconsistencies did not become apparent until after counties from across the State began to return their respective part-petitions to the Secretary. Exhibit A, Affidavit of Carrie Kuruc, ¶ 7.

As a result of the unprecedented level of potential defects in the part-petitions, Secretary Husted issued Directive 2016-01 on January 4, 2016—the day prior to the General Assembly

convening its 2016 session.[2] Exhibit C, Directive 2016-01. This Directive instructed the boards to undertake a more thorough review of the part-petitions and signatures because of the newly discovered, statewide irregularities. *Id.* After the boards conducted their more detailed review and the Secretary's office reviewed the boards' findings, on February 4, 2016 the Secretary transmitted, with reservations, the Proposed Initiative to the General Assembly.[3] Exhibit D, Transmission Letter to the General Assembly.

Beginning with the transmission date of February 4, 2016, the General Assembly had a four-month window in which to consider acting upon the Proposed Initiative. Ohio Constitution, Article II, Section 1(b). That four-month window expired on June 4, 2016 with no action from the General Assembly.

On February 29, 2016 (before the four-month window expired), Relators filed this case urging the Court to invalidate a certain number of signatures, and challenging the Secretary's transmission of the Proposed Initiative. The Petition Committee Respondents filed a motion for

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[2] According to Ohio law, January 5, 2016 was the first day of the General Assembly's 2016 session. Article II, Section 8 of the Ohio Constitution and R.C. 101.01(A) state that "[e]ach general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, . . . and in second regular session on the same date of the following year." In 2015 (the odd-numbered year), the first Monday of January was January 5, 2015. The "same date of the following year" remains January 5; therefore, the General Assembly convened on January 5, 2016.

[3] In the transmission letter, Secretary Husted explained the results of the evidentiary hearing that Cuyahoga County conducted during their re-review of the part-petitions. Exhibit D, Transmission Letter to General Assembly. Based upon the evidence and sworn testimony presented to the Cuyahoga County Board of Elections, Secretary Husted invalidated signatures on part-petitions circulated by two petition companies because it was likely someone other than the signer, the signer's attorney-in-fact, or the circulator struck out signatures on part-petitions, in violation of Ohio law. *Id.* Additionally, a tie-vote was submitted to Secretary Husted from the Delaware County Board of Elections regarding certification of part-petitions after the re-review. The tie-vote, however, was submitted to the Secretary's office more than fourteen days after the tie vote, which is past the statutory deadline. R.C. 3501.11(X). Furthermore, the tie-vote was submitted *after* the Secretary had transmitted the Proposed Initiative to the General Assembly. Accordingly, the Secretary was not required to break the tie-vote. The transmission of the Proposed Initiative completed the Secretary's administrative duties.

judgment on the pleadings. On May 18, 2016, the Court denied the Petition Committee Respondents' motion. On May 13, 2016, Relators moved for partial summary judgment, which is currently pending before this Court. On that same date, Relators also moved to stay the supplementary signature gathering period. The Court denied the motion to stay.

III. LEGAL ARGUMENT

A. The Secretary has at all times complied with the Ohio Constitution and the Ohio Revised Code.

With respect to the Proposed Initiative, the Secretary has acted at all times pursuant to and in compliance with the Ohio Constitution and Ohio law. The Ohio Constitution requires the Secretary of State to verify initiative petitions filed with his office and, when he confirms a sufficient number of valid signatures, transmit the initiative to the General Assembly.

Here, the Secretary did just that. Once the Proposed Initiative was filed with the Secretary's office, he "forthwith" separated and sent the part-petitions to the county boards of elections and instructed them to certify the number of valid signatures. After the Secretary received those part-petitions back from the county boards, consistent and widespread irregularities in the part-petitions, which appeared to violate Ohio law, became apparent. Believing these irregularities warranted further evaluation, the Secretary instructed the boards to conduct a more thorough review of the part-petitions. After that additional review, the Secretary verified that the Proposed Initiative had garnered enough valid signatures to meet the constitutional threshold. Accordingly, the Secretary transmitted the Proposed Initiative, albeit with reservations, to the General Assembly.

At each step in the process, the Secretary has adhered to the requirements of the Ohio Constitution and Ohio law. Once the Secretary verified that a sufficient number of valid signatures existed and he transmitted the Proposed Initiative to the General Assembly, the

Secretary fully complied with, and completed, his legal duties.

1. The Secretary may only transmit an initiative to the General Assembly once verified that it meets the constitutional requirements.

Article II, Section 1(b) of the Ohio Constitution requires the Secretary to transmit to the General Assembly an initiated statute petition *only* "[*w*]*hen*" it is verified to have been signed by three percent of electors in the most recent gubernatorial election. Ohio Constitution, Article II, Section 1(b). The Constitution also requires that the signatures supporting the initiative equal one and a half percent of the electors from the most recent gubernatorial election in at least 44 separate counties. Ohio Constitution, Article II, Section 1(g). In *Cappelletti v. Celebrezze*, this Court explicitly held that the "verified as herein provided" phrase that appears in Article II, Section 1(b) "*requires* the Secretary of State as chief elections officer to *first determine* that the petition contains the purported signatures of three percentum of the electors of the state, *for that requirement is fundamental to the constitutional reservation of the right of initiative to the people*." 58 Ohio St.2d 395, 396, 390 N.E.2d 829 (1979) (emphasis added); *see also Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 (6th Cir. 1993) ("[States] also ha[ve] a strong interest in ensuring that proposals are not submitted for enactment into law unless they have sufficient support.", citing *Anderson v. Celebreeze*, 460 U.S. 780, 788 n.9 (1983)).

2. Secretary Husted properly sent the part-petitions to the county boards of elections "forthwith" upon the filing of the petition.

As the chief election officer of the State, R.C. 3501.04, the Secretary is required to determine the sufficiency and verification of petitions that are filed. R.C. 3501.05(K) (requiring the Secretary to "[r]eceive all initiative and referendum petitions on state questions and issues and *determine and certify to the sufficiency of those petitions*") (emphasis added). The Secretary does, and indeed is required to, employ the county boards of elections to assist in this

verification. *Id.*; *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 1, 2006-Ohio-4334, 854 N.E.2d 1025, ¶ 28. R.C. 3519.15 requires that whenever an initiative is filed, the Secretary "shall *forthwith* separate the part-petitions by counties and transmit such part-petitions to the boards of elections in the respective counties." R.C. 3519.15 (emphasis added).

Secretary Husted has complied with the Constitution and the law. The Proposed Initiative was filed with the Secretary's office on December 22, 2015. Exhibit A, Affidavit of Carrie Kuruc, ¶ 5. Directive 2015-40, which provided guidance to the boards regarding how to review, examine, and certify the part-petitions, was issued on December 23, 2015, the same day on which the part-petitions were sent to the boards. *Id.*, ¶ 6. These actions taken by the Secretary are exactly what the Ohio Constitution and the Ohio Revised Code contemplate and require.

3. Directive 2016-01 was authorized by law and appropriately issued to ascertain whether the Proposed Initiative was sufficiently supported by enough valid signatures.

As the county boards of elections returned the part-petitions, the Secretary's office became aware of unusually large numbers of part-petitions containing irregularities. These irregularities appeared on part-petitions across the State, and were most consistent in their inconsistency with Ohio law. As a result, the Secretary sent the part-petitions back to the county boards for further review.

a. The irregularities in part-petitions across the State prompted Secretary Husted to send the part-petitions back to the county boards of elections for a more thorough review.

States are permitted to enact reasonable, nondiscriminatory regulations on a petitioner's ability to initiate legislation. *See, e.g.*, *Taxpayers United*, 994 F.2d at 297 ("Because the right to initiate legislation is a wholly state-created right, we believe that the state may constitutionally

place nondiscriminatory, content-neutral limitations on the plaintiffs' ability to initiate legislation."). Ohio has chosen to implement laws that govern its initiative and election process. As the chief election officer for the State, the Secretary is responsible for verifying and certifying compliance with those laws.

Here, the Proposed Initiative suffered from two irregularities that occurred across the State in a widespread manner. First, numerous part-petitions showed consistent, black strike-throughs of signatures suggesting that, contrary to Ohio law, someone other than the signer, the signer's attorney-in-fact, or the circulator removed a signer's name from the part-petition. Exhibit A, Affidavit of Carrie Kuruc, ¶¶ 7-9; Exhibit C, Directive 2016-01. Second, many part-petitions exhibited a likelihood that circulators had improperly "pre-affixed" the number of signatures they purported to witness prior to actually witnessing any signatures or even circulating a particular part-petition. Exhibit A, Affidavit of Carrie Kuruc, ¶¶ 7, 8, 10; Exhibit C, Directive 2016-01.

These irregularities justified the Secretary instructing the boards to conduct a more thorough review of the part-petitions to ensure their conformity with Ohio law.

i. Only the signer, the signer's attorney-in-fact, or the circulator can strike a signature from a part-petition.

Ohio law provides that "[t]he circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as part of the petition." R.C. 3501.38(G). Additionally, the law provides that "[a]ny 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; no signature may be removed after the petition is filed in any public office." R.C. 3501.38(H). The Ohio Revised Code sets forth no

circumstances whereby someone other than the signer, the signer's attorney-in-fact, or the circulator may strike a signer's signature.

Moreover, R.C. 3519.06 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 . . . [t]hat the statement is altered by erasure, interlineation, or otherwise . . . ." R.C. 3519.06(C).

As noted by the Secretary in his February 4, 2016 transmission letter, "it is the duty of election officials, not a petition company, to determine whether a signature is valid." Exhibit D, Transmission Letter to the General Assembly. R.C. 3501.05 provides that one of the duties of the Secretary is to "[r]eceive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions." R.C. 3501.05(K). Similarly, R.C. 3501.11 states that one of the duties of boards of elections is to "[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board." R.C. 3501.11(K). As the Third District Court of Appeals observed in *In re Protest of Brooks*, "States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process * * *." 15 Ohio App.3d 370, 2003-Ohio-6348, 801 N.E.2d 503, ¶ 15 (3d Dist.), quoting *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 191 (1999); *see also Taxpayers United*, 994 F.2d at 297.

Here, the Proposed Initiative's part-petitions exhibited consistent, black strike-throughs removing large numbers of signatures. Exhibit A, Affidavit of Carrie Kuruc, ¶¶ 7-9. These strike-throughs were consistent across circulators, and across petition companies. *Id.* The Secretary expressed concerns that these strike-throughs were not made either the signer, the signer's attorney-in-fact, or the circulator—the only persons permitted to do so by Ohio law.

Directive 2016-01 instructed the county boards to examine and re-review the part-petitions to ascertain the source of these strike-throughs. Exhibit C, Directive 2016-01. That the signatures appeared to be struck-through by someone other than the signer, the signer's attorney-in-fact, or the circulator of the petition is a sufficient basis by itself to justify the Secretary's decision to instruct the county boards to re-review the petitions.[4] R.C. 3501.05.

ii. Ohio law and the Ohio Election Official Manual require a circulator to attest to the correct number of signatures on a part-petition.

Ohio law requires the circulator of a part-petition to attest (i.e., swear) to the number of signatures that a circulator witnesses being affixed to a part-petition.

Specifically, the Ohio Revised Code provides that:

> On each petition paper, *the circulator shall indicate the number of signatures contained on it, and shall sign a statement under penalty of election falsification that the circulator witnesses the affixing of every signature*, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose signature it purports to be . . .

R.C. 3501.38(E) (emphasis added). This Court has found that this circulator attestation is a "substantial, reasonable requirement." *State ex rel. Loss v. Bd. of Elections of Lucas Cty.*, 29 Ohio St.2d 233, 234, 281 N.E.2d 186 (1972). Among other benefits of this rule, it serves as "a protection against signatures being added later." *Id.*

A separate statute, R.C. 3519.06, states that a part-petition is not properly verified if "the statement required by section 3519.05 of the Revised Code is not properly filled out" or "the

[4] While not factoring in the Secretary's decision to issue Directive 2016-01, it should be noted that as a result of this re-review, Angelo Paparella, President of PCI Consultants, Inc.—the lead petition management firm for the Proposed Initiative—testified under oath in his deposition that the signatures on the part-petitions were struck-through by "validators", not circulators, at PCI's processing center in California. Relators' Evidence, Volume II, Exhibit B, Deposition of Angelo Paparella, 23:22-25:17. This testimony underscores that the Secretary's concerns were well-founded and that the issuance of Directive 2016-01 was prudent.

statement is false in any respect." R.C. 3519.06(A) and (D). R.C. 3519.05 recites the circulator's attestation, in part, as follows: "I, ..., *declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of ..... electors, that the signatures appended hereto were made and appended in my presence* on the date set opposite each respective name, and are signatures of the persons whose names they purport to be . . . ." R.C. 3519.05(A) (emphasis added).

This Court has held the requirements of R.C. 3501.38(E) "must be strictly complied with." *State ex rel. Baron v. Butler Cty. Bd. of Elections*, 44 Ohio St.2d 33, 336 N.E.2d 849 (1975). When a circulator does not comply with a statutory requirement, "rejecting the petition" is proper. *Loss*, 29 Ohio St.2d at 234; *State ex rel. Reese v. Bd. of Elections*, 6 Ohio St.2d 66, 67, 215 N.E.2d 698 (1966). With respect to attesting to the number of signatures, at most only an "arithmetic error will be tolerated, *but only if the error does not promote fraud*." *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167, 172, 602 N.E.2d 615 (1992) (emphasis added). In all other circumstances, such a petition has not properly been verified as required under R.C. 3519.06.

Likewise, the Ohio Election Official Manual (a compendium of instructions to the boards of elections) specifies that "[t]he Board must accept the circulator's statement of part petitions at face value unless there are inconsistencies with the number of signatures witnessed." Exhibit E, Ohio Election Official Manual, pp. 11-8; 11-9. Directive 2016-01 provided further guidance regarding inconsistencies, explaining that "[by] their nature, however, 'arithmetic errors' should be isolated, unintentional oversights. . . . The 'over-reporting of signatures' (e.g., a circulator statement purporting to witness 28 signatures on a part-petitions bearing only two signatures) is so strikingly prevalent in this submission that the suggestion that unintentional 'arithmetic errors'

are to blame strains credulity." Exhibit C, Directive 2016-01.

Importantly, R.C. 3519.06 provides both the Secretary and the boards with significant discretion to determine that a petition is valid. The statute requires "satisfactory evidence" of falsity to determine that a part-petition is not properly verified. R.C. 3519.06.

As explained above, in numerous instances, circulators attested to witnessing exactly 28 signatures, the maximum number of possible signatures on a petition. Exhibit A, Affidavit of Carrie Kuruc, ¶¶ 8, 10. On many of those part-petitions, however, where the attestation read "28", there were actually many fewer signatures. *Id.* These irregularities in the part-petitions led the Secretary to issue Directive 2016-01 and instruct the boards to re-review the part-petitions. This irregularity—whether circulators were improperly attesting to a number of signatures that they did not witness—prompted the Secretary to send the part-petitions back to the county boards for a re-review. This was reasonable, and comports with the Secretary's duty to "determine and certify to the sufficiency of" the Proposed Initiative prior to its transmission.

b. The Secretary could not transmit the Proposed Initiative to the General Assembly on January 5, 2016 because it had not been properly verified.

Article II, Section 1(b) of the Ohio Constitution requires the Secretary to transmit an initiative to the General Assembly *only* "[*w*]*hen*" the Secretary verifies that there are a sufficient number of valid signatures meeting the constitutional requirements. Until that verification occurred, which in this case did not happen until February 4, 2016, the Proposed Initiative could not have been transmitted.

The Secretary is not merely a delivery-person. To the contrary, the Secretary is ultimately responsible for the verification of the petition. Accordingly, the Secretary is tasked with transmitting an initiative to the General Assembly only if and when the Secretary

determines that there are a sufficient number of valid signatures. *Supra* II.A.1. This Court has found that the Secretary should not presume the sufficiency of a petition and mindlessly send it to the General Assembly, but instead must verify the sufficiency of the petition prior to transmission. *Cappelletti*, 58 Ohio St.2d at 396-97. Ohio law and this Court's decisions require the Secretary to utilize the county boards of elections to assist in that verification process. R.C. 3501.05(K); R.C. 3519.15; *State ex rel. Evans*, 2006-Ohio-4334 at ¶ 28. The Secretary's ultimate determination of sufficiency, however, cannot occur until *after* the county boards have returned the part-petitions to the Secretary. *Cappelletti*, 58 Ohio St.2d at 398.

Nothing in Ohio law precludes the Secretary from instructing the boards to re-review part-petitions. The only requirement prior to transmission of an initiative to the General Assembly is that the Secretary verifies the sufficiency of the initiative. To aid in that determination, Secretary Husted, as required, immediately sent the Proposed Initiative's part-petitions to the county boards for their assistance in the verification process. Exhibit B, Directive 2015-40.

On January 5, 2016, the Secretary could not have transmitted the Proposed Initiative because it was not, at that time, properly verified to contain a sufficient number of valid signatures.

c. Directive 2016-01 gave the county boards of elections sufficient time to conduct a more thorough review of the irregularities appearing on part-petitions statewide in order to ultimately verify the Proposed Initiative.

The Secretary's issuance of Directive 2016-01 adhered to the contours of Ohio law and the decision to give the county boards until January 29, 2016 to conduct the re-review likewise comported with the Secretary's task of verifying the sufficiency of the Proposed Initiative.

Ohio law does not specifically provide for *how* the Secretary is to instruct the county

boards to review part-petitions, except that it must be commenced "forthwith." R.C. 3519.15. When a county board reviews part-petitions, they do so in the "vacuum" of evaluating only those part-petitions circulated in that particular county, and then comparing the signatures thereon to that particular county's voter registration database and records. *Id.* (instructing the boards to utilize their registration and voter databases to ascertain the validity of signatures on the part-petition). The Secretary's office, however, receives all of the part-petitions from the various counties prior to verification and transmission of an initiative. *Id.*; *see also* Ohio Constitution, Article II, Section 1(b). It is the Secretary, then, who sees initiatives at a cross-county level.

The Secretary's view of the Proposed Initiative at the statewide level established significant concerns with irregularities that appeared in a widespread manner across counties and across petition companies. The county boards of elections, upon their initial review of part-petitions at a micro level, apparently did not (and could not) realize the widespread manner of these irregularities. Thus, the Secretary issued Directive 2016-01 to instruct the county boards to conduct a re-review of the part-petitions while bringing to the boards' attention the irregularities that were evident.

Directive 2016-01 gave the boards until January 29, 2016 to conduct this additional review. Exhibit C, Directive 2016-01. This was 19 days longer than the initial review delineated by Directive 2015-40. *Compare* Exhibit B, Directive 2015-40 (7 days) *with* Exhibit C, Directive 2016-01 (25 days). Directive 2016-01 provided the extra days for the boards to conduct "any evidentiary hearings that they [] believe[d] necessary to complete their duties." Exhibit C, Directive 2016-01. Indeed, approximately 14 counties chose to conduct evidentiary hearings. Exhibit A, Affidavit of Carrie Kuruc, ¶ 12. The Secretary's instruction to the boards—along with the time provided to conduct evidentiary hearings—was reasonable in light of his duty to

verify the sufficiency of the Proposed Initiative. *See State ex rel. Evans*, 2006-Ohio-4334 at ¶¶ 28-36 (finding that the Secretary's actions were "not unreasonable" and the Court should "defer to the secretary's reasonable interpretation"), citing *State ex rel. Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶ 13 (the Court's duty is to defer to Secretary of State's interpretation of election law if law is subject to two different, but equally reasonable, interpretations). The Secretary gave the boards a reasonable period of time to conduct the additional review, and several of the boards did just that.

4. Secretary Husted properly transmitted the Proposed Initiative to the General Assembly on February 4, 2016.

On February 4, 2016, the Secretary ultimately verified the sufficiency of the Proposed Initiative and duly transmitted it to the General Assembly.

Once an initiative is transmitted to the General Assembly, the Secretary's constitutional and statutory duties are complete. *See* Ohio Constitution, Article II, Section 1(b), and R.C. 3501.05(K).

In this case, once the county boards submitted their certifications of the re-review, the Secretary verified that the Proposed Initiative had a sufficient number of valid signatures. Exhibit D, Transmission Letter to the General Assembly. The Secretary's transmission, however, was communicated "with reservations." *Id.* In his transmission letter, the Secretary outlined the process and steps he took to "determine and certify the sufficiency of [statewide] petitions." R.C. 3501.05(K). Ultimately, the Proposed Initiative was transmitted to the General Assembly on February 4, 2016. Exhibit D, Transmission Letter to the General Assembly.

B. Secretary Husted's actions are consistent with this Court's decisions in *Cappelletti v. Celebrezze* and *State ex rel. Hodges v. Taft*.

Pursuant to this Court's May 18, 2016 Announcement, the Secretary's hereby addresses

the applicability of *Capelletti v. Celebreze* and *State ex rel. Hodges v. Taft*. The Secretary's actions complied with this Court's decisions in both instances.

Capelletti is especially notable. There, a relator brought an action in mandamus seeking to compel the Secretary of State to either transmit the initiative to the General Assembly by presuming the sufficiency of the initiative or certify that the initiative was deficient. 58 Ohio St.2d at 395. The Court explained the "verified as herein provided" phrase in Article II, Section 1(b), and described the Secretary's duties as follows:

> *[F]irst* determine that the petition contains the purported signatures of three percentum of the electors of the state, *for that requirement is fundamental to the constitutional reservation of the right of initiative of the people*. We reject 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 eligibility of the signers as electors. Verification . . . can be best, and is by statute to be, performed . . . by the county boards of elections to be viewed together with the records kept there for the purposes of *assisting the Secretary of State in arriving at his verification* . . . .

Id. at 396-97 (emphasis added). The Secretary cannot presume validity of the petition prior to verification and transmission; instead, he is required to verify the petition prior to transmission. *Id.* at 397-98, citing *State ex rel. McCrehen v. Brown*, 108 Ohio St. 454, 141 N.E. 69 (1923) ("The secretary of state has neither express nor implied power to make *any determination relative to such petition until after* the parts thereof have been transmitted to the [county boards of elections] and after the same have been returned to the secretary of state with certification of the number of signatures thereto.") (emphasis added).

State ex rel. Hodges, while discussing Article II, Section 1(b), primarily focuses on issues unrelated to this litigation. There, relators sought an action in mandamus to compel the Secretary to reject a petition and to not transmit the petition to the General Assembly. 64 Ohio St.3d at 1. The relators argued that the initiative was not filed with the Secretary ten days prior

to the *biennium* of the General Assembly and thus should be transmitted an entire year (and session) later. *Id.* at 8. This Court found that the Constitution and the law differentiate between a biennium of the General Assembly and a session of the General Assembly; and, for purposes of Article II, Section 1(b), "as soon as it convenes" refers to a session of the General Assembly. *Id.* at 9-10. A biennium consists of two sessions. *Id.* Notable for this litigation, the *Hodges* Court stated that "*when* initiative petitions proposing a new law and containing a *sufficient* number of signatures are filed with the Secretary of State, he shall transmit" the initiative to the General Assembly. *Id.* at 9 (emphasis added). Additionally, the Court importantly found that the Secretary's actions become "ministerial" and "mandatory" *only* after an initiative is determined to be sufficient. *Id.* at 11.

The Secretary's actions regarding the Proposed Initiative are entirely consistent with this Court's decisions in *Cappelletti* and *State ex rel. Hodges*. As *Cappelletti* requires, the Secretary—in conjunction with the county boards of elections—took the necessary steps (and time) to verify that the Proposed Initiative was supported by a sufficient number of valid signatures. Once the Secretary verified the sufficiency of the petition, however, *State ex rel. Hodges* required that he then transmit it to the General Assembly, assuming it was filed with his office 10 days prior to the start of the General Assembly's session (rather than sitting on it until the *next* biennium). Once the Secretary verified the Proposed Initiative (after the boards conducted the re-review), Secretary Husted transmitted the Proposed Initiative to the General Assembly on February 4, 2016. In doing so, he complied with *Cappelletti* by verifying the Proposed Initiative and complied with *State ex rel. Hodges* by transmitting it upon verification instead of waiting until the start of the January 2017 General Assembly session.

IV. CONCLUSION

Ohio Secretary of State Jon Husted has, at all times, acted pursuant to and in compliance with the Ohio Constitution and Ohio law. Any contention otherwise is misplaced. The Secretary received the as-filed Proposed Initiative and "forthwith" transmitted part-petitions to the county boards of elections—just as Ohio law requires. Thereafter, the Secretary became aware of widespread irregularities in the part-petitions that were contrary to Ohio law. He then instructed the boards to conduct an additional review of the part-petitions. Once the re-review was complete, and after the Secretary was able to verify that there were enough valid signatures, the Secretary transmitted the Proposed Initiative to the General Assembly. All of these actions are consistent with, and performed pursuant to, the Ohio Constitution and Ohio law.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

/s Steven T. Voigt
STEVEN T. VOIGT* (0092879)
**Counsel of Record*
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Counsel for Respondent
Ohio Secretary of State Jon Husted

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by first class mail via the U.S. Postal Service on June 22, 2016, upon the following:

Kurtis A. Tunnell
Anne Marie Sferra
Nelson M. Reid
James P. Schuck
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

Counsel for Relators

Donald J. Mctigue
J. Corey Colombo
Derek S. Clinger
McTigue & Colombo LLC
545 E. Town Street
Columbus, Ohio 43215

Counsel for Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya Thurman

s/ Steven T. Voigt
STEVEN T. VOIGT (0092879)
Principal Assistant Attorney General

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.	:	

AFFIDAVIT OF CARRIE KURUC

I, Carrie Kuruc, having been duly cautioned and sworn, hereby attest to the following:

1. My name is Carrie Kuruc, I am over eighteen years of age, I am competent to testify, and I state the following based on my personal knowledge.

2. I currently serve as Senior Elections Counsel in the Ohio Secretary of State's Office. In this role, I coordinate a staff of Elections Counsel that provides election law support to Ohio's 88 county boards of elections. Boards of elections regularly contact the staff with questions about election law provisions and processes.

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

4. In Ohio, petitions attempting to receive consideration of an initiative petition currently 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. On December 22, 2015, a petition committee on behalf of the "Ohio Drug Price Relief Act" filed approximately 10,029 part-petitions purporting to contain 171,205 signatures with the Secretary of State's office.

6. Directive 2015-40, issued on December 23, 2015, instructed the county boards of elections on how to review, examine, and certify part-petitions for the "Ohio Drug Price Relief Act."

7. A review of the "Ohio Drug Price Relief Act" part-petitions as they came back from the county boards of elections found a pattern of irregularities involving an unusually large number of signatures and part-petitions from counties across Ohio. The same irregularities are consistent across the counties.

Exhibit A

8. The irregularities fit into two categories. First, the same, bold strikethroughs of numerous signatures. Second, circulators attesting to more signatures than actually appear on each petition.

9. The bold strikethroughs of signatures do not appear to be the work of the individual circulators.

10. Questions as to the authenticity of signatures may exist if circulators did not attest to the actual number of signatures witnessed on each petition.

11. Directive 2016-01, issued on January 4, 2016, instructed county boards to re-review the part-petitions for the "Ohio Drug Price Relief Act." The Directive provided time for "any evidentiary hearings that [county boards] believe[d] necessary to complete their duties."

12. Approximately fourteen county boards of elections conducted evidentiary hearings after Directive 2016-01 was issued.

FURTHER AFFIANT SAYETH NAUGHT.

Carrie Kuruc

Carrie Kuruc

STATE OF OHIO

ss:

COUNTY OF Cuyahoga

NOTARY PUBLIC STATE OF OHIO

BRANDI R. LASER SESKES, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

Sworn to and subscribed before me, a Notary Public, on this 22nd day of June, 2016.

Notary Public

Exhibit A

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

DIRECTIVE 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).

Exhibit B

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 B

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

DIRECTIVE 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).

Exhibit C

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
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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.

Exhibit D

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).

Exhibit D

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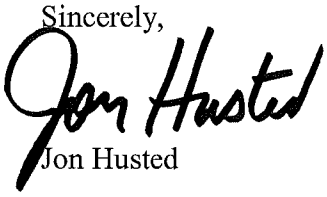
[2] Interestingly, petitioners could have jeopardized their own efforts by illegally striking signatures. One county prosecutor reported in a letter submitted to me along with their number of certified signatures that only 79% of the stricken signatures were truly invalid.
[3] R.C. 3501.382.
[4] R.C.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

Exhibit D

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

Enclosure

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

Exhibit D

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 HIVIAIDS, 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.

Exhibit D

(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 individuals

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 D

Chapter 11

Petitions

Directive 2015-33

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

1 *R.C. 3501.11(K)*.

2 *R.C. 3501.38(L)*.

3 *R.C. Chapter 3513*.

Exhibit E

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.

[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).