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DIRECTIVE 2011-38

November 1, 2011

To: ALL COUNTY BOARDS OF ELECTIONS
Members, Directors and Deputy Directors

Re: **Continued Ballot Access for Minor Political Parties in Ohio in 2012**

SUMMARY:

Consistent with the Federal District Court's order on October 18, 2011, I am recognizing the Libertarian Party as a minor party, as well as the Americans Elect Party, the Constitution Party, the Green Party and the Socialist Party as minor parties.

DIRECTION:

On September 6, 2006, the U.S. Court of Appeals for the Sixth Circuit found that Ohio's laws for political party formation and ballot access were unconstitutional.¹ On October 18, 2011, the Federal District Court ordered that the Libertarian Party be a recognized minor party for the 2012 elections in Ohio.² Accordingly, I am recognizing the Libertarian Party as a minor party and, further, am extending minor party recognition to the Americans Elect Party, the Constitution Party, the Green Party, and the Socialist Party.

Ohio boards of elections are hereby instructed to recognize these political parties and to grant candidates of these political parties ballot access in the 2012 election cycle consistent with the following directions.

A. Minor Party Candidates Seeking Political Party Nomination at the Primary Election

1. Candidates seeking the nomination of a minor political party at the primary election use the same forms as candidates for major political parties seeking nomination at the primary election.

¹ *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (2006)(holding that the petition process for political party formation in R.C. 3517.01(A)(1) and the primary election requirement for political parties in Section 7, Article V of the Ohio Constitution violate the First Amendment to the U.S. Constitution).

² *Libertarian Party of Ohio v. Husted*, Case No. 2:11-CV-722 (S.D. Ohio 10/18/11)

2. Candidates of minor political parties must pay the same filing fee as candidates for the same office who are seeking the nomination of a major political party.
3. Any candidate seeking political party nomination at a primary election must declare under penalty of election falsification that the candidate is a member of the political party whose nomination the candidate is seeking. This declaration is made in the declaration of candidacy.
4. Any elector may seek political party nomination as a candidate of a minor political party in 2012, regardless of the elector's prior political affiliation. R.C. 3517.013.

B. Signature Number and Signers of Candidate Petitions for Minor Political Party Candidates

1. The minimum number of signatures for candidates of minor political parties seeking nomination at the primary election is one-half the minimum number of signatures required for candidates of major political parties. R.C. 3513.05.
2. When the candidacy is for election as a member of the state central committee or the county central committee of a minor political party, the minimum number of signatures is the same as it is for major parties. R.C. 3513.05.
3. Because primary elections were not held for the Americans Elect Party in 2010, any qualified elector may sign the declaration of candidacy and petition of an Americans Elect party candidate for the first primary election held by that party in an even-numbered year. R.C. 3517.015.
4. Only electors who did not vote in a different political party's primary election in the preceding two calendar years may sign a declaration of candidacy and petition for nomination or election of the Constitution Party, Green Party, Libertarian Party, or Socialist Party USA. R.C. 3513.05, R.C. 3517.015.
5. Signers of a declaration of candidacy and petition of a candidate seeking nomination or election at a primary election must declare that he or she is a member of the political party of the candidate. R.C. 3513.07. Signers of such declaration of candidacy and petitions must make their declaration of party membership in good faith and may not sign declaration of candidacy and petitions of candidates of different political parties for the same primary election.

C. Circulators of Minor Political Party Candidate Petitions

1. The circulator of a candidate's petition does not have to be an Ohio resident or Ohio elector under the ruling of the U.S. Court of Appeals for the Sixth Circuit in *Nader v. Blackwell*, 545 F.3d 459 (2008).

2. Each circulator of a declaration of candidacy and petition must, however, be a member of the political party named in the declaration of candidacy. A board of elections determines a circulator's political party affiliation as follows:
 - a. Non-electors of Ohio: 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.
 - b. Ohio elector: An Ohio elector who circulates another person's declaration of candidacy and petition for the nomination or election of the Constitution Party, Green Party, Libertarian Party, or Socialist USA Party must satisfy the party affiliation standard set forth in seventh paragraph of R.C. 3513.05. The circulator must have either voted in only that party's primary in the prior two calendar years, or did not vote in any other party's primary election in the preceding two calendar years. The board of elections should examine the circulator's Ohio voting history. If the board determines that the circulator voted in another political party's primary election during the prior two calendar years, the board must invalidate all part-petitions circulated by the circulator for the candidate named in the petition.
3. Candidates may circulate their own declarations of candidacy without regard to how they may have voted in the prior two calendar years. R.C. 3513.05 (tenth paragraph), R.C. 3513.191(C)(4), and R.C. 3517.013.

D. Protests

A protest may be filed against a candidate for political party nomination or election at a primary election on or before the 74th day before the primary election by only (1) an elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate; or (2) the controlling committee of the political party named in the candidate's declaration of candidacy. R.C. 3513.05.

E. Holding of a Primary Election for One or More Minor Political Parties

Separate primary election ballots shall be provided by the board of electors for each political party having candidates for nomination or election in a primary election. R.C. 3513.13.

If you have any questions about this directive or its implementation, please contact the elections attorney in this office assigned to assist your county board of elections.

Sincerely,



Jon Husted