

Case No. 2018-1037

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**In the**  
**Supreme Court of Ohio**

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STATE EX REL. NORMA J. MCCANN, *et al.*,  
*Relators,*

v.

DELAWARE COUNTY BOARD OF ELECTIONS,  
*Respondent.*

*Original Action in Prohibition*

*Expedited Election Matter Under S.Ct.Prac.R. 12.08*

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**RELATORS' MERIT BRIEF**

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## **I. INTRODUCTION**

A township zoning referendum submitted by a petition containing several blatant abnormalities and fatal defects was certified for placement upon the November 6, 2018 general election ballot by Respondent Delaware County Board of Elections (“Respondent Board” or “the Board”). A protest had been filed with Respondent Board, providing the Board an opportunity to correct its errors, but the Board declined to reverse its initial decision to certify the referendum for placement on the ballot. In so doing, Respondent Board effectively held that the private property owners’ interests in land ownership and control must yield to even the most problematic and fraud-prone petitions. This cannot be what the General Assembly intended when it established the ability for township residents to place township zoning referendums on the ballot by petition. And as a result, Relators Norma J. McCann and James E. Wheeler (“Relators”) bring this action for a writ of prohibition to prevent Respondent Delaware County Board of Elections from placing the referendum against Harlem Township Zoning Application HTZC 17-09 upon the November 6, 2018 general election ballot.

For the reasons that follow, Relators are entitled to the requested writ of prohibition.

## **II. STATEMENT OF FACTS**

On March 27, 2018, the Harlem Township Board of Trustees (“Board of Trustees”) approved Harlem Township Zoning Application HTZC 17-09, which was a request from John D. McCann to rezone 13.28 acres located in Harlem Township, Delaware County, Ohio from AR-1 Agricultural Residential to a PCD Planned Commercial District. [Compl. ¶ 8]. Subsequently, on April 18, 2018, a petition for zoning referendum against Harlem Township Zoning Application HTZC 17-09 (the “Referendum Petition”) was filed with the Board of Trustees. [Compl. ¶ 9; Referendum Petition attached as Exhibit A]. The Referendum Petition contained 174 signatures

on twelve (12) or thirteen (13) part-petitions, depending upon how they are counted. [Compl. ¶ 10].

The petitioners used the form prescribed by the Ohio Secretary of State for township zoning referendums, Form No. 6-O, which is a two-page document. [Compl. ¶ 11; *see also*, Form No. 6-O attached as Exhibit B]. The front page contains fields for the name and number of the zoning proposal, the summary of the proposal, and four signature lines. [*Id.*]. The back page contains the remainder of the signature portion of the petition, fourteen more signature lines, plus the circulator's statement and the required warning against election falsification. [*Id.*].

While most of the part-petitions filed with the Board of Trustees followed the two-page format of Form No. 6-O, three part-petitions contain additional pages. [Compl. ¶ 12]. Two part-petitions—those marked by Respondent Board as parts “1/13” and “2/13” (hereinafter referred to as “Part-Petition No. 1” and “Part-Petition No. 2,” respectively, and attached as Exhibits C and D)—each contain one front page and two back pages with two completed circulator's statements. [Compl. ¶ 13; *see also*, Exhibit A]. An additional part-petition—the three pages marked by Respondent Board as parts “11/13” and “12/13” (hereinafter referred to as “Part-Petitions Nos. 11 and 12” and attached as Exhibit E)—contains two front pages and one back page. [Compl. ¶ 17; Exhibit E].

On Part-Petition No. 1, the first page (i.e., the front page) contains an “X” drawn through the four signature lines. [Compl. ¶ 14; Exhibit C]. The second page (i.e., the first back page) contains thirteen (13) signatures and a completed circulator's statement attesting to having circulated the “foregoing petition containing 13 of 16 signatures” with “13 of 16” having been written partially in black ink and partially in blue ink. [*Id.*]. The third page (i.e., the second back page) contains three (3) signatures and a completed circulator's statement attesting to having

circulated the “foregoing petition containing 1-16 total signatures.” [Id]. Both circulator statements on Part-Petition No. 1 identify Herman Berk, Jr. as the circulator, and both contain Mr. Berk’s signature. [Compl. ¶ 16; Exhibit C].

On Part-Petition No. 2, the first page (i.e., the front page) contains an “X” drawn through the four signature lines, identical to the “X” appearing on Part-Petition No. 1. [Compl. ¶ 15; Exhibit D]. The second page (i.e., the first back page) contains fourteen (14) signatures and a completed circulator’s statement attesting to having circulated the “foregoing petition containing pg 1 of 2 signatures” with “pg 1 of 2” and additional text to the side reading “28 total” having been written in black ink. [Id]. The third page (i.e., the second back page) contains fourteen (14) signatures and a completed circulator’s statement attesting to having circulated the “foregoing petition containing 28 signatures” with “28” having been written in blue ink. [Id]. As with Part-Petition No. 1, both circulator statements on Part-Petition No. 2 identify Mr. Berk as the circulator, and both contain Mr. Berk’s signature. [Compl. ¶ 16; Exhibit D].

A copy of Part-Petition No. 2, with Respondent Board's verification marks in red, is below:

Form No. 4-C Provided by Ohio Secretary of State (4-17)

Rec'd  
2/13/2014

**Petition for a Township Zoning Referendum**

To be filed with the Board of Township Trustees within 30 days after the adoption of the amendment.  
RC. 519.12, 505.30

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HTZC 17-09

Name and number of the property, if any

A proposal to amend the zoning map of the unincorporated area of Harlem, Township,  
Delaware County, Ohio, adopted on the 27th day of March, 2018.

This petition is a brief summary of the proposed zoning amendment:

The zoning amendment requests to rezone 13.28 acres of property on Farther Road, Parcel #153300109901, from current zoning of AII-1, Agricultural Residential, to PCD, Planned Commercial and Office District. There is no physical address for the property.

Valid  
Signed - ✓  
Vet/OK  
JSC

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RECEIVED  
2013RP 26 FEB 17  
OHIO STATE BOARD OF ELECTIONS  
REGISTRATION OF VOTERS

To the Board of Township Trustees

of Harlem Township, Delaware County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of Harlem Township, included within the Harlem Township Zoning Plan, equal to not less than eight percent of the total vote cast for all candidates for governor in the area during the previous gubernatorial election, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of Harlem Township residing within the unincorporated area of the township included in the Harlem Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on the 5th day of November, 2018, pursuant to Section 519.12 of the Revised Code.

Signatures on this petition must be written in ink.

Signature	Voting Residence, Street Number and Address	City, Village or Township	County	Date of Signing
L				
L				
L				
L				
L				

Signature	Voting Residence, Street Number and Address	City, Village or Township	County	Date of Signing
John V. Long	2070 Mainfield Dr.	Gates	Delaware	4/18/18
Matthew Kusmer	6050 Mayfield Dr.	Marion	Delaware	4/18/18
John	5814 Larchwood Dr.	CALIFORNIA	Del	4/18/18
John Cullen	1000 7th St.	John	Del	4/18/18
Matthew J.	1050 Greenfield Rd.	John	Delaware	4/18/18
John Cullen	1001 Harrison Rd.	Harrison	Delaware	4/18/18
John M.	1101 Harrison Rd.	Harrison	Delaware	4/18/18
John Cullen	1104 Harrison Rd.	Harrison	Delaware	4/18/18
John M.	1120 8th Avenue	Harrison	Delaware	4/11/18
John Cullen	1142 1st Avenue	Harrison	Delaware	4/11/18
John M.	1145 1st Avenue	HARRISON	Delaware	4/11/18
John Kusmer	12200 Farwell	Hartford	Delaware	4/11/18
Matthew Kusmer	12200 Farwell	Hartford	Delaware	4/11/18
John Cullen	12300 Farwell	Hartford	Delaware	4/11/18

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**Circulator Statement**

Must be completed and signed by the circulator.

Howard Frank Ir declare under penalty of perjury that I reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 101 signatures; that I witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3604.320 of the Revised Code.

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

my knowledge and belief the signature of the person  
acting pursuant to section 3501.382 of the Revised Code.

*Joe R. Reiter*  
Signature of Circulator  
10745 Franklin Rd.  
Permitted Registered Address  
Westerville, OH 43082  
City or Village      State      Zip Code

Form D-1: Motion for  
Temporary zoning reversion  
Filed \_\_\_\_\_

Temporary zoning order  
\_\_\_\_\_

**Circulator Statement**

Must be completed and signed by the circulator.

*Helen and Bruce Becker* before penalty of perjury that I reside at the address  
Penn Home of the elderly, 1000 Penn Street, Pittsburgh, Pennsylvania 15222, and that the circulator of the foregoing petition containing 28 signatures,  
appearing below my signature, that I am the circulator of the foregoing petition containing 28 signatures,  
that I witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief  
qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person  
whose signature it purports to be or of an attorney in fact acting pursuant to Section 2051.382 of the Revised Code.

H. E. Bly  
Signature of Circulator  
10745 Finchard Rd  
Patrons/Residence Address  
Westerville OH Ch 1325  
City or Village State Zip Code

On the three pages marked by Respondent as Part-Petitions Nos. 11 and 12, the first page (i.e., the first front page, marked as “11/13”) contains four signatures, the second page (i.e., the second first page, marked as “12/13”) contains two signatures, while the pre-numbered signature lines are renumbered “5” and “6,” and the third page (i.e., the only back page) contains two

signatures, while the signature lines are renumbered “7” and “8.” [Id]. [Compl. ¶ 17; Exhibit E]. The circulator’s statement on the third page attests to having circulated the “foregoing petition containing 8 signatures” is signed by Juanita Berk. [Id].

Additionally, the individual pages of all part-petitions, when filed with the Board of Trustees, were attached by paper-clips. [Compl. ¶ 18]. None were stapled together, nor were any of the two-page part-petitions printed double-sided. [Id].

On April 25, 2018, the Harlem Township Board of Trustees certified the Referendum Petition to Respondent Board to determine the petition’s sufficiency and validity. [Compl. ¶ 19]. Respondent Board subsequently met on May 24, 2018 to determine the sufficiency and validity of the Referendum Petition. [Compl. ¶ 20].

During Respondent Board’s May 24, 2018 meeting, one point of discussion was whether to validate the part-petitions that contained additional pages. [Compl. ¶ 24; Board’s 5/24/2018 Meeting Minutes attached as Exhibit F]. As to the three pages marked as Part-Petitions Nos. 11 and 12, the there was uncertainty as to whether these were supposed to be a single part-petition or two part-petition; citing this uncertainty, Respondent Board invalidated them. [Compl. ¶¶ 27-28; Exhibit F at \*6]. As to Part-Petitions Nos. 1 and 2, the Board’s Director and the Board’s legal counsel remarked that they had never before seen a part-petition containing more than one circulator statement. [Compl. ¶ 25]. Citing the confusion caused by the two circulator statements, Respondent Board invalidated Part-Petition No. 1. [Compl. ¶ 26; *see also*, 5/24/18 Meeting Minutes, Exhibit F at \*6 (describing it as “too confusing”)]. However, Respondent Board voted to accept Part-Petition No. 2 as valid. [Id].

Another point of discussion during the May 24, 2018 meeting was whether the failure to staple any of the individual pages of the Referendum Petition’s parts invalidates each part-petition.

[Compl. ¶ 21]. Respondent Board adopted a written policy in 2014 requiring all part-petitions that are not printed on double-sided paper to be affixed by a staple. [*Id; see also*, Board Resolution No. 2014-01 and Policy Regarding the Affixing of Part Petitions, attached as Exhibit G]. This policy, titled “Policy Regarding the Affixing of Part-Petitions,” requires, in pertinent part:

Consistent with the requirement of R.C. § 3501.38(K) and except as otherwise permitted by the Ohio Revised Code or this Policy, **the Board shall not certify any candidate, issue, or question to the ballot unless** each Part-Petition comprising the Petition is received at the Board Office in one of the following conditions:

1. As a single Duplex paper so that the front of the Part-Petition appears on one side of the paper and the corresponding back of the Part-Petition appears on the back of the same paper; or
2. As two (2) pages so that the front of the Part-Petition appears on one paper and the corresponding back of the Part-Petition appears on a separate paper, but only if **the two (2) individual pages comprising the Part-Petition are Affixed by a staple.**

[Compl. ¶ 21; *see also*, Exhibit G]

Despite none of the Referendum Petition’s parts being stapled together, the Board did not invalidate any part-petitions. [Compl. ¶ 23].

Ultimately, Respondent Board certified that the Referendum Petition contained 127 valid signatures, which was more than the 116 required by law for placement on the ballot. [Compl. ¶ 29; 5/24/18 Meeting Minutes, Exhibit F]. The 127 valid signature figure includes twenty-three (23) valid signatures on Part-Petition No. 2. [See, Part-Petition No. 2, Exhibit D (indicating “23” valid signatures)].

Subsequently, on June 8, 2018, Relators filed a Protest Against Referendum Petition for Harlem Township Zoning Application HTZC 17-09 (“Protest”) with Respondent. [Compl. ¶ 30; Respondent’s Answer ¶ 6; Protest Letter attached as Exhibit H]. The Protest set forth two grounds: (1) Part Petition No. 2 contains a number of defects that do not comply with R.C. 3501.38(E) and

R.C. 519.12(H); and (2) None of the part-petitions were stapled together, as required by Respondent Board's Policy Regarding the Affixing of Part-Petitions. [Compl. ¶ 31; *see also*, Protest, Exhibit H].

On July 17, 2018, Respondent Board held a quasi-judicial hearing (the "Protest Hearing") on the Protest in which the protestors, protestors' counsel, and counsel for the petitioners were present. [Compl. ¶ 33; *see*, Transcript of Protest Hearing, attached as Exhibit I; Protestors' Exhibits, attached as Exhibit J].

At the Protest Hearing, the protestors argued that Part-Petition No. 2's use of two circulator statements invalidates it. The protestors argued that as a matter of law, part-petitions are permitted to contain only one circulator statement. The protestors also argued that the manner in which the two circulator statements were completed invalidates it.<sup>1</sup> Indeed, during direct examination of Mr. Berk, the circulator of Part-Petitions Nos. 1 and 2, Mr. Berk admitted that when he signed the circulator statements, he intentionally left the signature number field blank. [Compl. ¶ 35; Tr. 49:15-20, Exhibit I]. Mr. Berk also admitted that sometime after signing the circulator statements, he gave the part-petition to another circulator, Bonnie Perry, who then completed the signature number field on Mr. Berk's circulator statements. [Compl. ¶ 37; Tr. 52:11-16, Exhibit I]. Upon cross-examination, Ms. Perry likewise admitted that she filled in this information on Part-Petition No. 2's circulator statements. [Compl. ¶ 38; Tr. 85:12-86:2, Exhibit I].

The protestors also argued that all the Referendum Petition's parts were invalid because they were not stapled in accordance with the Board's Policy Regarding the Affixing of Part-Petitions. This underlying fact was not in dispute as Respondent Board heard testimony from

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<sup>1</sup> This was also one of the arguments asserted in the protest letter filed with the Board as protestors had alleged that Part-Petition No. 2's circulator statements appeared to have been filled out by someone other than Mr. Berk in violation of Ohio law. [Protest at \*4, Exhibit H].

Brittany Bowers, the circulator who filed the Referendum Petition with the Board of Trustees, who admitted that none of the part-petitions were stapled together when filed. [Compl. ¶ 39; Tr. 73:20-24, Exhibit I].

At the conclusion of Protest Hearing, Respondent Board denied the protest. In so denying, Respondent Board has prevented the private property owners from exercising their rights of property ownership in the manner they choose.

Seven days after Respondent Board denied the protest and 105 days before the November 6, 2018 election, Relators filed the instant action. In so doing, Relators have acted with the utmost diligence, and there has been no unreasonably delay or lapse of time in asserting Relators' rights sought herein. [Compl. ¶ 3]. Further, there is no prejudice to Respondent Board.

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

Relators are seeking a writ of prohibition.<sup>2</sup> A writ of prohibition will issue if (1) the Board exercised or is about to exercise quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. [*State ex rel. Edwards Land Co. v. Delaware Cty. Bd. of Elections*, 129 Ohio St.3d 580, 2011-Ohio-4397, 954 N.E.2d 1193, ¶ 17]. Here, Respondent Board exercised quasi-judicial authority by denying the protest following the Protest Hearing, which included sworn testimony. [See, *id* ¶ 18; see also, *State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St.3d 346, 2005-Ohio-4758, 835 N.E.2d 336, ¶ 28 (“Even if the board already exercised its quasi-judicial power by denying the protest, relief in prohibition is still available to prevent the placement of names or issues on a ballot, as long as the election has not yet been held.”) (internal

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<sup>2</sup> Art. IV, Section 2(B)(1)(d) of the Ohio Constitution provides the Court with original jurisdiction for actions in Prohibition.

citation omitted)]. Additionally, Relators lack an adequate remedy in the ordinary course of law due to the proximity of the November 6, 2018 general election as any appellate process would last well past the election. [*See, McCord*, 106 Ohio St.3d at ¶ 29 (“relators lack an adequate remedy in the ordinary course of law because given the proximity of the election in this expedited election case, any appellate process would last well past the election.”)].

The remaining issue is whether Respondent Board’s decision to deny Relators’ protest was authorized by law. The applicable standard is “whether the board engaged in fraud or corruption, abused its discretion, or acted in clear disregard of applicable legal provisions.” [*McCord*, 106 Ohio St.3d at ¶ 30].

For the following three reasons, Respondent Board’s decision was not authorized by law: (1) Part-Petition No. 2’s use of two circulator statements renders it invalid; (2) Part-Petition No. 2 is invalid because the circulator statement was modified by someone other than the circulator after the circulator signed the statement under penalty of election falsification; and (3) Respondent Board abused its discretion by not enforcing its policy to require the individual parts of the Referendum Petition to be stapled together.

**B. Part-Petition No. 2’s use of two circulator statements renders it invalid.**

Respondent Board’s decision to deny the Protest was premised, in part, upon an incorrect interpretation of Ohio law as permitting Part-Petition No. 2 to contain multiple circulator statements, each of which purports to be the end of the part-petition, spread throughout the part-petition. This was an abuse of discretion and/or in clear disregard of applicable legal provisions as Ohio law permits part-petitions to contain only a single circulator statement and because the text of the circulator statements at issue are inconsistent with each other.

## **1. Ohio law permits part-petitions to contain only one circulator statement.**

Ohio law permits part-petitions to contain only one circulator statement. The circulator statement requirement for all petitions is set forth in R.C. 3501.38(E). R.C. 3501.38(E)(1) provides, in pertinent part:

On each petition paper, the circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Emphasis added).

It is well-settled that R.C. 3501.38(E) requires strict compliance and does not allow for substantial compliance. [*See generally, McCord* at ¶ 36 (“Election laws, however, are mandatory and require strict compliance and substantial compliance is acceptable only when an election provision expressly states that it is”)] (internal quotations and citations omitted)]. Indeed, this Court has held that R.C. 3501.38(E) requires strict compliance in virtually every aspect of the statute. In *State ex rel. Barton v. Bd. of Elections*, 44 Ohio St. 2d 33, 336 N.E.2d 849 (1975), the Court held that the inclusion of the circulator statement is mandatory. In *State ex rel. Loss v. Bd. of Elections*, 29 Ohio St. 2d 233, 281 N.E.2d 186 (1972), the Court held that the requirement to indicate the number of signatures witnessed is mandatory. In *State ex rel. Home Fed. Sav. & Loan*, 40 Ohio St. 2d 94, 96, 320 N.E.2d 672 (1974), the Court held that the inclusion of language stating that the circulator “witnessed the affixing of every signature” is mandatory. In *State ex rel. Macko v. Monzula*, 48 Ohio St. 2d 35, 36, 356 N.E.2d 493 (1976), the Court held that the inclusion of language stating that all signers were to the best of the circulator's knowledge and belief qualified

to sign is mandatory. In *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 50, the Court held that the circulator must have actually witnessed every signature being affixed to the part-petition as this is what the statement on the part-petition says. The Court has never held that any aspect of R.C. 3501.38(E) allows for substantial compliance.

With respect to township zoning referendum petitions, R.C. 519.12(H), which permits and governs such referendums, incorporates R.C. 3501.38(E)(1)'s circulator statement requirement. R.C. 519.12(H) states that each part-petition must contain "the statement of the circulator," and states further that "[i]n addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code." [R.C. 519.12(H) (emphasis added)]. R.C. 519.12(H) also provides a form for the "circulator statement" which, in part, requires the circulator to declare, under penalty of election falsification, that they are the circulator of "the foregoing part-petition containing (number) signatures." [R.C. 519.12(H) (emphasis added); *see also, State ex rel. Quinn v. Delaware Cty. Bd. of Elections*, 152 Ohio St.3d 568, 2018-Ohio-966, (explaining that R.C. 519.12(H) "sets forth the mandatory content of the circulator's statement" for township zoning referendum petitions)].

Together, R.C. 3501.38(E)(1) and R.C. 519.12(H) affirmatively permit township zoning referendum petitions to contain only one circulator statement per part-petition. That this is the intent of the statute is made clear by "the statutory language, reading words and phrases in context and construing them according to the rules of grammar and common usage." [McCord, at ¶ 61 (explaining that in construing R.C. 519.12(H), the "paramount concern" is the legislative intent in enacting the statute.)]. The language used in R.C. 3501.38(E)(1) and R.C. 519.12(H) repeatedly—and only—refers to the circulator statement in the singular form: "the circulator . . . shall sign a

statement” [R.C. 3501.38(E)(1)], “the statement of the circulator” [R.C. 519.12(H)], and “circulator statement” [*id*]. Additionally, the form provided in R.C. 519.12(H) contains only a single circulator statement, and the text of this statement contains a declaration that the circulator circulated “the foregoing” part-petition, further indicating that only a single circulator statement, appearing at the end of the part, is permitted.

**2. The Ohio Secretary of State interprets Ohio law to permit part-petitions to contain only one circulator statement.**

The Ohio Secretary of State likewise interprets R.C. 3501.38(E)(1) and R.C. 519.12(H) as permitting township zoning referendum petitions to contain only one circulator statement. This interpretation is evidenced in the petition form he prescribed for such petitions, Form No. 6-O. Under R.C. 3501.05(G),<sup>3</sup> the Secretary has the statutory duty to prescribe such forms, and the Court, which accords great deference to the Secretary’s interpretation of Ohio election statutes, has previously relied upon the design of the Secretary’s petition forms as evidencing such interpretations. [See, *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St.3d 346, 2015-Ohio-4097, 43 N.E.3d 406, ¶ 10 citing *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.3d 697, ¶ 27 (Kennedy, J., concurring in judgment only)]. Form No. 6-O is similar, though not identical to, the form set forth in R.C. 519.12(H). [See, Form No. 6-O, Exhibit B]. After the signature-lines, it contains a single “Circulator Statement” that, in part, requires the circulator to declare having circulated “the foregoing petition.” Nowhere does the form contemplate having an additional set of signatures following the circulator statement. Indeed, the only items appearing after the circulator statement on the form are the

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<sup>3</sup> R.C. 3501.05(G) provides, in pertinent part, that the Secretary shall “[d]etermine and prescribe the . . . forms and blanks required by law for us by candidates, committees, and boards.”

required warning against election falsification and a box to be used by the township fiscal officer to indicate when the petition was filed, further indicating that this is the end of the part-petition.

Additionally, the Ohio Secretary of State, in his directive to the county boards of elections regarding the verification of petitions, refers to the circulator statement on each part-petition in the singular form. Directive 2017-15, which is incorporated as Chapter 11 of the Ohio Election Official Manual, instructs:

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.

(Emphasis added).

This instruction is further evidence that the Secretary interprets R.C. 3501.38(E)(1) as permitting only a single circulator statement, appearing at the end of the part-petition. Otherwise, this directive would be read as instructing the boards to look at only the circulator statement appearing on the last page, skipping over any other circulator statements.

**3. The Court has previously held that additional petition papers cannot be added to other petition papers.**

The issue here is analogous to the issue before the Court in *State ex rel. Wilson v. Hisrich*, 69 Ohio St.3d 13, 630 N.E.2d 319 (1994). In *Wilson*, a candidate had filed one declaration of candidacy and a petition paper containing a circulator statement,<sup>4</sup> and then attached three additional petition papers, each of which contained a circulator statement, that did not contain declarations of candidacy. [*Wilson*, 69 Ohio St.3d at 15]. The Court rejected the relator's argument that the three additional petition papers should be construed as being a single petition paper along

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<sup>4</sup> The form for the petition paper used by the candidate was set forth in R.C. 3513.07, and this form included a statement of circulator.

with the petition paper attached to the declaration of candidacy. [*Id*]. In explaining its holding, the Court stated that adopting the relator's construction would "permit the evils that [the statute concerning declarations of candidacy] seems clearly intended to prevent: (1) lack of clear notice to signers, and (2) creation of petitions which could be used for some candidacy other than that intended by the signers." [*Id*]. The Court further explained that such a construction would not "literally comply" with the statutes setting the form of the petition, which "do not provide for a form containing only the petition portion of the declaration and petition." [*Id*].

Here, the issue is essentially the same as the one presented in *Wilson*. An additional petition paper with its own circulator statement was attached to Part-Petition No. 2, which already contained a petition paper and circulator statement. Like in *Wilson*, this does not "literally comply" with the statute setting the form of the petition nor with the form prescribed by the Ohio Secretary of State, both of which contemplate there being only a single petition paper with a single circulator statement.

#### **4. The one circulator statement rule is necessary to prevent petition fraud.**

Requiring part-petition to contain one circulator statement is necessary to prevent "the evils" identified in *Wilson*: (1) it serves as a way to verify that signers had clear notice of what they were being asked to sign, and (2) it helps prevent the creation of petitions which could be used for some purpose other than that intended by the signers. This is accomplished by requiring the circulator to declare under penalty of perjury what was shown to the signer, i.e. the "foregoing petition."<sup>5</sup> With a single circulator statement, boards can easily determine what was shown to signers, and then verify if the signers had clear notice. With multiple circulator statements and additional petition papers, this becomes confusing. [See, 5/24/18 Meeting Minutes, Exhibit F

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<sup>5</sup> This language is found in both R.C. 519.12(H) and Form No. 6-O further evidencing the intent of the legislature to prevent petition fraud.

at \*6 (Board member Cuckler describing the two circulator statements on Part-Petition No. 1 as “too confusing” and citing “the confusion they inspire” as a reason to invalidate it)]. Moreover, allowing additional petition papers, each with their own standalone circulator statement, to be attached to a part-petition already containing a circulator statement would greatly increase the risk of entire pages of signatures from one petition being swapped out and used for some other petition. The General Assembly and the Secretary of State have sought to prevent these evils by permitting part-petitions to contain only a single circulator statement.

Permitting part-petitions to contain only one circulator statement advances additional important policies not discussed in *Wilson*. For instance, the Court has repeatedly explained that the circulator statement requirement is, in part, “a protection against signatures being added later.” [*Ohio Manufacturers’ Assn. v. Ohioans for Drug Price Relief Act*, 149 Ohio St.3d 250, 2016-Ohio-5377, 74 N.E.3d 399 at ¶ 44 quoting *Loss*, 29 Ohio St.3d at 234]. Allowing entirely separate petition pages to be added to a part-petition would greatly increase the risk of signatures being added later. Additionally, another purpose advanced by the single circulator statement requirement is that it serves as a way to help ensure that a part-petition is circulated by just one circulator, as required by Ohio law. Allowing for additional petition papers with their own circulator statements to be added to other petition papers would increase the risk of more than one person circulating the same part-petition. In short, permitting part-petition to contain only a single circulator statement serves to prevent a number of evils identified by the Court and advances other important policies.

**5. The text of the two circulator statements used in Part-Petition No. 2 are inconsistent with each other and, therefore, invalidate the part-petition.**

Even if the use of two circulator statements does not invalidate a part-petition, as a matter of law, the use of two circulator statements here still renders Part-Petition No. 2 invalid. This is

because the actual text of the two circulator statements, and the information provided therein, are inconsistent with each other.<sup>6</sup>

No effort was made to harmonize the actual text of the two circulator statements on Part-Petition No. 2. Both contain identical declarations from the circulator that he circulated the “foregoing petition” and that he witnessed the affixing of every signature thereon. [See, Part-Petition No. 2, Exhibit D]. The problem with this is that, in each instance, the use of “the foregoing petition” connotes that the circulator statement marks the end of the part-petition as the circulator is declaring to have circulated the foregoing—and not the subsequent—pages. Thus, the first circulator statement implies that the page with the second circulator statement is not part of the same part-petition.

Moreover, with two circulator statements containing identical language, there is no indication as to whether, and to what extent, the second circulator statement would modify the first circulator statement if the second statement is construed as applying to the whole, foregoing part-petition. Indeed, construing the second circulator statement in this manner would seem to render the first circulator statement unnecessary and superfluous as, at least with respect to the signatures on the page with the first circulator statement, the circulator would be *twice* attesting to having witnessed the signatures thereon. This makes it unclear as to what is—and is not—being attested to by the circulator.

Because Part-Petition No. 2’s two circulator statements are inconsistent with each other, the inclusion of both render the part-petition invalid, and Respondent Board abused its discretion and/or acted in clear disregard of the law by finding that Part-Petition No. 2 is valid.

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<sup>6</sup> For cases in which the Court examined the language of contested circulator statements, see *Home Fed. Sav. & Loan*, 40 Ohio St. 2d at 96; *Macko*, 48 Ohio St.2d at 36; and *Comm. for the Referendum of Lorain Ordinance No. 77-01* at ¶ 50.

**6. Respondent Board invalidated another of the Referendum Petition's parts for containing two circulator statements.**

Oddly, Respondent Board invalidated another of the Referendum Petition's parts—Part-Petition No. 1—for containing two circulator statements but did not invalidate Part-Petition No. 2. The meeting minutes from Respondent Board's May 24, 2018 meeting state that Board member Steve Cuckler found Part-Petition No. 1 to be "too confusing," and, therefore, made a motion to invalidate it "because of the dual statements and the confusion they inspire."<sup>7</sup> [5/24/2018 Meeting Minutes, Exhibit F at \*6]. This motion carried unanimously. *Id.* However, Respondent Board then validated Part-Petition No. 2 despite the part-petition suffering from the identical defects that served as the basis for invalidating Part-Petition No. 1, i.e., "confusing" "dual statements." Respondent Board was correct to invalidate Part-Petition No. 1 for containing two circulator statements. Yet, when it was given the opportunity at the Protest Hearing to correct its inconsistent application of Ohio law with respect to Part-Petition No. 2, Respondent Board declined. In so doing, Respondent Board abused its discretion and/or acted in clear disregard of the law.

**C. Part-Petition No. 2 is also invalid because the circulator statements were modified by someone other than the circulator after the circulator signed them.**

In its decision to deny Relators' protest, Respondent Board ruled that Part-Petition No. 2 was valid even though the Board heard testimony that parts of the circulator statements were amended by someone other than the circulator after the circulator had signed the attestations. This invalidates the part-petition because (1) Ohio law does not permit anyone other than the circulator to complete the circulator statement and (2) the subsequent amendment voids the circulator's attestation. *See*, Ohio Secretary of State Directive 2017-15, Section 1.02(G) ("The entire part-petition is invalid if the circulator's statement is not completed as required by law.").

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<sup>7</sup> The meeting minutes state, "Member Cuckler stated that the first part petition was too confusing and made a motion that, because of the dual statements and the confusion they inspire, the 16 signatures on that part not be counted."

## **1. Only the circulator of a part-petition can complete the circulator statement.**

As an initial matter, Ohio law permits only the circulator of a part-petition to complete the circulator statement. R.C. 3501.38(E)(1) provides that “[o]n each petition paper, the circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification . . .” [(Emphasis added); *see also, Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶ 9 (“R.C. 3501.38(E)(1) requires circulators to indicate the number of signatures contained on the part-petitions they circulated.”) (emphasis added)]. As stated previously, R.C. 3501.38(E) requires strict compliance.

Nowhere in Ohio law does it provide that someone other than the circulator can complete the circulator statement. This is in contrast to other election statutes concerning part-petitions which expressly permit individuals, other than the circulator, to complete aspects of or make changes to part-petitions. For instance, R.C. 3501.38(G) and (H) affirmatively permit the circulator, the signer, or the signer’s attorney in fact to delete signatures from part-petitions, and the Court has interpreted this to mean that only these three people are authorized to remove signatures from a part-petition. [*Ohio Manufacturers’ Assn.* at ¶ 13-18]. By extension, because R.C. 3501.38(E)(1) affirmatively permits only the circulator to complete the circulator statement, then only the circulator can complete the circulator statement.

The Ohio Secretary of State likewise interprets R.C. 3501.38(E)(1), in the context of R.C. 519.12(H), as requiring the circulator statement to be completed by the circulator of the part-petition. On Form No. 6-O, the instructions for the circulator statement portion of the part-petition state that it “[m]ust be completed and signed by the circulator.”<sup>8</sup> [*See, Form No. 6-O, Exhibit B* (emphasis added)]. These instructions, which are printed in bold, italicized font, could not be

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<sup>8</sup> As explained *infra*, the Court has previously relied upon the design of the Secretary’s petition forms evidencing the Secretary’s interpretations of election statutes. [*See, Crowl* at ¶ 10].

clearer or more unambiguous. [See, *State ex rel. Calhoun v. Scioto Cty. Bd. of Elections*, 36 Ohio St.3d 164, 164, 522 N.E.2d 49 (1988) (finding that a candidate failed to follow the instructions on a petition form prescribed by the Ohio Secretary of State)].

Here, there is no dispute that someone other than the circulator of Part-Petition No. 2, Mr. Berk, completed part of the circulator statement. At the Protest Hearing, Mr. Berk admitted during direct examination by protestors' legal counsel, J. Corey Colombo, that another circulator, named Bonnie Perry, completed the signature number field on Part-Petition No. 2 (and Part-Petition No. 1) after he had signed the circulator statement:

Mr. Colombo: Now if you flip to Part-Petition 2 in front of you there. The reasons I was asking the last one is because I'm trying to establish your circulating policy and how you turned them in. The – for this one, on the second page, it says Page 1 of 2. Correct?

Mr. Berk: Yeah. Yeah.

Mr. Colombo: And would you have written that or would Bonnie [Perry] have written that?

Mr. Berk: Bonnie wrote it.

Mr. Colombo: "28 total," would Bonnie have written that?

Mr. Berk: Yes, sir.

\* \* \*

Mr. Colombo: So you're saying Bonnie would have done the official tally and put in 28 there?

Mr. Berk: Yes, sir.

Mr. Colombo: And you would have signed it before giving it to her?

Mr. Berk: When the page got full, I signed it.<sup>9</sup>

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<sup>9</sup> This is a reference to earlier testimony in which Mr. Berk explained how the circulator statements on Part-Petition No. 1 were prepared. Mr. Berk had explained that once the page of signatures "got full," he "signed in front of the last person that signed it for [him]" before giving it to Ms. Perry at some other unspecified time. [Tr. 49:15-20, Exhibit I].

[Tr. 51:13-52:16, Exhibit I].

Ms. Perry likewise admitted that she—and not Mr. Berk—filled in the signature number fields on Part-Petition No. 2's two circulator statements:

Mr. Colombo: [Regarding Part-Petition No. 2] So if you flip to the second page of this stack of documents, that one – Page 1 of 2 in there, is that something you would have filled in?

Ms. Perry: Page 1 of 2, signatures 28 total?

Mr. Colombo: Yeah.

Ms. Perry: Yes, I wrote that.

Mr. Colombo: That's your handwriting?

Ms. Perry: Yeah.

Mr. Colombo: Okay. On the next page, there is a “28” inserted on the number line.

Ms. Perry: Uh-huh.

Mr. Colombo: Would that have been something you would have filled out?

Ms. Perry: Yeah.

[Tr. 85:11-86:6, Exhibit I].

Both Mr. Berk and Ms. Perry testified that Ms. Perry completed portions of the circulator statements on Part-Petition No. 2. Despite hearing this uncontested testimony, Respondent Board ignored it. This was an abuse of discretion. [See, *Scott* at ¶ 19 (“having decided to conduct a hearing, it was an abuse of discretion for the board to disregard the evidence that hearing produced.”)] Accordingly, because the circulator statements on Part-Petition No. 2 were completed by someone other than the circulator, the circulator statements are invalid.

**2. A third-party's modification of a circulator's statement after the circulator has signed the statement voids the attestation.**

Even if it is permissible for someone other than the circulator of a part-petition to complete portions of the circulator statement, the sequence of Ms. Perry modifying Mr. Berk's circulator statements on Part-Petition No. 2 *after* Mr. Berk had signed them renders the statements invalid. Again, Mr. Berk testified that he signed the circulator statements on Part-Petitions No. 1 and 2 sometime before giving them to Ms. Perry to fill in the number of signature witnessed:

Mr. Colombo: Would you have signed it before you gave this petition to Bonnie and then she filled in the numbers.

Mr. Berk: Yeah, I signed it. Once the page got full, I signed it in front of the last person that signed it for me.

\* \* \*

Mr. Colombo: So you're saying Bonnie would have done the official tally and put in 28 there?

Mr. Berk: Yes, sir.

Mr. Colombo: And you would have signed it before giving it to her?

Mr. Berk: When the page got full, I signed it.

[Tr. 49:15-49:20; 52:11-52:16, Exhibit I].

When Mr. Berk signed the circulator statements on Part-Petition No. 2, he did not attest to witnessing the affixing of "28" (or "pg 1 of 2") signatures on the part-petition. Rather, he attested to witnessing the affixing of *no* signatures as he left the signature number field blank. This is tantamount to the issue before the Court in *Loss*, in which the Court held that the requirement for a circulator to state the number of signatures witnessed is mandatory and that failure to comply with this requirement invalidates the part-petition. *Loss*, 29 Ohio St.2d at 234. Therefore, because Mr. Berk admitted to not complying with R.C. 3501.38(E)(1)'s requirement to state the number of signatures he witnessed, then, under *Loss*, Part-Petition No. 2 is invalid.

Ms. Perry's subsequent modification of Mr. Berk's signed circulator statements on Part-Petition No. 2 also invalidates Part-Petition No. 2. This is because Mr. Berk did not actually declare under penalty of election falsification that he witnessed the affixing of the number of signatures indicated by Ms. Perry, nor did Mr. Berk provide any indication on the part-petition that he approved the modification, such as by providing his initials. Ms. Perry's modification of Mr. Berk's circulator statements is effectively an alteration of a sworn statement.

Ms. Perry's modification of Mr. Berk's circulator statement is particularly problematic in light of the purpose served by circulator statements. Inherent in the purpose of the circulator statements—as well as in the purpose of all sworn statements—are the notions of finality and completion upon signature. Indeed, as the Court has repeatedly explained, the requirement that a circulator state the number of signatures personally witnessed “is a protection against signatures being added later.” [*Ohio Manufacturers' Assn.*, at ¶ 44 quoting *Loss*, 29 Ohio St.3d at 234]. Given that Ms. Perry admitted to having filled in the number fields on Part-Petition No. 2 sometime after Mr. Berk signed the circulator statements, there is “no guarantee that someone did not later add the signature of legitimate electors who did not choose to sign (or did not even know that their names were being placed on the petition).”<sup>10</sup> [*Ohio Manufacturers' Assn.*, at ¶ 44].

Permitting third parties to modify signed circulator statements, as was the case here, could have an untold impact on election petitions across the state at every level. It would undoubtedly increase the risk of signatures being added to petitions after the circulator has signed the circulator statement, undermining the purpose of Ohio's petition process. This cannot be what the General Assembly intended when it required circulators to attest to the number of signatures witnessed.

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<sup>10</sup> Notably, Part-Petition No. 2 contained four signatures invalidated by Respondent Board as being “not genuine,” i.e., the signatures on the petition did 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.

For these reasons, the circulator statements on Part-Petition No. 2 were not properly completed, and, therefore, the entire part-petition—containing twenty-three (23) valid signatures—is invalid.

**D. Respondent Board abused its discretion by not enforcing its written policy requiring the individual parts of the Referendum Petition to be stapled together.**

In its decision to deny Relators' protest, Respondent Board took the unprecedented step of declining to enforce a written policy that applies to all part-petitions against the Referendum Petition without formally revoking the policy or otherwise indicating that it would thereafter cease enforcing it. This was an abuse of discretion and/or acting in clear disregard of the law.

Boards of elections are permitted to adopt policies to implement election laws. R.C. 3501.11(E) provides that county boards of elections shall “[m]ake and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters.” Similarly, the Ohio Secretary of State has directed that county boards of elections are authorized to “carry out state and federal law as instructed by the Secretary and by board policies adopted by the board’s members.” Ohio Secretary of State Directive 2017-11, Section 1.02.

Pursuant to the authority granted by R.C. 3501.11(E) and the Ohio Secretary of State, Respondent Board, in 2014, adopted its Policy Regarding the Affixing of Part-Petitions via Resolution No. 2014-01, requiring the individual pages of part-petitions to be stapled together, if they are not printed double-sided. [Res. No. 2014-01 and Policy Regarding the Affixing of Part-Petitions, Exhibit G (stating that the Board “shall not” certify any issue or question unless the individual pages comprising the part-petitions are “affixed by a staple”)]. This policy was

unanimously adopted by the Board at the time, including by three of the four current members of the Board.<sup>11</sup>

At the Protest Hearing, members of Respondent Board provided the history of this policy. The Board's Chair, Ed Helvey, explained that the Board adopted the written policy after being rebuked by the Court for trying to enforce a similar rule as an unwritten policy:

Chair Helvey: Just for everybody's enlightenment, I guess, the history of this resolution, 2014-1, in the 2013 election process, it's an odd-year election. Petitions are filed in August. They're filed late, you know, in the election calendar. And we had probably 18 to 20 people who had different problems with their petitions, where they left critical areas blank. Even people that had run for that office before, because it was four years earlier, you know. It's not something that they do every day or every year. \* \* \*

As far as the stapling goes, one of the candidates who did not have his petition as a singular document took it to the Ohio Supreme Court and the Supreme Court ruled in his favor because they said we did not have a specific policy. He was a township trustee. Was his name?

Member Cuckler: Crowl.

Chair Helvey: Yes, Crowl.

Mr. Betts: Porter Township.

Chair Helvey: So Mr. Crowl took the case to the Supreme Court and won because we didn't have a specific policy. So before the next round of elections, especially the odd number year elections[,] came about, we created that policy. Just so everybody knows how it came about.

[Tr. 27:3-28:17, Exhibit I (emphasis added)]

Board member Steve Cuckler provided more history, explaining that there was an additional instance in which the Court had rebuked the Board for seeking to enforce an unwritten policy:

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<sup>11</sup> These three members are Steve Cuckler, Ed Helvey, and Shawn Stevens.

Member Cuckler: To give a little context also to the reasoning and the motivation behind Board policies, in general, when it comes to petitions, there was another case that even predates this and which dealt with Orange Township. Orange Township was filing for a fire levy, and they actually turned it in after 4:00 on the last day to file a levy, by which that's – by which a township is required to submit. And, of course, it went all the way up to the Supreme Court. Our ruling on that specific thing was the Revised Code, the law of Ohio says 4:00. Right?

It went to the Supreme Court. The township had argued, well, they faxed it in or something like that, e-mailed it in, scanned it in, but our staff had not received a hard copy at 4:00. The Supreme Court had ruled, well, you guys can't enforce that 4:00. It was arbitrary and capricious of us to enforce 4:00 because we didn't have a policy that said people have to have it in at 4:00.

Chair Helvey: Hard copy.

Member Cuckler: Hard copy. Now, we're just all, you know, country people here trying to figure all this out, like everybody else. I don't know. If the law says 4:00, I assume 4:00 means something. Right?

So nonetheless, the Supreme Court encouraged us to make a policy of this Board. And the way we took that -- and again, the reason I'm going on is to educate, in the event this goes to the next level. The way we took that, or at least I took that, because I was one of the big proponents of doing policies, was, okay, sounds like where there is either -- where there is clarity in the law or where there's ambiguity in the law, the Supreme Court is encouraging us to have a policy that either enforces the law or clarifies any of the ambiguity.

So that was the motivation behind having these various policies. Again, we took a cue from the Supreme Court. I don't know what year that was, I can't remember, in the Orange Township versus Board of Elections case.

So that gives you a little context, background, as to why there's even a policy on these various things, period. I just think that is important to understand.

[Tr. 29:21-31:22, Exhibit I (emphasis added)].

The case referred to by Board member Cuckler is *State ex rel. Orange Twp. Bd. of Trustees v. Delaware Cty. Bd. of Elections*, 135 Ohio St.3d 162, 2013-Ohio-36, 985 N.E. 2d 441. As Board member Cuckler stated, the Board sought to enforce an unwritten policy that hard copies—and not just electronic or faxed copies—of required documents had to be filed by the applicable deadline. In holding that the Board could not enforce this unwritten policy, the Court stated “[u]nlike the courts, the Delaware County Board of Elections does not have a rule or even a policy regarding the manner in which documents may be ‘filed with’ or ‘certified to’ the board. In the absence of such a rule, the e-mail transmission of the requisite documents . . . was adequate to be considered a ‘certification to’ the board . . .”). [Id at ¶ 27].

Adding even more context, the Board’s legal counsel explained that the policy was adopted in order to prevent petition fraud:

Mr. Betts: I should add one other thing. Obviously the reason for having them stapled is so that the Board know what front and back go together. That was a problem from the standpoint of petitions being submitted that weren’t attached and we didn’t know the front and back, and certainly don’t want something to be added to the part-petitions later. And in history, this was not a problem because they would get the form from the Board of Elections that was a duplex copy. Nowadays, you print them off the computer and it prints it off as separate pages. It doesn’t do a duplex.

So that was another reason behind that policy, so you know the front and the back go together and there wasn’t some sort of fraud happening in terms of inserting signatures.

[Tr. 126:18-127:10, Exhibit I (emphasis added)].

The Board’s legal counsel also explained that the Board was permitted to adopt this policy by R.C. 3501.11(E):

Mr. Betts: Just to add slightly more to that, if I may, under Revised Code 3501.11, which is the duty of the Board of Elections, the Board of Elections, specifically under Subsection (E) of that statute, is given the authority to make and issue rules and instructions that are not inconsistent with

laws or with Secretary of State's directives as it considers necessary for elections officers and voters. So the policies were permitted under the powers and duties of the Board.

[Tr. 31:23-32:9, Exhibit I (emphasis added)].

Additionally, Respondent Board has had occasion to consider whether to continue enforcing its Policy Regarding the Affixing of Part-Petitions or to revoke it. In 2015, the Board adopted "Petition Verification Guidelines" with respect to candidacy petitions that stated that its Policy Regarding the Affixing of Part-Petitions would continue to apply. [See, Board Res. No. 2015-05 and Petition Verification Guidelines, attached as Exhibit K at \*2 ("The following will invalidate the entire part-petition: . . . Part-petition comes in as two separate pages not affixed. (Policy 2014-01)").] As with the Policy Regarding the Affixing of Part-Petitions (2014-01), these guidelines were approved by the three current members of Respondent Board who were also members of the Board at the time the guidelines were adopted.<sup>12</sup> [Id at \*3]. Thus, the Board's Policy Regarding the Affixing of Part-Petitions remained in effect when the Referendum Petition was filed. [See also, Respondent's Answer ¶ 14 (admitting that the Policy Regarding the Affixing of Part-Petitions remains in effect)].

There is no dispute that the none of the separate pages of the Referendum Petition's parts were stapled together when filed. Circulators of the Referendum Petition stated as much to Respondent Board when the Board first met on May 24, 2018 to discuss the Referendum Petition. [See, 5/24/2018 Meeting Minutes, Exhibit F at \*6 ("Member Watkins audibly reviewed the Board's stance on the necessity for staples to be affixed. . . . With the Chair's permission, Members Cuckler and Watkins directed questions to the gallery, several of them having circulated the petitions in question. The answers respectively yielded that the part-petitions were in fact paper

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<sup>12</sup> Again, these three members are Steve Cuckler, Ed Helvey, and Shawn Stevens.

clipped while being circulated . . .”)]. And at the Protest Hearing, the circulator who actually filed the Referendum Petition, Brittany Bowers, testified that none of the pages were stapled when it was filed. [Tr. 75:14-15, Exhibit I (“[The part-petitions] were all paperclipped when it was submitted”).

The Referendum Petition undoubtedly did not comply with the Board’s Policy Regarding the Affixing of Part-Petitions, and it illustrates the danger of not affixing the part-petitions by staples as identified by the members of and legal counsel for Respondent Board. Several part-petitions contain extra pages making it unclear as to what was actually shown to signers and whether signature pages were added after the fact. For instance, and identical to the issues with Part-Petition No. 2 described above, Part-Petition No. 1 contained one cover page and two signature pages, each with a corresponding circulator statement attesting witnessing the “foregoing” petition; again Board member Cuckler said he was “too confused” by this. [5/24/2018 Meeting Minutes, Exhibit G at \*6]. Similarly, it is unclear whether what is marked as Part-Petition No. 11 is a part-petition without a circulator statement or if it is supposed to be combined with what is marked as Part-Petition No. 12, creating a part-petition with two cover pages and one signature page. This confusion would have been avoided altogether had the Referendum Petition’s parts been stapled together as units, as required by the Board.

Despite being presented with this evidence and argument at the Protest Hearing, the Board declined to enforce its Policy Regarding the Affixing of Part-Petitions against the Referendum Petition. In so doing, the Board did not affirmatively state that it was overruling the Policy Regarding the Affixing of Part-Petitions nor that it would thereafter decline to enforce the policy against other policies. Indeed, the Policy Regarding the Affixing of Part-Petitions remains in effect. Because of this, the Board abused its discretion and/or acted in clear disregard of the law

by declining to enforce the policy against this particular petition. Moreover, because none the Referendum Petition's parts complied with the Board's Policy Regarding the Affixing of Part-Petitions, each part-petition is invalid, and the Referendum Petition does not have a sufficient number of valid signatures to be certified for placement on the November 6, 2018 General Election ballot.

#### **IV. CONCLUSION**

For the foregoing reasons, Relators respectfully request this Court issue a Writ of Prohibition prohibiting Respondent from certifying the Referendum Petition and placing the issue upon the ballot for the November 6, 2018 General Election.

Respectfully submitted,

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*Counsel for Relators*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Merit Brief and Appendix of Cited Statutes were served via email on August 3, 2018 upon the following:

Carol H. O'Brien, [cobrien@co.delaware.oh.us](mailto:cobrien@co.delaware.oh.us)  
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*Counsel for Respondent*

/s/ Derek S. Clinger

Derek S. Clinger (0092075)

**In the  
Supreme Court of Ohio**

---

STATE EX REL. NORMA J. MCCANN, *et al.*,  
*Relators,*

v.

DELAWARE COUNTY BOARD OF ELECTIONS,  
*Respondent.*

*Original Action in Prohibition*

*Expedited Election Matter Under S.Ct.Prac.R. 12.08*

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**RELATORS' APPENDIX OF CITED STATUTES**

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(A)

(1) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the board of township trustees requires such a fee, it shall be required generally, for each application. The board of township trustees, upon the passage of such a resolution, shall certify it to the township zoning commission.

(2) Upon the adoption of a motion by the township zoning commission, the certification of a resolution by the board of township trustees to the commission, or the filing of an application by property owners or lessees as described in division (A)(1) of this section with the commission, the commission shall set a date for a public hearing, which date shall not be less than twenty nor more than forty days from the date of the certification of such a resolution, the date of adoption of such a motion, or the date of the filing of such an application. Notice of the hearing shall be given by the commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of the hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the township zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted to the addresses of those owners appearing on the county auditor's current tax list. The failure of delivery of that notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the township zoning commission that will be conducting the hearing;
- (2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

- (5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;
- (6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;
- (7) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;
- (8) Any other information requested by the commission.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;
- (4) The name of the person responsible for giving notice of the hearing by publication;
- (5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;
- (6) Any other information requested by the commission.

(E) Within five days after the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section, or the filing of the application described in division (A) of this section, the township zoning commission shall transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the township zoning commission. The recommendation shall be considered at the public hearing held by the township zoning commission on the proposed amendment.

The township zoning commission, within thirty days after the hearing, shall recommend the approval or denial of the proposed amendment, or the approval of some modification of it, and submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county or regional planning commission on it to the board of township trustees.

The board of township trustees, upon receipt of that recommendation, shall set a time for a public hearing on the proposed amendment, which date shall not be more than thirty days from the date of the receipt of that recommendation. Notice of the hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of the hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the board of township trustees that will be conducting the hearing;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;
- (5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;
- (6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;
- (7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the board of township trustees that will be conducting the hearing on the proposed amendment;
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
- (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;
- (4) The name of the person responsible for giving notice of the hearing by publication;
- (5) Any other information requested by the board.

(H) Within twenty days after its public hearing, the board of township trustees shall either adopt or deny the recommendations of the township zoning commission or adopt some modification of them. If the board denies or modifies the commission's recommendations, a majority vote of the board shall be required.

The proposed amendment, if adopted by the board, shall become effective in thirty days after the date of its adoption, unless, within thirty days after the adoption, there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in that area at the most recent general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of that area for approval or rejection at a special election to be held on the day of the next primary or general election that occurs at least ninety days after the petition is filed. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

**"PETITION FOR ZONING REFERENDUM**

(if the proposal is identified by a particular name or number, or both, these should be inserted here) .....

A proposal to amend the zoning map of the unincorporated area of ..... Township, ..... County, Ohio, adopted .....(date).... (followed by brief summary of the proposal).

To the Board of Township Trustees of ..... Township, ..... County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of ..... Township, included within the ..... Township Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of ..... Township residing within the unincorporated area of the township included in the ..... Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the primary or general election to be held on .....(date)...., pursuant to section 519.12 of the Revised Code.

Street Address Date of Signature or R.F.D. Township Precinct County Signing

**STATEMENT OF CIRCULATOR**

I, .....(name of circulator)....., declare under penalty of election falsification that I am an elector of the state of Ohio and reside at the address appearing below my signature; that I am the

circulator of the foregoing part petition containing .....(number)..... signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

.....  
(Signature of circulator)

.....  
(Address of circulator's permanent residence in this state)

.....  
(City, village, or township, and zip code)

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

The petition shall be filed with the board of township trustees and shall be accompanied by an appropriate map of the area affected by the zoning proposal. Within two weeks after receiving a petition filed under this section, the board of township trustees shall certify the petition to the board of elections. A petition filed under this section shall be certified to the board of elections not less than ninety days prior to the election at which the question is to be voted upon.

The board of elections shall determine the sufficiency and validity of each petition certified to it by a board of township trustees under this section. If the board of elections determines that a petition is sufficient and valid, the question shall be voted upon at a special election to be held on the day of the next primary or general election that occurs at least ninety days after the date the petition is filed with the board of township trustees, regardless of whether any election will be held to nominate or elect candidates on that day.

No amendment for which such a referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters, it shall take immediate effect.

Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the county or regional planning commission, if one exists.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

R.C. 3501.05

The secretary of state shall do all of the following:

- (A) Appoint all members of boards of elections;
- (B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections.
- (C) Prepare rules and instructions for the conduct of elections;
- (D) Publish and furnish to the boards from time to time a sufficient number of indexed copies of all election laws then in force;
- (E) Edit and issue all pamphlets concerning proposed laws or amendments required by law to be submitted to the voters;
- (F) Prescribe the form of registration cards, blanks, and records;
- (G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards;
- (H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;
- (I) Except as otherwise provided in section 3519.08 of the Revised Code, certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;
- (J) Except as otherwise provided in division (I)(2)(b) of section 3501.38 of the Revised Code, give final approval to ballot language for any local question or issue approved and transmitted by boards of elections under section 3501.11 of the Revised Code;
- (K) Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions;
- (L) Require such reports from the several boards as are provided by law, or as the secretary of state considers necessary;
- (M) Compel the observance by election officers in the several counties of the requirements of the election laws;
- (N)

- (1) Except as otherwise provided in division (N)(2) of this section, investigate the administration of election laws, frauds, and irregularities in elections in any county, and report violations of election laws to the attorney general or prosecuting attorney, or both, for prosecution;
- (2) On and after August 24, 1995, report a failure to comply with or a violation of a provision in sections 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code, whenever the secretary of state has or should have knowledge of a failure to comply with or a violation of a provision in one of those sections, by filing a complaint with the Ohio elections commission under section 3517.153 of the Revised Code.
- (O) Make an annual report to the governor containing the results of elections, the cost of elections in the various counties, a tabulation of the votes in the several political subdivisions, and other information and recommendations relative to elections the secretary of state considers desirable;
- (P) Prescribe and distribute to boards of elections a list of instructions indicating all legal steps necessary to petition successfully for local option elections under sections 4301.32 to 4301.41, 4303.29, 4305.14, and 4305.15 of the Revised Code;
- (Q) Adopt rules pursuant to Chapter 119. of the Revised Code for the removal by boards of elections of ineligible voters from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct, which rules shall provide for all of the following:
  - (1) A process for the removal of voters who have changed residence, which shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 and the National Voter Registration Act of 1993, including a program that uses the national change of address service provided by the United States postal system through its licensees;
  - (2) A process for the removal of ineligible voters under section 3503.21 of the Revised Code;
  - (3) A uniform system for marking or removing the name of a voter who is ineligible to vote from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct and noting the reason for that mark or removal.
- (R) Prescribe a general program for registering voters or updating voter registration information, such as name and residence changes, by boards of elections, designated agencies, offices of deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers consistent with the requirements of section 3503.09 of the Revised Code;
- (S) Prescribe a program of distribution of voter registration forms through boards of elections, designated agencies, offices of the registrar and deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers;

(T) To the extent feasible, provide copies, at no cost and upon request, of the voter registration form in post offices in this state;

(U) Adopt rules pursuant to section 111.15 of the Revised Code for the purpose of implementing the program for registering voters through boards of elections, designated agencies, and the offices of the registrar and deputy registrars of motor vehicles consistent with this chapter;

(V) Establish the full-time position of Americans with Disabilities Act coordinator within the office of the secretary of state to do all of the following:

(1) Assist the secretary of state with ensuring that there is equal access to polling places for persons with disabilities;

(2) Assist the secretary of state with ensuring that each voter may cast the voter's ballot in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters;

(3) Advise the secretary of state in the development of standards for the certification of voting machines, marking devices, and automatic tabulating equipment.

(W) Establish and maintain a computerized statewide database of all legally registered voters under section 3503.15 of the Revised Code that complies with the requirements of the "Help America Vote Act of 2002," Pub. L. No. 107-252, 116 Stat. 1666, and provide training in the operation of that system;

(X) Ensure that all directives, advisories, other instructions, or decisions issued or made during or as a result of any conference or teleconference call with a board of elections to discuss the proper methods and procedures for conducting elections, to answer questions regarding elections, or to discuss the interpretation of directives, advisories, or other instructions issued by the secretary of state are posted on a web site of the office of the secretary of state as soon as is practicable after the completion of the conference or teleconference call, but not later than the close of business on the same day as the conference or teleconference call takes place.

(Y) Publish a report on a web site of the office of the secretary of state not later than one month after the completion of the canvass of the election returns for each primary and general election, identifying, by county, the number of absent voter's ballots cast and the number of those ballots that were counted, and the number of provisional ballots cast and the number of those ballots that were counted, for that election. The secretary of state shall maintain the information on the web site in an archive format for each subsequent election.

(Z) Conduct voter education outlining voter identification, absent voters ballot, provisional ballot, and other voting requirements;

(AA) Establish a procedure by which a registered elector may make available to a board of elections a more recent signature to be used in the poll list or signature pollbook produced by the board of elections of the county in which the elector resides;

(BB) Disseminate information, which may include all or part of the official explanations and arguments, by means of direct mail or other written publication, broadcast, or other means or combination of means, as directed by the Ohio ballot board under division (F) of section 3505.062 of the Revised Code, in order to inform the voters as fully as possible concerning each proposed constitutional amendment, proposed law, or referendum;

(CC) Be the single state office responsible for the implementation of the "Uniformed and Overseas Citizens Absentee Voting Act," Pub. L. No. 99-410, 100 Stat. 924, 42 U.S.C. 1973ff, et seq., as amended, in this state. The secretary of state may delegate to the boards of elections responsibilities for the implementation of that act, including responsibilities arising from amendments to that act made by the "Military and Overseas Voter Empowerment Act," Subtitle H of the "National Defense Authorization Act for Fiscal Year 2010," Pub. L. No. 111-84, 123 Stat. 3190.

(DD) Adopt rules, under Chapter 119. of the Revised Code, to establish procedures and standards for determining when a board of elections shall be placed under the official oversight of the secretary of state, placing a board of elections under the official oversight of the secretary of state, a board that is under official oversight to transition out of official oversight, and the secretary of state to supervise a board of elections that is under official oversight of the secretary of state.

(EE) Perform other duties required by law.

Whenever a primary election is held under section 3513.32 of the Revised Code or a special election is held under section 3521.03 of the Revised Code to fill a vacancy in the office of representative to congress, the secretary of state shall establish a deadline, notwithstanding any other deadline required under the Revised Code, by which any or all of the following shall occur: the filing of a declaration of candidacy and petitions or a statement of candidacy and nominating petition together with the applicable filing fee; the filing of protests against the candidacy of any person filing a declaration of candidacy or nominating petition; the filing of a declaration of intent to be a write-in candidate; the filing of campaign finance reports; the preparation of, and the making of corrections or challenges to, precinct voter registration lists; the receipt of applications for absent voter's ballots or uniformed services or overseas absent voter's ballots; the supplying of election materials to precincts by boards of elections; the holding of hearings by boards of elections to consider challenges to the right of a person to appear on a voter registration list; and the scheduling of programs to instruct or reinstruct election officers.

In the performance of the secretary of state's duties as the chief election officer, the secretary of state may administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws.

In any controversy involving or arising out of the adoption of registration or the appropriation of funds for registration, the secretary of state may, through the attorney general, bring an action in

the name of the state in the court of common pleas of the county where the cause of action arose or in an adjoining county, to adjudicate the question.

In any action involving the laws in Title XXXV of the Revised Code wherein the interpretation of those laws is in issue in such a manner that the result of the action will affect the lawful duties of the secretary of state or of any board of elections, the secretary of state may, on the secretary of state's motion, be made a party.

The secretary of state may apply to any court that is hearing a case in which the secretary of state is a party, for a change of venue as a substantive right, and the change of venue shall be allowed, and the case removed to the court of common pleas of an adjoining county named in the application or, if there are cases pending in more than one jurisdiction that involve the same or similar issues, the court of common pleas of Franklin county.

Public high schools and vocational schools, public libraries, and the office of a county treasurer shall implement voter registration programs as directed by the secretary of state pursuant to this section.

The secretary of state may mail unsolicited applications for absent voter's ballots to individuals only for a general election and only if the general assembly has made an appropriation for that particular mailing. Under no other circumstance shall a public office, or a public official or employee who is acting in an official capacity, mail unsolicited applications for absent voter's ballots to any individuals.

R.C. 3501.11

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

- (A) Establish, define, provide, rearrange, and combine election precincts;
- (B) Fix and provide the places for registration and for holding primaries and elections;
- (C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;
- (D) Appoint and remove its director, deputy director, and employees and all registrars, precinct election officials, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;
- (E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;
- (F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;
- (G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;
- (H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;
- (I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.
- (J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;
- (K)

- (1) Review, 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;
- (2) Examine each initiative petition, or a petition filed under section 307.94 or 307.95 of the Revised Code, received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

- (L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those abstracts to the proper authorities;
- (M) Issue certificates of election on forms to be prescribed by the secretary of state;
- (N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;
- (O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;
- (P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;
- (Q) Investigate and determine the residence qualifications of electors;
- (R) Administer oaths in matters pertaining to the administration of the election laws;
- (S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;
- (T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;
- (U) Maintain voter registration records, make reports concerning voter registration as required by the secretary of state, and remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state;
- (V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;
- (W) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

## NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law.

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) Assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

(AA) Perform any duties with respect to voter registration and voting by uniformed services and overseas voters that are delegated to the board by law or by the rules, directives, or advisories of the secretary of state.

R.C. 3501.38

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

(A) Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. Each signer shall be a registered elector pursuant to section 3503.01 of the Revised Code. The facts of qualification shall be determined as of the date when the petition is filed.

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

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

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

(E)

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

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

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

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

(H) 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; no signature may be removed after the petition is filed in any public office.

(I)

(1) No alterations, corrections, or additions may be made to a petition after it is filed in a public office.

(2)

(a) No declaration of candidacy, nominating petition, or other petition for the purpose of becoming a candidate may be withdrawn after it is filed in a public office. Nothing in this division prohibits a person from withdrawing as a candidate as otherwise provided by law.

(b) No petition presented to or filed with the secretary of state, a board of elections, or any other public office for the purpose of the holding of an election on any question or issue may be resubmitted after it is withdrawn from a public office or rejected as containing insufficient signatures. Nothing in this division prevents a question or issue petition from being withdrawn by the filing of a written notice of the withdrawal by a majority of the members of the petitioning committee with the same public office with which the petition was filed prior to the sixtieth day before the election at which the question or issue is scheduled to appear on the ballot.

(J) All declarations of candidacy, nominating petitions, or other petitions under this section shall be accompanied by the following statement in boldface capital letters: **WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.**

(K) All separate petition papers shall be filed at the same time, as one instrument.

(L) If a board of elections distributes for use a petition form for a declaration of candidacy, nominating petition, or any type of question or issue petition that does not satisfy the requirements of law as of the date of that distribution, the board shall not invalidate the petition on the basis that the petition form does not satisfy the requirements of law, if the petition otherwise is valid. Division (L) of this section applies only if the candidate received the petition from the board within ninety days of when the petition is required to be filed.

(M)

(1) Upon receiving an initiative petition, or a petition filed under section 307.94 or 307.95 of the Revised Code, concerning a ballot issue that is to be submitted to the electors of a county or municipal political subdivision, the board of elections shall examine the petition to determine:

(a) Whether the petition falls within the scope of a municipal political subdivision's authority to enact via initiative, including, if applicable, the limitations placed by Sections 3 and 7 of Article XVIII of the Ohio Constitution on the authority of municipal corporations to adopt local police, sanitary, and other similar regulations as are not in conflict with general laws, and whether the petition satisfies the statutory prerequisites to place the issue on the ballot. The petition shall be invalid if any portion of the petition is not within the initiative power; or

(b) Whether the petition falls within the scope of a county's authority to enact via initiative, including whether the petition conforms to the requirements set forth in Section 3 of Article X of the Ohio Constitution, including the exercise of only those powers that have vested in, and the performance of all duties imposed upon counties and county officers by law, and whether the petition satisfies the statutory prerequisites to place the issue on the ballot. The finding of the board shall be subject to challenge by a protest filed pursuant to division (B) of section 307.95 of the Revised Code.

(2) After making a determination under division (M)(1)(a) or (b) of this section, the board of elections shall promptly transmit a copy of the petition and a notice of the board's determination to the office of the secretary of state. Notice of the board's determination shall be given to the petitioners and the political subdivision.

(3) If multiple substantially similar initiative petitions are submitted to multiple boards of elections and the determinations of the boards under division (M)(1)(a) or (b) of this section concerning those petitions differ, the secretary of state shall make a single determination under division (M)(1)(a) or (b) of this section that shall apply to each such initiative petition.