



Ohio Legislative Service Commission

Bill Analysis

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S.B. 193

130th General Assembly
(As Introduced)

Sen. Seitz

BILL SUMMARY

- Eliminates intermediate political parties and revises the methods and standards for determining whether an organization qualifies as a political party.
 - Lowers the percentage of vote required for a party to retain its status as a political party and revises the process for a new party to gain recognition by filing a party formation petition.
 - Permits a new political party to be formed by filing a party formation petition not later than 125 days before a general election and permits the new political party to nominate candidates by petition to appear on the ballot at that general election.
 - Requires the candidates of new political parties to file nominating petitions not later than 125 days before the general election, and specifies the circumstances under which the names of those candidates will appear on the general election ballot as the nominees of the new political party.
 - Permits nominees of new political parties to be designated on the ballot with the name of the new political party, exempts those candidates from the general requirement that party candidates be nominated in a primary election, and permits a new political party to fill ballot vacancies in its nominations prior to the general election.
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CONTENT AND OPERATION

Background

The process for establishing new political parties and for those parties to place candidates on the ballot that is currently described in the Revised Code has been held

unconstitutional. The Sixth Circuit Court of Appeals stated, in *Libertarian Party of Ohio v. Blackwell*, that,¹

[T]he combination of two Ohio election regulations – the requirement that all political parties nominate their candidates via primary election and the requirement that all minor political parties file a petition with the Secretary 120 days in advance of the primary – imposes an unconstitutional burden on its First and Fourteenth Amendment rights of free association, by effectively preventing it from gaining access to the general election ballot in the twelve months preceding a presidential election. . . . As the regulations are not narrowly tailored and do not advance a compelling state interest, Ohio's system for registering new political parties violates the Constitution.

Following that case, a subsequent attempt to specify standards for new political parties by a Directive issued by the Secretary of State was invalidated both on the ground that the standards were too burdensome and on the ground that the Secretary of State lacked authority to develop new standards.² The court then ordered the Libertarian Party candidates to be placed on the ballot with the associated party designation. Pursuant to these decisions, while statutory standards for minor political party recognition and ballot access appear in the Revised Code, those standards are not currently being enforced.

Revised standards for political parties; elimination of intermediate parties

The bill eliminates intermediate political parties and revises the methods and standards for determining whether an organization qualifies as a minor political party.³ Under the bill, a "minor political party" means any political party whose candidate for Governor or nominees for presidential electors received less than 20% but not less than 3% of the total vote cast for the applicable office at the most recent regular state election. If a party fails to cast 3% of the total vote for Governor or President, it ceases to be a political party.

¹ *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006).

² *Libertarian Party of Ohio v. Brunner*, 567 F.Supp.2d 1006 (S.D. Ohio 2008).

³ R.C. 3501.01, 3501.07, 3505.10, 3513.05, 3513.31, 3517.02, and 3517.03.



A party may also be a minor political party if, after receiving less than 3% of the vote at such an election, it files with the Secretary of State a party formation petition meeting all of the following requirements:⁴

- The petition is signed by qualified electors equal in number to at least 1% of the total vote for Governor or nominees for presidential electors at the most recent election for such office.
- The petition is signed by not fewer than 500 qualified electors from a minimum of ½ of the congressional districts in the state. If the state has an odd number of congressional districts, the number of districts from which signatures are required to be obtained must be rounded up.
- The petition must declare the petitioners' intention of organizing a political party, the name of which must be stated in the declaration, and of participating in the succeeding general election, held in even-numbered years, that occurs more than 125 days after the petition is filed.
- The petition must name the candidates that the petitioners intend to nominate to appear on the ballot at that general election.

Upon receiving a party formation petition, the Secretary of State must promptly transmit to each board of elections the separate petition papers that purport to contain signatures of electors of that board's county. Not later than the 113th day before the general election, each board must examine and determine the sufficiency of the signatures on the petition papers and must return them to the Secretary of State, together with the board's certification of its determination as to the validity or invalidity of the signatures on the petition.

Any qualified elector may file a written protest against the petition with the Secretary of State not later than the 109th day before the general election. Any such protest must be resolved in the manner specified under the Election Petition Protest Law. Not later than the 90th day before the general election, the Secretary of State must determine whether the party formation petition is sufficient and must notify the petitioners of that determination. If the petition is sufficient, the new party comes into legal existence on the date of filing and is entitled to nominate candidates to appear on the ballot at the general election held in even-numbered years occurring more than 125

⁴ R.C. 3501.01(F)(2) and 3517.01.

days after the petition is filed. The party formation petition must name the candidates the petitioners wish to nominate for offices to be voted on at that general election.⁵

Under current law a party is an "intermediate political party" if it received less than 20% but not less than 10% of the vote at the most recent regular state election for Governor or nominees for presidential electors. A party is a "minor political party" if it received less than 10% but not less than 5% of the vote at that election or if it files with the Secretary of State at least 120 days before the primary election in an even-numbered year, a petition signed by at least 1% of the vote cast for Governor or presidential nominees.⁶

Nomination of candidates for new minor political parties

As previously mentioned, the party formation petition filed by a new political party must name the candidates the petitioners wish to nominate for offices to be voted on at the first general election at which the new party is entitled to place candidates on the ballot. Additionally, the prospective candidates also must file nominating petitions for the particular offices they seek.

Not later than 125 days before the day of that general election and not earlier than the day the applicable party formation petition is filed, each candidate or pair of joint candidates named on the party formation petition must file a nominating petition, on a form prescribed by the Secretary of State, that includes the name of the political party that submitted the party formation petition. If the candidacy is to be submitted to electors throughout the entire state, the nominating petition must be signed by at least 500 qualified electors who have not voted as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years. If the candidacy is to be submitted only to electors within a district, political subdivision, or portion of a district or political subdivision, the nominating petition must be signed by not less than 25 qualified electors who have not voted as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years.⁷

Each board of elections that is responsible to verify signatures on the nominating petition must examine and determine the sufficiency of those signatures not later than the 113th day before the general election. Written protests against the petition may be filed in the same manner as protests are filed against other nominating petitions not

⁵ R.C. 3517.012(A).

⁶ R.C. 3501.01 and 3517.01.

⁷ R.C. 3517.012(B)(1) and (2).



later than the 109th day before the general election and must be resolved in the same manner as protests against independent candidate petitions. Not later than the 90th day before the general election, the Secretary of State or the board of elections, as applicable, must determine whether the nominating petition is sufficient and must notify the candidate of that determination. The bill specifies three possible outcomes to determination of sufficiency of these petitions:⁸

- If the candidate's party formation petition is sufficient and the associated candidate's nominating petition is sufficient, the candidate must appear on the ballot in the general election as that political party's nominee for that office.
- If the candidate's nominating petition is insufficient, the candidate must not appear on the ballot in the general election.
- If the party formation petition is insufficient, the candidate named on that petition must not appear on the ballot in the general election, regardless of whether the candidate's nominating petition is sufficient.

Ballot designations, filling vacancies, and other actions by new minor parties

Because the bill permits new political parties to be recognized in advance of the general election, rather than the primary election as under current law, it adds candidates nominated using the new procedure to various provisions of the Elections Law that currently apply only to candidates nominated at a primary election. For example, the bill permits a party candidate nominated using the new nominating petition procedure to be designated on the ballot with the name of the new political party, exempts such a candidate from the general requirement that party candidates be nominated in a primary election, and permits a new political party to fill ballot vacancies in its nominations prior to the general election.⁹ Each of these processes currently only apply to candidates nominated at a primary election, since current law requires new parties to nominate candidates in that manner.

Cross reference changes

Because of the changes the bill makes to the law governing political parties, it revises several internal cross references to the section defining terms for the purpose of

⁸ R.C. 3517.012(B)(4).

⁹ R.C. 3501.01(K), 3505.03, 3505.08, 3505.10, 3506.11, 3513.04, 3513.05, 3513.31, 3513.311, 3513.312, and 3517.012(B)(1).

the Campaign Finance Law. Sections of the Revised Code not otherwise impacted by the political party changes are included in the bill to update the cross-referenced definitions.¹⁰

HISTORY

ACTION	DATE
Introduced	09-19-13

S0193-I-130/ejs

¹⁰ R.C. 3517.01(B) and (C), 4503.03, and 5747.29.

