



Ohio Legislative Service Commission

Final Analysis

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Am. Sub. S.B. 193 130th General Assembly (As Passed by the General Assembly)

Sens. Seitz, Eklund

Reps. Buchy, Huffman, Stebelton, Wachtmann, Batchelder

Effective date: February 5, 2014

ACT 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.
- Specifies further reduced party formation petition and vote percentage retention requirements for a group of voters who wish to form a minor political party and nominate candidates for the 2014 general election.
- 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 to appear on the ballot at that general election.
- Requires the candidates of new political parties to file nominating petitions not later than 110 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.

- Increases the length of time that a political party remains a recognized political party after it meets the requirements to become a political party in this state.
- Voids previous Directives issued by the Secretary of State that recognized political parties that do not meet the act's requirements for political party recognition.

CONTENT AND OPERATION

Background

The process for establishing new political parties and for those parties to place candidates on the ballot that was described in the Revised Code was held unconstitutional in 2006. 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 appeared in the Revised Code, those standards were not

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).



enforced. Since 2008, certain groups have been granted recognition as minor parties by court order or by Secretary of State Directive.³

Revised standards for political parties; elimination of intermediate parties

The act eliminates intermediate political parties and revises the methods and standards for determining whether an organization qualifies as a minor political party.⁴

General requirements

Under the act, 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. A political party that meets this threshold remains a political party for a period of four years after meeting the requirement.⁵

A group of voters may also become a minor political party if, after failing to meet the previously described requirements, the group files with the Secretary of State a party formation petition meeting all of the following requirements:⁶

- 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 each of at least 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.

³ Ohio Secretary of State Directives 2009-21, 2011-01, 2011-38, and 2013-02. Available at sos.state.oh.us/sos/elections/electionofficials/rules.aspx, accessed November 13, 2013. See also, e.g., *Moore v. Brunner*, Case No. 2:08-CV-224 (S.D. Ohio 2008).

⁴ R.C. 3501.01, 3501.07, 3505.10, 3513.05, 3513.31, 3517.02, and 3517.03.

⁵ R.C. 3501.01(F)(2)(a) and 3517.01(A)(1)(a).

⁶ R.C. 3501.01(F)(2)(b) and 3517.01(A)(1)(b).



- The petition must designate a committee of not less than three nor more than five individuals of the petitioners, who are required to represent the petitioners in all matters relating to the petition. Notice of all matters or proceedings pertaining to the petition may be served on the committee, or any of them, either personally or by registered mail, or by leaving such notice at their usual place of residence.

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 118th 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 114th 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 95th day before the general election, the Secretary of State must determine whether the party formation petition is sufficient and must notify the committee designated in the petition 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 days after the petition is filed.⁷

Under prior law, a party was considered 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 was a "minor political party" if it received less than 10% but not less than 5% of the vote at that election or if it filed 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. A party that failed to cast 5% of the total vote cast at an election for the office of Governor or President ceased to be a political party.⁸

Modified political party standards for 2014

The act sets out modified party formation and retention requirements for a group of voters who wish to form a minor political party and nominate candidates for the 2014

⁷ R.C. 3517.012(A).

⁸ R.C. 3501.01 and 3517.01.



general election. These modified requirements apply to any group, including one that previously has been recognized as a political party by a court order or a Secretary of State Directive.

First, the act reduces the required number of signatures for a party formation petition submitted in 2014. Under the act, a group must submit a party formation petition signed by qualified Ohio electors equal in number to at least 0.5%, instead of 1%, of the total vote for nominees for presidential electors at the 2012 general election (approximately 28,166 signatures). The petition must meet all of the other requirements for a party formation petition described above, including the requirement that the petition be signed by not fewer than 500 qualified electors from each of at least a minimum of ½ of the congressional districts in the state.

Further, the act lowers the party status retention threshold for 2014. At the 2014 general election, in order to remain a minor political party, a party must poll for its candidate for Governor at least 2%, instead of at least 3%, but less than 20%, of the entire vote cast for that office. As under the act's general provisions, a party that meets this requirement remains a minor political party for a period of four years after meeting that requirement.⁹

Nomination of candidates for new minor political parties

Not later than 110 days before the day of the general election and not earlier than the day the applicable party formation petition is filed, each candidate or pair of joint candidates wishing to appear on the ballot at the general election as the nominee or nominees of the party that filed 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 50 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 5 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.¹⁰

⁹ Section 4 of the act and Ohio Secretary of State, *Official Results for 2012 General Election*. Available at sos.state.oh.us/sos/elections/research/electresultsmain/2012results.aspx, accessed November 13, 2013.

¹⁰ R.C. 3517.012(B)(1) and (2).



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 105th 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 later than the 100th day before the general election and must be resolved in the same manner as protests against independent candidate petitions. Not later than the 95th 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 and the committee designated in the party formation petition of that determination.

After being notified that the political party has submitted a sufficient party formation petition, the committee designated in a party formation petition must, not later than the 75th day before the day of the general election, certify to the Secretary of State a slate of candidates. The slate of candidates must consist of candidates or joint candidates who submitted sufficient nominating petitions indicating their desire to be the candidates of the party formed by the party formation petition. The slate certifying the candidates must be on a form prescribed by the Secretary of State and signed by all of the individuals of the committee designated in the party formation petition. In no event may the slate of candidates include more than one candidate for any public office or more than one set of joint candidates for the offices of governor and lieutenant governor.

The names of the candidates or joint candidates so certified must appear on the ballot at the general election as that party's nominees for those offices. If a candidate's nominating petition is insufficient or if the committee does not certify the candidate's name as part of the party's slate of candidates, the candidate must not appear on the ballot in the general election. If the party formation petition is insufficient, no candidate may appear on the ballot in the general election as that political party's nominee, regardless of whether any candidate's nominating petition is sufficient.¹¹

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

Because the act permits new political parties to be recognized in advance of the general election, rather than the primary election as under prior law, it adds candidates nominated using the new procedure to various provisions of the Elections Law that previously applied only to candidates nominated at a primary election. For example, the act permits a party candidate nominated using the new nominating petition

¹¹ R.C. 3517.012(C).



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.¹² Each of these processes previously only applied to candidates nominated at a primary election, since prior law required new parties to nominate candidates in that manner.

Invalidation of Secretary of State Directives

The act specifies that Directives 2009-21, 2011-01, 2011-38, and 2013-02 issued by the Secretary of State are void and must not be enforced or have effect on or after the act's effective date. Each of the referenced Directives relates to the recognition of, and continued ballot access for, minor political parties.¹³

Cross reference changes

Because of the changes the act makes to the law governing political parties, it revises several internal cross references to the section defining terms for the purpose of the Campaign Finance Law. Sections of the Revised Code not otherwise impacted by the political party changes are included in the act to update the cross-referenced definitions.¹⁴

HISTORY

ACTION	DATE
Introduced	09-19-13
Reported, S. State Gov't Oversight & Reform	10-08-13
Passed Senate (22-11)	10-08-13
Reported, H. Policy & Legislative Oversight	10-30-13
Passed House (52-46)	10-30-13
Senate refused to concur in House amendments (0-29)	10-30-13
House requested conference committee	10-31-13
Senate acceded to request for conference committee	10-31-13
Senate agreed to conference committee report (21-12)	11-06-13
House agreed to conference committee report (51-46)	11-06-13

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¹² 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).

¹³ Section 3 of the act.

¹⁴ R.C. 3517.01(B) and (C), 4503.03, and 5747.29.

