



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 193*

130th General Assembly

(As Reported by H. Policy and Legislative Oversight)

Sens. Seitz, Eklund

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 to appear on the ballot at that general election.
- Reduces the number of electors required to sign a party formation petition.
- 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.

* This analysis was prepared before the report of the House Policy and Legislative Oversight Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- 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 existing Directives issued by the Secretary of State that recognize political parties that do not meet the bill'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 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.

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).



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 2% 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.⁴

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:⁵

- The petition is signed by qualified electors equal in number to at least 0.5% 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 $\frac{1}{2}$ 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 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

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

⁴ R.C. 3501.01(F)(2)(a) and 3517.01(A)(1)(a).

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



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.⁶

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. A party that fails to cast 5% of the total vote cast at an election for the office of Governor or President ceases to be a political party.⁷

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

⁶ R.C. 3517.012(A).

⁷ R.C. 3501.01 and 3517.01.



voted as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years.⁸

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.⁹

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

⁸ R.C. 3517.012(B)(1) and (2).

⁹ R.C. 3517.012(C).



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.¹⁰ 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.

Invalidation of current Secretary of State Directives

The bill 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 bill's effective date. Each of the referenced Directives relates to the recognition of, and continued ballot access for, minor political parties.¹¹

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 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.¹²

HISTORY

ACTION	DATE
Introduced	09-19-13
Reported, S. State Gov't Oversight & Reform	10-08-13
Passed Senate (23-11)	10-08-13
Reported, H. Policy & Legislative Oversight	-----

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¹⁰ 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).

¹¹ Section 3 of the bill.

¹² R.C. 3517.01(B) and (C), 4503.03, and 5747.29.

