

Constitution Party of Ohio

Ballot Access Overview

2008

Ohio's ballot access regulations are arguable the toughest in the nation and essentially prevent minor political parties from engaging in the most fundamental of political activities – recruiting supporters, selecting a candidate, and placing that candidate on the general election ballot in hopes of winning votes and ultimately, the right to govern. According to these requirements a new political party would have to submit a petition containing at least 80,000 raw signatures 120 days before a primary to ensure their candidates a spot on the ballot. This requires minor parties to rally support when the election is remote and voters are generally uninterested in the campaign.

Once a party surmounts the initial requirement, they must poll at least 5% for their candidate for Governor or President to maintain their ballot access. If they cannot, they must start the process of obtaining tens of thousands of petition signatures over again.

In 2006, the Libertarian Party of Ohio was successful in getting Ohio's ballot access laws deemed unconstitutional. Therefore, until the legislature acts to create new laws, the Secretary of State, through directive has provided a method for minor party registration by reducing the petition signature requirement in half and the deadline by 20 days.

Because the Constitution Party of Ohio is just forming, we lacked the funding and foot soldiers to launch a full party ballot access drive. Consequently, with the help of the national party, the Constitution Party of Ohio collected more than 11,000 petition signatures which are enough raw signatures to get the party's candidates for president and vice-president listed on the ballot as "independent" candidates. We will turn in these petition signatures after the National Presidential Nominating Convention at the end of April.

Following is a brief outline of Ohio's laws regulating the registration of minor political parties.

Minor Political Parties

O.R.C. 3517.01(A)(1)

<http://codes.ohio.gov/orc/3517>

Major Political Party: any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received at least ten percent of the total vote cast for such office at the most recent regular state election.

Minor Political Party: any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than ten percent but not less than five percent of the total vote cast for such office at the most recent regular state election, or **which has filed with the secretary of state, 120 days prior to the primary election, a petition signed by qualified electors equal in number to at least one percent of the total vote cast for such office in the last preceding regular state election.**

2006 General election: 4,022,754 (total votes) x 0.01 = **40,227.54** total valid signatures (must gather at least 80,000 raw signatures)

Date to be submitted: 120 days before the primary election (November).

A 2006 Sixth Circuit U.S. Court of Appeals case held that Ohio's system for registering a new political party violates the Constitution. (See Libertarian Party of Ohio, et al. v. Blackwell analysis attached and full decision: <http://www.ca6.uscourts.gov/opinions.pdf/06a0342p-06.pdf>).

Until the State Legislature acts to change Ohio's election regulations, the Secretary of State issued a directive to provide a means for political parties to organize and participate in the electoral process (See SOS Directive 2007-09: <http://www.sos.state.oh.us/sos/electionsvoter/directives/2007/Dir2007-09.pdf>)

In accordance with the Secretary of State's role as chief election officer she will grant legal recognition to and allow ballot access for any political party that submits a petition to this office that meets the following requirements:

1. It contains the valid signatures of qualified electors equal in number to at least **0.5** percent of the total number of votes cast for governor in the 2006 general election, which amount is **20,114** (4,022,754 x 0.005);
2. It is filed with the office of the secretary of state no later than one hundred (**100**) days before the primary election (November).

Individuals or groups of individuals who desire to organize a political party in Ohio, but who do not intend to participate in the primary election, may certify candidates for the general election ballot for president and vice president only, in accordance with R.C. 3505.10(B)(3) by filing with the secretary of state's office a petition meeting requirements 1 above no later than eighty (80) days before the 2008 general election (August).

Independent Candidates

O.R.C. 3513.257

<http://codes.ohio.gov/orc/3513.257>

Independent joint candidates for president and vice president run without a political party designation. Instead of participating in the primary process, they participate in Ohio's general election by filing either a valid and sufficient joint nominating petition or a declaration of intent to be joint write-in candidates.

Persons wanting their names to be printed on the general election ballot for the offices of president and vice president must file with the Ohio secretary of state:

1. A valid and sufficient Joint Nominating Petition (Form 3-A) that complies with R.C. 3513.257 and R.C. 3501.38. The nominating petition must contain the names and signatures of both the candidate for president and the candidate for vice president, and at least **5,000** – but not more than 15,000 – signatures of qualified Ohio electors (any qualified Ohio elector may sign the petition, regardless of the elector's political party affiliation); and
2. A slate of presidential electors. Joint candidates must file a list of names of 20 electors who will represent them in the Electoral College, should the candidates win the general election. (R.C. 3513.257)

The filing deadline to have names printed on ballot is **August**.

Substitution of Candidates:

House Bill 99, passed in 1995 permits a group, which circulates an independent candidate petition, to substitute a new candidate if the candidate named on the petition withdraws (the substitute must be chosen at least 76 days before the election). Previously, a replacement for an independent candidate could only be made if the independent candidate died before the election. The Senate will take up the bill when it returns from recess.

Libertarian Party of Ohio, et al., v. Blackwell, 2006

<http://www.ca6.uscourts.gov/opinions.pdf/06a0342p-06.pdf>

OPINION:

The combined effect of the following two Ohio regulations impose an unconstitutional burden on the First and Fourteenth Amendment rights of free association by effectively preventing political parties from gaining access to the general election ballot in the twelve months preceding a presidential election: 1.) all political parties must nominate their candidates via primary election 2.) all minor political parties must file a petition with the Secretary 120 days in advance of the primary

FACTS OF THE CASE:

To accommodate the majority party over the past 25 years, Ohio has moved the date for the presidential primary election back by three months from the beginning of June to the beginning of March. To qualify for the primary election, minor political parties must file a petition by the beginning of November the previous year, which is 120 days before the primary and a full year before the general election.

CASE ANALYSIS:

In determine that Ohio's voting regulations should be subject to heightened scrutiny, the U.S. District Court concluded that the burden on the associational rights of minor political parties is severe, requiring political parties to file registration petitions far in advance of the primary and general elections. The Court also determined that the restrictions imposed by the voting regulations were not justified by any compelling interest of the state.

They describe the documentation, in other federal courts, of this severe burden. They recognized that the petition deadline, imposed to qualify for a primary, was almost one year before the presidential election requiring minor parties to recruit volunteers, attract media coverage and rally support when the election is remote and voters are not politically energized and generally uninterested in the campaign. The Court agreed that this negatively impacts the ability of minor parties to appear on the ballot.

Only 5 states require their minor political parties to nominate their candidates in a primary, election. Of those, Ohio is the ONLY state to impose a deadline far in advance of a primary and general election. The court even cited that the historical record as a whole in Ohio indicates this negative impact that these laws have had on minor parties and on political activity as a whole in Ohio. Accordingly, it opined that Ohio's system of registering minor political parties imposes a severe burden on associational rights.

Finally, this court finds the reasoning and conclusion of its sister circuits to be compelling. These courts have also found filing deadlines well in advance of the election date to be unconstitutional because the restrictions such laws unduly hinder, if not bar, minor political parties from influencing the electoral process by ballot access.

Accordingly, the court found the state's arguments unpersuasive. The state was neither able to surmount the severe burden requirement nor show that the election regulations at issue protect a compelling interest of the state. The State of Ohio is left with the option of moving the deadline closer to the primary date or allowing minor parties to choose their candidates in another manner.

While recognizing the limitations of their role, the court thought it important to point out that the State is not a neutral arbiter and is controlled by the major political parties in power, which presumably have an incentive to shape the rules of the electoral game to their own benefit. The court deemed it vital that their role protect interest that may not be adequately represented in the political process. They did note that the record shows that elections in Ohio have been monopolized by the two major political parties.