

OPINION NO. 2006-004**Syllabus:**

1. Paid campaign staff of a candidate for statewide office are not persons who "receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy" for purposes of R.C. 3501.381(A)(1). Paid campaign staff of a candidate for statewide office, therefore, are not subject to the filing requirements of R.C. 3501.381(A)(1).
2. The campaign committee of a candidate for statewide office is not a "person" for purposes of R.C. 3501.381(A)(2).
3. Pursuant to R.C. 3501.39(A)(3), the Secretary of State is responsible for determining whether, on particular facts, a declaration of candidacy and petition of a statewide candidate satisfies the requirements of R.C. 3501.381, and rejecting such declaration of candidacy and petition if it does not.

To: J. Kenneth Blackwell, Secretary of State, Columbus, Ohio
By: Jim Petro, Attorney General, February 13, 2006

You have requested an opinion concerning the application of R.C. 3501.381 to paid campaign staff of candidates for statewide office. The General Assembly enacted R.C. 3501.381 in Am. Sub. H.B. 1, 125th Gen. A., Special Session (2004) (eff. March 31, 2005), in the wake of problems that ensued in 2004 when certain business entities paid persons to collect signatures for placement on statewide initiative petitions and candidate petitions.

R.C. 3501.381 states the following:

(A)(1) Any person who will receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy, nominating petition, or declaration of intent to be a write-in candidate for a person seeking to become a statewide candidate or for a statewide initiative petition or a statewide referendum petition shall file a statement to that effect with the office of the secretary of state before any signatures are obtained for the petition or before the person is engaged to supervise, manage, or otherwise organize the effort to obtain signatures for the petition, whichever is later.

(2) Any person who will compensate a person for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy, nominating petition, or declaration of intent to be a write-in candidate for a person seeking to become a statewide candidate or for a statewide initiative or a statewide referendum petition shall file a statement to that effect with the office of the secretary of state before any signatures are obtained for the petition or before the person

engages a person to supervise, manage, or otherwise organize the effort to obtain signatures for the petition, whichever is later.

(B) The secretary of state shall prescribe the form and content of the statements required under division (A) of this section.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree, and the petition for which a person was compensated for supervising, managing, or otherwise organizing the effort to obtain signatures shall be deemed invalid.

(D) As used in 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.

Your request presents several questions about the construction and application of R.C. 3501.381:

1. Are paid campaign staff of statewide candidates persons who "receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy" for purposes of R.C. 3501.381(A)(1)?
2. Does the term "person" as used in R.C. 3501.381(A)(2) apply to the campaign committee of a statewide candidate?
3. What are the obligations, if any, of the Secretary of State to enforce R.C. 3501.381, and specifically R.C. 3501.381(C)?

Legislative intent in the enactment of R.C. 3501.381

A special session of the General Assembly enacted Am. Sub. H.B. 1 for the purpose of reforming Ohio's campaign finance laws, and addressing a number of ancillary aspects of the conduct of elections. During the 2004 election season certain alleged irregularities in the circulation of candidate and issue petitions were reported by the media, and some of those irregularities provided the basis for litigation challenging the placement of a particular candidate or an issue on the ballot. Among the problems identified was the payment of petition circulators on a per signature or per volume basis. Paying a petition circulator for each signature or by volume has a tendency to induce dishonesty and less than scrupulous behavior on the part of the petition circulator.

For example, in *Blankenship v. Blackwell*, 341 F. Supp. 2d 911 (S.D. Ohio 2004), *appeal dismissed for want of jurisdiction*, 429 F.3d 254 (6th Cir. 2005), the court commented upon the enormity of fraud perpetrated by petition circulators during the 2004 election, citing the rampant misconduct as a basis for denying a presidential hopeful access to Ohio's ballot. Members of a nominating committee to qualify for the Ohio ballot Ralph Nader and his running mate as independent candidates for President and Vice-President of the United States challenged the Secretary of State's order removing Nader and his running mate from Ohio's elec-

tion ballot. The basis for the Secretary's removal order was his finding that the committee's nominating petition failed to contain the number of valid signatures required by statute. Although almost eleven thousand of the signatures collected by the Nader campaign were invalidated for a number of reasons, plaintiffs challenged in particular the Secretary's exclusion of 1,956 signatures on the grounds, *inter alia*, that the petition circulators failed to meet Ohio's statutory requirement that circulators be residents of the State-inclusion of these signatures would have qualified Nader for the ballot.

In denying plaintiff's motion for temporary and preliminary injunctive relief, the court stated that, "[t]he record in this case is replete with credible, unchallenged instances of actual fraud in the circulation of petitions.... Not only were various petition circulators non-residents of this State, they engaged in outright fraud." *Id.* at 923. The court further noted that, "it is clear that not only were signatures rendered invalid because petitioners circulators falsely attested that they were residents of the State of Ohio, but also because they engaged in other forms of fraud in obtaining the signatures. *The fraud among petition circulators was widespread and took various forms.*" *Id.* (emphasis added). Indeed, the court held that "[t]he magnitude of the fraud ... [is] far too great for this Court to consider granting the equitable relief of an injunction in the Plaintiffs' favor." *Id.* at 924.

In order to check the tendencies to fraud identified by the court in *Blankenship v. Blackwell*, the General Assembly, in Am. Sub. H.B. 1, enacted R.C. 3599.111,¹ which declares, in relevant part, that

[n]o person shall receive compensation on a fee per signature or fee per volume basis for circulating any declaration of candidacy, nominating petition, declaration of intent to be a write-in candidate, initiative petition, referendum petition, recall petition, or any other election-related petition that is filed with or transmitted to a board of elections, the office of the secretary of state, or other appropriate public office.

R.C. 3599.111(B).

In addition, the statute requires that the compensation of persons who collect signatures on election-related petitions "be paid solely on the basis of time worked." R.C. 3599.111(D). Whoever violates R.C. 3599.111(B) is guilty of election falsification under R.C. 3599.36. R.C. 3599.111(E)(1). Whoever violates R.C. 3599.111(D) is guilty of a felony of the fifth degree. R.C. 3599.111(E)(2).

R.C. 3501.381 works hand-in-hand with R.C. 3599.111. As pertains to your questions, R.C. 3501.381 requires any person "who will receive compensation" for supervising, managing, or otherwise organizing any effort to obtain signatures

¹ The enforcement of R.C. 3599.111 was temporarily stayed by the United States District Court in *Citizens for Tax Reform v. Deters*, Case No. 1:05-CV-2-2 (S.D. Ohio April 19, 2005).

for a statewide candidate petition to file a statement to that effect with the office of the Secretary of State. R.C. 3501.381(A)(1). The statement must be filed before any signatures are obtained for the petition or before the person is engaged to undertake such supervising, managing, or organizing, whichever is later. *Id.*

Similarly, division (A)(2) of R.C. 3501.381 requires any person “who will compensate” a person for supervising, managing, or otherwise organizing any effort to obtain signatures for a statewide candidate petition to file a statement to that effect with the office of the Secretary of State. The statement must be filed before any signatures are obtained for the petition or before the person engages a person to undertake such supervising, managing, or organizing, whichever is later. *Id.*

In 1999 the United States Supreme Court decided *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999), recognizing the States’ “strong interest in policing lawbreakers among petition circulators.” *Id.* at 196. Although the Court struck down several requirements that the State of Colorado had imposed on petition circulators, it emphasized that Colorado had other statutory safeguards that did not so heavily burden free speech and more precisely achieved the State’s “integrity-policing” objectives. *Id.* at 196-97. “Through less problematic measures, Colorado can and does meet the State’s substantial interests in regulating the ballot-initiative process. Colorado aims to protect the integrity of the initiative process, specifically, to deter fraud and diminish corruption.... To serve that important interest ... Colorado retains an arsenal of safeguards.” *Id.* at 204-05.

Enacted after *Buckley*, R.C. 3501.381 is part of Ohio’s “arsenal” to “police lawbreakers among petitions circulators.” It allows the State to identify those who will be responsible for supervising or organizing signature gathering efforts, and thereby hold them accountable for any fraudulent practices, without resort to other possible safeguards that might, under *Buckley*, too heavily burden interests protected by the Constitution.

Paid campaign staff of a candidate for statewide office are not persons who “receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy” for purposes of R.C. 3501.381(A)(1)

In your first question you ask whether paid campaign staff of statewide candidates are persons who “receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy” for purposes of R.C. 3501.381(A)(1). For the following reasons we conclude that they are not. This means that paid campaign staff of a candidate for statewide office are not subject to the filing requirements of R.C. 3501.381(A)(1).

We understand that your question is prompted by recent uncertainty regarding the scope of R.C. 3501.381. Notwithstanding previous communications from your office that R.C. 3501.381 has no application to the regular, paid campaign staff of a candidate for statewide office, it has been suggested that such campaign staffers may come within the purview of R.C. 3501.381. Based upon the plain language of these several statutory enactments, as well as considerations of legislative intent, however, we must reject that suggestion.

First, the plain terms of R.C. 3599.111(B) and (D) make it clear that the General Assembly sought to address a problem that, albeit disturbing, is confined to those instances in which petition circulators are hired by an entity on an *ad hoc* basis for the sole purpose of gathering and collecting petition signatures. Until the enactment of R.C. 3599.111(B) and (D), it was a common practice for these independent contractors to receive payment of their compensation on the basis of the number of signatures that they were able to collect. It is not difficult to discern that payment for such services on a “piecework” or volume basis is rife with the potential for fraud and dishonesty. Accordingly, entities that hire persons for the purpose of soliciting and collecting signatures on issue and candidate petitions now may pay those persons “solely on the basis of time worked.” R.C. 3599.111(D).

It cannot reasonably be argued that these same circumstances obtain in the case of those persons retained and employed by a candidate’s campaign committee to carry out the numerous activities and responsibilities that are part and parcel of a campaign for statewide office. To the contrary, the regular staff of a modern campaign are engaged to accomplish a panoply of activities such as campaign fundraising, scheduling and orchestrating appearances by the candidate, purchasing campaign advertising, and devising strategies for mounting a winning campaign. In other words, campaign staffers are not retained principally or even incidentally to serve as petition signature gatherers. Thus, we are of the view that the paid campaign staff of a candidate for statewide office are not included within the plain language of R.C. 3501.381.

“The paramount consideration in determining the meaning of a statute is legislative intent[.]” *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶34 (2004); *accord Carnes v. Kemp*, 104 Ohio St. 3d 629, 2004-Ohio-7107, 821 N.E.2d 180, at ¶16 (2004), and thus “the strict letter of an act must ... yield to its evident spirit and purpose.” *Fleischmann Const. Co. v. United States*, 270 U.S. 349, 360 (1926). *See also Cochrel v. Robinson*, 113 Ohio St. 526, 149 N.E. 871 (1925) (syllabus, paragraph four). In light of the circumstances that impelled the enactment of R.C. 3501.381, and the related provisions that appear in R.C. 3599.111, it would strain credulity to conclude that the General Assembly intended the scope of R.C. 3501.381 to be so broad as to sweep within its coverage persons who are employed as and comprise the regular paid campaign staff of a candidate for statewide office.

Thus, we conclude that the paid campaign staff of a candidate for statewide office are not persons who “receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy” for purposes of R.C. 3501.381(A)(1).

The term “person,” as used in R.C. 3501.381(A)(2), does not apply to the campaign committee of a candidate for statewide office

In your second question you ask whether the term “person,” as used in R.C. 3501.381(A)(2), applies to the campaign committee of a candidate for statewide office. The term “person” is not separately defined for purposes of R.C.

Title 35. Thus, we must resort to the definition of “person” that appears in R.C. 1.59(C): “As used in any statute, ... [p]erson includes an individual, corporation, business trust, estate, trust, partnership, and association.” It is apparent that R.C. 1.59(C) does not include a campaign committee of a candidate for statewide office as a “person.” Moreover, such a campaign committee is not an “individual,” “corporation,” “business trust,” “estate,” “trust,” “partnership,” or “association.” Thus, it follows that the campaign committee of a candidate for statewide office is not a “person” for purposes of R.C. 3501.381(A)(2).

Pursuant to R.C. 3501.39(A)(3), the Secretary of State may reject a declaration of candidacy and petition of a candidate for statewide office when the Secretary of State determines that a requirement of R.C. 3501.381 has not been satisfied

In your third question you ask about your obligations to enforce R.C. 3501.381, and specifically division (C) of that section. Pursuant to R.C. 3501.39(A)(3), the Secretary of State may reject the declaration of candidacy and petition of a statewide candidate when the Secretary of State determines that a requirement of R.C. 3501.381 has not been satisfied.

R.C. 3513.05 requires a declaration of candidacy and petition to be filed with the Secretary of State when the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state. Upon receiving such a declaration of candidacy and petition, the Secretary of State is required to do the following:

(A) The secretary of state or a board of elections *shall accept any petition* described in section 3501.38 of the Revised Code² *unless one of the following occurs:*

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) *The candidate’s candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.* (Footnote and emphasis added.)

² R.C. 3501.38 concerns “[a]ll 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.”

R.C. 3501.39.

The plain language of R.C. 3501.39(A)(3) thus authorizes the Secretary of State to reject the declaration of candidacy and petition of a statewide candidate when the Secretary of State determines that a requirement of R.C. Chapter 3501 has not been satisfied.³ See generally R.C. 3501.381(C) (when R.C. 3501.381(A) is violated, the petition “shall be deemed invalid”). Because R.C. 3501.381 is a requirement set forth in R.C. Chapter 3501, it follows that the Secretary of State may reject the declaration of candidacy and petition of a statewide candidate when the Secretary of State determines that a requirement of R.C. 3501.381 has not been satisfied. See generally 1989 Op. Att’y Gen. No. 89-049 (syllabus, paragraph two) (“[w]hen a circulator fails to indicate the number of signatures contained on a petition paper as required by R.C. 3501.38(E), such petition paper is invalid”).

In light of the language of R.C. 3501.39(A)(3), it is clear that the Secretary of State is responsible for determining whether a declaration of candidacy and petition of a statewide candidate satisfies the requirements of R.C. 3501.381. Whether a declaration of candidacy and petition of a statewide candidate satisfies the requirements of R.C. 3501.381 involves questions of fact that must be resolved on a case-by-case basis by the Secretary of State. See generally *State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections*, 70 Ohio St. 3d 413, 414, 639 N.E.2d 78 (1994) (“[b]oards of elections are obligated to weigh evidence of a candidate’s qualifications, and courts should not substitute their judgment for that of the board”); *State ex rel. Williams v. Bd. of Elections of Trumbull Cty.*, 175 Ohio St. 253, 193 N.E.2d 392 (1963) (whether a candidate for the office of municipal court judge has satisfied the qualification that he be “admitted to the practice of law,” as required by R.C. 1901.06, is a question of fact for a board of elections). Accordingly, pursuant to R.C. 3501.39(A)(3), the Secretary of State is responsible for determining whether, on particular facts, a declaration of candidacy and petition of a statewide candidate satisfies the requirements of R.C. 3501.381, and rejecting such declaration of candidacy and petition if it does not.

Although the Secretary of State has the foregoing authority, such authority does not extend to criminally prosecuting a person who violates R.C. 3501.381(A).⁴ Instead this authority is conferred upon local officials vested with the authority to prosecute misdemeanor offenses. See R.C. 309.08(A) (“[t]he prosecuting attorney may inquire into the commission of crimes within the county. The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies

³ R.C. 3501.39(B) sets forth an exception to R.C. 3501.39(A)(3). This exception does not apply, however, when the Secretary of State reviews the declaration of candidacy and petition of a statewide candidate.

⁴ R.C. 3501.381(C) provides:

Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree, and the petition for which a person was compensated for supervising, managing, or otherwise organizing the effort to obtain signatures shall be deemed invalid.

in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to [R.C. 177.03] or by the attorney general pursuant to [R.C. 109.83], and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals”); R.C. 2938.13 (“[i]n any case prosecuted for violation of a municipal ordinance the village solicitor or city director of law, and for a statute, he or the prosecuting attorney, shall present the case for the municipal corporation and the state respectively, but either may delegate the responsibility to some other attorney in a proper case, or, if the defendant be unrepresented by counsel may with leave of court, withdraw from the case. But the magistrate or judge shall not permit prosecution of any criminal case by private attorney employed or retained by a complaining witness”).

The Secretary of State may, however, file with an appropriate local official an affidavit or complaint alleging a violation of R.C. 3501.381(A). *See* R.C. 2935.09; *see also* Ohio R. Crim. P. 3. When such an affidavit or complaint is filed, the local official shall proceed forthwith to determine whether a violation of R.C. 3501.381(A) has occurred, and, if necessary, commence a criminal prosecution. *See generally* 1989 Op. Att’y Gen. No. 89-002 at 2-13 (“[u]pon being made aware of the probable commission of a violation of R.C. 961.04, the prosecuting attorney may inquire into the commission of the crime and may prosecute”); 1987 Op. Att’y Gen. No. 87-097 (syllabus, paragraph six) (“[u]nder R.C. 309.08, the county prosecuting attorney is to prosecute any criminal charge filed in the court of common pleas charging a violation of R.C. 3767.13”).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Paid campaign staff of a candidate for statewide office are not persons who “receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a declaration of candidacy” for purposes of R.C. 3501.381(A)(1). Paid campaign staff of a candidate for statewide office, therefore, are not subject to the filing requirements of R.C. 3501.381(A)(1).
2. The campaign committee of a candidate for statewide office is not a “person” for purposes of R.C. 3501.381(A)(2).
3. Pursuant to R.C. 3501.39(A)(3), the Secretary of State is responsible for determining whether, on particular facts, a declaration of candidacy and petition of a statewide candidate satisfies the requirements of R.C. 3501.381, and rejecting such declaration of candidacy and petition if it does not.