

March 07, 2006

Ms. Lesley G. Blackner, Chairman
Florida Hometown Democracy, Inc. PAC
c/o Mr. Ross Stafford Burnaman
Attorney At Law
1018 Holland Drive
Tallahassee, FL 32301

RE: DE 06-03
Initiative Petitions;
§101.371, Florida Statutes

Dear Ms. Blackner:

This is in response to your request for an advisory opinion. As Chairman of a registered political committee, Florida Hometown Democracy, Inc. PAC, the division has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

You advise in your request that your political committee is the sponsor of a citizen's initiative to amend the Florida Constitution. Your committee's initiative petition, entitled "Referenda Required For Adoption and Amendment of Local Government Comprehensive Land Use Plans," was approved as to format by the Division of Elections on June 21, 2005 and was assigned serial number 05-18. On January 23, 2006, your committee obtained the requisite number of valid petition signatures for the submission of your petition language to the Attorney General pursuant to section 15.21(3), Florida Statutes¹. That submission by the Secretary of State occurred on January 26, 2006. On February 1, 2006, the Attorney General, pursuant to section 16.061, Florida Statutes, requested an advisory opinion from the Florida Supreme Court regarding the compliance of the text, ballot title and summary of the proposed amendment with state law.

You ask essentially the following questions:

1. Whether petition 05-18 was "filed" with the division prior to February 1, 2006 for purposes of eligibility for the 2006 general election ballot?

¹ Section 15.21(3), F.S., requires the Secretary of State to submit an initiative petition to the Attorney General and the Financial Impact Estimating Conference when the supervisors of elections have verified to the Division of Elections a number of valid petition forms submitted from the sponsor equal to 10 percent of the number of electors statewide and in at least one-fourth of the congressional districts required by s. 3, Article XI of the State Constitution.

2. Whether the deadline for Supervisors of Elections to certify signature verifications on petition 05-18 was February 1, 2006 or the later date of 91 days prior to the date of the 2006 General Election?

The short answer to Question 1 is no. The short answer to Question 2 is that February 1, 2006 was the deadline for Supervisors of Elections to certify signature verifications for the purpose of determining eligibility of a petition for placement on the 2006 General Election ballot.

Article XI, Section 5(b), of the Constitution of the State of Florida², effective January 4, 2005, states as follows:

A proposed amendment or revision to this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

Sections 100.371(1)-(5), Florida Statutes (2005), currently read as follows:

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election occurring in excess of 90 days from the certification of ballot position by the Secretary of State.

(2) Such certification shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated when made and shall be valid for a period of 4 years following such date, provided all other requirements of law are complied with.

(3) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The Secretary of State shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats.

(4) The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee required by s. 99.097. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, and the distribution by congressional

²See Senate Joint Resolution 2394, 2004; adopted 2004.

district. This certificate shall be immediately transmitted to the Secretary of State. The supervisor shall retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to obtain ballot position.

(5) The Secretary of State shall determine from the verification certificates received from supervisors of elections the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. **A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating the petition has been signed by the constitutionally required number of electors.**

Pursuant to Article XI, Section 3, of the Constitution of Florida, an initiative petition must be signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to 8% of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen. To make ballot position for the 2006 General Election, 611,009 valid signatures are required. Therefore, pursuant to section 101.371(5), Florida Statutes, a petition will be deemed "filed" with the Secretary of State upon the date of receipt by the Secretary of certificates from the supervisors of elections indicating that 611,009 valid signatures have been obtained. With regard to your petition, bearing serial number 05-18, that has not yet occurred.

As to Question 2, the language of Article XI, Section 5(a), of the Constitution of the State of Florida, which supersedes any statutory or rule provision to the contrary, imposes a deadline of February 1, 2006 for Supervisors of Elections to certify signature verifications for any petition seeking placement on the 2006 General Election ballot. Please note that Rule 1S-2.0091, Florida Administrative Code, entitled, "Constitutional Amendment Initiative Petition Submission Deadline; Verifying Electors' Signatures", is being revised to reflect the February 1 deadline now imposed by the Florida Constitution. The rule revision should become effective sometime in March of this year.

SUMMARY

Pursuant to section 101.371(5), Florida Statutes, a petition will be deemed "filed" with the Secretary of State upon the date of receipt by the Secretary of State of certificates from the supervisors of elections indicating that 611,009 valid signatures have been obtained. With regard to your petition, bearing serial number 05-18, that has not yet occurred. Article XI, Section 5(a), of the Constitution of the State of

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Florida, which supersedes any statutory or rule provision to the contrary, imposes a deadline of February 1, 2006 for Supervisors of Elections to certify signature verifications for any petition seeking placement on the 2006 General Election ballot.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

Prepared by:
Sharon D. Larson
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DKR/SDL/lmg