

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BEATRICE M. FRIEDLANDER, et al.,	:	
	:	
Plaintiffs,	:	Case No. 2:10-CV-378
	:	
v.	:	Judge Watson
	:	
JENNIFER BRUNNER, in her official Capacity as Ohio Secretary of State,	:	Magistrate Judge King
	:	
Defendant.	:	
	:	

CONSENT DECREE

Plaintiffs, Beatrice M. Friedlander ("Friedlander"), Citizens in Charge ("CIC"), and the Humane Society of the United States ("HSUS"), have brought this action against Defendant Ohio Secretary of State, who is named in her official capacity only ("Secretary").

Plaintiffs have challenged the constitutionality of R.C. §3503.06(B)(1), which prohibits all persons who are not residents of the State of Ohio from circulating any initiative or referendum petition within the State. The Plaintiffs further challenged the constitutionality of the portion of R.C. §3519.05 which requires each initiative and referendum petition circulator to provide his or her "permanent residence address in this state."

As set forth in the Complaint, Plaintiffs allege that R.C. §3503.06(B)(1) and a portion of R.C. §3519.05 are unconstitutional on their face and as applied to Plaintiffs to the extent that they prohibit non-Ohio residents from circulating statewide initiative and referendum petitions in violation of the First and Fourteenth Amendments to the United States Constitution.

Plaintiff Friedlander is a Michigan resident who desires to circulate a statewide initiative petition designed to prevent animal cruelty, promote food safety, and strengthen Ohio family farms ("OHF Petition"). Plaintiff CIC is a non-profit, non-partisan organization based in Virginia, whose Ohio and non-Ohio members support and work to protect the rights of initiative and referendum. Plaintiff HSUS is a national public-interest organization based in Washington, D.C. whose out-of-state members desire to circulate the OHF Petition.

Defendant Secretary is charged with enforcing R.C. §3503.06(B)(1) and §3519.05.

The claims in the Complaint are brought solely under federal law, namely, under the First and Fourteenth Amendments, which protect free speech rights.

The parties, desiring that this action be settled by an appropriate Consent Decree ("Decree") and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to the Court's approval of this Decree, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding among and between themselves as to the issues raised in the Plaintiffs' Complaint, and the matters resolved in this Decree.

In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

I. PURPOSES OF THIS DECREE.

1. The purpose of this Decree is to ensure that the fundamental rights of free speech of statewide initiative and referendum petition circulators are protected and that non-Ohio residents will not be deprived of the right to circulate statewide initiative and referendum petitions in Ohio.
2. The parties desire the Court to apply the ruling of *Nader v. Blackwell*, 545 F.3d 459, 477–78 (6th Cir. 2008) to the current Complaint. In *Nader*, the United States Court of Appeals for the Sixth Circuit found unconstitutional a similar bar on non-Ohio-resident petition circulators. On October 29, 2008, the court held that registration and residency requirements imposed on candidate petition circulators by R.C. § 3503.06(A) violated the First and Fourteenth Amendments. *Id.* The court also determined that no legally-significant difference exists between the level of protected political speech engaged in by circulators of candidate petitions and circulators of initiative and referendum petitions. *Id.* at 475–76.
3. The parties desire the Court to formalize the Secretary's Directive 2009-10 and Advisories 2009-04 and 2009-06 that the Secretary issued in response to the *Nader* decision. In these documents, the Secretary concluded that the Ohio-residency requirement for circulators of initiative and referendum petitions contained in R.C. § 3503.06(B)(1) was unenforceable. She directed the Boards of Elections not to enforce that requirement and not to invalidate any part-petition solely because the circulator listed a permanent residence located outside of Ohio. Although the Advisories and the Directive purport to allow non-residents to circulate initiative and referendum petitions in Ohio, to the extent they do so, they are contrary to existing Ohio law and remain subject to challenge on that

basis. Further, the Secretary's revision of circulator forms issued by her office is insufficient because the form of state initiative petitions is prescribed by statute. See R.C. § 3519.05. Circulators remain statutorily required to provide, under penalty of law, an "[a]ddress of . . . permanent residence in this state." *Id.*

II. PARTIES BOUND BY DECREE.

4. This Decree is hereby being entered with the consent of all parties.
5. This Decree shall be binding upon the Defendant Secretary and her successors and their employees, agents and representatives.
6. The parties recognize that Article VI, Clause 2 of the United States Constitution provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

III. DECLARATORY AND INJUNCTIVE RELIEF.

7. The Court hereby declares that R.C. §3503.06(B)(1), which prohibits all persons who are not residents of the State of Ohio from circulating any initiative or referendum petition within the State and the portion of R.C. §3519.05 which requires each initiative and referendum petition circulator to provide his or her permanent residence address "in this state," are unconstitutional on their face and as applied to Plaintiffs.
8. The Court hereby issues a permanent injunction against enforcement by Defendant Secretary of R.C. §3503.06(B)(1) and the portion of R.C. §3519.05 which requires each initiative and referendum petition circulator to provide his or her permanent residence address "in this state."
9. This Decree has no effect on the portion of R. C. §3519.05 that requires each petition circulator to provide the "Address of circulator's "permanent residence" on a part-petition. It only provides that the part-petition will not be invalid if the address of a circulator's permanent residence is not within the State of Ohio.
10. Defendant Secretary shall issue an Advisory to all Boards of Elections that sets forth the text of the injunctive relief described above.
11. In conjunction with sending a statewide initiative or referendum petition to Boards of Elections for petition and signature review, Defendant Secretary

shall direct the Boards of Elections that they must comply with the injunctive relief described above.

IV. MISCELLANEOUS PROVISIONS.

12. Plaintiffs waive any and all claims for attorneys' fees and expenses in this action.

IT IS SO ORDERED.



MICHAEL H. WATSON
UNITED STATES DISTRICT JUDGE