

JS 44 (Rev. 12 07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS <i>BEATRICE M. FRIEDLANDER</i></p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) <i>MCTIGUE & MCGINNIS LLC 550 E WALNUT ST COL 5 OH 43215</i></p>	<p>DEFENDANTS <i>JENNIFER L. BRUNNER, OH SEC. OF STATE FRANKLIN</i></p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 PTF <input checked="" type="checkbox"/> 1 DEF</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 PTF <input type="checkbox"/> 4 DEF</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2 PTF <input type="checkbox"/> 2 DEF</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 PTF <input type="checkbox"/> 5 DEF</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1 PTF <input checked="" type="checkbox"/> 1 DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 PTF <input type="checkbox"/> 4 DEF	Citizen of Another State	<input checked="" type="checkbox"/> 2 PTF <input type="checkbox"/> 2 DEF	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 PTF <input type="checkbox"/> 5 DEF	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF	Foreign Nation	<input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF	Foreign Nation	<input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF										

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety-Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing: Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
1st, 14th AMENDMENTS, U.S. CONSTITUTION

Brief description of cause:
PROHIBITION AGAINST PETITION CIRCULATION BY NON-RESIDENTS

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: *APRIL 27, 2010*

SIGNATURE OF ATTORNEY OF RECORD: *Mark H. [Signature]*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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

FILED
JAMES BONINI
CLERK

10 APR 27 PM 4: 25

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

BEATRICE M. FRIEDLANDER)
49651 Shenandoah Circle)
Canton, Michigan 48187,)

CITIZENS IN CHARGE)
2050 Old Bridge Road, Suite 103)
Lake Ridge, Virginia 22192,)

THE HUMANE SOCIETY OF THE UNITED STATES)
2100 L Street NW)
Washington, D.C. 20037,)

Plaintiffs,)

v.)

JENNIFER BRUNNER, in her Official Capacity as)
Ohio Secretary of State,)

Defendant.)

Civil Action No. _____

2 : 10 cv 378

JUDGE KOLSCHUH

MAGISTRATE JUDGE KING

COMPLAINT

I. NATURE OF THE CASE

1. This complaint challenges 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. This case also challenges the portion of R.C. § 3519.05 that requires each initiative and referendum petition circulator to provide his or her “permanent residence address in this state.”

2. Plaintiffs include a Michigan resident who wishes to gather signatures on a current initiative petition within Ohio, an organization that is supporting a current initiative petition in Ohio and whose non-Ohio-resident members wish to volunteer to gather signatures in support of that petition, and an organization that is dedicated to protecting and enhancing the initiative and referendum rights of citizens across the country.



3. The challenged provisions violate the First and Fourteenth Amendments to the United States Constitution, and Plaintiffs seek from the Court declaratory and injunctive relief to enable them to participate in the democratic process by gathering signatures on Ohio initiative and referendum petitions.

II. JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, which provides for federal question jurisdiction, because this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; and under 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable relief under an Act of Congress, here 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights.

5. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, as the claims asserted by Plaintiffs arose within this judicial district and division and Defendant is situated within this judicial district and division.

III. PARTIES

6. Plaintiff Citizens in Charge (“CIC”) is a non-profit, non-partisan organization based in Virginia that is dedicated to protecting and enhancing the initiative and referendum rights of citizens across the country. It pursues this goal through educational programs, direct advocacy in legislatures, and participation in both federal and state litigation. In addition, the organization and its members, many of whom reside outside of Ohio, assist in initiative campaigns in various states by, among other things, circulating petitions.

7. Plaintiff The Humane Society of the United States (“HSUS”) is a national public-interest organization based in Washington, D.C., that has been involved in coordinating more than a dozen animal welfare initiatives. HSUS is supporting a current initiative petition in Ohio, and many of its members who reside outside of Ohio would like to volunteer to join its Ohio members in circulating this petition. Plaintiff HSUS has filed a Form 15 with the Ohio Secretary of State, stating that it will provide compensation to an individual or entity for supervising, managing, or otherwise organizing an effort to obtain signatures on a statewide initiative petition

“[t]o require the Ohio Livestock Care Standards Board to adopt certain minimum standards that will prevent the cruel and inhumane treatment of farm animals, enhance food safety, and strengthen Ohio family farms” (“The OHF Petition”).

8. Plaintiff Beatrice M. Friedlander is a resident of Michigan. She collects petition signatures on issues she supports on a volunteer basis and has been and will continue to be a proponent of initiatives. Plaintiff Friedlander would like to volunteer to circulate the current OHF Petition in Ohio.

9. Defendant Jennifer Brunner, or any successor to Ms. Brunner (“Secretary”), serves as the Secretary of State for the State of Ohio. Defendant is named in her official capacity only. In that capacity, Defendant is charged with enforcing R.C. §§ 3503.06(B)(1) and 3519.05. *See* R.C. § 3501.05(K), (M), and (N)(1).

IV. BACKGROUND

10. In the Ohio Constitution, the people have “reserve[d] to themselves the power . . . to adopt or reject [laws and amendments to the constitution] at the polls” through the initiative and referendum processes. Ohio Const. art. II, § 1.

11. These processes are methods of democratic participation that permit the people to exercise direct law-making power. “Initiative” refers to the process whereby the voters propose and enact statutes and constitutional amendments on their own accord. “Referendum” refers to the process by which the citizens vote to accept or reject laws already enacted by the legislature.

12. The process of circulating petitions and gathering signatures is crucial to initiative or referendum petitions. To place an initiative or a referendum on the Ohio ballot, the proponent must submit a petition containing the requisite number of signatures of Ohio electors. Ohio Const. art. II, § 1a–b. The exact number of signatures required is calculated as a percentage of the total votes cast in the previous gubernatorial election. Ohio Const. art. II, § 1a–b. Petition circulators gather the required signatures on part-petitions—the individual sheets that provide details regarding the petition and space for individuals’ signatures.

13. Section 3503.06(B)(1) of the Ohio Revised Code explicitly provides that “[n]o person shall be entitled to circulate any initiative or referendum petition unless the person is a resident of this state.”

14. Section 3519.05 of the Ohio Revised Code prescribes the form of Ohio initiative petitions. Reiterating the limitation embodied in section 3503.06(B)(1), it explicitly requires that each part-petition include a space for the circulator to provide the “[a]ddress of [his or her] permanent residence in this state.”

15. Section 3519.06 of the Ohio Revised Code, in turn, provides that if a circulator’s statement is not properly completed or is false in any respect, the part-petition is not properly verified. All of the signatures of Ohio electors that are contained on a part-petition that is not properly verified must be “eliminat[ed].” R.C. § 3519.15.

16. The United States Court of Appeals for the Sixth Circuit has found unconstitutional a similar bar on non-Ohio-resident petition circulators. On October 29, 2008, it held that registration and residency requirements imposed on candidate petition circulators by R.C. § 3503.06(A)¹ violated the First and Fourteenth Amendments. *Nader v. Blackwell*, 545 F.3d 459, 477–78 (6th Cir. 2008).

17. The *Nader* court also indicated 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. 545 F.3d at 475–76.

18. In response to the *Nader* decision, the Secretary issued two Advisories and one Directive to the Ohio county boards of elections. 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 not to enforce that requirement and not to invalidate any part-petition solely because the circulator listed a permanent residence located outside of Ohio.

19. In Advisory 2009-04, dated May 18, 2009, the Secretary further informed the boards that “the Secretary of State’s office has revised the circulator statements in all Secretary of State prescribed forms to omit any requirement that the circulator be an Ohio elector or an Ohio resident.”

¹ “No person shall be entitled to . . . circulate any declaration of candidacy or any nominating, or recall petition, unless the person is registered as an elector and will have resided in the county and precinct where the person is registered for at least thirty days at the time of the next election.” R.C. § 3503.06(A).

20. 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.*

21. Time is of the essence in this matter: Plaintiffs and those similarly situated have only until June 30, 2010 to circulate part-petitions, collect signatures of Ohio electors, and submit the required number of valid signatures to the Secretary in order to qualify proposed initiatives or referenda for the 2010 Ohio ballot.

22. Accordingly, Plaintiffs seek relief from the Court to permit their participation in the democratic process by gathering signatures in support of initiatives and referenda that Ohioans may wish to place on the 2010 election ballot.

V. CAUSE OF ACTION

COUNT I: Section 3503.06(B)(1) and the Relevant Portion of Section 3519.05 of the Ohio Revised Code are Unconstitutional on Their Face and As Applied to Plaintiffs and to Those Similarly Situated

23. Plaintiffs repeat and incorporate by reference the allegations set out in paragraphs 1 through 22.

24. The circulation of initiative and referendum petitions constitutes core political speech protected by the First and Fourteenth Amendments to the United States Constitution.

25. R.C. § 3503.06(B)(1) and the relevant portion of R.C. § 3519.05 prohibit individuals who reside outside of Ohio, including Plaintiff Friedlander and CIC and HSUS's non-Ohio-resident members from engaging in this speech.

26. Although they prohibit this core political speech, R.C. §§ 3503.06(B)(1) and 3519.05 are not narrowly tailored to a compelling government interest.

27. For these reasons, Ohio's prohibition on the ability of non-Ohio residents to circulate initiative and referendum petitions, as contained in R.C. §§ 3503.06(B)(1) and 3519.05,

violates rights guaranteed by the First Amendment and Fourteenth Amendments, both on their face and as applied to Plaintiffs and those similarly situated.

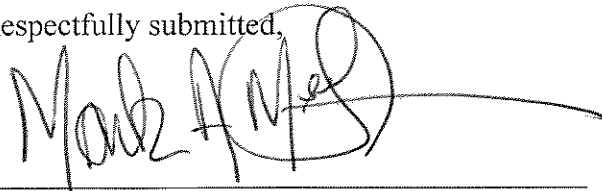
VI. PRAYER FOR RELIEF

WHEREFORE, as relief for the cause of action set forth in Count I, Plaintiffs request that the Court:

1. Enter judgment declaring R.C. § 3503.06(B)(1), which prohibits a person from “circulat[ing] any initiative or referendum petition unless the person is a resident of this state,” to be unconstitutional on its face and as applied to Plaintiffs and those similarly situated;
2. Enter judgment declaring and the portion of R.C. § 3519.05 that requires each initiative and referendum petition circulator to provide his or her “permanent residence address in this state” on the form for state initiative petitions to be unconstitutional on its face and as applied to Plaintiffs and those similarly situated;
3. Preliminarily and permanently enjoin Defendant from enforcing R.C. § 3503.06(B)(1) and the aforementioned portion of R.C. § 3519.05 or adopting any new statutes or regulations that would have the same effects;
4. Award nominal damages to Plaintiffs;
5. Award Plaintiffs’ reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988 and other applicable law; and,
6. Enter such additional relief as this Court may deem just and equitable.

Dated: April 27, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark A. McGinnis", with a long horizontal line extending to the right.

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Attorneys for Plaintiffs

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

BEATRICE M. FRIEDLANDER, ET AL.,

Plaintiff

v.

JENNIFER BRUNNER,
OHIO SECRETARY OF STATE

Defendant

Civil Action N

2 : 10 cv 378

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) HON. JENNIFER L. BRUNNER
OHIO SECRETARY OF STATE
180 EAST BROAD STREET
COLUMBUS, OHIO 43215

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DONALD J. MCTIGUE
MCTIGUE & MCGINNIS LLC
550 EAST WALNUT ST
COLUMBUS, OHIO 43215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 4-27-2010

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: