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April 28, 2006

Hon. J. Kenneth Blackwell
Secretary of State of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Ohio Rev. Code §§ 3599.11(B)(2)(b), (C)(2)

Dear Secretary Blackwell:

I am writing on behalf of the Ohio Association of Community Organizations for Reform Now (Ohio ACORN). As the May 2 effective date of Am. Sub. H. B. 3 (H.B. 3) approaches, groups like Ohio ACORN that are conducting voter registration drives must prepare to comply with the new law. This letter seeks confirmation of the proper understanding of subsections 3599.11(B)(2)(b) and (C)(2) of the Ohio Revised Code, as amended by H.B. 3. Each of these subsections provides that no person who helps another person register to vote, "shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state."

As outlined below, Section 3599.11 appears to be aimed at ensuring that third party voter registration groups such as ACORN return applications they collect to the Secretary of State or to any board of elections—rather than to the broader range of government offices, including schools, libraries, county treasurers, and other designated agencies, to which individual voter registrants may ordinarily return their applications. We would be grateful for your written confirmation that this interpretation is correct. Unless you provide guidance otherwise, Ohio ACORN plans to proceed based on this interpretation beginning on May 2.

Relevant Statutory Provisions

In construing Section 3599.11, it is helpful to see it together with a few key related provisions of the elections code that were added or amended by H.B. 3:

Chapter 3503.19, Methods of Registration or Changing Registration

§ 3503.19(B)(2)(a) [Individuals Returning Their Own Voter Registration Applications]:

An applicant may return the applicant's completed registration forms ~~may be returned form~~ in person or through another person or by mail to any state or local office of a designated agency, to a public high school or vocational school, to a

public library, or to the office of a county treasurer, or ~~in person, through another person, or by mail~~ to the office of the secretary of state; or to the office of a board of elections.

§ 3503.19(B)(2)(b) [Non-Compensated Third Parties Returning Another Person's Application]

[A]n applicant may return the applicant's completed registration form through another person to any board of elections or the office of the secretary of state.

§ 3503.19(B)(2)(c) [Compensated Third Parties Returning Another Person's Application]:

A person who receives compensation for registering a voter shall return any registration form entrusted to that person by an applicant to any board of elections or to the office of the secretary of state.

Chapter 3599, Offenses & Penalties

§ 3599.11(B)(2)(b) [Non-Compensated Third Parties Returning Another Person's Application]:

[N]o person who helps another person register outside an official registration place shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree

§ 3599.11(C)(2) [Compensated Third Parties Returning Another Person's Application]:

No person who receives compensation for registering a voter shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree

Interpretation

The plain language of Section 3599.11 and its context in H.B. 3 suggest that it was intended to limit the locations to which third parties can turn in voter registration applications. Section 3599.11 is part of the penalties chapter of the elections code. It should be read together with the corresponding section from the voter registration chapter, which provides the rules for violations upon which these penalties are based. *See* Ohio Rev. Code §§ 3503.19(B)(2)(a)-(c).

Prior to H.B. 3, Ohio law allowed for voter registration applications to be returned to a wide variety of locations, directly or through a third party:

Registration forms may be returned in person *or through another person* to any state or local office of a designated agency, to a public high school or vocational school, to a public library, or to the office of a county treasurer, or in person, through another person, or by mail to the office of the secretary of state or the office of a board of elections.

Id. §§ 3503.19(B)(2)(a) (2005) (emphasis added). H.B. 3 revised this subsection, limiting its application to only those persons who are returning their own completed voter registration forms:

(a) An applicant may return the applicant's completed registration forms ~~may be returned form~~ in person ~~or through another person or by mail~~ to any state or local office of a designated agency, to a public high school or vocational school, to a public library, or to the office of a county treasurer, or ~~in person, through another person, or by mail~~ to the office of the secretary of state; or to the office of a board of elections.

Id. § 3503.19(B)(2)(a). Under the revised election code, third parties may no longer return other persons' voter registration applications to the broader range of government office locations listed in § 3503.19(B)(2)(a) – *i.e.*, schools, libraries, county treasurers and other designated agencies. Instead, the new provisions added by H.B. 3 specify just two government office locations to which a third party may now return another person's voter registration form:

(b) . . . [A]n applicant may return the applicant's completed registration form through another [non-compensated] person to any board of elections or the office of the secretary of state.

(c) A person who receives compensation for registering a voter shall return any registration form entrusted to that person by an applicant to any board of elections or the office of the secretary of state.

Id. §§ 3503.19(B)(2)(b)-(c). These two locations—boards of elections and the office of the secretary of the state—are the same locations referenced in Section 3599.11's corresponding penalty provisions. *See id.* § 3599.11 (C)(2) (forbidding return to “any location other than any board of elections or the office of the secretary of state.”).

Taken together, Section 3599.11 appears intended to establish penalties for violating Section 3503.19, which, as discussed, has been amended by H.B. 3 to limit the locations to which a third party may return voter registration applications to the state. Section 3599.11 appears aimed at ensuring that such third party voter registration groups return applications they receive to the Secretary of State or to any board of elections—rather than to the broader range of government offices, including schools, libraries, or county treasurers, and other designated agencies, to which individual voter registrants may return their applications.

Thank you for your time and consideration. As time is short, we would be grateful for your confirmation of this interpretation as quickly as possible. Unless I am informed otherwise by your office, Ohio ACORN will proceed with its voter registration drive on the basis of this interpretation of Section 3599.11.

Very truly yours,

Donald J. McTigue

C: Cassandra Hicks, Counsel's Office

