



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 24, 2018

Mr., Michael C. Minardi, Esq.
Chairman, Sensible Florida, Inc.
11402 Bloomingdale Avenue
Riverview, Florida 33578

Re: DE 18-05 Petitions – Effect of Paid Initiative Petition Circulators on Undue Burden Oath; Contributions – In-kind – §§ 99.097(4), (6), 106.07(4), 106.011(5), and 106.191, Florida Statutes

Dear Mr. Minardi:

This letter responds to a request for an advisory opinion submitted by your legal advisor on your political committee's behalf regarding actions proposed to be taken by Sensible Florida, Inc., an active political committee, which is sponsoring a constitutional amendment initiative petition. You seek guidance concerning the submission of signed initiative petitions indicating that a paid petition circulator may have collected the petitions after your committee filed an Affidavit of Undue Burden.¹ Because Sensible Florida, Inc. has questions about compliance with Florida's election laws with respect to its proposed actions, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2017).

FACTS

Sensible Florida, Inc. (hereinafter, "the Committee"), is the sponsoring political committee of Constitutional Amendment Initiative Petition #16-02. The Division of Elections approved the

¹ A political committee desiring to have an issue placed on the ballot must pay in advance the supervisor of elections 10 cents for each signature on an initiative petition that the supervisor checks, but if the committee cannot pay the fee without imposing an undue burden on the resources available to the committee, it may file a certification ("undue burden oath") to have the signatures verified at no charge. § 99.097(4), Fla. Stat. (2017).

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petition for circulation on March 17, 2016. On May 4, 2017, the Committee filed an Affidavit of Undue Burden pursuant to section 99.097(4), Fla. Stat.

On May 16, 2017, the Committee entered into a contingency contract with a paid-petition circulating company, Pro Petitions, LLC (hereinafter, "the Contractor"). The contract provides that while the Contractor would pay the volunteer petition circulators a nominal amount per petition, the Contractor would not assess the Committee until and unless the Committee became sufficiently funded to afford to pay supervisors of elections for signature verification and pay the Contractor to cover "past services rendered."

The Contractor has collected signatures for the Committee's initiative petition presently at no cost to the Committee. The Committee represents that it is still unable to pay signature verification fees without imposing an undue burden on its resources. However, the Contractor's personnel who have collected signatures have been completing that portion of the petition that they are paid petition circulators. The completion of this part of the petition by the circulators implies that the circulators are being paid and is creating confusion regarding the application of the law in light of the Committee's filed undue burden oath and payment for signature verification pursuant to Section 99.097(6)(a), Florida Statutes (2017).

The Committee seeks an advisory opinion regarding how to submit the petitions that contain the paid petition circulator's information on them without invalidating the Committee's undue burden oath on file.

ANALYSIS

Initially, we note the law regarding the filing of an undue burden oath and the payment of the signature verification fees. Section 106.191, Florida Statutes (2017), provides, in relevant part, "if payment is made to any person to solicit signatures . . . , an undue burden oath may not be filed in lieu of paying the fee to have the signatures verified." (*See also*, § 99.097(6)(a), Fla. Stat. (2017) (If any person is paid to solicit signatures on a petition, an undue burden oath may not be subsequently filed in lieu of paying the signature verification fee.)) Moreover, more closely aligned to your situation where it is possible that your committee may receive monetary contributions and become able to pay the signature verification fees and pay for the contractor's services, section 99.067(6)(b), Florida Statutes (2017), indicates:

If an undue burden oath has been filed and payment is subsequently made to any person to solicit signatures on a petition, the undue burden oath is no longer valid and a fee for all signatures previously submitted to the supervisor of elections and any that are submitted thereafter shall be paid by the candidate, person, or organization that submitted the undue burden oath. If contributions as defined in s. 106.011 are received, any monetary contributions must first be used to reimburse the supervisor of elections for any signature verification fees that were not paid because of the filing of an undue burden oath.

Additionally, “only constitutional amendment petition forms that have actually been gathered by a paid petition circulator must bear the name and address of the paid circulator.” *Division of Elections Opinion 03-07* (Sept. 23, 2003). When considering the applicable laws, the Committee’s contingency contract and the Contractor’s subsequent actions have made it difficult for a supervisor of elections to know beyond the “four corners” of the form if paid petition circulators were used and whether the undue burden oath has become invalid so that payment for signature verification is now due from the Committee.

The statutory provisions concerning initiative petitions and the undue burden oath do not cover this situation. Without statutory guidance directly on point and without authority to impose an obligation on supervisors of elections to look beyond the paid petition circulator notation on the petition form, we must address the matter within the existing statutory framework if the Committee has not paid for the solicitation of signatures on the petitions and the Committee has filed an undue burden oath.

We opine that the Committee has three options based on the right that the Committee has as the sponsor of the initiative petition to submit or not to submit signed petitions in support of obtaining ballot position:

- (1) Submit the petitions to the applicable supervisor of elections with the understanding that, based upon the prior undue burden oath being filed and the “four corners” of the paid petition circulator portion of the form being completed, the supervisor will be unable to verify the petition until payment is made;²
- (2) Submit the petitions only when the Committee has sufficient funds to pay the signature verification fees for all petitions (*i.e.*, wait until the contingency in the Committee’s agreement with the Contractor becomes effective, which would then require payment for all petitions checked by the supervisors of elections); or
- (3) Do not submit any petitions in which the paid petition circulator part of the form is completed.

² Signatures on constitutional initiative petitions are valid for only two years after the date of its signing. Also, supervisors of elections “shall promptly verify the signatures within 30 days after receipt of the petition forms and payment of the fee required by s. 99.097.” § 100.371(3), Fla. Stat. (2017). In the situation that your contractual arrangement has created, we believe that a supervisor of election can only go by what is on the face of the petition form regarding whether a circulator was paid to collect the signature on the petition; so, if an undue burden oath has been filed and the form indicates that a paid petition circulator was used, the supervisor will await payment before verification and the supervisor will have 30 days after receipt of payment to verify the petition.

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As a tangential but equally important matter, we note that if the Contractor is actually paying the petition circulators, then its activity amounts to an in-kind contribution to the Committee. Section 106.011(5), Florida Statutes (2017), exempts from the term of "contribution" services that are "provided without compensation by individuals volunteering a portion or all of their time" from the definition of "contribution." If the circulators are being paid by the contractor, then their services are being compensated and the Committee would have to report this activity as a contribution. The Committee has a duty to report *all* contributions, to include those in-kind, on its campaign finance reports. § 106.07(4), Fla. Stat. (2017). The Committee may not intentionally overlook or discount the contributions being provided by the Contractor to the Committee.

SUMMARY

If the sponsoring political committee of an initiative petition has filed an undue burden oath and, thereafter, the paid petition circulator's portion on the initiative petition is completed by a petition circulator when the committee did not pay the circulator or the circulator's employer, the committee has three options: (1) Submit the petitions to the applicable supervisor of elections with the understanding that, based upon the prior undue burden oath being filed and the paid petition circulator portion of the form being completed, the supervisor will be unable to verify the petition until payment is made; (2) Submit the petitions only when the committee has sufficient funds to pay the signature verification fees for all petitions; or (3) Do not submit the petitions. The sponsoring political committee also must be cognizant of any in-kind contribution being provided by any person or entity gathering petition signatures on its behalf so that the committee may properly reflect the contributions on its campaign finance reports.

Respectfully,



Maria I. Matthews, Esq.
Director, Division of Elections

cc: William R. Wohlsifer, Esq.