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Sent Via email to pdisantis@OhioSOS.gov

Paul Disantis, Esq.
Chief Legal Counsel and Director of Public Policy
Office of the Ohio Secretary of State
180 S Civic Center Dr.
Columbus, Ohio 43215

RE: *Democratic Party Letter of April 9, 2024.*

Dear Paul,

This correspondence is in reference to the April 9, 2024 letter from Attorney McTigue on behalf of the Democratic Party requesting that the Secretary waive the 90-day deadline for certification of its president and vice-president candidates on the 2024 General Election ballot as set forth in R.C. 3505.10(B)(1). Attorney McTigue explained that the Democratic Party will certify President Biden and Vice President Harris as its president and vice-president candidates for the 2024 General Election at its national convention, which will conclude on August 22, 2024 – seventy-five days before the November 5, 2024 election. Attorney McTigue astutely recognized that the Democratic Party’s choice to hold its national convention less than ninety days before the 2024 General Election will prevent the Party from complying with the required certification deadline under Ohio law. As a remedy, the Democratic Party offers to “provisionally certify” President Biden and Vice President Harris on or before August 7, 2024 (the statutory deadline) and, thereafter, will “confirm the results” to the Secretary on August 25, 2024. The Democratic Party asserts in its letter that the Secretary of State has both the authority and the obligation to accept its offer of a “provisional certification.”

Having reviewed Attorney McTigue’s letter and applicable law, it is clear that: (1) Ohio law does not permit “provisional certifications” and (2) the Secretary of State lacks authority to waive the certification deadline found in R.C. 3505.10(B)(1). R.C. 3505.10(B)(1) provides that a presidential ballot shall include “the names of the candidates for president and vice president certified to the secretary of state or...[n]ominated by the national convention of a political party to which delegates and alternates were elected in this state at the next preceding primary election.” R.C. 3505.10(B)(1) specifically provides that “A political party certifying candidates so nominated shall certify the names of those candidates to the secretary of state *on or before the ninetieth day before the day of the general election.*” (emphasis added.). Thus, in order to have its president and vice president candidates appear on the 2024 General Election ballot, the Democratic Party must actually certify the names of those candidates on or before August 7, 2024.

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The Ohio Supreme Court has long held that “Ohio’s election statutes are mandatory and must be strictly complied with by the candidates as well as election officials.” *State ex rel. Chevalier v. Brown*, 17 Ohio St.3d 61, 63 (1985) (citing cases). “Substantial compliance is acceptable only when an election provision expressly states that it is.” *State ex rel. Brubaker v. Lawrence Cnty. Bd. of Elections*, 168 Ohio St.3d 211, 2022-Ohio-1087, 197 N.E.3d 548 ¶13 (2022) citing *State ex rel. Maras v. LaRose*, ___ Ohio St.3d ___, 2022-Ohio-866, ___ N.E.3d ___, ¶ 23, quoting *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 49. “In an election statute, the word “shall” is construed as mandatory unless there is a clear and unequivocal legislative intent that a different construction applies.” *Id.* quoting *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188, ¶ 15 (plurality opinion), quoting *Ohio Civ. Rights Comm. v. Countrywide Home Loans, Inc.*, 99 Ohio St.3d 522, 2003-Ohio-4358, 794 N.E.2d 56, ¶ 4, quoting *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834 (1971), paragraph one of the syllabus. (internal citations omitted). In its letter, the Democratic Party acknowledged that it will not be able to comply with R.C. 3505.10(B)(1) because it scheduled its national convention on a date that is too late for it to submit the required certifications for President Biden and Vice President Harris. The Democratic Party’s notion of providing a “provisional certification” by the statutory deadline simply is not provided for by law. Nor does R.C. 3505.10(B)(1) permit substantial compliance. Instead, the law mandates the Democratic Party to actually certify its president and vice-president candidates on or before August 7, 2024. No alternative process is permitted.

What is more, Ohio law specifically prohibits the Secretary from unilaterally changing the election deadlines set forth in R.C. 3505.10(B)(1). R.C. 3501.40 states, “Except as permitted under section 161.09 of the Revised Code, and notwithstanding any other contrary provision of the Revised Code, no public official shall cause an election to be conducted other than in the time, place and manner prescribed by the Revised Code.” R.C. 3505.10(B)(1) prescribes the manner in which political parties must certify their president and vice-president candidates to the general election ballot. The Secretary is duty bound and specifically prohibited from altering those election deadlines.

The Secretary’s lack of authority to change the certification deadlines in R.C. 3505.10(B)(1) played out on two prior occasions, in 2012 and 2020, when the General Assembly passed legislation relaxing the deadline to accommodate both the Democratic Party’s and the Republican Party’s national convention schedules. On both of those prior occasions, the deadlines were revised through legislation, not by the Secretary of State. Just like the two prior occasions, there is no provision in Ohio’s Election Code that would permit the Secretary to provide the Democratic Party with an alternative process this time around.

Thus, the Secretary of State lacks authority to accept “provisional certifications” from the Democratic Party pursuant to R.C. 3505.10(B)(1). The Democratic Party must actually certify its president and vice president candidates on or before August 7, 2024 to be placed on the 2024 General Election ballot.

Very Truly Yours,

Julie M. Pfeiffer

Julie M. Pfeiffer,
Section Chief