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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
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70804-9005

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OPINION 18-0065

Steve Raborn  
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92-A-1 Registrar of Voters

La. R.S. 18:1, *et seq.*  
La. R.S. 18:154  
La. R.S. 33:1, *et seq.*  
La. R.S. 44:1, *et seq.*

This opinion addresses numerous questions regarding a registrar of voters' evaluation of a petition for incorporation.

Dear Mr. Raborn:

In your capacity as the East Baton Rouge Parish Registrar of Voters, you have requested this opinion in anticipation of a petition for incorporation to be submitted to your office for certification. Petitions for incorporation are governed by La. R.S. 33:1, *et seq.*, and La. R.S. 18:3. We begin by noting that La. R.S. 33:4(D) provides that, in the event a petition for incorporation is challenged in court, "[t]he district court shall determine whether there has been *full compliance* with the provisions of this Subpart, *including* the accuracy of the statements in the petition and of the *certification of the registrar of voters.*" (Emphasis added). Thus, full compliance is the standard by which a registrar of voters must certify an incorporation petition. Additionally, the duties of the registrar are ministerial in character.<sup>1</sup> Based on these standards, we answer each of your questions below in turn.

### GENERAL QUESTIONS

**1. La. R.S. 33:1(E)(2) provides that the registrar of voters is the custodian of an incorporation petition upon submission by the chairman, and that the petition and the custodian shall be subject to all the provisions of La. R.S. 44:31, *et seq.* Once the registrar is the custodian, is the petition also subject to La. R.S. 18:154?**

Louisiana Revised Statutes 33:1(E)(1) provides that, "[a] signed and dated petition . . . shall be a public record as of the date that written notice is given by the chairperson pursuant to Subsection C of this Section." Louisiana Revised Statute 33:1(E)(2)(b) provides that, "[u]pon receipt of a signed and dated petition submitted by the chairperson pursuant to Subsection C of this Section, the registrar of voters shall be the custodian of the petition." Louisiana Revised Statute 33:1(E)(2)(c) further provides that, "[t]he petition and the custodian of the petition shall be subject to all the provisions of R.S. 44:31, *et seq.*"

Louisiana Revised Statute 18:154(A) provides that, "[t]he records of each registrar are public records and at all times during office hours shall be open to inspection, except

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<sup>1</sup> La. R.S. 18:66.

the early voting confirmation sheets of voters." Upon receipt from the chairperson, the petition of incorporation becomes a part of the records of the registrar making La. R.S. 18:154 applicable to the petition for incorporation.

**2. May the registrar of voters release a submitted signed and dated petition to a private copy service for photocopying?**

As provided by La. R.S. 33:1 and La. R.S. 18:154, the petition for incorporation is a public record. As such, La. R.S. 44:36(A) establishes an obligation on the part of the record custodian to exercise diligence in preserving a public record but limits the obligation to preservation of the original record where a copy exists.

Pursuant to La. R.S. 44:31(B), "[e]xcept as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person of the age of majority may inspect, copy, or reproduce, any public record." Louisiana Revised Statute 44:32(C) requires the custodian of a public record to provide a copy of the record to persons so requesting.

Consistent with the foregoing obligations, the registrar may contract with a private photocopying service for the reproduction of the public records of his office provided the custodian exercises the following precautions in doing so:

First, the records custodian must retain the original record in his office and provide a copy of the original to the photocopying service for reproduction.

Second, the custodian must redact the record before turning over its possession for copying as required by La. R.S. 18:154 and 52 U.S.C. § 20507 to protect against the disclosure of information protected by the subject statutes. In that regard, La. R.S. 18:154 protects the following items of information against disclosure by the Registrar or any other official involved in voter registration:

- (a) The fact that a registered voter is entitled to assistance in voting;
- (b) The social security number of a registered voter;
- (c) The driver's license number of a registered voter;
- (d) The day and month of the date of birth of a registered voter;
- (e) The mother's maiden name of a registered voter;
- (f) The electronic mail address of a registered voter;
- (g) The short message service number of a registered voter;

(h) the names and addresses of any law enforcement officer certified by his agency as engaging in hazardous activities unless released on a general list;

(i) the name and address of a program participant in the Department of State Confidentiality Program as provided in La. R.S. 44:51, *et seq.*;

(j) information of a type exempted from disclosure pursuant to this subsection that is received from another state pursuant to La. R.S. 18:18(D);

(k) any information contained on the voter registration application of a person who is sixteen or seventeen years of age.

52 U.S.C. § 20507 prohibits the disclosure of information relating to the specific public assistance agency, state funded disability services office, or motor vehicle office at which a person applied to register to vote.

Before sending a copy of the petition for incorporation to the photocopy service, or any third person, the registrar is required to redact the above information if it appears on the petition for incorporation.

**3. May the registrar of voters release reports regarding the verification status of a petition at some regular interval (such as daily or weekly) during the verification process?**

Pursuant to La. R.S. 33:2, the registrar's duty is to determine how many electors have signed the petition. There is no requirement that the registrar issue any interim findings or determinations during the verification process. Rather, the registrar's duty is simply to certify whether twenty-five percent or more of electors have signed the petition once the verification process has been completed. Additionally, this office can find no rule, regulation, form, or instruction issued by the Secretary of State pursuant to La. R.S. 18:18 providing for the preparation of reports regarding the interim verification status of a petition for incorporation.

**4. May the registrar of voters provide information by telephone to electors inquiring whether their name is on a submitted petition and/or whether their signature has been accepted or rejected? May the registrar provide information to a third party inquiring about an elector's status on a petition?**

Neither the Public Records Law nor the law governing records of the registrar requires the registrar to give out information over the telephone. If an individual would like to obtain information from the registrar regarding the petition for incorporation, he or she may inspect the records during the registrar's office hours or request a copy to be made, pursuant to the procedure outlined in La. R.S. 18:154(B) and other applicable

statutes, subject to redaction in accordance with response to Question 2 above. This procedure would apply to both individuals inquiring about the status of their signatures and individuals who may inquire about the status of a third person's signature.

The law does not require a registrar to separately list the accepted and rejected names during the review and certification process. The Supreme Court has held that, "an agency has no duty to create a record where a record does not already exist." *Nungesser v. Brown*, 95-3005 (La. 02/16/96), 667 So. 2d 1036, 1037.<sup>2</sup>

**5. May the registrar of voters utilize employees from the Secretary of State's office or employees from a registrar of voters office in another parish to review and evaluate signatures, and make determinations on a petition?**

While the duties of the Secretary of State and registrars of voters overlap to a degree with respect to voter registration, a registrar's duties in regards to a petition for incorporation are specific to the registrar. Both La. R.S. 18:3 and La. R.S. 33:2 require the registrar to determine how many qualified electors appear on a petition, and the statutes make no provision for the assistance or participation of any other agency or office in the certification process for a petition for incorporation.

While the Secretary of State's employees cannot assist in certifying the petition, it is permissible for the registrar to rely on the Secretary of State's staff to perform other duties in his office as it relates to voter registration. This permissible assistance could be particularly relevant during the certification process so as to temporarily relieve the registrar's regular employees from responsibilities related to voter registration in order to attend to the certification of the petition for incorporation.

**6. Does La. R.S. 18:196(A)(1) [inactive voters not counted in computing the number of signatures required on any petition] apply to incorporation petitions?**

It is a fundamental principle of statutory construction that statutes on the same subject are to be construed together, if possible, so as to reconcile them, giving full effect to each. *State in the Interest of Wright*, 408 So. 2d 1123 (La. App. 1 Cir. 1981). In that regard, we do not find La. R.S. 33:1, *et. seq.* and La. R.S. 18:196, *et. seq.*, to be in conflict with respect to the treatment of inactive voters, and reading the statutes together, giving full effect to both, it is clear that the Legislature intended La. R.S. 18:196(A)(1) to apply to petitions for incorporation.

However, we feel compelled to respond further in light of the comment in your inquiry concerning the counting of signatures by inactive voters. We are aware that different views for treating inactive voter signatures for purposes of determining petitions have been expressed among election officials, and we need to clarify our understanding of the statutes in that respect.

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<sup>2</sup>See also, La. Atty. Gen. Op. No. 17-0084.

We begin that discussion with the classification of a voter as "inactive" under La. R.S. 18:193(A). When a registrar has reason to believe that a voter's status as an elector is subject to question because the voter is no longer qualified or has changed his address, La. R.S. 18:193(A) requires the registrar to send the voter an address confirmation card and to place the voter on a list of inactive voters, unless the voter's address can otherwise be confirmed through the United States Postal Service.

Louisiana Revised Statute 18:196(A)(1) creates a distinction between the "official list of voters" and the "inactive list of voters" and expressly provides that persons on the inactive list of voters shall not be counted in computing the number of signatures required on any petition.

However, La. R.S. 18:196(A)(2) provides that any registrant whose name appears on the inactive list of voters shall be eligible to sign a petition and such petition signature, if valid, shall be sufficient to return the registrant to the official list of voters at the address given on the petition as confirmation of the voter's address for registration purposes.

The number of electors required on an incorporation petition is derived by taking twenty-five percent of the total number of electors residing in the area proposed for incorporation. La. R.S. 33:2(B) and (C). The required percentage is based upon the number of electors on the voting rolls at the time the petition is filed with the registrar by the chairperson of the petition drive when the chairperson believes that a sufficient number of signatures have been gathered. La. R.S. 33:2(A), (3).

What is not clear, and is thus ambiguous in La. R.S. 18:196(A)(1), is whether the signatures of voters on the inactive list (a) should not be counted in computing the number of electors who signed the petition; or (b) should not be counted in computing the total number of electors residing in the area; or (c) should not be counted in either total.

In our view, it would be anomalous for an inactive voter to be allowed to sign the petition, assuming the address given upon signing is in the area proposed for incorporation, yet not to count the signature toward the total needed to determine whether twenty-five percent of the electors residing in the area signed the petition. Such a result would be absurd, and statutes should not be interpreted so as to produce absurd consequences. *La. Mun. Ass'n v. State*, 04-227 (La. 1/19/05), 893 So. 2d 809. A voter on the inactive list who resides in the jurisdiction is qualified and registered to vote and is thus an "elector" as that term has been defined in the jurisprudence. *Suarez v. Barney*, 903 So. 2d 555 (La. App. 4 Cir. 5/9/05).

Thus, we can only conclude that La. R.S. 18:196(A)(1) is more properly construed to mean that the names on the inactive list of voters should not be counted in computing the total number of electors residing in the area. The statute must not be taken to mean that voters on the inactive list who sign the petition should not be counted toward the twenty-five percent needed to certify the petition since such a construction would be

inconsistent with the interest of the state in allowing all electors with a direct stake in the outcome of the incorporation drive to express their view by signing the petition.

**7. Is there a deadline for the registrar of voters to evaluate all signatures and issue a determination on an incorporation petition once the signed and dated petition has been submitted to him?**

No provision in La. R.S. 33:1, *et seq.*, nor La. R.S. 18:3, sets a deadline for the registrar to issue a determination once the petition has been submitted to him for certification. As a result, the registrar does not have a statutorily defined period of time in which to issue a determination on the petition.<sup>3</sup>

Thus, while no direct statutory provision establishes a time limit for the review and determination of the petition, the courts generally require diligence and expedition in the performance of a government official's assigned duties, and the same diligence and expedition should be exercised with respect to the review and certification of a petition of incorporation.

**VERIFYING SIGNATURES**

**8. May any signature on an incorporation petition, including original signatures, additional signatures obtained pursuant to La. R.S. 33:2(B), or requests from electors to have their name stricken from or added to the petition, be submitted to the registrar by mail, commercial courier, fax, or email?**

The response to this request begins with the method for conducting the incorporation petition drive. Proponents of the incorporation, headed by a chairperson and vice-chairperson, circulate and obtain signatures on the petition. La. R.S. 33:1. When the proponents believe that they have the signatures of twenty-five percent of the electors residing in the area proposed for incorporation, they shall file the petition with the registrar for certification. La. R.S. 33:1(C)(2) and 33:2(A).

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<sup>3</sup>However, this office would remind the registrar of the general injunction of the Louisiana courts regarding the importance of the diligent performance by government officials of the ministerial duties assigned to them:

In a well-regulated government, obedience to its laws by executive officers is absolutely essential and of paramount importance. Were it not so, the most inextricable confusion would inevitably result, and produce such collision in the administration of public affairs as to materially impede the proper and necessary operations of government. It was surely never intended that an executive functionary should nullify a law by neglecting or refusing to execute it.

The chairperson is assigned the responsibility for submitting the signed and dated petition to the registrar for certification. La. R.S. 33:1(C)(2). Once the chairperson files the signed and dated petition for certification, the registrar undertakes the verification of signatures, including review of the petition to ensure that the required information is contained for each signature and to confirm that the signer is an elector for the area to be incorporated.

We find no provision of law, however, that requires the chairperson to submit the original signed and dated petition to the registrar by a particular method so long as the petition containing original signatures, dates, etc., is submitted timely. Consequently, we must conclude that the petition may be submitted by hand-delivery, mail, commercial courier, or any other means chosen by the chairperson, again, provided that the original signed and dated petition is conveyed to the registrar timely.

With respect to the withdrawal or addition of a signature pursuant to La. R.S. 33:1(D)(2), the situation is a little different since these withdrawal requests are made on an individual basis rather than being obtained by the circulators on an approved petition form and submitted by the chairperson. Signers of the petition may strike from or add their signature to the petition provided they submit a request to do so to the registrar prior to the certification of the petition as provided in La. R.S. 33:2(C) but not more than five days after a signed and dated petition is submitted for certification pursuant to La. R.S. 33:1(C), whichever is earlier. La. R.S. 33:1(D)(2). The request to remove or add the signer's signature must be submitted to the registrar in writing and contain the name and address of the elector (signer), the elector's date of birth, and the date of the request.

We find no provision of law requiring that the request to strike or add a signature be conveyed to the registrar by any particular method or means as long as the request is in writing, timely submitted, and contains the information required by La. R.S. 33:1(D)(2). *See, Kansas City S. R. Co., v. Shreveport*, 354 So. 2d 1362 (La. 1978). To the extent the statute requires that the request to add or strike contain a signature, we can only construe the statute to mean an original signature. Thus, we conclude that a request to strike or add a signature from the petition may be submitted by any means chosen by the signer to present the request to the registrar provided the information required by La. R.S. 33:1(D)(2), including an original signature is contained thereon.

With respect to additional signatures pursuant to La. R.S. 33:2(B), the statute gives the proponents of the incorporation an additional sixty days within which they can obtain additional signatures to the petition if the registrar of voters determines that the original petition submitted to his office contains less than twenty-five percent of the electors in the area proposed for incorporation. The proponents must circulate the petition and obtain additional signatures in the same manner as the original petition is circulated and signatures obtained, and it follows that the chairperson shall submit the additional signatures just as he submitted the original signed and dated petition.

## **9. Does La. R.S. 18:3 apply to incorporation petitions?**

Louisiana Revised Statute 18:3 by its express terms applies to any petition submitted to a registrar for certification with the exception of petitions filed pursuant to Chapter 3 of Title 26 of the Revised Statutes of 1950. La. R.S. 18:3(A) and (E).

In that regard, La. R.S. 18:3(A) provides:

A. Notwithstanding any other provision of law to the contrary, every petition submitted to a registrar of voters for certification shall contain certain information as listed in the statute.

Thus, the statute applies to petitions for incorporation and unless in direct conflict with La. R.S. 33:1, *et seq.*, governs petitions for incorporation.

## **10. On an incorporation petition, must all elements listed in La. R.S. 18:3(A)(1) be provided for an elector in order for the registrar to accept the elector's signature?**

The form for incorporation petitions, as specified in La. R.S. 33:1(A), must be in conformity with the provisions of La. R.S. 33:1, *et seq.*, and R.S. 18:3. Louisiana Revised Statute 18:3(A)(1) requires that the information listed therein "shall" be contained in the petition. The word "shall" is mandatory in Louisiana law.<sup>4</sup> In *Cowan v. Ensminger*, the Third Circuit Court of Appeal held, "we find that the statute requires a complete address, including the town, and the complete date." *Cowan v. Ensminger*, 96-955 (La. App. 3 Cir 07/24/96), 677 So. 2d 1127, 1131. While the *Cowan* decision did not address all elements of La. R.S. 18:3, it did hold that the provisions of La. R.S. 18:3 are "to be strictly construed." *Id.* Furthermore, La. R.S. 33:4(D) requires full compliance with the statutes governing petitions for incorporation. Therefore, all elements of La. R.S. 18:3(A)(1) must be contained on the petition in order for the registrar to accept the elector's signature.

## **11. What action should the registrar take if any of the information provided by (or for) an elector on an incorporation petition is incorrect or illegible?**

Regarding incorrect information, La. R.S. 18:3(A)(1) lists the information that must be contained on the petition for a signature to be accepted. If the information is demonstrably incorrect on the petition, then the voter has failed to provide the information required in La. R.S. 18:(A)(1).

We find no statute or reported appellate decision directly addressing illegible information on the petition. However, it is evident that if the required information provided by the signer cannot be determined by the registrar, it is as if the information was not provided at all. Consequently, if information required to be contained on the petition is illegible,

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<sup>4</sup> La. R.S. 1:3.



the signature must be considered as lacking the requirements of La. R.S. 18:3 and cannot be counted for purposes of determining the petition.

**12. What action should the registrar take if any of the information provided by (or for) an elector on an incorporation petition is entered on the wrong line (for example, members of the same household invert information or signatures)?**

The law does not require that all voter information be in the indicated field on the petition provided all other requirements of the statute are met and the registrar is able to determine that the information required by statute is affixed to the petition.

Louisiana Revised Statute 18:3(A) requires certain information to be contained in a petition submitted to the registrar for verification. The petition is also required to be on a certain form provided by the Secretary of State and approved by the Attorney General, pursuant to La. R.S. 33:1(A). While the currently approved Secretary of State form provides spaces for the appropriate information, errors in placing the required information in the indicated field may occur. The duty of the registrar is to determine the number of qualified electors appearing on the petition. La. R.S. 33:2(A). If the registrar is able to determine that a qualified elector has submitted the required information on the petition and the signature matched, then the Registrar should accept the signature. However, if the Registrar cannot verify that the elector in question has submitted the correct information, then the signature should be rejected.

**13. La. R.S. 33:1(D)(1) provides that the handwritten signatures of the electors must “reasonably correspond” with their signatures on file in the office of the registrar of voters. Does this include only signatures upon voter registration documents or could it also include signatures on election precinct registers and absentee voting records? Does La. R.S. 18:3(C) apply to the verification of the handwritten signatures on an incorporation petition? Is the term “reasonably correspond” in La. R.S. 33:1(D)(1) further defined in law?**

Answering each of these questions in turn:

a) With respect to the records that a registrar is permitted to consult to verify signatures, La. R.S. 18:3(D) provides, in pertinent part:

To verify a signature on a petition, the registrar shall compare the handwritten signature on the petition with the signature on the original application card or any subsequent signature in the records of the registrar, including but not limited to precinct registers and affidavits filed pursuant to the provisions of R.S. 18:111(C), or any microfilm, microfiche, or scanned or electronically captured computerized images of such documents.

The statute would thus permit the utilization of broad range of voting record of the registrar for signature comparison purposes.

b) Respecting your second question as to whether La. R.S. 18:3(C) applies to the verification of handwritten signatures on an incorporation petition, we would note that the statute was amended in 2018 such that La. R.S. 18(C), at the time the question was posed, is now designated La. R.S. 18:3(D). With that note, it is our opinion that La. R.S. 18:3(D) is applicable to incorporation petitions, and the provisions on signature verification contained therein are applicable to the incorporation petition.

c) As to your final question, there is scant authority defining the term "reasonably correspond" as used in La. R.S. 33:1(D)(1). However, there is some discussion in a case called *State ex rel. Langridge v. Harris*, 138 So. 2d 197, 204 (La. App. 4 Cir 1962), containing a general statement regarding the validation of signatures that lends some guidance in that regard. Although the relevant statutes have been amended since the *Langridge* decision and the case has little precedential value, the observations of the court with respect to evaluating signatures on an election petition are helpful.

The plaintiff in *Langridge* argued that the signature on the petition must be an exact match with the voter's signature on the registration rolls or else cannot be counted. The court rejected that argument observing that it was not aware of any law or jurisprudence to the effect that persons signing a petition must sign exactly the same as shown on the registration rolls. The court went on to note that signatures on a petition may vary from the signature on the registration rolls since the signature verification process is intended to ensure the identity of the voter signing the petition. By the court's reasoning, correlating earlier signatures with the signature on the petition with sufficient certainty that the signature, taken with the other information provided on the petition, confirms the identity of the signer is the objective of the signature verification process.

Regarding the verification of signatures, La. R.S. 18:3(D) provides that if the signature on the petition and an earlier signature on the records which the registrar is permitted to consult for comparison are "sufficiently alike to identify the person who signed the petition as the person who is the registered voter, the signature shall be verified." This rule is entirely consistent with the views expressed by the court in *Langridge*.

Otherwise, the dictionary meaning of "reasonably" is "within the bounds of common sense." *The American Heritage Dictionary*, Second Edition, 1982. The same source defines "correspond" as "consistent or compatible, to be similar, parallel, equal in character." It is a fundamental principle of statutory interpretation that words in a statute must be given their generally prevailing meaning. La. Civ. Code art. 11; *Sherwood Forest Country Club v. Littlefield*, 08-0194 (La. 2008), 998 So. 2d 56, 61.

Thus, the registrar should review the signature on the petition through a lens of common sense to determine if the signature is consistent, compatible, or like earlier signatures in

the registrar's records sufficient to satisfy the registrar as to the identify the signer as an elector entitled to sign the petition.

**14. Does the registrar have any responsibility to verify information regarding the witness to an elector's signature on an incorporation petition?**

We find no duty in law or jurisprudence that requires the registrar to investigate or verify information regarding a witness to an elector's signature except to ensure that the date on which the person witnessed and obtained the signature is provided as required by La. R.S. 18:3(A)(7).

**15. Do electors signing an incorporation petition have to be registered to vote or registered within the area proposed for incorporation by a certain date, (for example, at the time of signing the petition or at the time the signed and dated petition is submitted to the registrar for verification)? If an elector was registered to vote within the area proposed for incorporation at the time of signing an incorporation petition, but later registered to vote outside the area, or had their voter registration cancelled for some other reason (death, etc.), is his signature counted if otherwise determined to be valid?**

Louisiana Revised Statutes 33:1(C) allows proponents of an incorporation 180 or 270 days, depending upon the number of electors residing in the area proposed for incorporation, in which to gather signatures and file the petition with the registrar(s) in the affected area for verification. At the outset of the petition drive, the registrar must provide notice of the number of electors residing the area. La. R.S. 33:1(B)(1)(b). As previously noted, an "elector" is defined simply as a person qualified and registered to vote. *Suarez v. Barney*, 903 So. 2d 555 (La. App. 4 Cir. 5/9/05).

When the proponents believe that they have the signatures of at least twenty-five percent of the electors in the area, the chairperson of the petition drive may file the signed and dated petition with the registrar(s) for verification. Whether twenty-five percent of the electors have signed the petition is determined on the basis of the number of electors on the rolls of the registrar of voters at the time the petition is filed with the registrar.

It is clear that the law anticipates that changes will occur in the voter rolls during the six to nine month period that signatures are being gathered. People will register, move, come of age, or pass away, and the voter rolls will change accordingly. Under the statute, the voter rolls are not "frozen" as they exist at the inception of the petition drive.

To determine whether a voter at any given point in the incorporation process may sign the petition, La. R.S. 33:1(D)(1) provides: "All electors residing in the area proposed for incorporation shall be eligible to sign the petition." The clear import of that provision is that at the time of signing, the signer must be an elector residing in the area proposed for incorporation.

Nothing in the law provides that signers must remain electors in the proposed area through the time the chairperson files the petition with the registrar or after. Consequently, if the signer is an elector in the area at the time of signing yet his status changes after he signs for any of the reasons mentioned in your question, the signature is nonetheless valid as meeting the requirements of statute, provided the other requisites of the statutes are met.

**16. If additional signatures to an incorporation petition are obtained pursuant to La. R.S. 33:2(B), do these electors have to be registered to vote or registered within the area proposed for incorporation by a certain date or the same date as those who signed the original petition?**

Again, the only requirement set out in the statute in that regard is that the signer be an elector residing in the area proposed for incorporation at the time their signature is affixed to the petition. Whether the signature is signed during the initial period or during the sixty-day period for gathering additional signatures is of no moment in that regard. The validity of the signature is determined as of the time of signing inasmuch as the signer was eligible to sign the petition at that time, and there is no provision to disqualify or invalidate the signature once it is affixed to the petition.

**17. During the incorporation petition verification process and prior to the registrar's final determination, may the registrar change the status of a signature from accepted to rejected (or vice versa) based upon verified information provided to the registrar by a third party (including the petition proponents or opponents) that the Registrar's original determination had been in error?**

The registrar's duties in evaluating the petition are governed by La. R.S. 18:3 and La. R.S. 33:1. These duties include verifying that all information required by La. R.S. 18:3(A) is present, verifying the signature of the elector pursuant to La. R.S. 18:3(D), and verifying the person's name appears on the registrar's roll of electors pursuant to La. R.S. 18:3(D). Further, La. R.S. 33:2(D)(1) requires that the handwritten signature of each elector must reasonably correspond with their signatures on file in the registrar's office.

These prescribed duties are the extent of the registrar's verification process. No state law allows the registrar to take third-party information into account in verifying signatures on the petition. The registrar is limited to examining information submitted on the petition and the records on file with the registrar. Therefore, the registrar should not rely on third party information in the process of verifying the petition.

**18. During the incorporation petition verification process, what action should the registrar take if an elector claims their signature was accepted or rejected in error?**

Aside from La. R.S. 33:1(D)(2), which allows a voter to have his signature stricken from or added to the petition prior to certification but not more than five days after the petition is submitted to the registrar for certification, whichever is earlier, there is no provision of law allowing a voter to challenge or contest the determination of the registrar with respect to a signature during the verification process.

If an elector wishes to contest the incorporation or the determination of the registrar with respect to any signature, he or she may petition a court for such relief as may be provided by law in that respect.

**19. During the incorporation petition verification process, what action should the registrar take if an elector claims that their name is on the petition, but that someone else has signed their name?**

Louisiana Revised Statute 33:1(D)(2) allows an elector who wishes to strike or add his name from the incorporation petition to do so upon a written request containing the information specified in the statute, provided the request is made prior to certification of the petition but not more than five days after the petition is submitted to the registrar for certification, whichever is earlier. Otherwise, the registrar is without authority to investigate or pursue claims of forgery or fraud in connection with signatures affixed to an incorporation petition. If the elector wishes to report such allegedly fraudulent activity, he should lodge the report with an official authorized to investigate the claim such as the Secretary of State or the District Attorney. Otherwise, La. R.S. 33:4 reserves the right to electors and others to bring suit to contest the incorporation.

#### REQUESTS FROM ELECTORS TO HAVE SIGNATURE STRICKEN OR ADDED

**20. La. R.S. 33:1(D)(2) provides the information an elector must provide to have their signature stricken from or added to the signed and dated petition. Is a witness signature necessary to have an elector's signature stricken from or added to the petition? Do the same requirements for originally signing the petition apply to having a signature stricken from or added to the petition?**

Louisiana Revised Statute 33:1(D)(2) provides:

Prior to certification of a signed and dated petition as provided in R.S. 33:2(C) but not more than five days after a signed and dated petition is submitted for certification pursuant to Subsection C of this Section, whichever is earlier, the registrar of voters shall honor the written request of any elector who desires to have his handwritten signature either stricken from or added to the signed and dated petition. The written request of the elector shall include the name and address of the elector, the date of birth of the elector, the signature of the elector, and the date of the request.

The quoted statute mandates that the registrar "shall honor the written request" of an elector to strike or add his signature upon the elector providing the information set out in La. R.S. 33:2(D)(2). There is no requirement that the written request be witnessed or that the information required to be provided on the original petition pursuant to La. R.S. 18:3(A) be included with the request to strike or add a name within the window allowed for that purpose. It should be noted that La. R.S. 18:3(C) does not provide for signatures to be stricken from or added to a petition "unless such addition or deletion is expressly authorized by law." Thus, its provisions requiring that certain information be contained on the petition would have no application to names added or stricken under authority of La. R.S. 33:1(D)(2) beyond the information specified therein.

**21. May electors submit written requests to the registrar to have their signature stricken from or added to an incorporation petition before the signed and dated petition has been submitted for the registrar for verification?**

Pursuant to La. R.S. 33:1(D)(2), there is a specific time frame in which electors can request that their signatures be stricken from or added to the petition, which is "prior to certification of a signed and dated petition as provided in R.S. 33:2(C) but not more than five days after a signed and dated petition is submitted for certification pursuant to Subsection C of this Section, whichever is earlier." We find no law or jurisprudence that would allow the registrar to consider or honor written requests to strike an elector's name from the petition prior to its submission to the registrar for certification.

**22. Does the time frame provided in La. R.S. 33:1(D)(2) for an elector to submit a request to have his signature stricken from or added to an incorporation petition apply to both the original submitted petition and any additional signatures submitted pursuant to La. R.S. 33:2(B)? If there is a period following the submission of additional signatures in which electors may request to have their signatures stricken from or added to the petition, does it apply only to the additional signatures submitted pursuant to La. R.S. 33:2(B) or does it apply to signatures on the original submitted petition as well?**

Pursuant to La. R.S. 33:1(D)(2), there is a specific time frame in which electors can request that their signatures be stricken from or added to the petition, which is "prior to certification of a signed and dated petition as provided in R.S. 33:2(C) but not more than five days after a signed and dated petition is submitted for certification pursuant to Subsection C of this Section, whichever is earlier."

Louisiana Revised Statute 33:2(B) provides for the proponents of a petition for incorporation to have additional time to collect signatures if they originally fail to collect enough signatures to meet the twenty-five percent requirement and states, "[i]f the registrar of voters determines that less than twenty-five percent of the electors have signed the petition, the proponents of the incorporation shall have an additional sixty days within which they can obtain additional signatures to the petition to meet the twenty-five percent requirement."

As stated in La. R.S. 33:1(D)(2), the five-day window for an elector to request that his signature be stricken from or added to the petition refers to the submission of the petition under Subsection C of this Section, which provides for the original submission of the petition by the chairperson.

The provision in La. R.S. 33:2(B) is a separate provision, which allows the proponents of the petition for incorporation an additional sixty days to gather signatures. Once this additional sixty-day time period is complete, there is no provision of law that would allow electors to request that their names be stricken from or added to the petition. Pursuant to the legal doctrine of *expressio unius et exclusio alterius*, because the Legislature intentionally excluded an additional period to strike and add signatures in La. R.S. 33:2, this window to add or strike a signature cannot be applied to the additional sixty day period for gathering additional signatures as provided in La. R.S. 33:2(B).

**23. As a practical matter, the registrar must hold requests from electors to have their signature stricken from an incorporation petition until all signatures from the petition have been entered in the Secretary of State's voter database system (on a large petition, it is virtually impossible to know if an elector has signed the petition or where their signature is on the petition until all names on the petition have been entered and checked). Does the registrar make his determination under La. R.S. 33:2(B) or (C) [determining whether or not the required twenty-five percent of electors have signed the petition] only after processing all valid requests from electors to have their signature stricken from or added to the petition?**

The request to strike or add an elector's signature to the original petition must be submitted to the registrar within the window allowed by La. R.S. 33:1(D)(2) as previously discussed in this opinion.

Any such requests will affect the number of signatures necessary to amount to twenty-five percent of the electors residing in the area proposed for incorporation. Signatures stricken from the petition will reduce the number of total signatures, and signatures added to the petition will increase the total number of signatures.

To determine the total number of signatures on the petition under La. R.S. 33:2(B) or (C) it is necessary for the strikes and additions to be processed. Thus, the additions and strikes should be included prior to the final determination of the petition.

**24. Must the registrar accept requests from electors to have their signature stricken from or added to an incorporation petition outside of regular business hours if employees are present at the office?**

Louisiana Revised Statute 18:134 specifically provides for the office hours of a registrar of voters:

A. A registrar shall keep his principal office open for business on those days that state departments are open. A registrar shall observe the holidays that are provided by law or proclaimed by the governor for state departments. On days that a registrar's office is open, his office hours shall be from 8:00 a.m. until 4:30 p.m. Notwithstanding any provision of this Subsection, any registrar may keep his principal office open during additional hours and on additional days.

B. Each registrar shall keep each permanent branch office open for business during the hours and on the days he deems the activity justifies it.

C. Each registrar shall keep each temporary branch office and each mobile registration unit open for business during the hours and on the days that he deems that activity justifies it.

D. Additional hours and days during which a principal office is to be kept open, as authorized by Subsection A of this Section, and the hours and days during which each office or mobile unit is to be kept open, under the provisions of Subsections B and C of this Section, and the hours and days of early voting, shall be specified and advertised in advance by the registrar by means of the news media.

The registrar of voters' principal office is required to be open during normal business hours 8:00 a.m. – 4:30 p.m., Monday – Friday on days that state departments are open and the registrar is required to accept the requests made pursuant to La. R.S. 33:1(D)(2) only within these hours, unless the registrar decides to keep his office open during additional hours and on additional days as permitted under La. R.S. 18:134(A) – (D).<sup>5</sup>

**25. La. R.S. 33:1(D)(2) requires a written request in order for an elector to have their signature stricken from or added to an incorporation petition. May the registrar provide a form for electors who appear in person at the registrar's office to have their signature stricken from or added to the petition?**

Forms to be utilized by registrars are governed by La. R.S. 18:18(A)(3), which states:

A. The secretary of state shall administer the laws relating to custody of voting machines and voter registration, and for this purpose he shall:

(3) Prescribe uniform rules, regulations, forms, and instructions, which shall be approved by the attorney general and thereafter shall be applied uniformly by each registrar of voters in the state. These rules, regulations,

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<sup>5</sup>We also note that registrar of voters' offices are required to be kept open on election days.



forms, and instructions shall include but not necessarily be restricted to forms of applications for registration, records, affidavits and statements, documents, and general procedures to be used by the registrars of voters, none of which shall be inconsistent with the constitution and laws of the United States or of this state.

Before a registrar may use a form for purposes of La. R.S. 33:1(D)(1), it must be prescribed by the Secretary of State and approved by the Attorney General. If such a form has not been so prescribed and approved, the registrar is without authority to create and use a separate form.

### POST-VERIFICATION

**26. May the registrar reconsider any final determination issued pursuant to La. R.S. 33:2(B) or (C)? Does the registrar have a duty to reconsider his final determination if any verified errors are found in the registrar's determination?**

Louisiana Revised Statute 33:2(B), the registrar shall make an initial determination as to whether the petition contains twenty-five percent of the electors in the area. If the registrar determines that the petition does not contain enough signatures to meet the twenty-five percent threshold, the statute gives the proponents of the incorporation a period of 60 days from that determination to obtain additional signatures to try to meet the twenty-five percent threshold. If the proponents fail to obtain the required percent of signatures within the additional 60 day period, the incorporation effort is ended, and all or part of the same area cannot be proposed for incorporation again for a period of two years. There is no provision in the statutory scheme for reconsideration by the registrar once the initial determination has been made that the petition does not contain a sufficient number of signatures to meet the twenty-five percent threshold.

Under La. R.S. 33:2(C), where the registrar determines that the required twenty-five percent of electors have signed the petition, whether after the initial review or following the 60 day additional period, the registrar shall issue a certificate stating that twenty-five percent or more of the electors residing in the area proposed for incorporation have signed the petition. Upon issuance, the certificate shall be forwarded to the governor for his determination as to whether an election shall be called. Once the certificate is issued and sent to the governor, there is no provision for reconsideration by the registrar.

**27. Who is the custodian of the petition in the event that the registrar determines pursuant to La. R.S. 33:2(C) that the required twenty-five percent of electors have signed the petition? Should the registrar forward the petition to the Governor along with his certification, or does the registrar remain the custodian of the petition?**

Louisiana Revised Statute 33:1(E)(2)(b) provides that, “[u]pon receipt of a signed and dated petition submitted by the chairperson pursuant to Subsection C of this Section, the registrar of voters shall be the custodian of the petition.” La. R.S. 33:1(E)(2)(c) further provides that, “[t]he petition and the custodian of the petition shall be subject to all the provisions of R.S. 44:31, *et seq.*” There is no provision of law that transfers custody to another official.

Certainly, a copy of the petition may be provided to the governor for use in his review of the petition or to persons making a request for such a copy pursuant to La. R.S. 18:154 and the Public Records Act, 44:1, *et seq.*, but the registrar remains the custodian of the original petition.

We trust that this opinion has adequately addressed your concerns. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY  
ATTORNEY GENERAL

By:



Jeffrey M. Wale  
Assistant Attorney General