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April 26, 2011

Via Fax (608)267-0500 & Email (kevin.kennedy@wi.gov)

Mr. Kevin Kennedy
Wisconsin Government Accountability Board
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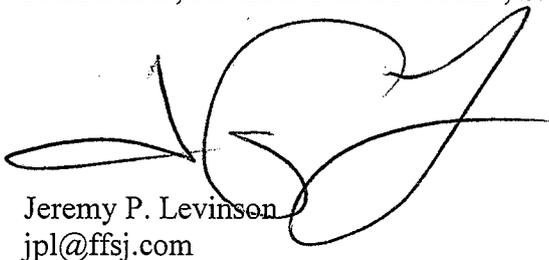
Re: In Re Petition to Recall Senator Randy Hopper of the 18th Senate District

Dear Mr. Kennedy:

Enclosed please find the Petitioners' Rebuttal of Senator Hopper's Challenges to Petitions in the above-entitled matter. By copy of this letter, we are providing copies of same to Attorney McLeod by facsimile and mail this date.

Very truly yours,

FRIEBERT, FINERTY & ST. JOHN, S.C.



Jeremy P. Levinson
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JPL/jlm
Enclosures

cc.: Eric M. McLeod, Esq. (via fax & U.S. Mail)

BEFORE THE WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

IN RE: PETITION FOR RECALL OF STATE
SENATOR RANDY HOPPER OF THE 18TH
SENATE DISTRICT

**PETITIONERS' REBUTTAL OF
SENATOR HOPPER'S CHALLENGES TO PETITIONS**

INTRODUCTION

On March 2, 2001 the Committee to Recall Hopper ("the Committee") filed its Campaign Registration Statement, GAB-1. As required, a Statement of Intent of Circulate Recall Petition was appended to the GAB-1 form and executed by Scott Dillman, a qualified elector and resident of State Senator Randy Hopper's ("Hopper") Senate district. The GAB accepted these documents and established a May 2 due date by which properly executed petitions bearing the signatures of 15,269 of the district's qualified electors had to be submitted in order for the GAB to order the recall election sought by Hopper's constituents.

On April 7, slightly more than half-way through the time allotted, the Committee offered petitions bearing approximately 22,500 signatures for filing with the GAB, over 7,000 more signatures than required. Two weeks later, Hopper submitted purported challenges to the Committee's petitions.

Hopper's purported challenges are no more than another example of an embattled politician who is faced with overwhelming constituent disapproval and, lacking any meaningful

argument to obstruct a recall election, resorts to empty rhetoric and mischaracterization of the law.

First, Hopper takes pot-shots at a small handful of signatures. Again, this serves only to confirm that the recall effort has submitted thousands of unchallenged and valid signatures above and beyond that required to trigger the election his constituents demand and to which they are entitled by Wisconsin's Constitution.

Second, Hopper makes the same groundless procedural attack as Senator Kapanke, claiming all 22,500 signatures must be rejected because Scott Dillman did not file a separate campaign finance registration statement. As with the Kapanke challenge, the Board should reject this argument on its face, as it conflicts with a fair reading of Chapters 9 and 11, runs contrary to the Board's own interpretation of the statutes and advice to recall participants, and would result in the nullification of the expressed will of Hopper's constituents to participate in a recall election.

DISCUSSION

I. LIKE KAPANKE, HOPPER IGNORES THE FACT THAT THE COMMITTEE FILED A GAB-1 REGISTRATION TO WHICH IT APPENDED, AS REQUIRED, A STATEMENT OF INTENT

The filings submitted to and accepted by the GAB in connection with the Hopper Recall are a matter of record: The Committee filed its GAB-1 Campaign Finance Registration Statement, to which it appended a Statement of Intent. The GAB-1 was executed, as required, by the Committee's treasurer, and the appended Statement of Intent was executed by another representative of the Committee, Dillman, who is a qualified elector from Hopper's district, as is

also required. The receipt issued by the GAB at the time the petitions to recall Hopper were submitted accurately reflects the fact that Dillman delivered them on behalf of the Committee.

The most generous characterization of Hopper's argument is that it uses mere word play to artificially create the illusion that the Committee and Dillman acted independently of one another. The GAB's records confirm the Committee filed the required registration to which it appended a Statement of Intent signed by the only appropriate signatory, a qualified elector of the Hopper's district work as a representative of the Committee.¹

Hopper repeatedly insists that in all contexts, the word "petitioner" relates solely and exclusively to an individual human being. From this, Hopper argues that since the GAB-1 was the Committee's campaign finance registration and Dillman, the human being who signed the appended Statement of Intent, did not file a separate GAB-1 as an individual, it is as though no registration was filed in connection with the recall effort and the signatures of almost 23,000 of Hopper's constituents should be ignored.

Section 9.10(2)(d) states in relevant part:

No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.05 (1) or (2) with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town, town sanitary district, or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.

¹ On page 7 of Hopper's memorandum, he states that Dillman "has not provided GAB with any evidence" of his relationship with the Committee. First, this acknowledges the baselessness of the challenge – the burden rests with the challenger. Second, there is unassailable evidence – the GAB-1/Statement of Intent filing. Likewise, the GAB had no trouble correctly issuing a receipt to Dillman when he delivered the petitions.

The text of the statute alone shows the poverty of Hopper's argument. First, it requires a "petitioner" to file a campaign finance registration statement and specifically permits the "petitioner" to do so "under § 11.05(1)" which provides for registration of "Committees and Groups." *The very statute Hopper relies on specifically recognizes that a petitioner is specifically authorized to be a committee.*

As a separate point, § 9.10(2)(d) requires a "petitioner" to "append" to the registration a statement of intent. The GAB has correctly determined that the human being *signing* the Statement of Intent must be a qualified elector from the relevant district. The petitioner merely needs to append the Statement to its registration indicating its intent. Committees, as legal entities, can neither sign documents nor form intent. **The human beings that constitute or represent a committee do these things and they are attributed to the committee.** Hopper's effort to feign confusion about the statute's reference to both committees and the human beings that constitute them as "petitioners" is meritless.

Here, the Committee properly registered and did so precisely as the statute permits. It appended to its registration a Statement that indicated its intent through the execution of that document by a qualified elector, Dillman. These documents confirm that the statutory requirements were followed to the letter and that Dillman is a representative of the Committee.

II. EVEN IF HOPPER'S ARGUMENT WAS NOT DEVOID OF MERIT, IT WOULD NOT PERMIT UNDERMINING THE CONSTITUTIONAL RIGHTS OF OVER 20,000 OF HIS CONSTITUENTS

Article 13, § 12 of the Wisconsin Constitution guarantees the right of electors to pursue recall of their elected officials. Section 9.10, Stats., facilitates the exercise of this right. Unsurprisingly, it requires *electors* of the applicable political district to petition for the recall of

the official representing that district. § 9.10, (1)(a), Stats. The GAB's recall manual clearly and correctly lays out the reasonably straightforward procedural requirements. Likewise, the GAB appropriately deemed the Committee's GAB-1 registration and the appended Statement of Intent sufficient. *See Letter from GAB to the Committee, March 2, 2011; Cf. American Recall Coalition Notice of Rejection and Insufficiencies.pdf* (GAB's rejection of recall registration filings for failing to include individual elector of district); *see also Open Session Board Materials Packet for GAB March 22-23, 2011 Meeting at 74 et seq.* (further reflecting the application and administration of the statutes as described above).

Hopper attacks the GAB's understanding of the requirements at issue and any reliance on that articulated understanding. This attack immediately digresses into irrelevant areas of law, including the limits on administrative rule making imposed by the doctrine of the separation of powers. The invitation to follow Hopper down that rabbit hole is declined. Oddly, on page 9, footnote 2, Hopper references Kapanke's claim that he was given inaccurate guidance from the GAB as to the computation of certain deadlines. Hopper holds this up as an evidence that good faith reliance is irrelevant. Hopper omits a fact: Kapanke sought and obtained an extension to those deadlines specifically premised on his reliance on the GAB's guidance. *See Dane County Case No. 2011-CV-1660.* Hopper's attack on the GAB's (correct) understanding of the requirements and reliance on that understanding amount to nothing more than repeated and meritless declarations that the statute means what he says it means.

Reliance aside, even if Hopper's argument had any substance, it would not derail the recall election his own constituents have properly demanded. The Wisconsin Constitution specifically guarantees electors the right to seek recall of their elected officials. Statutory

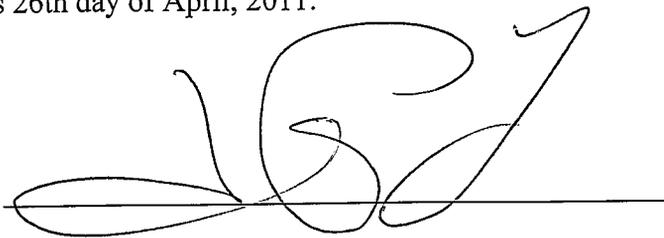
provisions relating to recall are to be liberally interpreted in favor of electorate. *Matter of Recall of Redner*, 153 Wis. 2d 383, 388, 450 N.W. 2d 808 (Ct. App. 1989). The statutes themselves mandate such a construction: that even if Hopper's challenge were not devoid of merit (and was merely and profoundly hyper-technical), it could not defeat the call of over 20,000 of his constituents for a recall election. "Chapters 5 to 12 shall give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of its provisions." § 5.01(1), Stats. The Administrative Code, GAB § 2.05 (made applicable by GAB § 2.09) reflects that the statutes require "substantial compliance." If belief was suspended and Hopper's argument was viewed as holding some merit, it would not begin to make the case that the recall effort was not in substantial compliance.

Given that Hopper's best efforts confirm that far more than the required number of proper signatures have been submitted in support of a recall election, there can in no event be any doubt about "the will of the electors."

CONCLUSION

A recall election should be ordered for Wisconsin Senate's 18th District, currently held by Senator Randy Hopper. As his challenge confirms, well more than the required number of signatures have been properly submitted.

Respectfully submitted this 26th day of April, 2011.

A handwritten signature in black ink, appearing to read 'JPL', is written over a horizontal line.

Jeremy P. Levinson (Wisconsin Bar No. 1026359)

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