State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: For the October 28, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Michael Haas
Elections Division Administrator

SUBJECT: Printed Name Requirement on Election Petitions

The new statutory requirement for signers of nomination papers and other election petitions to include their legibly printed name was first implemented during the G.A.B.'s review of nomination papers of candidates in the 2014 fall elections. Both G.A.B. staff and Board members expressed concerns about the difficulty in defining a consistent and objective standard for determining when a name was "legibly printed." Board members recommended that staff attempt to refine and clarify the standard for determining whether a name was legibly printed. With nomination papers being circulated as of December 1, 2014 for candidates in the 2015 Spring Election, it is important that G.A.B. staff is able to properly and efficiently process nomination papers of state candidates, and to also provide clear guidance to local election officials who will process nomination papers of local candidates.

Background

2013 Act 160 created a new requirement for individuals who sign nomination papers of a candidate or other election petition. In the various statutory sections related to nomination papers, Act 160 inserted language stating that ". . . in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature . . . ." Similar language was included in Wis. Stat. §8.40 which relates to other election petitions. A copy of Act 160 is attached.

At its meeting of April 17, 2014, the Board approved the following standards for reviewing the legibility of printed names:

1. If the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted.

2. If the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.

3. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

In implementing these standards, G.A.B. staff also required that, consistent with other rules for correcting an insufficiency on a nomination paper, the signer may correct a printed name error (such as failure to include a printed name) by filing a correcting affidavit, but that a circulator could not correct the signature or printed name of an elector.

The standards approved by the Board focused on legibility and not on the meaning of the term "printed." When reviewing over 100,000 signatures on nomination papers for the fall elections, G.A.B. staff came to realize the complications of applying a requirement which may have appeared straightforward on its face. In an effort to establish an objective standard, staff relied on the dictionary definition of "print" which then required staff to strike signatures when they were accompanied by a name in the "Printed Name" column which was actually written in cursive, or which had individual letters connected to one another. While this was not a satisfactory common sense interpretation for either staff or the Board, it attempted to give meaning to the Legislature's decision to require a legibly printed name, regardless of whether or not the signer's signature was legible on its own or in conjunction with the printed name.

Analysis of Legislative History

Neither the bill file for Act 160 nor the comments and debate in the legislative committees or floor session contain conclusive evidence of whether the Legislature intended that a "legibly printed" name must literally be "printed" and must not include cursive handwriting or letters which are connected or overlap. Possible evidence of a legislative intent to require that the entire name be actually printed in addition to a signature, even if a signature was clearly legible, includes the following:

1. On the bill request form, the author, Representative Ott, listed as the topic, "Names on petitions must be printed," and included instructions stating "Require each signer of a nomination paper, statutory petition for a referendum, direct legislation petition, or recall petition to print his or her name next to his or her signature and address."

2. The first version of the bill required each signer to "legibly type or print his or her name beneath or opposite his or her signature and address." Subsequently, the phrase "in order for the signature to be valid" was inserted and "beneath or opposite" was changed to "next." As introduced, the bill did not include the option to type the name. The LRB Analysis of the introduced bill stated "This bill also requires that each individual who signs a nomination paper or petition legibly print his or her name in a space provided next to his or her signature."

Attached is a copy of the testimony of Representative Jim Ott during the public hearing before the Assembly Committee on Campaigns and Elections regarding Assembly Bill 420 (which later became Act 160). During the Committee's executive session, the precise question of whether a legible name in cursive would qualify as a printed name was never pinpointed and discussed. Whenever the requirement was discussed it was as a "legible printed" name or "legibly printed." There was some discussion about how to determine whether a name was legible, but no mention of how to treat a name that is legible but is not printed in either column for the signature or the printed name. There seemed to be consensus that if the required information was included, the signature should count, but no discussion about whether the "required information" included that the name had to be in print format.

In response to a question, Legislative Council staff stated that the bill language suggests that the boxes for both the signature and the printed name need to be completed, regardless of whether the signature is legible. There was a lengthy discussion of whether signatures should be counted if the signature and printed name were switched in the two boxes, with both representatives of both political parties seeming to agree that switching the signature and printed name should not disqualify a signature. Following this discussion, Legislative Council staff stated that the bill only prohibits counting the signature "if there is no printed name next to the signature," and that "the bill requires an additional printed name."

In the Senate Committee public hearing, Representative Ott, stated that the current problem was that illegible signatures prevent valid challenges because the challenger cannot even read the name to be challenged. He stated that the bill would make it easier to challenge names and that it would not have much impact on candidates because many already collected printed names on nomination papers. Senator Vukmir, the Senate lead author, stated that the bill would promote uniformity and protect the ability to challenge signatures. In response to questions about the difficulty in defining what is legible, Representative Ott stated that either the name can be read or it is not legible. Again, there was no specific discussion about whether printed names could be written in cursive.

G.A.B. Director Kennedy testified that the term "legibly" should either stay in the bill or the Board would use that as the standard for evaluating printed names. He stated that the Board would use a common sense approach and read "legible" into the bill even if it was not included in order to have a uniform standard.

During the floor debate regarding AB 420, discussion also focused on the legibility part of the proposal rather than the printed name requirement. Representative Ott repeated that the goal of the bill was to allow candidates and potential challengers to at least know the name of the person who signed the nomination paper. In responding to criticisms of the bill, he noted several provisions of G.A.B. administrative rules and policies which were in place and which he presumed would continue and would be extended to the printed name requirement. Specifically, 1) there is a presumption of validity that attaches to information on nomination papers 2) substantial compliance with the signature requirements is acceptable, and 3) signers who cannot complete their signature because of a disability may authorize another person to sign for them. Representative Ott also stated that he had been advised by the G.A.B. that a circulator would be able to print the name of a signer with a disability upon their request, and his bill did not intend to change that policy.

In reviewing the language and legislative history of Act 160, it can be argued that, if legibility of a signer's name was the only concern, there would have been no reason to insert the term "printed" into the statutory provisions. However, there is no indication of any discussion or debate which made a distinction between a name that is literally printed with no letters connecting, and a name that is legible even though it is written in cursive or includes letters which connect or cross over each other. Legislative staff in Senator Lazich's and Representative Bernier's offices indicate that the term "printed" was used only as the most convenient way to describe a marking that was legible, not because it required any specific form of writing. Representative Ott's concern was clearly to preserve the ability to make challenges, and his reliance on existing G.A.B. rules to review nomination papers emphasize that readability of a signer's name was the primary focus.

Conclusion

Given this analysis and its experience of reviewing nomination papers for the 2014 fall elections, G.A.B. staff recommends interpreting and applying Act 160 in a manner that preserves the ability to challenge a signature, is consistent with existing administrative rules related to the sufficiency of signatures, and does not invalidate signatures which are clearly readable, by reference to either the signature or printed name, or by reviewing both forms of the name associated with the signer.

Staff recommends updating and clarifying the Board's policy determination of April 17, 2014 regarding the review of printed names on nomination papers and other election petitions, so that the focus is on readability of the signer's name rather than whether or not the signer has complied with any literal definition of "printing." Staff recommends that the Board adopt the following standards:

1. The filing officer shall confirm that the signer has completed information in both the "Signature" box and the "Printed Name" box of the nomination paper or other election petition. The signature may be marked as the signer customarily marks his or her signature, including by using an "X" or by using either traditional printed letters or a handwritten signature. Similarly, the signer's printed name is not required to include only letters that are separated from one another.

2. If the filing officer can discern no part of the signer's name, after reviewing both the signature and the printed name, it should be deemed illegible and the signature should not be counted.

3. After reviewing both the signature and printed name of a signer, if the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature shall be counted if otherwise valid.

4. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

It is the consensus of staff that, while these standards will continue to require some subjective judgment by filing officers, the standards will accurately capture the intent of Act 160. G.A.B. staff and local filing officers will be able to apply a common sense approach which does not eliminate legible names simply because letters in a printed name are connected or cross over one another. In essence, the printed name requirement is used to clarify or complete a signature which may not be legible or readable, not to invalidate signatures on the basis of a name failing to meet a literal definition of "printed."

Recommended Motion:

In interpreting and administering 2013 Act 160, the Board directs its staff and local filing officers to apply the following standards to determine the sufficiency of signatures on nomination papers and other election petitions:

1. The filing officer shall confirm that the signer has completed information in both the "Signature" box and the "Printed Name" box of the nomination paper or other election petition. The signature may be marked as the signer customarily marks his or her signature, including by using an "X" or by using either traditional printed letters or a handwritten signature. Similarly, the signer's printed name is not required to include only letters that are separated from one another.

2. If the filing officer can discern no part of the signer's name, after reviewing both the signature and the printed name, it should be deemed illegible and the signature should not be counted.

3. After reviewing both the signature and printed name of a signer, if the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature shall be counted if otherwise valid.

4. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

5. The signer must print his or her name, and the signer must execute a correcting affidavit if the printed name is missing or insufficient for the signature to be counted. However, a circulator may print the name of a signer with a disability who requests such assistance.