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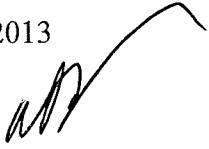
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MEMORANDUM

Date: September 13, 2013

From: William Talbot 

To: A.J. Spiker
State Chairman, Republican Party of Iowa
Via e-mail to ajspiker@iowagop.org

RE: Ballot Vacancy
Addendum to Opinion of September 3, 2013

Chairman Spiker,

I am writing to amend the opinion regarding ballot vacancies for the United State Senate in the event a candidate does not receive 35% of the primary vote. In my previous opinion I had referred you to Section 43.78 of the Code and the case of *Zellmer v. Smith*, Secretary of State. The summation of my opinion was that there was no case law precisely and exactly on point; therefore the plain language of the Code should be interpreted using the ordinary application of English language. I further summarized the opinion stating that a ballot vacancy does not exist until the conclusion of state canvass. Taking this to its logical conclusion, it was my opinion that if a ballot vacancy did not exist, it cannot be filled.

The focus of concern with a nominating convention being held pre-canvass was that we did not have an opinion from the Iowa Secretary of State as to whether it would be lawful for the Secretary of State to accept the results of a nominating convention that occurred before a ballot vacancy was a legal fact. That matter has, to some extent, been remedied. Subsequent to issuing my opinion, and on September 13, 2013, I received a release from the Secretary of State titled "Iowa Secretary of State Matt Schultz clarifies convention timing". In that document, Secretary Schultz commits to certify the name of any Federal or State candidate nominated by a political party prior to the certification of election results so long as all other statutory requirements are met.

I would read the "other statutory requirements" to include, the results of the primary and subsequent canvass taking precedence over the nominating convention if there is conflict.

I continue to have no opinion as to the preferred date for the party's convention; however the Secretary of State's commitment to accept the results of a nominating convention removes the impediment of having a nominating convention as part of the state convention if it is held prior to canvass.

The dominant impediment being removed by the Secretary of State's commitment to honor convention results that occur prior to canvass still leave us with at least two possible uncomfortable scenarios, although both seem unlikely.

First, if the primary is quite close and no candidate receives more than 35% of the vote, it is possible that the nominating convention and canvass would have different persons named as the candidate. In this scenario, it is my opinion that the results of canvass would prevail. As stated, this would be an unlikely and quite unusual result, but it would certainly be an undesired result that would show a definite lack of party support for the ultimate candidate.

Next, as I mentioned in my September 3 opinion, I cannot find a court case directly on point regarding the authority of the Secretary of State to accept the results of a nominating convention held prior to canvass. Therefore, a potential risk of holding a nominating convention prior to the Secretary of State's issuance of a certificate would be a disgruntled party's potential to file suit in mandamus or injunction to prevent that nominee from being named on the general election ballot. I express no opinion as to what the outcome of such a suit might be, but at the minimum it would certainly create considerable chaos.

In sum, my opinion as to the statement of law remains unchanged; however my opinion as to the ability of a Secretary of State to accept the nominating convention result that occurs prior to canvass is changed.

What is changed from my previous opinion is that the Secretary of State has committed to accept the results of a nominating convention that occurs before canvass, provided that the nominee meets other legal requirements. Therefore, as long as Mr. Schultz is Secretary of State, it seems to be a reasonable risk to hold the nominating convention prior to final canvass.

All of this consternation and concern will, of course, be for naught if a candidate in the primary receives more than 35% of the vote.

Please let me know if you need further explanation regarding my opinion.