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FORMAL OPINION	)	No. 12-06
OF	)	AG Alpha No. ST EL AGBDQ
JOHN W. SUTHERS Attorney General	)	September 5 , 2012

This opinion, requested by Secretary of State Scott Gessler, concerns the effect of congressional redistricting and state legislative reapportionment on candidate petition signature requirements.

QUESTION PRESENTED AND ANSWER

Question: For the 2012 and 2014 primary and general elections, how should the Secretary of State calculate the candidate petition requirements for races affected by the redistricting and reapportionment that followed the 2010 Federal Census?

Answer: The General Assembly requires a candidate seeking placement on a ballot via petition to obtain the lesser of an enumerated number of signatures or a number of signatures equaling a percentage of votes cast in the district's preceding primary or general election for the office being sought. The signatures must come from electors currently residing in the district, but reapportionment and redistricting have no effect on the number of signatures required by law. Therefore, the Secretary of State should reference a district's preceding primary or general election for the office being sought to determine how many signatures are required for a candidate's petition.

ANALYSIS

The Secretary of State is charged with "supervis[ing] the conduct of primary, general, congressional vacancy, and statewide ballot issue elections in this state." § 1-1-107(1)(a), C.R.S. (2011). In addition, the Secretary of State is directed "to enforce," and "[w]ith the assistance and advice of the attorney general, to make uniform interpretations of," election laws. § 1-1-107(1)(b)–(c). The Secretary seeks my opinion on how to calculate petition signature requirements when, as now, reapportionment and redistricting have changed the boundaries and

population of the state's congressional and legislative districts from what existed in previous elections.

Candidates for public office in Colorado may access a ballot in multiple ways. In addition to political party conventions, the General Assembly affords a statutory petition process, where candidates must obtain petition signatures from "electors resident within the district for which the officer is to be elected." § 1-4-801(2)(b), C.R.S. (2011); *see also* § 1-4-802(1)(c), C.R.S. (2011) (requiring signatures from "eligible electors residing within the district or political subdivision"). The number of signatures required differs for major and minor political parties and unaffiliated candidates. *Compare generally* § 1-4-801, *with* § 1-4-802. Most signature requirements are set forth as the lesser of an enumerated number or a number equaling a percentage of votes cast in a previous election. *See generally* §§ 1-4-801(2) and 802(1)(c).

Statutes must be construed in context, according to their plain and ordinary meaning. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088–89 (Colo. 2011). "[S]tatutes limiting a person's right to hold public office" must be construed "in a way that will least infringe upon that right," because the right is "'one of the valuable and fundamental rights of citizenship.'" *Conte v. Meyer*, 882 P.2d 962, 966 n.2 (Colo. 1994) (quoting *Romero v. Sandoval*, 685 P.2d 772, 774–75 (Colo. 1984)).

The plain and ordinary meaning of the statutes implicated here indicates that the General Assembly intended to use the least restrictive ballot requirements possible for each election. Candidates can readily locate electors currently residing in a district, whether or not population or boundaries have changed. However, it would be far more burdensome to determine which electors resided in a since-redrawn district's preceding election. In addition, under subsection 1-4-802(1)(c), unaffiliated candidates and candidates from minor political parties face less stringent signature requirements than those facing major political party candidates. *Cf.* § 1-4-801(2). Subsection 1-4-802(1)(c) correlates ballot-access thresholds with the scope of the elections for particular elected offices, progressively increasing signature requirements for offices of greater statewide scope. Finally, the statutory formulas for petition signature requirements uniformly mandate that the lesser number of signatures be used.

The statutes make no unique, numerical adjustment for periodic reapportionment and redistricting. District boundaries and populations can be changed, so much so that a "district" could be said to continue in name only. *See Hall v. Moreno*, 270 P.3d 961, 983–84 (Colo. 2012) (Eid, J., dissenting) (noting the "seismic shift" of moving "nearly one-third of Colorado's total population—almost 1.4 million people—to a different congressional district"). Yet, except when an additional representative is apportioned by the United States Congress, there always will have been a previous election in a district from which to measure a percentage of votes cast. To ignore prior district elections after reapportionment and redistricting would remove the percentage-of-votes-cast alternative from the General Assembly's formula for determining petition signature requirements.

In some cases, disregarding the votes cast in a district's prior election could make ballot access more onerous. For example, in the 2010 primary election, the Republican Party candidates

in House District 2 received a total of 702 votes. Under the statutory percentage approach to determining the petition signature requirement, a Republican candidate seeking access to the primary ballot via petition in this year's election for District 2 will need just 211 signatures. *See* § 1-4-801(2)(b). If, however, reapportionment is deemed to mean there was no previous primary election in House District 2, and therefore no votes had been cast in that district, the candidate would need to obtain 1,000 signatures, because subsection 1-4-801(2)(b) requires a petition to be signed by at least *some number* of "eligible electors."

Similarly, of all state legislative contests in the 2010 general election, the contest for House District 17 garnered the fewest votes—just 8,962. Applying the statutory percentage, a minor party or unaffiliated candidate seeking access to the ballot via petition in this year's election will need just 179 signatures. *See* § 1-4-802(1)(c)(V). Yet, if reapportionment is deemed to mean there was no previous general election in the current House District 17, the candidate would need to obtain 400 signatures. These two illustrations demonstrate that ignoring pre-redistricting and reapportionment election results would frustrate the General Assembly's intent that the least burdensome signature requirement apply. *Cf. Conte*, 882 P.2d at 966 & n.2 ("The construction urged by the Secretary and adopted by the trial court fails to further the intent and purpose of the statute [regarding unaffiliated candidates]. In addition, such construction leads to an absurd result . . . . The construction we adopt least infringes upon Conte's right to seek public office.").

CONCLUSION

For the foregoing reasons, I conclude candidate petition signatures must come from electors currently residing in a district, but reapportionment and redistricting have no effect on the number of signatures required by law. Subsections 1-4-801(2)(b) and 1-4-802(1)(c) require a candidate seeking placement on a ballot via petition to obtain the lesser of an enumerated number of signatures or a number of signatures equaling a percentage of votes cast in a district's preceding primary or general election for the office being sought. Nothing in these statutes indicates an intent by the General Assembly that the percentage alternative should be disregarded after districts have been redrawn. Except when an additional representative is apportioned by the United States Congress, there always will have been a previous election in a district from which to measure a percentage of votes cast. Therefore, the Secretary of State should reference a district's preceding primary or general election for the office being sought to determine how many signatures are required for a candidate's petition.

Issued this 5th day of September, 2012.

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