



COMMONWEALTH of VIRGINIA

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December 21, 2023

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Mr. Dustin Curtis
Chairman, Spotsylvania County Electoral Board
Post Office Box 2819
Woodbridge, Virginia 22195

Dear Mr. Curtis:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether petition signatures collected on January 1 count towards the minimum number of signatures required for an independent candidate to gain access to the ballot for a succeeding November general election.¹ You also seek guidance regarding what actions should be taken in the event a disqualifying number of signatures are proven invalid after a particular individual has been certified as an independent candidate.

Response

It is my opinion that signatures collected on January 1 do not count towards the minimum number of signatures required to be collected by independent candidates seeking to have their name printed on the ballot. It is my further opinion that what actions may be available in the scenario you describe is dependent on the attendant facts and circumstances and therefore is a question beyond the scope of an opinion of this Office.

Applicable Law and Discussion

Under Virginia's election laws, "[o]nly a person fulfilling all the requirements of a candidate shall have his name printed on the ballot"² One such requirement is the filing of a petition for candidacy.³

¹ Your inquiry relates to independent candidates seeking state and local office; the analysis and conclusions herein apply to all candidates covered by § 24.2-506. I further note that, although election day for a general election ordinarily is held "on the Tuesday after the first Monday in November[,]" VA. CODE ANN. § 24.2-101 (Supp. 2023) (defining "general election"), absentee voting for such election commences "on the forty-fifth day prior to" election day. Section 24.2-701.1(A) (Supp. 2023).

² Section 24.2-504 (2016). *See also* § 24.2-525(A) (Supp. 2023) (imposing a similar rule on primary candidates). "It is the duty of [the] candidate to insure that he meets all the qualifications of filing for his candidacy[;] failure to meet such qualifications may not be passed on to another." 1971-72 Op. Va. Att'y Gen. 158, 159.

³ Petitions must be submitted along with the candidate's Declaration of Candidacy. Sections 24.2-506 (Supp. 2023) (independent candidates); 24.2-521 (Supp. 2023) (primary candidates). No petition is required of a direct party

Each petition must contain a minimum number of signatures of qualified voters; the minimum number depends on the office sought.⁴ An independent candidate seeking office at a November general election must file his completed petition with the local registrar by 7:00 p.m. on the third Tuesday in June.⁵ In requiring the signed petitions, the General Assembly specifically has directed, among other conditions, that the petitions be “signed by the number of qualified voters specified [by law] *after January 1* of the year in which the election is held.”⁶ You ask whether signatures collected on January 1 comport with this requirement.

The “primary objective” in construing a statute is “to ascertain and give effect to legislative intent, as expressed by the language used in the statute.”⁷ “[W]ords not defined in a statute are to be construed according to their ordinary meaning,” given the context in which they are used.⁸ The ordinary meaning of the term “after” is “[s]ubsequent in time to; at a later time than.”⁹ This definition, when applied to the language at hand, clearly indicates that the required signatures must be collected on a date that is “subsequent . . . to” or “at a later time than” January 1. Because January 1 makes up an entire day, rather than a specific time of day, only January 2 and later dates can be said to be “after” January 1. I therefore must conclude that a petition signature obtained January 1 was not “signed by the . . . voter[] . . . after January 1 of the [relevant] year” as contemplated under Virginia law.¹⁰

An examination of other parts of the *Code of Virginia* affirms that a signature obtained January 1 is not equivalent to one collected after January 1. In other provisions of Virginia’s election law, the General Assembly has used the phrase “*on or after*” to specify instances in which a particular action may be carried out either “on” or “after” a discrete day.¹¹ Courts generally consider differences in language in related

nominee, § 24.2-511(D), or a candidate seeking membership on the governing body or elected school board of any town that has fewer than 1,500 registered voters. Sections 24.2-506(A)(8); 24.2-521(B)(8).

⁴ See §§ 24.2-506; 24.2-521.

⁵ See §§ 24.2-505(C); 24.2-506; 24.2-507 (Supp. 2023). Primary candidates are required to submit their petitions to their local party chairperson by 5:00 p.m. of the seventy-fifth day before the primary. Section 24.2-522 (2016).

⁶ Section 24.2-506(A) (emphasis added); *accord* § 24.2-521(A) (primary candidates). A different timeframe, inapplicable here, applies “in the case of [March primaries],” conducted in relation to May general elections. See § 24.2-515 (Supp. 2023).

⁷ *City of Hampton v. Williamson*, ___ Va. ___, 887 S.E.2d 555, 558 (2023) (quoting *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012)).

⁸ 2022 Op. Va. Att’y Gen. 87, 88 (quoting *Eley v. Commonwealth*, 70 Va. App. 158, 165 (2019); 2016 Op. Va. Att’y Gen. 293, 296 & n.7). Absent an ambiguity, courts “must take the words [of a statute] as written and give them their plain meaning.” *Island Creek Coal Co. v. Honaker*, 9 Va. App. 336, 339 (1990) (internal quotation marks and citation omitted).

⁹ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 30 (Joseph P. Pickett & Steven R. Kleinedler et al. eds., 5th ed. 2011). See also *Pierce v. Commonwealth*, 21 Va. App. 581, 585 (1996) (“The word ‘after’ means ‘later than a particular time or period of time.’” (quoting *Suggs v. Life Ins. Co.*, 207 Va. 7, 11 (1966))).

¹⁰ See *Democratic Party of Va. v. Piper*, 102 Va. Cir. 478, 481 (2018) (“Each signature must be after January 1 of the year in which the election is held . . .”).

¹¹ See §§ 24.2-611(B) (Supp. 2023) (providing that electronic pollbooks shall be used “for any election held on or after November 1, 2020”); 24.2-684.1 (2016) (providing that certain requirements “shall apply to petitions calling for any referendum which is ordered to be held on or after January 1, 1994”); 24.2-949.6(D) & (E) (Supp. 2023) (referencing certain political action committee filings submitted “on or after March 15” or “on or after August 15”). In addition to these instances in Title 24.1, the *Code* contains hundreds of other instances where specific language is used to indicate that a particular action is carried out either “on,” “after,” or “on or after” a discrete day. See, e.g., VA. CODE ANN. §§ 1-214(A) (2022) (generally providing that new legislative enactments “shall take effect on the first day of July”); 9.1-114 (2018) (making compliance with minimum training standards applicable to certain officers

statutes to be “quite telling.”¹² Had the General Assembly intended to allow for the collection of signatures to begin on January 1, it could have said so.¹³ Accordingly, the fact that it has not supports the conclusion that the timeframe allotted for qualifying signatures does not extend to those collected prior to January 2, including those obtained on January 1.¹⁴

Although some irregularities in candidate petitions can be deemed immaterial to candidate qualification,¹⁵ I conclude that signatures collected on January 1 of the relevant election year will not count towards the minimum number of signatures required for ballot access. When read with the prescribed filing deadlines, the plain language directing that the petition be signed by voters “after January 1,” serves to establish fixed, equally binding time frames for the collection of signatures. Accommodation for signatures collected outside these dates would circumvent the express intent of the General Assembly, as articulated above. In contrast, strict adherence to these clearly defined time requirements not only effectuates the legislative intent, but it also promotes fairness in the treatment of those seeking office. I therefore conclude that only those signatures collected on January 2 or later will count towards a potential candidate’s signature requirement.

In addition, regulations that set forth limited circumstances under which “a petition or a petition signature should not be rendered invalid” by virtue of an immaterial error or omission do not expressly address the instant question.¹⁶ The lack of any date on a signature, however, is deemed immaterial only when “*a period of time that qualifies* can affirmatively be established with previous and subsequent dates provided by other signers on the petition page.”¹⁷ Moreover, in detailing the petition verification process, official guidance materials instruct reviewers as follows: “Do not check signatures when the date signed cannot be established to be *within the permitted time period* for the petition.”¹⁸ The prescribed petition form itself states that the “Date Signed” “*Must* be after January 1st of [the] election year.”¹⁹ The language used

“employed after July 1, 1989”); 46.2-383(A) (2022) (forwarding of specified abstracts of records “[o]n or after July 1, 2013”); 58.1-3703(E) (2022) (particular exemption of license fees or license taxes may be made “[f]or taxable years beginning on or after January 1, 2012”).

¹² *Williamson*, __ Va. at __, 887 S.E.2d at 559.

¹³ *See, e.g.*, 2013 Op. Va. Att’y Gen. 39, 40 (observing that “[t]he General Assembly knows how to express its intention”).

¹⁴ “[W]hen the General Assembly has used specific language in one instance but omits that language or uses different language when addressing a similar subject elsewhere in the Code, [we] must presume that the difference in the choice of language was intentional.” *Morgan v. Commonwealth*, __ Va. __, __, 881 S.E.2d 795, 799 (2022) (quoting *Zinone v. Lee’s Crossing Homeowners Ass’n*, 282 Va. 330, 337 (2011)). In “‘these circumstances, it is evident that the General Assembly ‘knows how’ to include such language in a statute to achieve an intended objective,’ and therefore, omission of such language in another statute ‘represents an unambiguous manifestation of a contrary intention.’” *Id.* (quoting *Brown v. Commonwealth*, 284 Va. 538, 545 (2012)).

¹⁵ *See generally, e.g.*, 1983-84 Op. Va. Att’y Gen. 140, 142-43, and 1975-76 Op. Va. Att’y Gen. 124, 124 (concluding that the rule of substantial compliance applies to candidate petitions); 1 VA. ADMIN. CODE § 20-50-20.

¹⁶ 1 VA. ADMIN. CODE § 20-50-20(A). The General Assembly has charged the State Board of Elections with developing “standards by which petitions . . . are reviewed to determine if the petitions contain sufficient signatures.” Section 24.2-506(B).

¹⁷ 1 VA. ADMIN. CODE § 20-50-20(D)(8) (emphasis added). The omission of just the year from the signature also is deemed to be immaterial. *Id.* at § 20-50-20(D)(9).

¹⁸ VA. DEP’T OF ELECTIONS (“ELECT”)/SBE, *Review of Candidate Petition Page Checklist* (undated) (emphasis added), available at <https://www.elections.virginia.gov/formswarehouse/ballot-access-candidate-qualification/>.

¹⁹ *See* ELECT, Form ELECT-506/521, *Virginia Petition of Qualified Voters* (rev. July 2020), available at https://www.elections.virginia.gov/media/formswarehouse/campaign-finance/2018/candidates/Petition-of-Qualified-Voters-SBE-506_521_letter.pdf.

in implementing the statutory date requirement thus further evinces that timely execution of the signature is essential to its status as a qualifying signature.²⁰ Consequently, I conclude that signatures obtained outside the permitted statutory time frame do not count towards a candidate's minimum number of required signatures.²¹ Whether a particular signature, however, has been collected on a qualifying date is a question of fact that is beyond the scope of an opinion of this Office.²²

With respect to your second question, I must advise that the law is clear that the name of a candidate who is not qualified to have his name printed on the ballot “shall not be printed upon any official ballots.”²³ Accordingly, if a person seeking office is officially deemed no longer qualified to be a ballot candidate – prior to the “drop dead” date to begin printing ballots in order to meet applicable ballot-availability deadlines – then no ballots with the non-qualifying person shall be printed or used, and only ballots without the person's name printed can be made available to voters.²⁴ When those deadlines have passed, however, the Department of Elections is vested with the authority, after “tak[ing] into account the time available before the election and the status of the ballots for the election[,]” to use its discretion “to direct the electoral boards on how to proceed to print the ballot without the candidate's name, correct the ballot to delete the candidate's name, or provide notice to voters” that the individual is not qualified to appear on the ballot.²⁵ Courts recognize that administrative burdens and voter confusion can render late-hour corrections inappropriate and, on that basis, maintain the status quo.²⁶ Regardless of what action, if any, is taken, should

²⁰ Generally, “the construction accorded a statute by public officials charged with its administration and enforcement is entitled to be given weight by the court.” *Tazewell Cnty. Sch. Bd. v. Brown*, 267 Va. 150, 163 (2004) (quoting *Commonwealth v. Am. Radiator & Standard Sanitary Corp.*, 202 Va. 13, 19 (1960)). Together, the State Board of Elections and the Department of Elections are vested with the administration of Virginia's election laws. *See* 2014 Op. Va. Att'y Gen. 48, 51-52, and opinions cited therein.

²¹ I note that this Opinion does not address potential situations in which local charter provisions with different requirements may govern.

²² *See, e.g.*, 2006 Op. Va. Att'y Gen. 141, 144 (“[T]his Office does not investigate the facts behind opinion requests and does not issue opinions regarding questions of fact”). Local election officials are charged with determining the validity of petition signatures of independents seeking local office. *See* § 24.2-505. *See also* ELECT, *Electoral Board Job Description* at 2 (undated), available at <https://www.elections.virginia.gov/media/formswarehouse/local-administration/electoral-board/Electoral-Board-Job-Description.pdf> (including, in accordance with the authority afforded the State Board of Elections in § 24.2-106.01, “[c]ertification of candidates” among the responsibilities of an electoral board). Party leaders are responsible for verifying the petitions of primary candidates. Section 24.2-527 (2016).

²³ Section 24.2-506(A). You state that there is no statute providing for the disqualification of a candidate who has been certified. That there could be such disqualification, however, is implicit in Code § 24.2-612.1, which confers certain authority upon the Department of Elections “[i]n the case of the death, withdrawal, or *disqualification* of any candidate . . . who has *qualified* to have his name printed on the ballot” Section 24.2-612.1 (Supp. 2023) (emphases added). Moreover, materials prepared by the Department of Elections indicate that errors in petition verification can be corrected by the registrar in VERIS, the Virginia Election and Registration Information System. *See* ELECT, 2023 *General Registrar and Electoral Board Handbook*, § 16.5.3 at 12 (Sept. 2023), available at https://www.elections.virginia.gov/media/grebhandbook/2023-updates/16_Candidate_Processing_final_2023.pdf.

²⁴ *See Piper*, 102 Va. Cir. at 489.

²⁵ Section 24.2-612.1. *See also Piper*, 102 Va. Cir. at 489. I note that, in informing voters, steps should be taken to avoid confusion regarding what constitutes “disqualification”; disqualification from the ballot does not render one disqualified from holding office. *See* VA. CONST., art. II, § 5 (With limited exceptions, “[t]he only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must have been a resident of the Commonwealth for one year next preceding his election and be qualified to vote for that office.”); *accord* VA. CODE ANN. § 24.2-500 (2016).

²⁶ *See, e.g.*, *Perry v. Judd*, 471 F. App'x 219, 225 (unpublished) (4th Cir. 2012) (noting that legal “[c]hallenges [made] immediately before or immediately after the preparation and printing of ballots would be particularly disruptive

an unqualified candidate erroneously appear on the ballot and receive the majority of votes cast, he will be elected and “his right to qualify and hold the office cannot be successfully challenged upon the ground that his name was printed on the ballot” under these circumstances.²⁷

Conclusion

Accordingly, it is my opinion that signatures collected on January 1 do not count towards the minimum number of signatures required to be collected by prospective independent candidates seeking to have their name printed on the ballot for election to local office at a November general election. What actions are available when a disqualifying number of signatures are proven invalid after a particular individual has been deemed a qualified candidate depends on the specific attendant facts and circumstances.

With kindest regards, I am,

Very truly yours,



Jason S. Miyares
Attorney General

and costly for state governments”); *Curtin v. Va. State Bd. of Elections*, 463 F. Supp. 3d 653 (E.D. Va. 2020); *Tittle v. Va. State Bd. of Elections*, No. 3:20-CV-349, 2020 WL 6589328 (unpublished) (E.D. Va. Sept. 22, 2020); *Marcellus v. Va. State Bd. of Elections*, No. 3:15-CV-481, 2015 WL 5285819 (unpublished) (E.D. Va. Sept. 9, 2015).

²⁷ 1959-60 Op. Va. Att’y Gen. 161, 162. *See also id.* at 152, 153 (reaching similar conclusion for primary elections).