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LEGAL OPINION

To: Representative Bob Marshall

From: Office of Legislative Legal Services

Date: December 30, 2024

Subject: Constitutionality of prohibiting a member of the General Assembly appointed to their seat from running for the same seat at the next general election following their appointment[1]

Legal Question

Article V, section 2 of the Colorado Constitution and section 1-12-203 (1), C.R.S., require that vacancies in the General Assembly be filled by appointment of a vacancy committee of the political party of the member who created the vacancy. Article V, sections 3 and 4; article VII, section 6; and article XII, section 4 of the Colorado Constitution set forth restrictions and qualifications to be a representative or senator in the General Assembly.

1. Would prohibiting a person who is appointed to a seat in the General Assembly to fill a vacancy from being eligible to be a candidate to run for that same seat in the next general election following their appointment violate the United States Constitution?
2. Assuming that it does not violate the United States Constitution, would this additional qualification for a person's eligibility to seek election for a seat in the General Assembly—that the person not have been appointed to fill a vacancy in that

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[1] This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of its performance of bill drafting functions for the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

seat to a term or partial term immediately preceding the next general election—require an amendment to the Colorado Constitution?

Short Answer

1. Probably not. The prohibition of a person appointed to fill a vacant seat in the General Assembly running for that seat in the next general election is a temporary restriction on one person. Potential federal constitutional challenges under the First and Fourteenth amendments for violating rights to associate and to ballot access and violating the equal protection clause would likely be reviewed using a rational basis test, and the state would only need to demonstrate that the prohibition has a rational relationship to an identifiable state interest.

   While there does not appear to be case law directly on point for this specific type of candidate restriction, and therefore it cannot be concluded with total certainty how a court would rule, analogous precedents using the rational basis test to uphold other types of candidate restrictions such as term limits, disallowing certain elected or appointed officials serving terms in other offices from being eligible to serve in the state legislature, and requiring candidates for certain offices to not hold an interest in an industry license strongly suggest that a reviewing court would uphold the prohibition at issue. Moreover, if a court was to instead apply the heightened standard of strict scrutiny, analogous precedents finding compelling state interests in upholding age restrictions and requirements that unaffiliated candidates have disaffiliated with major political parties for a certain period of time prior to an election also suggest that a reviewing court would uphold the prohibition at issue.

2. Yes. The General Assembly's legislative power is limited by the Colorado Constitution, and if the Colorado Constitution establishes an office and qualifications for that office, the General Assembly is without the power to statutorily add to or modify the qualifications for the office. The offices of senators and representatives are such offices created by the Colorado Constitution with qualifications for such members of the General Assembly established thereby. Therefore, adding any qualification for a person's eligibility to be a member of the General Assembly requires an amendment to the Colorado Constitution.

Background

In Colorado, when a vacancy occurs in the General Assembly due to the death or resignation of a member sworn into office or of a member elected but not yet sworn into office or the failure of such a member to take the oath of office, the vacancy is filled through

appointment of a person to the General Assembly by a vacancy committee that has been created by the political party of the member who created the vacancy.[2] The appointed member then serves in the General Assembly, filling the seat that they have been appointed to until the next general election, at which time the seat is filled by election.[3] The appointed member may choose to run for election to the seat for the next term, or, in the case of a Senate seat for which a vacancy was filled before the general election occurring during the second year of the term, for the remainder of the term for which the member was appointed.[4]

Four other states also appoint members to fill vacancies by a political party committee. Vacancies in the Illinois General Assembly are filled in a substantially similar manner to Colorado's process; except that the political party affiliation of the member creating the vacancy is determined based on when the member was elected and, if the member was not affiliated with a political party at that time, the governor appoints a person to fill the vacant seat.[5] In Indiana, vacancies in the General Assembly are filled by appointment by the state committee of the political party that the member creating the vacancy was affiliated with when elected or selected as a candidate and, if the member was not affiliated with a political party, then the vacancy is filled by special election.[6] New Jersey fills vacancies in the General Assembly by appointment by the county committee of the political party of which the member creating the vacancy was the nominee from that district.[7] North Dakota has a similar process to Colorado for appointing a member by the district committee of the political party of the member creating the vacancy; except that, within thirty days of making the appointment, qualified electors in the district may petition to have the governor call a special election to fill the vacancy.[8] Members who are elected to fill a vacancy in the North Dakota General Assembly by special election serve in the seat for the remainder of the term even if a general election is held before the term ends.[9]

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[2] § 1-12-203 (1), C.R.S.

[3] *Id.*

[4] *See* Colo. Const. art. V, § 3 (1) (Requiring that Colorado state senators be elected for four-year terms).

[5] 10 Ill. Comp. Stat. § 5/25-6.

[6] Ind. Code § 3-13-5-0.1 (b) & (c).

[7] N.J. Const. art. IV, § IV (1).

[8] *See* N.D. Cent. Code, § 44-02-03.1.

[9] N.D. Cent. Code, § 44-02-03.1 (5).

Discussion

1. If challenged under the United States Constitution, the proposed restriction on appointee candidate eligibility would likely be subject to and withstand rational basis review or a challenge at any level of scrutiny.

A prohibition on a person appointed to fill a vacancy in the General Assembly being eligible to be a candidate to run for that same seat in the next general election (the "proposed restriction on appointee candidate eligibility") is a restriction on or qualification for a person to run for office. Constitutional challenges to restrictions on or qualifications for a person to run for a state elected office typically allege violations of the rights to associate and to ballot access under the First and Fourteenth Amendments to the United States Constitution or the right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Generally, in reviewing these claims the court will make a threshold determination as to whether the right being abridged is fundamental or not.[10] If a court determines that the right is fundamental, then it will evaluate the restriction or qualification using strict scrutiny, also referred to as the compelling interest standard, which requires that the restriction or qualification be narrowly tailored to meet a compelling state interest.[11] If, however, a court determines that the right is not fundamental, then the restriction or qualification is evaluated using a rational basis standard and needs only a rational relationship to a legitimate state objective in order to survive the constitutional challenge.[12]

Although there does not appear to be any case law interpreting a restriction on eligibility to be a member of the General Assembly that is tied to having been appointed to fill a vacancy, and no other state appears to have adopted such a restriction, persuasive authority addressing analogous restrictions suggests that, if the proposed restriction on appointee candidate eligibility is challenged, a court will find the allegedly abridged rights to not be fundamental and thereby use rational basis standard to review the restriction. Accordingly, the following sections discuss and apply a rational basis analysis to the proposed restriction on appointee candidate eligibility. However, there is some precedent that suggests that before applying rational basis review, a state court may apply a balancing test to determine which standard of review to then apply to the challenged restriction, and there is also precedent that has applied strict scrutiny review in certain instances to eligibility restrictions for officeholders. In light of these precedents that suggest a court might not simply adopt

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[10] *Lorenz v. State*, 928 P.2d 1274, 1277 (Colo. 1996).

[11] *Id.*; see also *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921 (6th Cir. 1998) (explaining the compelling interest standard of review).

[12] *Lorenz*, 928 P.2d at 1277.

rational basis review to evaluate the proposed restriction on appointee candidate eligibility, the discussion below also considers how a court might apply the balancing test and strict scrutiny review to the proposed restriction on appointee candidate eligibility.

1.1. First and Fourteenth Amendment challenges based on the rights to associate and ballot access by candidates would likely fail.

The proposed restriction on appointee candidate eligibility could be challenged by a person interested in being appointed to fill a vacancy or by a person who has been appointed to fill a vacancy as violating the person's First and Fourteenth Amendment rights to associate and to ballot access as a candidate because the proposed restriction on appointee candidate eligibility precludes the person from running in the next general election for the same seat to which they were appointed.

Candidates do not have a fundamental right to run for office.[13] This basis alone was recently relied on by the 6th Circuit Court of Appeals in *Kowall v. Benson* to apply rational basis review to a challenge to Michigan's lifetime term limits for state legislators.[14] In applying rational basis review to candidate limitations, a court analyzes whether the limitation is rationally related to a legitimate government interest.[15] The *Kowall* court found that Michigan had several legitimate government interests in adopting its term limits law including its sovereign interest in securing its government as it sees fit, electing a citizen legislature, reducing political careerism, and checking special interests.[16]

The proposed restriction on appointee candidate eligibility places a temporary restriction on one specific individual—the individual appointed to fill a vacant seat in the General Assembly—from being able to run for election to that same seat at the next general election. This restriction is analogous to consecutive term limit restrictions, which also place a temporary time restriction on a person's eligibility to be a candidate. *Kowall's* persuasive precedent regarding a lifetime term limit restriction, applying rational basis review and finding that the lifetime term limit restriction is rationally related to the state's interest in a citizen legislature, makes it likely that a court would similarly apply rational basis review to evaluate the proposed restriction on appointee candidate eligibility.

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[13] *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

[14] *Kowall v. Benson*, 18 F.4th 542, 547-548 (6th Cir. 2021) ("Without such a fundamental right at issue, we revert to the baseline: rational basis.").

[15] *Id.* at 548.

[16] *Id.*

In applying rational basis review, it can be argued that, as with term limit restrictions, the proposed restriction on appointee candidate eligibility is an exercise of the state's sovereign interest in securing its government as it sees fit and is rationally related to the state's interest in maintaining a citizen legislature, which thereby reduces career politicians and serves as a check on special interests. In addition, in applying rational basis review to the proposed restriction on appointee candidate eligibility, it can also be argued that the state has an interest in preventing an appointed candidate from having the benefits of incumbency without ever having been elected by the voters and that the proposed restriction on appointee candidate eligibility is rationally related to addressing this state interest. It is likely, therefore, that based on persuasive authority and these arguments, a court would uphold the proposed restriction on appointee candidate eligibility.

Some courts reviewing candidate or officeholder restrictions, including the Colorado Supreme Court, before going straight to rational basis analysis, have applied the *Anderson-Burdick* test, which is a balancing test used in the evaluation of election regulations that weighs the challenged restriction against the proffered state interest.[17] If the court finds that the restriction is severe in impact or character, then the restriction is reviewed using strict scrutiny under the compelling interest standard, but if it is not severe, then the restriction receives rational basis review.[18]

The Colorado Supreme Court in *Lorenz v. State* found that a statutory prohibition on certain elected and appointed officials in local governments where casinos were located holding an interest in a gaming license placed only a limited burden on the right to run for or hold public office and was not a severe injury to potential candidates.[19] In another, earlier, case reviewing Michigan's lifetime term limit statute, *Citizens for Legislative Choice v. Miller*, the court applied the *Anderson-Burdick* test and determined that the restriction was not a severe burden; instead it imposed merely a neutral burden.[20] The *Lorenz* court, upon its determination that the prohibition on having a gaming license in order to hold certain local government offices was not severe, applied a rational basis review to the challenged

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[17] *Lorenz*, 928 P.2d at 1278; *cf Kowall*, 18 F.4th, 546-47 (rejecting the *Anderson-Burdick* test in evaluating a constitutional challenge to term limits, reasoning that while the *Anderson-Burdick* test is applied in challenges to a state election law, term limits are a state's attempt to set qualifications for its officeholders and are not a state election law).

[18] *See Citizens for Legislative Choice*, 144 F.3d at 921 (explaining how to implement the *Anderson-Burdick* test); *see also Lorenz*, 928 P.2d at 1278 ("If the restriction is severe in impact or in character, then the state must put forth counterbalancing interests of greater weight in order to sustain the restriction. If the restriction is not severe in impact or character, then the state's interests may be of lesser weight or probity.") (internal citations omitted).

[19] *Lorenz*, 928 P.2d at 1279-80.

[20] *Citizens for Legislative Choice*, 114 F.3d at 922.

prohibition and found that the state's substantial interest in avoiding corruption, or the appearance of it, both in the gaming industry and in local government, outweighed the limited burden that the prohibition placed on candidates or officeholders.[21]

The prohibition in *Lorenz* required a candidate to forgo a choice to hold a gaming license and, in a similar way, the proposed restriction on appointee candidate eligibility requires a candidate to forgo a choice—that the person either forgo being appointed to fill the vacancy or forgo running for the seat at the next general election—and, as discussed previously, term limit restrictions, in particular consecutive term limit restrictions, are analogous to the proposed restriction on appointee candidate eligibility as both are temporary restrictions on eligibility. Given the *Lorenz* precedent and the *Miller* persuasive precedent, a court would likely not find the proposed restriction on appointee candidate eligibility to be severe under the *Anderson-Burdick* test.

Once it is determined to not be severe, the court then applies rational basis review to evaluate whether the proposed restriction on appointee candidate eligibility is rationally related to a legitimate state interest. As discussed above, there are a number of state interests with respect to the proposed restriction on appointee candidate eligibility that parallel the state interests identified in requiring term limits, and there is an additional state interest in limiting incumbency benefits in the context of appointing members to fill vacancies. Accordingly, relying on the precedent in *Lorenz* and *Kowall's* and *Miller's* persuasive authority, upon a determination that the proposed restriction on appointee candidate eligibility is not severe, it would likely withstand rational basis scrutiny as being rationally related to these state interests.

However, even if a court were to apply the higher standard of strict scrutiny because the restriction is severe in impact or character or because it determines that the rights being restricted are fundamental, it is likely that a court will still find that the proposed restriction on appointee candidate eligibility addresses compelling state interests in preventing career politicians, curtailing special interests, and limiting the benefits of incumbency for a person who was appointed by a political party committee rather than elected by the voters. The proposed restriction on appointee candidate eligibility is a temporary restriction that presents a choice to candidates to either not seek appointment or to not seek election at the next general election and have the opportunity to seek election at a subsequent election. A court would therefore likely find that the proposed restriction on appointee candidate

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[21] *Lorenz*, 928 P.2d at 1283.

eligibility is narrowly tailored to meet the identified state interests and that it withstands strict scrutiny review.[22]

1.2. First and Fourteenth Amendment challenges by voters based on the right to associate and vote for candidates of their choosing would likely fail.

The proposed restriction on appointee candidate eligibility could also be challenged by voters as violating their First and Fourteenth Amendment rights to associate because the proposed restriction on appointee candidate eligibility precludes voters from being able to vote at the general election for the person appointed to fill the vacancy and thereby may preclude them from voting for the candidate of their choice. In addressing whether voters' rights are abridged by candidate or officeholder restrictions, courts apply similar analyses as those applied in reviewing a candidate's or officeholder's rights.

The *Kowall* court found that there is not a fundamental right implicated for voters who challenge candidate restrictions because voters do not have a fundamental right to vote for a specific candidate or even a particular class of candidates and that, the voters' claims against the lifetime term limit restrictions thus failed on rational basis review for the same reasons that the candidates' claims failed.[23] The *Lorenz* court found that the gaming license prohibition did not "fence out" an independently identifiable class of voters and thus did not severely burden a voter's ability to exercise preferences.[24] As discussed previously, if a court applies rational basis review at the outset to the proposed restriction on appointee candidate eligibility as the *Kowall* court did or applies rational basis review upon determining that, on balance, the proposed restriction on appointee candidate eligibility is not a severe burden, for the same reasons as the proposed restriction on appointee candidate eligibility would be upheld as not violating a candidate's rights, it would also be upheld as not violating voters' rights because it is rationally related to legitimate state interests.

The Colorado Supreme Court, in *Colorado Libertarian Party v. Secretary of State,* evaluated a requirement that a candidate not wishing to run in an election for one of the state's two

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[22] *See Colo. Libertarian Party v. Sec. of St.*, 817 P.2d 998 (Colo. 1991) (finding that the one-year unaffiliation requirement for a candidate for public office who does not wish to affiliate with a political party to be nominated preserves compelling interests of the state in maintaining a fair election process and the integrity of its ballot access system); *cf. Williams v. Rhodes*, 393 U.S. 23 (1968) (finding that to comply with the First and Fourteenth Amendments a state had to provide a feasible opportunity for new political party candidates to appear on the ballot and that the burdensome and complicated regulations the state had adopted for new political party candidates to do so was justified by no discernable state interest and in effect made it impractical for any candidates other than those from the state's two major political parties to appear on the ballot).

[23] *Kowall*, 18 F.4th at 549.

[24] *Lorenz*, 928 P.2d at 1281.

major political parties must be unaffiliated for 12 months prior to filing their petition to be placed on the ballot using the compelling state interest standard.[25] The court upheld the requirement and concluded that while the unaffiliation requirement may preclude voters from supporting a particular ineligible candidate, voters nonetheless remain free to support and promote other candidates who satisfy the disaffiliation requirements and that the requirement preserves the state's compelling interest in maintaining a fair election process, without unfairly or unnecessarily impinging upon constitutional rights under the First and Fourteenth Amendments.[26] Relying on the court's holding in *Colorado Libertarian Party* and the reasons previously discussed with respect to a candidate's right to associate and right to ballot access, even if the proposed restriction on appointee candidate eligibility is subjected to strict scrutiny review, it is likely that a court will find that the restriction is narrowly tailored to the previously identified compelling state interests and does not violate a voter's right to associate and to vote for a candidate of their choosing because it furthers those state interests without unfairly or unnecessarily impinging on voters' rights.

1.3. A Fourteenth Amendment challenge based on the right of a person wishing to be a candidate for public office to equal protection would likely fail.

The proposed restriction on appointee candidate eligibility could be challenged as a violation of the equal protection clause because it precludes certain persons from being able to be a candidate in certain general elections. Under traditional equal protection principles, states are allowed considerable leeway to enact legislation that may appear to affect similarly situated people differently and distinctions need only be drawn in such a manner as to bear some rational relationship to a legitimate state end.[27] These traditional principles are only set aside if a challenged law places burdens upon "suspect classes" or on a fundamental constitutional right.[28] In the context of equal protection challenges, courts have once again maintained that the right to be a candidate, like the right to vote, is not a *per se* fundamental right.[29] Furthermore, it is unlikely that the proposed restriction on appointee candidate

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[25] *Colo. Libertarian Party*, 817 P.2d at 1003-04 ("In our view, the state's compelling interest in 'maintaining the integrity of the various routes to the ballot' is served by imposing the unaffiliation requirement on prospective candidates of political organizations as well.").

[26] *Id.* at 1004-05; *see Citizens for Legislative Choice*, 114 F.3d at 924 ("[E]ven if we found that lifetime term limits burdened voters severely, we would still uphold [the term limit law] under the compelling interest standard.").

[27] *Clements v. Fashing*, 457 U.S. 957, 962-63 (1982) (plurality).

[28] *Id.* at 963.

[29] *Blassman v. Markworth*, 359 F. Supp. 1, 6 (Ill. N. Dist. Ct. 1973); *see Clements*, 457 U.S. at 963 ("Far from recognizing candidacy as a fundamental right, we have held that the existence of barriers to a candidate's access to the ballot does not of itself compel close scrutiny.") (internal quotations omitted).

eligibility places a burden on a "suspect class" because it would fall equally on all persons appointed to fill a vacancy.[30]

In the context of reviewing an age restriction to be qualified to run for a seat on a board of education, a federal district court applied the rational basis test.[31] In addition, the United States Supreme Court in *Clements v. Fashing* reviewed a Texas constitutional provision whereby certain state officials[32] are ineligible for the state legislature for the duration of a term to the office to which the state officials were elected or appointed and found that the establishment of this maximum waiting period (the entire length of the term that the official was elected or appointed to) is a *de minimis* burden that does not discriminate on the basis of political affiliation or any factor related to a candidate's qualifications.[33] The court held that such an insignificant interference only required a rational predicate to survive an equal protection challenge, which was accomplished in furthering the state's interest in officeholders filling the entire term to which they were elected or appointed.[34] Accordingly, it is likely that a court would apply the traditional equal protection principles to a challenge to the proposed restriction on appointee candidate eligibility and require only rational basis review, and for the reasons previously discussed, the proposed restriction is likely to withstand an equal protection challenge under that standard.

Even if the court were to find that for an equal protection challenge to the proposed restriction on appointee candidate eligibility the traditional principles did not apply and that the heightened standard of strict scrutiny was required, it is likely that, for the reasons previously discussed, the court will uphold the law because it will find the state's interests in the restriction to be compelling and that the restriction is narrowly tailored to meet those interests.[35]

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[30] *Blassman*, 359 F. Supp. at 7; *see Lorenz*, 928 P.2d at 1279-80 (prohibition on having an interest in a gaming license to be qualified to be an office holder for certain local governments does not fence out an independently indefinable class of persons).

[31] *See Blassman,* 359 F. Supp. 1 (applying rational basis review to sustain an age restriction to be qualified to run for a seat on a board of education); *cf. Bullock v. Carter*, 405 U.S. 134 (1972) (finding that a scheme of requiring a filing fee to be a primary candidate had no rational relationship to the purported state interest of regulating the ballot and results in denial of equal protection of the laws).

[32] Judges of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or the State of Texas, or any foreign government. Tex. Const. art. III, § 19.

[33] *Clements*, 457 U.S. at 967-68.

[34] *Id.*

[35] *See Draper v. Phelps*, 351 F. Supp. 677 (Okla. West. Dist. Ct. 1972) (finding a compelling state interest in a requirement that a candidate be a qualified registered elector in the district for at least six months immediately

1.4. The Guarantee Clause and the Tenth Amendment to the United States Constitution provide additional support for rational basis review of the proposed restriction on appointee candidate eligibility.

Courts have recognized that a state's rights to structure its government and choose qualifications for its officeholders is fundamental to its sovereignty and is protected by the Guarantee Clause and the Tenth Amendment to the United States Constitution.[36] Accordingly, in respect of states' sovereign authority, federal courts have noted that their review must not be so demanding when dealing with matters within a states' constitutional prerogatives and as such rational basis review of qualifications to hold a state elected office is appropriate.[37] This principle is further evidence that any constitutional challenge to the proposed restriction on appointee candidate eligibility for restricting rights protected by the United States Constitution would likely be evaluated using the rational basis standard under which, as discussed above, the proposed restriction is likely to be upheld.

2. Prohibiting a person appointed to fill a vacancy in the General Assembly from being an eligible candidate to run for that same seat in the next general election requires an amendment to the Colorado Constitution.

While article V, section 1 of the Colorado Constitution vests legislative power, other than that which is reserved by the people, in the General Assembly, the legislative power is subject to limitations set forth in the Colorado Constitution and the United States

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preceding the filing period to run for office); *see also Colo. Libertarian Party*, 817 P.2d 998 (finding that Colorado's one-year unaffiliation requirement preserves the state's compelling interest in maintaining the integrity of its ballot access system and as such, the requirement's different treatment of political parties and organizations does not deprive appellants of equal protection of the laws).

[36] *Kowall*, 18 F.4th at 548 (explaining that restrictions on who may hold state elective office are at the heart of representative government and that "the Guarantee Clause and the Tenth Amendment explicitly protect" the rights of a state to define itself as a sovereign by structuring its government and choosing qualifications for its officeholders); *Blassman*, 359 F. Supp. at 8 ("[W]ere we to strike down the age minimum requirement here, we would be accomplishing nothing more than substituting our judgment for that of the Illinois legislature. This we decline to do.... Hence, we hold that [the statute] is the result of a valid exercise of legislative power by the State of Illinois as preserved for it by the Tenth Amendment.").

[37] *Kowall*, 18 F.4th at 548.

Constitution.[38] The General Assembly is constitutionally created,[39] and the restrictions on and qualifications of its members are likewise set forth in the Colorado Constitution.[40]

In *Reale v. Board of Real Estate Appraisers*, the Colorado Supreme Court looked at whether a statutory requirement that assessors be licensed as real estate appraisers was constitutional in light of article XIV, section 8 of the Colorado Constitution, which creates the office of county assessor and article XIV, section 10 of the Colorado Constitution, which sets forth two requirements for eligibility to be an assessor: that the person be a qualified elector and that they reside in the county one year prior to their election.[41] The court held that when the Colorado Constitution creates an office and prescribes the qualifications for the office, the General Assembly is without authority to name additional qualifications for the office.[42]

Precluding a person from running for a seat in the General Assembly in the general election that succeeds the term, or partial term, for which they were appointed to fill a vacancy places an additional qualification of not being the same person that was appointed to fill that vacancy on a person's eligibility to be a senator or representative. This qualification must be imposed by an amendment to the Colorado Constitution, and any attempt by the General Assembly to impose it as a statutory qualification to be a member of the General Assembly almost certainly would not withstand a constitutional challenge.

Conclusion

Adding to the qualifications for a person to be a senator or representative in the General Assembly must be done through an amendment to the Colorado Constitution. Assuming that this is done through a constitutional amendment, a prohibition on a person appointed to fill a vacancy in the General Assembly from being eligible to be a candidate to run for

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[38] *Reale v. Board of Real Estate Appraisers*, 880 P.2d 1205, 1208 (Colo. 1994) ("[T]he Colorado Constitution is a limitation on the power of the legislative branch[.]"); *see also* Senior Corp. v. Bd. of Assessment Appeals, 702 P.2d 732 (Colo. 1985); In re Y.D.M., 593 P.2d 1356 (Colo. 1979); City and County of Denver v. Lewin, 105 P.2d 854 (Colo. 1940); and Metzger v. People, 53 P.2d 1189 (Colo. 1936).

[39] Colo. Const. art. V, § 1.

[40] *See* Colo. Const. art. V, § 3 (establishing consecutive term limits); Colo. Const. art. V, § 4 (requiring that representatives and senators be at least twenty-five years old, be a citizen of the United States, and reside within the boundaries of the district they will represent for at least twelve months preceding their election); Colo. Const. art. VII, § 6 (requiring that a person be a qualified elector to be elected or appointed to any civil office in the state); and Colo. Const. art. XII, § 4 (making a person convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury ineligible to serve as a member of the general assembly).

[41] *Reale*, 880 P.2d at 1206.

[42] *Id.* at 1208.

that same seat in the next general election that is challenged for violating the United States Constitution's First and Fourteenth Amendment protections will likely be subjected only to rational basis review and may even be given deference pursuant to the protections of the Guarantee Clause and the Tenth Amendment to the United States Constitution. Under rational basis review, the proposed restriction on appointee candidate eligibility will likely be upheld for having a rational relationship to the state's interests in limiting career politicians, special interests, and incumbency benefits. However, even if a court reviews the proposed restriction on appointee candidate eligibility using the heightened standard of strict scrutiny, it is likely that it will uphold the restriction because it will find the same identified state's interests in the proposed restriction to be compelling and the proposed restriction to be narrowly tailored to meet those interests.