
CANDIDACY

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I. NOMINATION OF PARTISAN CANDIDATES FOR GENERAL ELECTIONS

A. Nomination by Primary Election

1. A political party's nominees for the offices of state, county, and U.S. Congress in the general election must be nominated by primary election, if the party's nominees for governor in the most recent gubernatorial election received 20% or more of the total number of votes received by all candidates for governor in the election. (Sec. 172.001)
2. A political party's nominees in the general election may be nominated by primary election if the party's nominees for governor in the most recent gubernatorial election received at least 2% but less than 20% of the total number of votes received by all candidates for governor in the election. (Sec. 172.002)

B. Nomination by Convention

1. A political party may make nominations of officers for the general election by convention if the party is authorized by Section 172.002 to make nominations by primary election. (Sec. 181.002)
2. A political party must make nominations of officers for the general election by convention if the party is not required or authorized to nominate by primary election. (Sec. 181.003)

II. FILING FOR PUBLIC OFFICE FOR PRIMARY ELECTIONS

A. Filing for Public Office, Generally

1. Availability of forms

The authority with whom this code requires an application to be filed with is required to make printed forms timely available. The format of the form is prescribed by the office of the Secretary of State. The forms must be furnished without charge. (Sec. 1.010)

2. Filing authority for applications for the general primary election

- a. the Political Party's State Chair, for an office filled by voters of more than one county; or

- b. the Political Party’s County Chair or the Secretary (if any) of the county executive committee, for an office filled by voters of a single county. (Sec. 172.022)

3. Notice of filing authority location.

Not later than the day before the last day to file, county chair (or secretary of the county executive committee) must post on the political party’s Internet website or in the location where a candidate files for a place on the ballot a notice containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an application. This deadline is not extended under Section 1.006. (Sec. 172.022(b), as amended by House Bill 3103, 2013).

NOTE: If both the county chair and the secretary will be available, the notice must contain the address at which each will be available.

NOTE: The law says internet posting “or” posting at the physical location. SOS recommends posting notice using each method, if possible. We also recommend allowing plenty of time for the state party to work with posting your notice if you plan to use the state party website.

4. Delivery

- a. An application for a place on the ballot may be filed by personal delivery, mail, *faxing*, or any other method of transmission. (Sec. 1.007(c))

NOTE: Although the law has been updated to more clearly authorize faxing for the general rule about delivery, the law still requires that a candidate’s application and all of its components be delivered at the same time, not piecemeal. For example, if the application is faxed in, and the filing fee delivered later, that is fatal; at the time of receipt, the application did not have a filing fee, and so would be rejected. When an application is filed, the review period is considered to start.

- b. An application filed by mail is considered filed at the time of its receipt by the appropriate authority. (Sec. 172.021(c)) The time of receipt is the time at which a post office employee:
 - i. places it in the actual possession of the authority or authority's agent; or
 - ii. deposits it in the authority's mailbox or at the usual place of delivery for the authority's official mail. (Sec. 1.009)
- c. If the authority cannot determine the time at which a deposit occurred or whether it occurred before a specified deadline, the deposit is considered to

have occurred at the time the mailbox or usual place of mail delivery, was last inspected for removal of mail. (Sec. 1.009)

5. Filing Period (Sec. 172.023)

- a. For candidate applications, other than precinct chair, the first day to file is November 11, 2017, and the filing deadline is not later than 6:00 p.m. on Monday, December 11, 2017.

For precinct chair application, the first day to file is September 12, 2017, and the filing deadline is not later than 6:00 p.m. on Monday, December 11, 2017.

- b. NOTE: December 11, 2017 at 6:00 p.m. is the last day minor party candidates may file applications to be nominated by convention. Minor party filing period was amended in 2013 to be consistent with primary deadline. A political party may extend the filing deadline by rule. (Sec. 181.033(b)). The filing authority is the state chair, for a statewide or district office; the county chair, for a county or precinct office.

NOTE: December 11, 2017 at 6:00 p.m. is the last day independent candidates may file declaration of intent to run with county judge or secretary of state. (Sec. 142.002).

B. Application

1. Candidate must make an application for a place on the ballot (Sec. 172.021)

- a. General requirements for application (Secs. 141.031 and 172.021)
- i. in writing;
 - ii. signed and sworn to by the candidate and indicate the date that the candidate swears to the application;

NOTE: The “sworn to” requirement means the oath must be administered by someone authorized to administer the oath under Texas law. NEW LAW: This has been emphasized by House Bill 2157 (2017).

- iii. timely filed with the appropriate authority; and
- iv. include:

- (a) the candidate's name;
For Nickname: An affidavit that any nickname provided for the name as it is to appear on the ballot is the nickname by which the candidate has been commonly known in the community for at least three years.

NOTE: The Secretary of State’s candidate forms already have the affidavit included.

- (b) the candidate's occupation;
- (c) the office sought, including any place number or other distinguishing number (e.g: Commissioner, Precinct 1);

- (d) an indication of whether the office sought is to be filled for a full or unexpired term if the office sought and another office to be voted on have the same title but do not have place numbers or other distinguishing numbers;
- (e) a statement that the candidate is a United States citizen;
- (f) a statement that the candidate has not been finally determined mentally incapacitated or partially incapacitated without the right to vote by a court with probate jurisdiction;
- (g) a statement that the candidate has not been finally convicted of a felony from which he or she has not been pardoned or otherwise released from the resulting disability;
- (h) the candidate's date of birth;
- (i) the candidate's residence address, or if the residence has no address, the address at which the candidate receives mail and a concise description of the location of the candidate's residence;
- (j) the candidate's length of continuous residence in the state and in the territory from which the office sought is elected as of the date the candidate swears to the application;

NOTE: See subsection b. below concerning the waiver of the sixth-month residency requirement for a county precinct office.

- (k) a statement swearing to defend the Constitution and laws of the United States and Texas; and
- (l) a statement that the candidate is aware of the nepotism law; and
- (m) public mailing address and e-mail:

NEW LAW: Section 141.031 was amended to a public mailing address at which the candidate receives correspondence relating to the candidate's campaign, if available, and any available electronic mail address at which the candidate receives correspondence relating to the candidate's campaign, if available. House Bill 1735 (2017). (NOTE: this codifies SOS interpretation.)

The filing authority must still provide notice to the candidate that the public mailing address and email address will be posted on the Secretary of State's website. (Senate Bill 1073, effective September 1, 2015.)

b. Effect of Boundary Change on Residence Requirement for Precinct Office

- i. Instead of the six-month residence requirement prescribed by Section 141.001(a)(5), a candidate for or appointee to a precinct office must be a resident of the precinct on the date prescribed by Section 141.001(a)(5) and must have resided continuously in the county in which the precinct is located for six months immediately preceding that date if an order creating the precinct or changing the boundary of the precinct:
 - (a) was adopted less than seven months before that date; or
 - (b) was in litigation at any time during the seventh month immediately preceding that date.
- ii. For the purpose of this section, an order is in litigation if the judgment concluding a judicial proceeding in which the order is mandated or the validity of the order is challenged has not become final.

NOTE: Here, "precinct office" refers to the county precinct offices of county commissioner, justice of the peace, or constable. (Sec. 141.002)

- c. Additional information on application form (Sec. 141.039)
 - i. a space for indicating the form in which the candidate's name is to appear on the ballot;
 - ii. a space for the candidate's mailing address; and
 - iii. spaces for the candidate's home and office telephone numbers (optional).
 - iv. space for e-mail address (optional).

NOTE: Most offices require voter registration in the territory from which the office is elected by the filing deadline. See Candidate's Guide Qualifications chart for details. However, the law does not require the voter registration number to be on the application form. (House Bill 484, effective September 1, 2015.)

C. Filing Fee and Petition Filed in Connection with Candidate's Application for a Place on the Ballot

1. A candidate must also file, along with the application, the appropriate filing fee or a petition in lieu of filing fee. (Secs. 141.063 and 172.021) See Candidate's Guide for details.

NEW LAW: Additional requirements relating to certain judicial candidates (often nicknamed the “judicial petitions”) were repealed in 2015 **and then added back in 2017. Senate Bill 44 (2017).**

For candidates running for the Court of Appeals in the 1st, 2nd, 3rd, 4th, 5th, and 14th Districts, and all candidates running for judicial offices in Bexar, Dallas, Harris, and Tarrant counties, an extra 250-signature judicial petition is NOW AGAIN REQUIRED (in addition to the filing fee, or as 250 additional signatures that had to be collected on the petition in lieu of filing fee). Sec. 172.021(e).

Candidates for the state supreme court or the court of criminal appeals who file for office and choose to pay the filing fee are NOW AGAIN REQUIRED to file a petition with at least 50 signatures from each court of appeals district in the state. (Sec. 172.021)

D. Validity of Petition (Sec. 141.062)

1. Requirements

- a. petition must be timely filed with appropriate authority;
- b. petition must contain the requisite number of valid signatures; and
- c. petition must comply with any other applicable requirements for validity prescribed by the Code.

2. A petition may consist of multiple parts.

- a. The affidavit at the bottom of the page must accompany each part but is not required for each page of signatures. Among other things, this means an affidavit of circulator need only be sworn on one page to serve for multiple pages from the same circulator. (The SOS form has spaces for the initials or name of circulator on each page so the pages can be identified.) *See also Cohen v. Strake*, 743 S.W.2d 366 (Tex.App—Houston [14th Dist.] 1988, *orig proceeding*).

NEW LAW: New Section 141.065 (c) provides that a single notarized affidavit by any person who obtained signatures is valid for all signatures gathered by the person **if the date of notarization is on or after the date of the last signature obtained by the person.** House Bill 2157 (2017). (NOTE: this codifies SOS interpretation.)

E. Validity of Petition Signatures (Sec. 141.063)

For a signature to be valid, the signer must be a registered voter of the territory from which the office sought is elected, or has a registration certification that will be effective by election day.

1. Signature Requirements:

- a. the signer's residence address;

- b. the signer's date of birth OR the signer's voter registration number;
- c. the county of voter registration, if the territory from which the signatures are obtained from is located in more than one county;
- d. the date of signing; and
- e. the signer's printed name.
- f. The signature is the only information that is required to appear on the petition in the signer's own handwriting.
- g. The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.
- h. The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

2. Affidavit of circulator (Sec. 145.065)

Each part of a petition in which a signature appears must contain the affidavit of circulator, who circulated the petition stating that the person:

- a. indicated and read to each signer, before the petition was signed, each statement pertaining to the signer that appears on the petition;
- b. witnessed each signature;
- c. verified each signer's registration status; and
- d. believes each signature to be genuine and the corresponding information to be correct.

If a petition contains an affidavit that complies with subsection (a) above, for the purpose of determining whether the petition contains a sufficient number of valid signatures, the authority with whom the candidate's application is filed may treat as valid each signature to which the affidavit applies, without further verification, unless proven otherwise.

3. Restriction on Petition Signer (Sec. 141.066)

- a. A person may not sign the petition of more than one candidate for the same office in the same election.
- b. A signature on a candidate's petition is invalid if the signer signed the petition subsequent to his or her signing a petition of another candidate for the same office in the same election. "Same election" for purposes of primary election refers to the primary election alone. A person who has signed a petition for a candidate in the primary election may also sign a petition for a write-in candidate in the November election.
- c. On signing a petition to be filed by a candidate affiliated with one party, the signer becomes ineligible to vote in a primary election or participate in a convention of another political party during the voting year in which the primary election is held. (Secs. 1.005(23) and 172.026)

4. Withdrawal of petition signature (Sec. 141.067)
 - a. To effectively withdraw a signature from a petition, a withdrawal request must:
 - i. be in writing and be signed and acknowledged by the signer of the petition; and
 - ii. be received by the filing authority not later than the date the petition is received by the authority or the seventh day before the petition deadline, whichever is earlier. A withdrawal request is considered timely filed by mail, when it is received by the filing authority.
 - b. If the withdrawal of a signature reduces the number of signatures on the petition below the prescribed minimum for the petition to be valid, the authority with whom the request is filed shall notify the candidate immediately by telephone, telegram, or an equally or more expeditious method of the number of withdrawn signatures. Before the third day after the date the candidate receives the notice, the candidate's petition may be supplemented with signatures equal in number to the number of signatures withdrawn.
5. Number of petition signatures required (Sec. 172.025):
 - a. for a statewide office: 5,000; or
 - b. for a District, County, or Precinct Office: the lesser of 500 or 2% of the number of votes received in the district, county, or precinct, as applicable, by all the candidates for governor in the most recent gubernatorial election, unless that number is under 50, in which case the required number of signatures is the lesser of 50 or 20% of that total vote.

III. CANDIDATE APPLICATION - AFTER FILING

A. Review of Application and Notice to Candidates

1. On the filing of an application for a place on the ballot, the authority with whom the application is filed must review the application to determine whether it complies with the requirements as to form, content, and procedure in order for the candidate's name to be placed on the ballot. (Sec. 141.032(b))
2. Unless accompanied by a petition, the review must be completed not later than the fifth day after the date the application is received by the authority. (Sec. 141.032(b))
3. If an application is accompanied by a petition, the petition is considered part of the application, and the review must be completed as soon as practicable after the date the application is received by the authority. (Sec. 141.032(c)).

However, the petition is NOT considered part of the application for purposes of determining compliance with the requirements applicable to each document, and a deficiency in the requirements of one document may not be remedied by the contents of the other document. (Sec. 141.032(c)).

4. If an application does not comply with applicable requirements, the authority must reject the application and immediately deliver to the candidate written notice of the reason for the rejection. (Sec. 141.032(e))
5. A determination that the application complies within the 5-day review period does not preclude a subsequent determination that the application does not comply on the basis of defects of form, content, and procedure. (Sec. 141.032(d))

NOTE: The Election Code provides no process for a candidate to supplement a defective application. The application and petition must stand or fall as originally filed. Some case law seems to suggest that in certain cases, a candidate may have a right to supplement a defective petition. The Texas Supreme Court has held that candidates, who made timely filings and whose petitions were accepted, could not be rejected later for minor clerical errors that could have been fixed had the candidate been notified of the defect. See *In Re Francis*, 186 SW 3rd 534 (Tex 2006) and *In re Holcomb*, 186 SW 3rd 553 (Tex 2006). However, Sections 141.032 and 141.062 were amended in 2011 to clarify that after the filing deadline, a candidate may not amend an application for a place on the ballot (Section 141.032) or any accompanying petition in lieu of filing fee (Section 141.062), nor can the filing authority accept an amendment to their application for a place on the ballot or any accompanying petition in lieu of filing fee. Our office recommends that the filing authority promptly review applications in order to avoid litigation; however, the law has been amended to emphasize that the filing authority cannot accept amendments after the filing deadline.

NOTE: We view this law as emphasis. The application and its components must be filed at the same time, and not piecemeal; see note at Delivery.

B. Administrative Declarations of Ineligibility

1. A candidate in an election other than the general election for state and county offices, including a primary election, may be declared ineligible before the beginning of early voting by personal appearance by the authority with whom an application for a place on the ballot for the office sought by the candidate is required to be filed. (Sec. 145.003(c))
2. A candidate in a general election for state and county officers may be declared ineligible before the 30th day preceding election day by:
 - a. The party officer responsible for certifying the candidate's name for placement on the general election ballot, for a candidate who is a party nominee.
 - b. The authority with whom the candidate's application for a place on the ballot is required to be filed, in the case of an independent candidate. (Sec. 145.003)
3. Except for a judicial action in which a candidate's eligibility is an issue, after the polls close on primary election day and before the final canvass for the office sought by the candidate is completed, a candidate for nomination may be declared

ineligible only by the presiding officer of the primary's final canvassing authority for that office. (Sec. 172.053)

4. In a general election, the presiding officer of the final canvassing authority may declare a candidate ineligible after the polls close and before a certificate of election is issued. (Sec. 145.003(d))
5. A candidate may be administratively declared ineligible if:
 - a. the information on the candidate's application for a place on the ballot indicates that the candidate is ineligible for the office; or
 - b. facts indicating that the candidate is ineligible are conclusively proved by another public record. (Sec. 145.003(f))
 - i. When presented with an application for a place on the ballot or another public record containing information pertinent to a candidate's eligibility, the appropriate authority shall promptly review the record. If the authority determines that the record establishes ineligibility, the candidate shall be declared ineligible.

C. Limitation on Challenge of Application

NEW LAW: An application for a place on the ballot may not be challenged for compliance with the applicable requirements as to form, content, and procedure after the day before **any ballot to be voted early by mail is mailed for the election for which the application is made**. This deadline does not apply to a determination of a candidate's eligibility. A challenge must state with specificity how the application does not comply with the applicable requirements as to form, content, and procedure. The authority's review of the challenge is limited to the specific items challenged and any response filed with the authority by the challenged candidate. Sec. 141.034, Senate Bill 44 (2017).

D. Withdrawal of Candidate from Primary Election (Sec. 172.052)

1. Withdrawal from general primary

- a. To withdraw from an election, a candidate whose name is to appear on the ballot must request that his or her name be omitted from the ballot. (Sec. 145.001(a))
- b. To be effective, a withdrawal request must be:
 - i. in writing and be signed and acknowledged by the candidate; and
 - ii. timely filed with the appropriate authority. (Sec. 145.001(b))A withdrawal is not effective if not timely, or filed with the wrong authority.
- c. A withdrawal request filed by mail is considered to be filed at the time of its receipt by the appropriate authority with whom the withdrawing candidate's application for a place on the ballot is required to be filed. (Sec. 145.001(c))
- d. Deadline for withdrawal.
Tuesday, December 15, 2015: A candidate for nomination may not withdraw from the general primary election after the first day after the

regular filing deadline. Sections 172.057(a), as amended by Senate Bills 904 and 910, 2013 Legislative Session.

NOTE: The new withdrawal deadline in Section 172.057(a) (1st day after the regular filing deadline for name to be omitted from ballot) was amended in 2013. The deadline in Section 172.052 was amended in 2015 by Senate Bill 1703 to be consistent. Because we viewed the newer law at 172.057(a) as prevailing in 2013-2014, this will not be a change from the earlier calendars. However, the law is now consistent in both sections.

IV. FREQUENTLY ASKED QUESTIONS ABOUT FILING FEES AND ACCEPTANCE OF PETITIONS

1. The candidate files both a check and a petition. The candidate indicates that he says if the petition is enough, give back the check, but if the petition is not enough, use the check as the filing fee.

If political party's chair has the opportunity to do so before the candidate file, we suggest that they advise the candidate the check cannot be returned. If he or she files with a check, it is considered that they have filed with a filing fee and that there is no refund provided in the Election Code, and the chair is not required to review the petition. If you receive the contents in the mail, the candidate has filed with a filing fee.

2. The candidate files with a check, but the check "bounces" for insufficient funds. What is the result?

The application must be rejected for lack of a filing fee. It is the candidate's responsibility to ensure that there are sufficient funds to cover the check. The chair is required to give the candidate a prompt notice of rejection.

NOTE: If a candidate's filing fee that accompanied the application is returned for insufficient funds before the end of the filing deadline, the authority receiving the application shall return the application to the candidate. The candidate may resubmit the application before the end of the filing period, but cannot submit the filing fee in a form a check from the same account of the payment that was returned. If the filing fee is returned for insufficient funds after the close of the filing period, the authority receiving the application shall inform the applicant that their application was not valid.

V. "RESIGN TO RUN": ARTICLE 16, SECTION 65 OF THE TEXAS CONSTITUTION

- A. Offices Affected:
 1. District Clerks;
 2. County Clerks;
 3. County Judges;
 4. Judges of County Courts at Law;

5. Judges of County Criminal Courts;
6. Judges of County Probate Courts;
7. Judges of County Domestic Relations Courts;
8. County Treasurers;
9. Criminal District Attorneys;
10. County Surveyors;
11. Inspectors of Hides and Animals;
12. County Commissioners;
13. Justices of the Peace;
14. Sheriffs;
15. Assessors and Collectors of Taxes;
16. District Attorneys;
17. County Attorneys;
18. Public Weighers; and
19. Constables.

B. Automatic Resignation

A holder of any of the above offices automatically resigns his or her position if the officeholder announces candidacy or becomes a candidate for any elective office other than the one then held, when the unexpired portion of the current term is more than one year. Tex. Const. art. 16, § 65.

NOTE: For many years, article XVI, Section 65 of the Texas Constitution set out which county offices would be up for election. This language (setting up the staggering scheme) was omitted in 1999 in "clean-up" legislation. Our office requested an attorney general opinion, expressing our concern about the omitted staggering scheme. The attorney general opined that because the staggering scheme was removed, any newly-created offices would be on the next ballot for the full four-year term.

For example, the county commissioners follow the same schedule, because by law there are four commissioners in every county, and therefore no county has created new county commissioners. However, some counties have created new JP and constable positions (this means a new office, not just an old one where the boundary lines changed); or, there might be a new county court of law. You will need to consult directly with the county to see if the county created new offices since the 1999 constitutional change.

See Texas Attorney General Opinion Number JC-0519 (2002).