

# The State of Texas



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Jane Nelson  
Secretary of State

## **ELECTION ADVISORY** **No. 2023-20**

**TO:** Election Officials

**FROM:** Christina Worrell Adkins, Director of Elections *CWA*

**DATE:** October 30, 2023

**RE:** Deadlines for Vacancies and Replacement Nominees for the General Election for State and County Officers (November 5, 2024)

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All statutory references in this advisory are to the Texas Election Code ("the Code"), unless otherwise indicated.

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- I. Replacement Nomination if Vacancy Occurs in the Party's Nomination for the General Election

### **QUICK REFERENCE:**

Tuesday, September 12, 2023 = First day to file for precinct chairs  
Saturday, November 11, 2023 = First day to file for all offices except precinct chair

Wednesday, December 6, 2023 = 5th day before regular filing deadline; vacancies occurring on or before this date filled at primary election

Monday, December 11, 2023 at 6:00 p.m. = Last day of the filing period for all offices

Monday, December 18, 2023 = "Extended" filing deadline (see note)

Tuesday, March 5, 2024 = PRIMARY ELECTION DAY

Tuesday, May 28, 2024 = RUNOFF PRIMARY ELECTION DAY

Friday, August 23, 2024 = 74th day before election, vacancy occurring on or before this date filled at November election (unexpired term)

Monday, August 26, 2024 = 71st day; certification of replacement nominations

Tuesday, November 5, 2024 = GENERAL ELECTION DAY

## Section A

### Party Nomination if Vacancy Occurs in a State or County Office That Would Not Normally be on the 2024 Ballot

#### I. Nomination by Primary Election (Sec. 202.004)

##### A. Vacancy On or Before December 6, 2023

If a vacancy occurs in an office on or before December 6, 2023 (5th day before regular filing deadline), a political party's nominee for the unexpired term must be nominated in the 2024 primary elections. (Sec. 202.004(a)).

##### B. Application Process (Secs. 202.004 and 172.022)

1. Regular deadline: If the vacancy occurred on or before December 1, 2023 (on or before the 10th day before the date of the regular filing deadline), an application for the unexpired term must be filed with the appropriate county or state chair by 6:00 PM, December 11, 2023 (the regular filing deadline). (Sec. 202.004(b)).

Extended Deadline: If the vacancy occurs after the 10th day before the date of the regular filing deadline, but on or before the 5th day before the date of the regular filing deadline (after December 1, 2023 and on or before December 6, 2023), an application for the unexpired term is subject to an extended filing deadline, December 18, 2023 at 6:00 PM (in-person) or 5:00 PM (by mail). (Sec. 202.004(a), (c)).

**Note:** The deadline is extended to the next regular business day which is December 18, 2023 due to the **5th day after the regular candidate filing deadline falling on Saturday, December 16, 2023. (Sec. 1.006).**

2. The filing fee or petition requirements for a candidate for an unexpired term are the same as for a candidate for a full term. (Sec. 202.004(d)).
3. Not later than the day before the last day of the filing period, notice must be posted on the party's website or at the location where candidate

applications are filed stating the address where the county chair (or secretary of the county executive committee, if any) will be available to accept filings on the last day of the filing period. If the chair and secretary are taking applications at two different locations, both locations must be listed in the notice. (Sec. 172.022).

4. If the filing deadline is extended, then the filing authority must provide notice of the extended filing period within 24 hours of the death, withdrawal, or ineligibility of the existing candidate. The notice must identify the ineligible, deceased, or withdrawn candidate and the office for which the deadline is extended, and must state the extended filing deadline. (Sec. 172.055).

The requirements for the notice of extended filing deadline are outlined in Section I.D of Section B.

## II. Nomination by Executive Committee (Secs. 202.006, 145.036, and 145.038)

### A. Vacancy After December 6, 2023 (Parties Nominating by Primary Election)

If a vacancy occurs in an office after December 6, 2023 (5th day before regular filing deadline), but not later than August 23, 2024 (74th day before the general election for state and county officers), the appropriate state, district, county, or precinct executive committee members who are elected in the 2024 primary elections (or appointed) to a **new** term starting June 17, 2024 may nominate a candidate for the unexpired term after the new party officers take office. (Secs. 1.006, 145.036, 171.022, 202.006).

### B. Vacancy After Fourth Day Before Date of Convention (Parties Nominating by Convention)

If a vacancy occurs in an office after the fourth day before the date of the convention in which nominees for that office are selected, then the appropriate state, district, county, or precinct executive committee members who are selected at the appropriate convention may nominate a candidate for the unexpired term after the new party officers take office. (Secs. 145.036, 202.006(a)(2)).

The fourth day before the date of the March 16, 2024 conventions for single-county district, county, or precinct offices will be March 12, 2024. (Sec. 181.061(c))

The fourth day before the date of the March 23, 2024 conventions for multi-county district offices will be March 19, 2024. (Sec. 181.061(b))

The fourth day before the date of the April 13, 2024 conventions for state offices will be April 9, 2024. (Sec. 181.061(a))

### C. Nominating Procedure (Secs. 145.036, 145.037, 145.038, and 202.006)

The nominating procedure for an unexpired term is the same as that provided for filling a vacancy in a nomination, to the extent it can be made applicable. (Sec. 202.006(b)).

The Election Code outlines basic guidelines for the nomination process by the party executive committees. For further guidance on the nomination process beyond these Election Code guidelines, please consult your party rules.

1. To be nominated, a person must fulfill the eligibility requirements for the particular office and receive a favorable vote of a majority of the appropriate executive committee members **voting** at the nominating meeting. For purposes of making a nomination, a majority of the committee's membership constitutes a quorum. For purposes of calculating the residency requirement, count backwards from the date of the nomination (e.g., a candidate for county judge must be a resident of the county for six months prior to the date of nomination). (Secs. 145.036, 141.001(a)(5)(D)).
2. The chair of the executive committee making the nomination must certify in writing the replacement nominee's name for placement on the general election ballot. (Sec. 145.037).

The certificate must:

- a. be signed and acknowledged by the chair;
  - b. include the replacement nominee's name, residence address, and mailing address (if different from the residence address);
  - c. identify the name of the original nominee;
  - d. state the office sought, including any place number or other distinguishing number;
  - e. state the cause of the vacancy;
  - f. identify the executive committee making the replacement nomination; and
  - g. state the date of the replacement nomination.
3. Not later than 5:00 p.m., August 26, 2024 (71st day before general election day), the certificate must be delivered to the Secretary of State for a statewide or district office, or to the county clerk/elections administrator for a county or precinct office. (Sec. 145.037).
  4. If the certificate is filed by mail, it must be **received** by the filing authority by the deadline. (Sec. 145.037).
- D. Failure of Executive Committee to Make Nomination (Sec. 145.038)

If the district executive committee fails to nominate and certify a replacement candidate by the August 26, 2024 deadline, the state executive committee may nominate a candidate to fill the vacancy. The state chair must deliver the

replacement nominee's certificate to the Secretary of State not later than 5:00 p.m., August 28, 2024 (69th day before general election day). Again, if the certificate is filed by mail, it must be received by the filing authority by the deadline. (Sec. 145.038).

III. Nomination by Convention (Parties Nominating by Convention) (Sec. 202.005)

A. Vacancy On or Before Fourth Day Before Date of Convention

If a vacancy occurs in an office on or before the fourth day before the date of the convention in which nominees for that office are selected, then the party must select its nominees for that office at the appropriate convention for selecting nominees for that particular office. (Sec. 202.005).

The fourth day before the date of the March 16, 2024 conventions for single-county district, county, or precinct offices will be March 12, 2024. (Sec. 181.061(c))

The fourth day before the date of the March 23, 2024 conventions for multi-county district offices will be March 19, 2024. (Sec. 181.061(b))

The fourth day before the date of the April 13, 2024 conventions for state offices will be April 9, 2024. (Sec. 181.061(a))

**Section B**

**Death, Withdrawal, or Ineligibility of Candidates for the 2024 Primary Election**

I. Extension of Filing Deadline

A. Death of Candidate (Sec. 172.054(a)(1))

The Election Code provides for an extended filing deadline (5th day after the regular candidate filing deadline, Saturday, December 16, 2023, extended to December 18, 2023) in the event that a candidate dies on or after the fifth day before the date of the regular filing deadline (December 6, 2023) and on or before the first day after the date of the regular filing deadline (December 12, 2023).

B. Withdrawal or Ineligibility of Incumbent Candidate (Sec. 172.054(a)(2))

The Election Code provides for an extended filing deadline (5th day after the regular candidate filing deadline, Saturday, December 16, 2023, extended to December 18, 2023) in the event that an incumbent running for re-election withdraws from the election or is declared ineligible on the date of the regular filing deadline (December 11, 2023) or on the first day after the date of the regular filing deadline (December 12, 2023).

C. Withdrawal or Ineligibility of Sole Candidate (Sec. 172.054(a)(3))

The Election Code provides for an extended filing deadline (5th day after the regular candidate filing deadline, Saturday, December 16, 2023, extended to December 18, 2023) if the sole candidate for an office withdraws his or her name from the primary election ballot or is declared ineligible to run in the primary election on the date of the regular filing deadline (December 11, 2023) or on the first day after the date of the regular filing deadline (December 12, 2023), and at the time of the withdrawal or declaration of ineligibility no other candidate has made an application that complies with the applicable requirements for the office sought by the withdrawn or ineligible candidate.

D. Notice of Extended Filing Deadline (Sec. 172.055)

If the filing deadline is extended, then the filing authority must provide notice of the extended deadline which identifies the candidate and office for which the filing deadline is extended and states the extended deadline. That notice must be given within 24 hours of the death/withdrawal/ineligibility in the following manner, depending on the office that is subject to the extended deadline:

1. In at least one daily newspaper published in the county, or if there is none, then at least one weekly newspaper published there, if any (for offices filed with county chair);
2. In at least three daily newspapers that regularly maintain a news representative at the State Capitol (for statewide offices); or
3. In at least one daily newspaper published in each county wholly or partly situated in the district or, if none, at least one weekly newspaper published there, if any (for district offices filed with the state chair).

E. Supplemental List of Candidates (Sec. 172.056)

1. If the filing deadline is extended, then the filing authority must make an electronic submission containing the name of each candidate who files an application that complies with the applicable requirements during the filing period if that candidate's information has not already been electronically submitted under Section 172.029.
2. The submission must contain the candidate's name as well as any additional information required under Section 172.029.

II. Extension of Write-in Filing Deadline, Office of County or Precinct Chair.

- A. There is no extended filing deadline for write-in candidates for the offices of county or precinct chair. (Sec. 171.0231(d)).

**Section C**

**Replacement Nominations for the General Election for State and County Officers**

I. Replacement Nomination if Vacancy Occurs in the Party's Nomination for the General Election (Secs. 145.035, 145.036)

The procedure for filling a vacancy by nomination of the executive committee is outlined in Section II of Section A.

A. When a Vacancy in Nomination May Be Filled

A vacancy **in nomination** may be filled if the name of the party's nominee will not appear on the November ballot due to:

1. **a death** occurring **after** December 12, 2023 (first day after the date of the regular filing deadline) and on or before August 23, 2024 (74th day before general election). (Secs. 145.035, 145.036, and 172.058(b));
2. **a declaration of ineligibility** occurring after December 12, 2023 (first day after the date of the regular filing deadline) and on or before August 23, 2024 (74th day before general election). (Secs. 172.058(b), 145.035, and 1.006);
3. **a withdrawal due to catastrophic illness**: the withdrawal must occur after December 12, 2023 (first day after the date of the regular filing deadline) and on or before August 23, 2024 (74th day before general election), and the illness must have been diagnosed after December 12, 2023 (first day after the date of the regular filing deadline). The illness must be such that the candidate will be permanently and continuously incapacitated and prevented from performing the duties of the office sought. The withdrawal must be accompanied by the certificate of two licensed physicians describing the illness. If the candidate withdrawing is the only nominee for the office in either party conducting a primary, all political parties with ballot access are entitled to select a replacement nominee. (Secs. 172.052, 145.036(b)(1), 145.036(c), and 1.006);
4. **a withdrawal because the candidate has been elected or appointed to fill a vacancy in another elective office or has become the nominee for another office** after December 12, 2023 (first day after the date of the regular filing deadline) and August 23, 2024 (74th day before general election). If the candidate withdrawing is the only nominee for the office in either party conducting a primary, all political parties with ballot access are entitled to select a replacement nominee (Secs. 145.036(b)(3), 145.036(c), and 1.006); or
5. **withdrawal by the only nominated candidate** for the office in either party conducting a primary sought on or before August 23, 2024 (74th day before general election). All political parties with ballot access are entitled to select a replacement nominee. (Secs. 145.036(b)(2), 145.036(c), and 1.006).

6. **a death or ineligibility of runoff primary candidate before runoff primary election day.** If a candidate in the runoff dies or becomes ineligible before runoff election day but wins the runoff election, thereby becoming the party's nominee, the appropriate executive committee may select a replacement nominee. (Sec. 172.060);

**NOTE:** All political parties with ballot access are entitled to select a replacement nomination in the circumstance of a withdrawal by the only nominated candidate for the office in either party conducting a primary (see I.A.3-5, above); otherwise, only the party with the deceased, ineligible, or withdrawn candidate is entitled to make a replacement nomination. (Sec. 145.036(c)).

#### B. Nominating Procedure

1. The nominating procedure for a vacancy in a nomination is prescribed by Sections 145.031-145.039. June 17, 2024 (first day of new party officers' term) is the first day the appropriate committee can meet to make a nomination. (Secs. 145.036(e), 171.022(c)).
2. If the executive committee is filling a vacancy in nomination because the party's nominee was declared ineligible due to a failure to pay a filing fee under Section 145.003(f)(3), then the executive committee may only make a replacement nomination if the replacement nominee pays the filing fee or petition in lieu of filing fee for that office. (Secs. 145.003(f)(3), 145.036(b-1)).
3. The chair of the appropriate executive committee must deliver the certificate of the replacement nominee's name by 5:00 p.m., August 26, 2024 (71st day before general election), to either the Secretary of State for a statewide or district office, or the county clerk/elections administrator for a county or precinct office, whichever is applicable. If the certificate is filed by mail, it must be **received** by the filing authority by the deadline. (Secs. 145.037(d), (e), and (f)).

#### C. Failure to Appoint a Replacement Nominee

If the district executive committee fails to appoint a replacement nominee by August 26, 2024 (71st day before general election), the state executive committee may appoint a nominee to fill the vacancy and the state chair must deliver the certificate of the replacement nominee to the Secretary of State by 5:00 p.m., August 28, 2024 (69th day before general election day). If the certificate is filed by mail, it must be received by the filing authority by the deadline. (Secs. 145.037(f), 145.038).

If you have any questions regarding this advisory, please contact the Elections Division toll-free at 1-800-252-VOTE (8683).