

# Accepting and Rejecting Candidate Applications

February 2022



# Topics Covered

- Candidate Filing Period
- Accepting/Rejecting Applications
- Other Application Review Issues
- Candidate Withdrawals
- FAQ's



# Candidate Filing Period

- May 6, 2023 Election
  - **January 18, 2023 – February 17, 2023**
  
- November 7, 2023
  - **July 22, 2023 – August 21, 2023**



# Review of Application

- **Form, Content and Procedure**
  - Was the candidate application submitted timely?
  - Was it filled out properly?
- **Eligibility**
  - Does the candidate meet the eligibility requirements associated with that office?



# Form, Content, and Procedure

- Things to look for...
  - Are all the boxes filled in?
  - Did they include a filing fee/petition (if required)?
  - Was the filing fee correct (if required)?
  - Was the petition properly filled out (if required)? Was the petition properly signed/notarized by the circulators?
  - Did they include the correct felony information, if applicable?
  - Was the application signed/notarized?



# Candidate Eligibility

- **Eligibility for Public Office (141.001, TEC)**
  - US Citizen
  - 18 years of age or older
  - No final judgment indicating:
    - Totally mentally incapacitated or
    - Partially mentally incapacitated without the right to vote
  - No final felony conviction
    - Unless pardoned or released from resulting disabilities
    - **NOTE: NEW LAW (HB 4555, 2021, Reg): If pardoned or released from the resulting disabilities, then must provide proof of the pardon or release.**
  - *\*Resided continuously in the state for 12 months*
  - *\*Resided continuously in the territory for 6 months.*
  - *\*Registered voter of the territory*
- **NOTE: \*Some offices have exclusive eligibility requirements, some laws are only partially conflicting and for some offices all of 141.001 applies. Review the Candidate's guide to determine the qualifications for the office a candidate has filed for. (Home Rule Charter)**



# Acceptance / Rejection of an Application



# Acceptance of Application

- Review promptly, within 5 days of receiving an application. If petition is submitted, review “as soon as practicable.”
- Provide written notice of acceptance
  - Not required, but recommended
  - Email permissible if candidate provided email
  - Can be combined with Ballot Drawing Notice

[Section 141.032]





# Rejection of Application

- Review promptly within 5 days of receiving the application.
- Petition must be reviewed as soon as practicable, if one is submitted.
- Two Types of Rejection
  - Form, Content, and Procedure
  - Administrative Declaration of Ineligibility
- Written rejection is required!
  - Email is permissible if the candidate provided their email
  - Must include the reason for the rejection



# Rejecting Applications

- **Form, Content, and Procedure**
  - If you determine there is a problem with the paperwork or the manner in which the application was filed, then it is a rejection for “form, content, and procedure.”
  - Ex: Application not fully filled out or was not signed or notarized
  - Ex. Application was delivered after the filing deadline
  - Ex. Candidate did not check any boxes in the felony conviction section
- **Administrative Declaration of Ineligibility**
  - If you determine the candidate is not eligible for the office they are seeking, then this is a rejection for eligibility purposes.
  - Ex: Length of continuous residence stated on the candidate's application is less than the required duration for the office
  - Ex: Residence address stated on the candidate's application is outside the territory from which the office is elected
  - Ex: Conclusive public record shows that the candidate is not a registered voter by the filing deadline



# Form, Content, and Procedure Rejections VS Administrative Declarations of Ineligibility



# Form, Content, and Procedure

- If the application (and/or petition, if applicable) was not fully completed or was not properly filed, then the rejection is a form, content, and procedure rejection
- A challenge to form, content, and procedure must be made no later than the 50th day before election day
  - **May 6, 2023 Deadline – March 17, 2023**
- An initial determination that the application meets the requirements does not prevent the filing authority from later determining that it does not meet the requirements and rejecting the application
  - If the application has a fatal defect that you do not notice in your initial review, you can still reject for that defect later on, as long as it is before the 50th day deadline.

Secs. 141.032, 141.034



# Form, Content, and Procedure

- Applies when:
  - Mandatory boxes on the application were not filled out
  - Application is not signed or notarized
  - Application was delivered after the filing deadline
  - Petition has insufficient signatures or was not properly filed, if a petition required
  - Candidate indicated that they have been finally convicted of a felony but did not provide proof of release from the resulting disabilities

Secs. 141.032, 141.034



# Administrative Declaration of Ineligibility

- If the candidate is not eligible for the office they are seeking, then the rejection would require an administrative declaration of ineligibility
- Can only declare a candidate ineligible if you have one of the following:
  - Information on the candidate application that indicates that the candidate is ineligible for office, OR
  - A public record that conclusively establishes that the candidate is ineligible.

**NOTE:** There is NO public record that conclusively establishes residency.

Sec. 143.005



# Administrative Declaration of Ineligibility

- Examples:
  - Length of continuous residence stated on the candidate's application is less than the required duration for the office
  - Residence address stated on the candidate's application is outside the territory from which the office is elected
  - Conclusive public record shows that the candidate is not a registered voter by the filing deadline
- Residency Issues
  - There is no conclusive public record that establishes a candidate's residence (or the continuous duration of their residence) as a matter of law
  - The only time a candidate may be **administratively** declared ineligible on the basis of residence is if their application shows that they do not meet the residency requirements
    - e.g. address on the application is outside the territory or length of continuous residence is less than the required duration for the office
  - Any other challenge to a candidate's eligibility based on residence must be raised in court



# Administrative Declaration of Ineligibility

- If you are provided with a conclusive public record that may impact a candidate's eligibility, you must promptly review the record.
  - e.g. if a voter or opposing candidate provides you with a conclusive public record showing that a candidate has been finally convicted of a felony
- If the record conclusively demonstrates that the candidate is ineligible, then you must declare the candidate ineligible.

Sec. 145.003(g)





# Administrative Declaration of Ineligibility

- Candidate **MAY** be declared ineligible:
  - **By filing authority before early voting in person begins,**  
OR
  - By the presiding officer of final canvassing authority after the polls close and before certificate of election is issued.
- Candidate must be given **written notice** of the declaration of ineligibility.
- Note: Home-Rule Cities may have more specific procedures for declarations of ineligibility in their city charter

Secs. 145.003, 145.097



# Administrative Declaration of Ineligibility

- Deadline to remove an ineligible candidate from a general election ballot is the 71st day before election day
  - **May 6, 2023 Deadline – February 24, 2023**
  - Special elections, elections held on non-uniform election dates, and elections for federal, state, and county offices have different withdrawal deadlines.
    - Please visit our calendar or contact our office for advice on these deadlines.
- If a candidate is declared ineligible after the deadline to remove their name from the ballot, then they will stay on the ballot even though they are ineligible
  - If an ineligible candidate wins the vote required to be elected to the office, you will have a vacancy in that office when your election is canvassed
  - Declaration of ineligibility should be provided to the candidate and to the canvassing authority



# Other Application Review Issues



# Format of Name on the Ballot

- Invalid format of a candidate's name on the ballot is not grounds for rejecting an application
- If the form of the candidate's name does not comply with the requirements, use the version of their name on the application that does comply
- Rules governing format of candidate's name:
  - May use a given name, contraction or familiar form of a given name, or an initial of a given name along with the surname
  - Can use any surname acquired by law or marriage (including maiden name)
  - No titles or designation of status, position, or incumbency
  - Nickname may be used, but must be one word of 10 letters or less that is not a slogan and by which the candidate has been commonly known for at least three years

Secs. 52.031, 141.037



# Format of Name on the Ballot

- Example
  - Candidate's legal name on application is John Smith
  - Candidate requests that their name be listed as "Dr. John 'Lower Taxes' Smith" on the ballot
    - Invalid due to use of a title ("Dr.")
    - Invalid due to use of a nickname that is two words and which constitutes a slogan
  - Candidate's application would not be rejected, but the name on the ballot would be "John Smith" because that is a valid format of their name on their application

Secs. 52.031, 141.037



# Amending an Application

- In general, an application cannot be amended once it has been filed
  - A candidate may make changes to their application before it is signed, notarized, and filed, but may not make any changes after it is has been signed, notarized, or filed
- If a candidate wishes to amend the information on their application, they will need to withdraw their original application (if it was not already rejected) and submit a new application before the filing deadline
  - Once the filing deadline has passed, they can no longer submit a new application

Sec. 141.032



# Notice of Ballot Drawing – NEW LAW

- Notice Requirements for Candidates

- Must provide notice in one of three ways:
  - Written Notice
    - Mailed to address on candidate’s application no later than fourth day before date of drawing; or
    - Provided to candidate (or candidate’s representative) at the time that the application is filed with the filing authority
  - Telephone
    - If candidate provided a phone number on application
  - Email
    - If candidate provided an email address on application
- Notice must include the date, hour, and place of drawing
- Cities no longer have different notice requirements from other local entities

Sec. 52.094



# Notice of Ballot Drawing – NEW LAW

- For many entities, the simplest approach may be to provide candidates with a notice of the ballot drawing at the time that they file their application
  - If you are going to give them advance notice, you will need to plan out the date, time, and place of your ballot drawing in advance
    - Best to choose a date after the candidate withdrawal deadline
  - If you take this approach, make sure to also provide notice to any candidates who do not file in-person
    - Telephone, email, or notice mailed to the address on application





# Candidate Withdrawals



# Candidate Withdrawals

- To withdraw as a candidate, the candidate must submit a withdrawal request to the filing authority who receives candidate applications.
- The withdrawal request must be:
  - In writing;
  - Signed by the candidate;
  - Notarized; and
  - Timely filed with the filing authority.
- A withdrawal request that does not meet these requirements has no legal effect and is not considered filed.
- NOTE: Home-Rule cities may have a charter provision that imposes their own specific requirements governing withdrawal of candidates

Sec. 145.001, 145.097



# Withdrawal Deadline

- The deadline to withdraw from a political subdivision's general election is 5 PM on the 71st day before election day.
  - For **May 6, 2023**, the withdrawal deadline is **Friday, February 24, 2023 at 5 PM**.
  - Special elections, elections held on non-uniform election dates, and elections for federal, state, and county offices have different withdrawal deadlines.
    - Please visit our calendar or contact our office for advice on these deadlines.
- A valid withdrawal submitted on or before the deadline must be accepted.

Sec. 145.092



# Withdrawal Deadline

- For elections held by a city, school, or other political subdivision, the filing authority has discretion to accept a withdrawal request submitted after the withdrawal deadline but before the ballots have been prepared.
  - If the withdrawal deadline has passed, but you have not yet prepared your ballots, then the filing authority can choose whether or not to accept the withdrawal request.
  - If the withdrawal deadline has passed and your ballots have already been prepared, then you may not accept the withdrawal request.
  - Whether your ballots have been prepared is a fact question.
    - Have you printed the ballots?
    - Have you completed the programming for your election?
    - Have you published the public notice for your public L&A test for your programming?
    - If the answer to any of these questions is yes, then you have likely reached the point where you cannot accept a late withdrawal.



# Coercion Against Candidacy

- When discussing the possible withdrawal of a candidate, it is important to avoid pressuring or intimidating a candidate to withdraw or to not file an application
- A person commits an offense if by intimidation or means of coercion the person influences or attempts to influence a person to:
  - Not file an application for a place on the ballot or a declaration of write-in candidacy; or
  - Withdraw as a candidate.
- Offense is a Class A misdemeanor unless it is a threat to commit a felony, in which case it is a third-degree felony.
- It is OK to explain the withdrawal process to a candidate.
- It is NOT OK to pressure or intimidate them into withdrawing.

Sec. 141.101



# FAQ's



# What is my responsibility for evaluating an application?

- As the filing authority you are limited to the four corner rule.
- This means that because the candidate application has been sworn to and notarized, you should take the application at face value.



# As the filing authority can I determine a Candidate's Residence?

- No. An individual's residency is the fixed place of habitation where an individual intends to return after any temporary absence.
- In reviewing residency questions, the courts have consistently ruled that residency is a combination of intention and fact, and that the voter's (or candidate's) intention must be reviewed to make a final determination of residence.
  - McBeth v. Streib, 96 S.W.2d 992 (Tex. Civ. App.--San Antonio 1936, no writ).
  - For example, the El Paso Court of Appeals held that "the voter's intention was material to a proper determination of the voter's residence requirement." Simmons v. Jones, 838 S.W.2d 298, 301 (Tex. App.--El Paso 1992, no writ).
  - Coupled with the voter's intention must be a physical connection to the place in which he or she is claiming residence. Commercial Standard Ins. Co. v. Nunn, 464 S.W.2d 415 (Tex. Civ. App.--Texarkana 1971, writ *dism'd*).
  - In the absence of judicial review, a person must generally be presumed to have the requisite intent.
  - Further, the Texas Supreme Court has not indicated that there is a single public record or a combination of public records that conclusively establish residency.





# Residency Issues

- If the candidate describes a residence address on the face of the application within the district and the state for the requisite amount of time, the filing authority must accept that statement.
- Under Section 145.003(f) of the Texas Election Code, an administrative declaration of ineligibility may be made only if the application or a conclusive public record establishes the candidate's ineligibility.
- Under Texas law, there is no public document that conclusively establishes residency for purposes of candidacy.



# What if an elected person seems to have moved from their elected territory?

- An officer is presumed to be a resident of the required territory he or she was elected to serve.
- To challenge this would require a judicial proceeding
- Specifically, a quo warranto hearing brought by the county or district attorney.
  - See *Whitmarsh v. Buckley*, 324 S.W.2d 298 (Tex. Civ. App., Houston, 1959, no writ hist.).



# Questions?

[elections@sos.texas.gov](mailto:elections@sos.texas.gov)

