

# Cancellation of an Election



December 2022 CSO Seminar  
Secretary of State – Elections Division



# Statutory Authority

The Texas Election Code requires the authority ordering an election to have specific statutory authority in order to cancel that election.

Tex. Elec. Code Sec. 2.082



# General Election vs. Special Election

- For cancellation purposes, a special election of a political subdivision is considered to be a separate election from a general election held the same day by the same political subdivision.
  - **Example:** Measure Election
  - **Example:** Special Election to Fill a Vacancy

Tex. Elec. Code Sec. 2.051



# Statutory Authority for Cancellation

- Section 2.051 allows a political subdivision to cancel an election if:
  - Members of the governing body are elected from territorial units (i.e. single-member districts); AND
  - Each candidate is unopposed and no at-large opposed race appears on the ballot
- Section 2.051 allows cancellation in a particular territorial unit even if there is an opposed race in another territorial unit (i.e. another single-member district)



# At-Large vs. Single Member

- **Pure At-Large**
  - The candidates run as one group on the ballot
  - All the qualified voters in the political subdivision may vote in the race
- **At-Large by Place**
  - The candidates run in separate groups on the ballot, for each position or place
  - All the qualified voters in the political subdivision may vote in the race
- **Single Member**
  - The political subdivision is divided into districts and the candidates run in their district of residence
  - Only voters within that district may vote on the race that pertains to their district



# Pure at-Large

- The candidates run as one group on the ballot.
- All qualified voters in the political subdivision may vote in the race.
- The top “vote-getters” win the number of positions available.
- Generally, **pure at-large is the “default” method of election** for cities and school districts, and it takes an action by the governing body (or a court) to change method of election.
  - Special Law Districts have method of election set by enacting legislation.



# Pure at-Large

## Ballot:

<b>City of Bedrock General Election</b>	
City Council Vote for none, one, two, or three	
<input type="radio"/>	Barney
<input type="radio"/>	Fred
<input type="radio"/>	Wilma
<input type="radio"/>	Bam Bam
<input type="radio"/>	Dino

## Results:

Election Results  
May 6, 2023

Candidates	Votes
Barney	61
Fred	122
Wilma	133
Bam Bam	71
Dino	85
<b>TOTAL</b>	<b>472</b>



## At-Large By Place/Position

- The candidates run in separate groups on the ballot for each available position.
- All voters within political subdivision get to vote in all races.
- It generally takes an act of the governing body or a court order to move to this type of method of election.





# At-Large By Place/Position

## Ballot

<b>Emerald Independent School District General Election</b>	
Board of Trustees, Place 2	
<input type="radio"/>	Dorothy
<input type="radio"/>	Toto
<input type="radio"/>	Scarecrow
Board of Trustees, Place 5	
<input type="radio"/>	Tin Man
<input type="radio"/>	Lion

## Results

Election Results May 6, 2023	
Place 2	
<b>Candidates</b>	<b>Votes</b>
Dorothy	57
Toto	122
Scarecrow	84
<b>TOTAL</b>	<b>263</b>
Place 5	
<b>Candidates</b>	<b>Votes</b>
Tin Man	171
Lion	85
<b>TOTAL</b>	<b>256</b>



# Single Member District

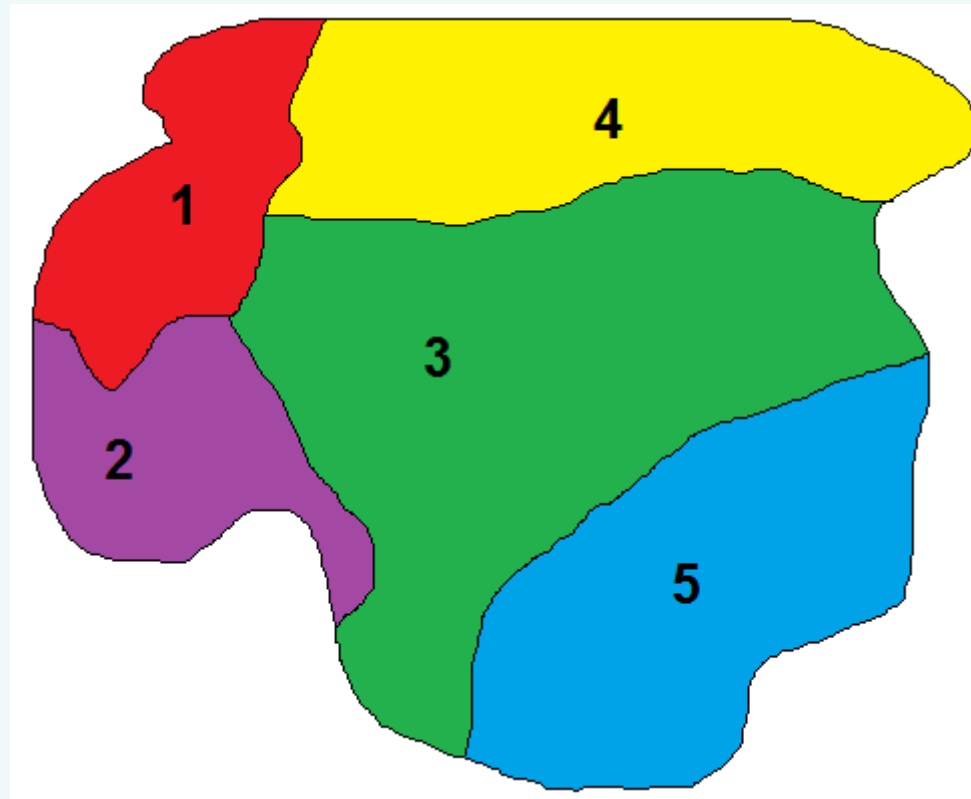
- The territory of the political subdivision is divided into districts, and candidates run in their district of residence.
- ONLY voters within the district can vote.
- It generally takes an act of the governing body or a court order to move to this type of method of election.



# Single Member District

## Example:

- City of Hoo
  - Home Rule City: 5 Single Member Districts
  - District 1 and District 3 positions expire in 2023
  - 3 people submit applications for District 1
  - 2 people submit applications for District 3



# Single Member District

## Ballot

<b>City of Hoo</b>	
<b>General Election</b>	
District 1	
<input type="radio"/>	Poe
<input type="radio"/>	O'Keefe
<input type="radio"/>	Byrd
District 3	
<input type="radio"/>	Marshburn
<input type="radio"/>	Melvin

## Results

Election Results	
May 6, 2023	
District 1	
<b>Candidates</b>	<b>Votes</b>
Poe	125
O'Keefe	85
Byrd	175
<b>TOTAL</b>	<b>385</b>
District 3	
<b>Candidates</b>	<b>Votes</b>
Marshburn	101
Melvin	192
<b>TOTAL</b>	<b>293</b>



# Example #1

- A school district has six trustees that are elected at large but hold specific place numbers. Places 1, 2 and 4 are currently up for election. There are two candidates for places 1 and 2 and only one candidate for place 4. May any race be cancelled in the election?



## NO RACE MAY BE CANCELLED IN THIS ELECTION

Remember that to cancel an election, there must be no at-large opposed races on the ballot. Here, Place 1 and Place 2 are opposed races and are both at-large.



## Example #2

- A groundwater district has five directors. One director is elected at-large and the remaining four directors are elected from their respective commissioners precincts. Directors 1 and 3 are up for election. The at-large director position is not up for election. There are two candidates for Director 1 and one candidate for Director 3. May any race be cancelled in the election?



## **YES. THE RACE FOR DIRECTOR 3 MAY BE CANCELLED.**

There is no at-large race and two single-member district races on the ballot. Only one single-member district race (Director 1) is opposed. The unopposed race (Director 3) may be cancelled in this instance. Remember that the Code allows a single-member district race to be cancelled even if there is an opposed race in another single-member district.





## Example #3

- In the same groundwater district at next year's election, the at-large director position and Director 2 and Director 4 are on the ballot. The at-large director position is opposed while the other two director positions are unopposed. May any race be cancelled in the election?



## **NO RACE MAY BE CANCELLED IN THIS ELECTION**

The at-large director race is opposed, which means that no unopposed races may be cancelled in the election.



## Example # 4

- In a city general election, the mayor is opposed; the other at-large councilmembers are unopposed. May any race be cancelled in the election?



## NO RACE MAY BE CANCELLED IN THIS ELECTION

Nothing can be cancelled. All the at-large candidates must appear on the ballot, because the at-large race for mayor is opposed.



# Statutory Authority for Cancellation

- A political subdivision may cancel an election on a measure if it has been determined that the action to be authorized by the election may not be taken, regardless of the outcome of the election.

Tex. Elec. Code Sec. 2.081



# Certification of Unopposed Candidate Status

- Section 145.098 allows a candidate to withdraw from an election after the statutory deadline for withdrawal if:
  - The candidate files a valid withdrawal request (except for its untimeliness);
  - Ballots for the election have not been prepared; and
  - If using a voting system, public notice of the Logic and Accuracy Test has not been published.
- This law gives the authority responsible for preparing the ballot the discretion to accept the untimely withdrawal and omit the candidate's name from the ballot (and cancel the election if otherwise able to do so), as long as ballots have not been prepared for the election AND if using a voting system, public notice of the Logic and Accuracy Test has not been published.

Tex. Elec. Code Sec. 145.098



## Certification of Unopposed Candidate Status

- The authority responsible for having the ballot prepared in an election shall certify, in writing, that a candidate is unopposed in an election for office.
- Such certification must be made to the governing body of the political subdivision as soon as possible after the filing deadlines for applications for place on the ballot and write-in candidate declarations.

Tex. Elec. Code Sec. 2.052



# Action Following Certification

- Upon receiving certification that candidates are unopposed, the governing body of the political subdivision must, by order or ordinance, declare such unopposed candidates elected.
- If the candidates are declared elected, the election is not held. The governing body must post a copy of the order or ordinance declaring the unopposed candidates elected at each polling place that would have been used in the election.

Tex. Elec. Code Sec. 2.053





# Action Following Certification

**NEW LAW: Senate Bill 1 (2021) (effective December 2, 2021)**

Although cancellation is not automatic in the sense that you **must** have your governing body meet in an open meeting, if a **proper certification** of unopposed status is presented by the filing authority to the governing body, the governing body **must** cancel the election.

Tex. Elec. Code Sec. 2.053



# Action Following Certification

It is imperative that the cancellation requirements be properly followed. The governing body must have authority to cancel the election. To recap, if there is an opposed at-large race within a general election or within a special election, **you cannot cancel the election. The unopposed candidates appear on the ballot in the traditional manner, and must receive at least one vote to win.**



# Action Following Certification

- If a separate election is being held at the same time as a cancelled election, the unopposed candidates must be listed on the ballot for that separate election under the heading “Unopposed Candidates Declared Elected”. The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the candidates.

Tex. Elec. Code Section 2.053



# Action Following Certification

- Unopposed candidates who are declared elected are issued certificates of election in the same manner as candidates who are elected.
- Unopposed candidates who are declared elected **must qualify** for office in the same manner as candidates who are elected.
  - An unopposed candidate who is declared elected may not qualify for office until after the regular canvass takes place (or would have taken place).



# Coercion

- A person may not intimidate or coerce another person in order to influence or attempt to influence the other person to not file an application for place on the ballot or declaration of write-in candidacy or to withdraw an application or declaration.
- This is a Class A misdemeanor, unless the intimidation or coercion is a threat to commit a felony (in which case it is a third degree felony).

Tex. Elec. Code Section 141.101



# Important Considerations

- Remember that the cancellation procedure only applies to a political subdivision with a write-in deadline for candidates.
  - If the law is silent with respect to write-in candidates for your election, there is no write-in deadline and your elections may not be cancelled.



# Important Considerations

- **Can an election with only at-large races ever be cancelled?**
  - Yes. If an at-large election has the same number of candidates as the number of offices to be filled, that election may be cancelled.



# Important Considerations

- An election must be cancelled by official action of the governing body ordering the election after certification of unopposed candidate status has been made.
  - This means at a meeting of the governing body subject to open meetings law (e.g. 72 hours notice)





# Important Considerations

- Remember that candidates who have been declared elected in a cancelled election may not qualify for or take office until after the election would have been canvassed if it had taken place.
  - For Type A general law municipalities, this also means officers must wait until the 6<sup>th</sup> day after the election to qualify and take office.



# Important Considerations

- If an election is cancelled because no one filed for office rather (in contrast to all offices being unopposed), vacancies are declared during the statutory canvassing period and are filled in accordance with the political subdivision's vacancy filling procedure.



# Resources

- **Elections Forms Index**

<https://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml#photo-id>

- **Conducting Your Elections Page**

<https://www.sos.texas.gov/elections/laws/local-laws.shtml>

- **Texas Election Code**

<https://statutes.capitol.texas.gov/>

- **Cancellation of Election Outline**

<https://www.sos.texas.gov/elections/laws/cancellation.shtml>



# Questions?

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

