

## CHAPTER 18

### PARTY OFFICIALS

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The officials of political parties have three general responsibilities under the election laws. First, political party officials provide the names of candidates for listing on the general election ballot. § 17-9-3. Second, for political parties of sufficient recent voter support, the officials provide the names of persons who are seeking by publicly funded primary election, to be: (i) the political party's nominees for listing on the general election ballot, and (ii) members of the party's governing committees. Party officials certify the results of those elections. § 17-13-17. Third, they nominate for selection by the county appointing boards the persons who administer the balloting at the polling places throughout the State, and they name poll watchers who are entitled to observe at each polling place the administration of the general election. § 17-8-1.

#### **18.1 Political Parties**

Political parties are self-governing bodies and may adopt their own rules under the protection of the First and Fourteenth Amendments to the U.S. Constitution. However, the substance of their rules may be affected to the extent they seek the benefit of State resources providing publicly funded primary elections.

A political party eligible to participate in a publicly-funded primary election is defined by state law as an assemblage or organization of electors in a county or state which casts more than 20 percent of the entire vote cast during the last general election in that county or state, respectively. § 17-13-40.

The Ethics Act requires that the chair and vice-chairs of each such political party is a “public official” under the Ethics Act. § 36-25-1(27). As such, they must, among other things, file a Statement of Economic Interests by April 30 of each year covering the preceding calendar year. § 36-25-14.

## **18.2 Notification by Party of Desire to Enter Primary**

When a political party desires to participate in a primary election, its governing body provide public notice of a primary by filing a resolution with the Secretary of State. Where the primary election affects only one county, this notice may be filed with the Secretary of State by the chair of the county executive committee, and a copy of the notice must be filed with the judge of probate of the county. § 17-13-46.

Parties are not required to hold primary elections. If a party does not intend to conduct a primary election, its governing body committee must file a statement of action with the Secretary of State at least 60 days before the date for any regular primary election. This statement of action must contain a copy of the resolution or motion adopted by the party’s governing body, and the statement must be certified by the chair and secretary of the governing body. § 17-13-42.

### **18.2.1 Party Committees**

Each political party may create a committee for the state and a committee for each political subdivision of the state, including counties. The manner in which members of these committees are selected is determined by the governing authority of each party. If committees are not elected or chosen for any county or other political subdivision, their powers are vested in the state executive committee. However, the state committee or its chair may appoint a county committee to act until a county committee can be elected or chosen in a manner provided by law or by party rule. § 17-13-44.

A state executive committee is considered to be the governing body of a party. The state committee may delegate to county committees the authority to conduct party affairs within their respective counties, including the authority to conduct primary elections. § 17-13-44.

If a state or county executive committee requires that its members be elected, elections for these offices must appear on the same ballots as the gubernatorial primary election. If committee members are to be elected during a primary, their declarations of candidacy must be filed in the same manner as candidates for nomination to public office. § 17-13-45.

### **18.2.2 Party Emblems**

Each political party must adopt, by its state party convention or by its state executive committee, a party emblem that will be printed on election ballots. The party emblem must be filed at least 60 days before each election for state officers with the Secretary of State. An original copy of the emblem and a copy in digital or other electronic format must be transmitted in an acceptable form to the Secretary of State. The emblem shall not be more than one and a half inches square. § 17-6-29. When there is a division within a party and each faction claims the party emblem, the judge of probate must immediately certify the fact to the chair of the state executive committee of that party. The state party chair then has 10 days to notify the judge of probate which ticket is entitled to the party emblem. § 17-6-32.

## **18.3 Candidate Qualification**

Party officials set qualifications for party candidates, receive declarations of candidacy, notify the Secretary of State if the party wishes to enter a primary, and fill vacancies in nominations.

## **18.4 Qualifications for Candidates**

Candidates must be legally qualified to hold the office they seek in order to have their names printed on the official primary election ballot. Each prospective candidate must be an eligible voter in the primary election in which they seek to be a candidate. Candidates must also possess the political qualifications established by the governing body of their party.

§ 17-13-6. For most positions, they must have been a resident for one year prior to the general election. In addition, parties often require a statement that they are a member of such party and intend to support that party's principles. Each party has a procedure whereby challenges may be lodged with the party regarding such qualifications.

The governing body of a party may establish assessments as qualifying fees upon candidates who are able to pay or other qualifications to become candidates for nomination to offices at a primary election. These assessments cannot exceed two percent of one year's salary of the office sought. For non-remunerative or party offices the limits are: \$150 for offices filled by a vote of the entire state and \$50 for all others. § 17-13-47. Case law indicates that parties should also provide an option for any candidate who can demonstrate an inability to pay the qualifying fee.

A political party may not have a nominee who was a candidate for the nomination of a different party in the primary election of that year. § 17-9-3.

## **18.5 Declarations of Candidacy**

All candidates for nomination by a political party primary election to public office or for election to party office must file a declaration of candidacy as directed by the political party no later than 5:00 p.m., 116 days before the date of the primary. § 17-13-5(a). However, procedures for filing these declarations differ depending upon the type of office sought by the candidate. § 17-13-5.

### **18.5.1 County Offices**

Candidates seeking nomination by primary election to a county public office or candidates seeking a county party office by primary election must file their declarations of candidacy with the county party chair. § 17-13-5(a). The county party chair must then certify the names of all primary election candidates to the judge of probate no later than 5:00 p.m., 82 days prior to the date of the primary election. § 17-13-5(b).

### **18.5.2 Other State Offices**

Candidates seeking nomination by primary election or election to public or

party offices other than county offices (including federal, state, circuit, and district offices) must file their declarations of candidacy with the state party chair. § 17-13-5(a). The state party chair must then certify the names of all primary candidates, except candidates for county offices, to the Secretary of State no later than 5:00 p.m., 82 days before the primary. § 17-13-5(b).

## **18.6 Vacancies in Nominations**

A vacancy in a party nomination may occur due to the death, resignation, or revocation of the nominated candidate. County executive committees, in the case of county offices, and state executive committees, in the case of non-county offices, have the power and authority to fill vacancies in party nominations. Vacancies may be filled either by action of the committee itself or by any method designated by the committee. This statute was amended in 2014 to place a deadline for filling vacancies 76 days before the election. An amendment of a candidate certification less than 76 days before an election may withdraw a candidate, such that no votes will be certified for them, but no replacement candidate will be placed on the ballot. § 17-13-23.

## **18.7 Presidential Preference Primaries**

In each year that a President of the United States is to be elected, a political party may participate in a publicly-funded primary election to identify the preferred candidates for that office and to choose delegates to the political party's national convention where the nominee for President is chosen.

If a state executive committee calls for a presidential preference primary to be held, notice of this action must be given to the Secretary of State at least 116 days before the primary is to be held. Notification must include a resolution adopted by the party that states the following: (1) the intention of the party to hold such a primary; (2) the method by which electors are to indicate one or more preferences; (3) the method by which delegates are to be selected, elected, chosen, and replaced; and (4) the pledge, if any, by which delegates are to be bound. § 17-13-105. When no presidential preference primary is to be utilized, delegates may be elected in the primary election in the same manner as other party officers. § 17-13-43.

The state executive committee may hold state conventions or conventions of other political subdivisions. Delegates to these conventions may be elected during a primary election. § 17-13-49.

In order to qualify as a candidate during the presidential preference primary of a political party, a petition or petitions in support of that candidacy must be filed with the state party chair 116 days prior to the presidential preference primary. These petitions must be signed either by at least 500 qualified electors of the state or by at least 50 qualified electors (on separate petitions) from each congressional district. Within certain limits, the state party chair may prescribe the form of these petitions. § 17-13-102. Candidates may be required to pay a filing fee to the chair, the amount of which is determined by the party. § 17-13-103.

Whenever the party chair receives a petition which is timely filed and appears to qualify the name of a candidate for president to be placed on the ballot, the chair must immediately notify the candidate that the candidate's name will appear on the ballot of their party. The candidate may withdraw their name from the ballot no later than 76 days before an election. § 17-13-104. If the candidate withdraws their name after the 76<sup>th</sup> day, their name stays on the ballot. § 17-6-21.

Primary elections in which a presidential primary is held are conducted on the first Tuesday of March. §§ 17-13-3 and 17-13-100.

## **18.8 Selection of Poll Workers and Watchers**

### **18.8.1 General Elections**

Each political party or organization having made nominations for an election may furnish the appointing board of the county with a list of names of recommended poll workers from qualified voters for each voting place. From the lists provided, one inspector and at least three clerks shall be appointed for each voting place from members of opposing political parties, if practical. Lists may be filed by either the state or county party chair or by nominees for office. § 17-8-5. Lists may be filed with the appointing board not later than 45 days before the election.

The appointing board is required to select poll workers from the names appearing on these lists provided for each precinct. The appointing

board, not more than 20 and not less than 15 days before the election, appoints the necessary election officials. § 17-8-1.

The chair of the county executive committee, nominees for office, or the precinct committee person may appoint a poll watcher at each polling place during all elections in which their parties have nominated candidates. Poll watchers are permitted to observe the operation of the polling place from the opening of the polls until the ballots are counted and certificates of result are signed. Poll watchers are permitted to see the ballots as they are called during the count. § 17-8-7.

### **18.8.2 Primaries**

At least 45 days before a primary election, all candidates for nomination may present to the county executive committee of their party a list of electors from which poll workers may later be selected by the appointing board. Lists submitted by candidates to their party may include electors from one or more of the applicable districts, wards, or precincts of the county. § 17-13-48.

In primary elections, each candidate for nomination may present to their party county executive committee a list containing the names of election officials they desire for each district, ward, or precinct. § 17-13-48. The county committee, so far as practical, shall make their nominees for election officials to the appointing board of the county from which they are to select precinct election officials to conduct the primary election. § 17-13-48.

The appointing board shall appoint from the county committee list sufficient persons to conduct the election giving representation to each party. If too few election officials are nominated, the appointing board shall supply the deficiency. § 17-13-11. These lists must be filed with the appointing board not later than 45 days before the election. § 17-8-5. The appointments are made not more than 20 nor less than 15 days before the primary election. § 17-8-1.

A candidate who has qualified for a primary election may have one watcher in each polling place. These poll watchers are appointed by the candidate and a signed notice of their appointment must be presented to and filed with the inspector of the appropriate polling place. Poll watchers cannot serve as poll workers. § 17-13-11.

## **18.9 Primary Election Voting**

Each political party, acting through its governing body, may establish rules which identify who possesses the political qualifications to vote in a primary election for nominating the party's candidates for public office or political office. § 17-13-7

## **18.10 Primary Election Canvassing**

### **18.10.1 Receiving Returns**

After the polls close and the votes are counted, the returning officer of the county must deliver to the chair of the county executive committee of each party, at the office of the judge of probate or place designated by the judge of probate, the party ballots and returns designated to the appropriate political chair. One envelope shall contain the certificate of results and voters' poll list.

The sheriff shall return the voted ballots container and a separate record of elections container containing: (1) one certificate of the results; (2) spoiled ballot envelope; (3) clerks poll list; (4) all partial ballot pads; and (5) the stubs of ballot pads, which must also be delivered. These items must be delivered no later than 10:00 a.m. on Wednesday following the primary. §§ 17-13-10, 17-13-12, 17-13-14, and 17-17-49.

One copy of the certificate of results must be posted in a conspicuous place at the voting place. One copy is transmitted to the chair of the county executive committee of each political party and another copy is transmitted to the chair of the state executive committee of each political party participating in the election. § 17-13-16.

### **18.10.2 Canvassing and Reporting Votes**

The county executive committee of each party participating in the primary must meet at the courthouse no later than noon on Tuesday following the election to receive, canvass, and tabulate the returns by precinct. A public declaration of the results must then be made by the committee. § 17-13-17.

No later than noon on the Tuesday seven days after the election, each county party chair must certify and return to their state party chair a statement and tabulation, by precincts, of the result of the primary and the number of votes received by each candidate for a non-county office. No later than noon on the Wednesday eight days following the primary, the state executive committee, or a subcommittee appointed by the chair, must meet at the Capitol in Montgomery to receive, canvass, and tabulate the returns. The state committee or subcommittee must also publicly declare the results of the election for all non-county offices on that day. § 17-13-17; Act 2019-318.

#### **18.10.2.1 Candidate Receives a Majority of Votes**

If a candidate receives a majority of the votes cast for the office for which they were a candidate, that candidate is declared to be the nominee of the party for that office. This declaration is made by the county committee for county offices and by the state committee for circuit, district, and state offices. § 17-13-18(a).

#### **18.10.2.2 No Candidate Receives a Majority of Votes**

However, there are frequently nominations which are not settled in the regular primary because no candidate receives a majority. In such cases a second primary, or run-off, is required. Where nomination to a county office is at stake, the county party chair certifies to the judge of probate the names of the two candidates who received the highest number of votes in the first primary. For other offices, the state party chair certifies to the Secretary of State the names of the top two candidates in each undecided race. § 17-13-18(b).

The second primary (run-off) is then held the fourth Tuesday following the primary. State law bars any person who voted in a primary election from voting in a primary runoff election of a different political party. § 17-13-7.1.

The results of the run-off are canvassed in the same manner as the first primary. The county party canvass must be held no later than the second Friday following the run-off and the returns for all offices other than county offices shall be forwarded no later than noon on the second Monday following the run-off. The state party canvass shall be held no later than noon on the third Wednesday following the run-off. After the canvass, the county party chair must immediately certify to and file with

the judge of probate the names of the party nominees for all county offices. Similarly, the state party chair must certify and file with the Secretary of State the names of the party nominees for all non-county offices. § 17-13-18(d). The Secretary of State shall, within 74 days after the second primary election, certify to the judge of probate a list of nominees of each party. § 17-13-22.

### **18.10.3 Tie Votes**

If a tie vote is cast during any primary election, the tie is decided by the county party chair if the office is a county office. The tie is decided by the state party chair if the office is a non-county office. § 17-13-21.

## **18.11 Storage and Disposal of Records**

The sheriff is responsible for the storage of voted ballots and the record of election container. § 17-13-15. After the time allowed by law for filing contests, if no contest is filed and if no federal race is on the ballot, the ballots may be destroyed after six months. § 11-46-46(b). Ballot containers may only be opened in one of the two following events:

- (a) In the event of a contest, the ballot container may only be opened under the authorization of the chair of the executive committee trying the contest; or
- (b) In the event no certificate of result has been delivered outside the container, the container may be opened by the sheriff in the presence of the chairs of the county committees for the political parties participating in the primary election, or their designees, and the container must be resealed by the sheriff in the presence of the same. § 17-13-15.

If a federal office was on the ballot, all records, ballots, and papers must be kept for 22 months. 52 U.S.C. § 20701.

## **18.12 Primary Election Contests**

All party nominations made by a primary election may be contested within 24 hours after the results of the primary have been declared. The contest is instituted by the filing of a written statement by any elector of a party desiring to contest the nomination. The statement, which must be

certified by affidavit of the contesting party that they believe the statement to be true, must specifically set forth all of the following:

- (a) The name of the party contesting and that the elector was a qualified elector when the primary was held and they participated therein;
- (b) The nomination which the election was held to fill;
- (c) The time of holding the election;
- (d) The name of the person declared nominated; and,
- (e) The particular grounds on which the nomination is contested. § 17-13-78.

Primary contests are heard and tried by the county executive committee if a county office is involved. The state executive committee hears and tries the contest if a non-county office is involved, if there is no county committee, or if the county committee lacks a quorum. § 17-13-70. The grounds and procedure for contesting a nomination by a party are set forth in §§ 17-13-71 through 17-13-89.

### **18.13 Grounds for Contesting a Nomination**

The following are grounds for contesting a nomination by a party for office, which may be instituted by any qualified elector of the state who belongs to that party and who legally participated in such primary election:

- (a) Malconduct, fraud, or corruption on the part of any inspector, clerk, returning officer, canvassing board, or other persons;
- (b) That a person whose nomination is contested was not eligible for the office sought at the time of the declaration of nomination.
- (c) Illegal votes;
- (d) Rejection of legal votes;
- (e) Offers to bribe, bribery, intimidation, or other malconduct or misconduct calculated to prevent a fair, free, and full exercise of the elective franchise; or
- (f) Miscalculation, mistake, or misconduct in counting, tallying, certifying, or canvassing which of itself alone or in

conjunction with the giving of illegal votes or the rejection of legal votes, or any other ground, would, when everything is corrected, reduce the number of legal votes cast for the declared nominee down to or below those of some other candidate in that race. § 17-13-71.

None of the grounds of contest will serve to annul or set aside any declared nomination, unless such ground alone or in conjunction with other of such grounds alleged shall serve to show that the person declared nominated and whose nomination is contested did not receive the number of legal votes necessary to be nominated. But upon such contest, the committee shall have the power to declare who was legally nominated at such primary for such office. § 17-13-72.

When a contest of a nomination is instituted, the declared nominee for such office shall not be certified until after the termination of the contest filed in the time herein prescribed. § 17-13-73.

#### **18.13.1 Witnesses**

In the hearing of any contest before any committee or subcommittee, the chair of such committee, or their designee, shall have the authority to summon witnesses to appear before the committee in the hearing of any contest pending before such committee and can require any witnesses by a subpoena duces tecum to produce any books, papers, poll lists, tally sheets, ballots, certificates, or other documents which it may consider necessary for a rightful determination of the case. § 17-13-74.

#### **18.13.2 Registration Lists**

The judge of probate of any county must deliver to the party, agent, or attorney making an application of such, a certified copy of the registration list of the county or for any election district, ward, or precinct therein, upon payment of the fees for certifying and copying the same at the rate of one dollar per page for making such copy. Such copies, duly certified, shall be prima facie evidence of the facts stated therein: that the persons listed were duly registered. Any chair of any committee or other authority or person in whose possession, control, or custody there is of any list of persons voting at the primary election, or any other paper lawfully pertaining to the primary election, must furnish a copy for any state, county, district, ward, or precinct, duly certified by him or her, whenever required in writing by either party to a contest or their agent or attorney,

upon the applicant's paying in advance the reasonable cost of preparing such copy. § 17-13-77.

Upon the hearing of any contest, if the state or county executive committee finally determines who is the legal nominee for any office, it must make a declaration of its judgment upon the question. The failure or refusal by the committee in which the contest is brought to hear and make a determination 90 days before the general election for a county office and not later than 83 days before the general election for a state office shall be treated as a dismissal or the rendition of judgment against the contestant, and a certificate thereof must be forwarded by either the county chair to the judge of probate or the state chair to the Secretary of State. § 17-13-86.

