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Election Advisory No. 2020-05

To: County Clerks/Election Administrators and County Chairs

From: Keith Ingram, Director of Elections

A handwritten signature in black ink, appearing to read "Keith Ingram".

Date: February 11, 2020

RE: Party Affiliation Questions and Answers

This advisory provides answers to some commonly asked questions related to party affiliation, voting in the primary election, and candidacy in the primary elections. If you have additional questions related to affiliation, please contact the Secretary of State at 1-800-252-VOTE (8683).

All references are to the Texas Election Code (unless otherwise cited).

General Affiliation Questions

1. How does party affiliation work in Texas?

In Texas, there are several main ways for a voter to affiliate with a party: by being accepted to vote in a party's primary election, by taking the required oath at a party precinct convention, or by taking a party oath of affiliation generally (§§162.003, 162.006, 162.007). A voter's affiliation with a party automatically expires at the end of each calendar year, which is December 31. (§162.010). A voter who has affiliated themselves with a party is ineligible to participate in the party affairs of another party during the same calendar year. (§§162.012, 162.013)

If a voter has not voted in a party primary or taken an oath of affiliation with a party this calendar year, they have not yet affiliated with any party. If a voter has not yet affiliated with a party, they are able to vote in either party's primary election. However, if a voter votes in the primary of one party, they will only be able to vote in that party's primary runoff election. (§§162.012, 162.013) After being affiliated with a party, a voter is not able to change or cancel their party affiliation until the end of the calendar year. (§162.010)

2. Do I have to register or affiliate with a party before I vote in the primary?

No. A registered voter is not required to pre-register or take any steps towards affiliating themselves with a party before voting in a party's primary election. (§162.003) Additionally, when a person registers to vote in Texas, they do not register with any kind of party affiliation.

3. Does a voter have to vote in the general primary election in order to vote in a primary runoff election?

No. Section 11.001 of the Texas Election Code prescribes the specific qualifications necessary in order to vote in a Texas election. There is no requirement to have previously voted in the general primary election in order to participate in the subsequent primary runoff election. Therefore, if a qualified voter did not vote in the general primary election, they are still eligible to vote in the primary runoff election.

4. If I have voted for one party in a prior calendar year, do I have to vote in the same party's primary this year?

No. A voter's party affiliation ends at the end of each calendar year. Affiliation with a party in a prior year does not affect what primary an unaffiliated voter can vote in this year. (§162.010)

5. How can I change my party affiliation?

After affiliating with a party by voting in a party's primary or by taking an oath of affiliation with a party, a voter cannot change their party affiliation during the calendar year. (§162.010) However, affiliation will automatically expire at the end of the calendar year.

6. What if I signed a petition for a candidate for a place on the primary ballot?

If a voter signed a candidate's petition for a place on the primary ballot, that voter is only able to vote in the primary, or participate in the convention, of that candidate's party during the voting year in which the primary election is held. For example, if a voter signed a Democratic candidate's petition, that voter is ineligible to vote in the Republican primary or participate in a minor party convention. (§172.026)

7. If I signed a petition for a candidate for nomination in the Libertarian or Green Party, Can I still vote in a primary election?

No. If a voter signed a candidate's petition for nomination for the Libertarian or Green Party, that voter is ineligible to vote in a primary election or participate in the convention of a different party during the voting year in which the primary election is held. (§§172.026, 141.041)

8. If I am not going to be 18 in time for the primary or primary runoff, but will be 18 by the time of the general election, can I vote in the primary?

No. A voter must have an effective date of registration on or before election day in order to vote in that election. (§11.001). A registration is effective for purposes of early voting if it will be effective on election day. (§13.143). In Texas, the earliest a voter can submit a voter registration application is when they are 17 years and 10 months old. (§13.001). However, this application is not effective until a voter's 18th birthday. If a voter is not 18 on or before election day, their voter registration will not be effective prior to election day and they will not be able to vote in that election. However, a voter who turns 18 between primary election day, March 3, 2020, and primary runoff election day, May 26, 2020, can register to vote and vote in the May 26, 2020 primary runoff election.

9. I voted in the primary election on March 3, 2020. Why did they ask if I wanted a Republican or Democratic ballot?

The primary elections are two separate elections that occur on the same day. The elections are the method for both the Republican and Democratic parties to select their nominees for the general election in November. When a voter votes in a primary election or primary runoff election, they are affiliating with the party whose primary they are voting in. (§162.003). A voter who is affiliated with a political party is ineligible to become affiliated with another party during the same voting year. (§162.012). This means a voter cannot vote in both primary elections, or the primary election of one party and the runoff election of another party. Some counties

will have joint primaries and/or the parties will share polling places. In a county where the Republican and Democratic parties are sharing polling places, the voter must identify the primary in which they would like to vote, in order to ensure they receive the correct ballot and are marked as voting in the correct primary election.

10. Is the fact that I voted in a primary election confidential?

No. The offices and candidates that you voted for are confidential and secret, but the fact that you voted in a particular party's primary is public information and your name will be listed in that party's early voting rosters.

11. Why did I have to indicate party preference on my Application for a Ballot by Mail (ABBM)?

Because a voter cannot participate in both parties' primary elections, a voter must indicate, when voting by mail, their party preference to ensure they receive the correct ballot style.

12. Does requesting a ballot by mail affiliate me with that party?

Not immediately. A voter does not become affiliated with a particular party until the early voting clerk receives their voted primary ballot. (§162.003) If a voter requests a certain primary ballot but does not return a voted ballot for that primary election, they will not be affiliated with a party (unless they take other steps to affiliate with a party).

NOTE NEW LAW: HB 2640 (86th Legislature, 2019) amended Section 162.003 to provide that, for purposes of ballots by mail, a voter does not affiliate with a party until they return a voted ballot. Previously, a person became affiliated merely by requesting a certain party's ballot by mail.

13. Can I vote in one party's primary election and another party's primary runoff election?

No. By voting in a party's primary election, a voter has affiliated themselves with that party and is ineligible to participate in the convention or primary runoff election of another party during that calendar year. (§§162.012, 162.013)

14. If I vote in a party's primary, am I required to vote for that party's candidates in the November 3, 2020 general election?

No. A voter who votes in the primary is not required to vote for a particular party's candidates in the succeeding general election.

15. What if I consider myself an independent, but wish to vote in a primary election?

The act of voting in a primary election affiliates a voter with a political party. (§162.003). However, if a voter has not otherwise affiliated themselves with a political party, they are able to vote in the primary of either party.

Candidacy Affiliation Questions

16. I was a candidate in the primary election and I lost my race. Can I run as an independent candidate in November?

Probably not. A person that was a candidate for nomination in a primary election is ineligible for a place on the ballot for the next general election for state and county officers as an independent candidate for any office for which a candidate was nominated in the primary. (§162.015(a)).

17. I was a candidate in the primary election and I lost my race. Can I run as a write-in candidate in November?

A person that was a candidate for nomination for the primary election cannot run as a write-in candidate for the **same** office in the general election in November. However, the candidate could run as a write-in candidate for a **different** office. (§ 162.015(b)).

KI:CA:JG