
Coates' Canons Blog: What if No Candidates File? An Election without Candidates?

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There is an open seat—District 2—on the board of county commissioners, up for election. It will be voted on in November, along with other county offices (like sheriff and school board), district offices (like state senate and district attorney), and statewide offices (like governor and commissioner of labor). The candidate filing period has come and gone, and Republican candidates have filed their notices of candidacy to run in the Republican primary and Democratic candidates have filed their notices of candidacy to run in the Democratic primary, for all the offices at the county, district, and statewide levels.

Except one. No Republican candidate filed to run for the District 2 seat on the board of county commissioners. No Democratic candidate filed. What happens now?

The Normal Situation

In the normal course of events, the Republican candidates who file their notice of candidacy for an office face one another in the Republican primary, and the same for the Democratic candidates. The winners of the two primaries then face one another in the general election in November. If only one Republican candidate files, then there is no Republican primary, and that one candidate is the Republican nominee and will be on the ballot in the November general election. Same for the Democrats. So for any particular office, there could be a Democratic primary but no Republican primary, and the other way around.

But what happens if no Republican candidate files and no Democratic candidate files? In that case, there would be no primary election in either party and no candidate from either party would appear on the general election ballot. How would somebody get elected?

The Unaffiliated Candidate

One possibility would be for an eligible voter of District 2 to get up a petition, under North Carolina General Statutes 163-122, to appear on the ballot as an unaffiliated candidate. Almost always, candidates appear on the general election as the nominee of their party—Republican or Democratic. But it is possible for a candidate to appear on the ballot as unaffiliated (which in common speech gets called “independent”).

Traditionally, the candidate filing period for Republicans and Democrats has been in February (of even numbered years), with the primary election in May. For the 2016 election, the schedule was moved earlier, with the filing period in December 2015 and the primary in March 2016 (to get North Carolina voters involved in the presidential election earlier). But either way, the filing period is over before the deadline for unaffiliated candidacy petitions. Under GS 163-122, petitions must be filed by the last Friday in June.

So an eligible voter in District 2 has time to react to the fact that no candidates filed in the filing period and that there will be no primary for the District 2 seat. That voter can circulate a petition (after registering with the county board of elections under GS 163-218) and try to get the signatures of 4% of the registered voters in District 2. The voter then submits the signed petitions to the county board of elections, which reviews all the signatures and determines whether in fact there are enough qualified signatures. If so, the voter goes on the general election ballot (and will be likely to win, since there are no other candidates on the ballot). If not, she does not go on the ballot.

The Write-In Candidate

A second possibility (which can arise whether an unaffiliated candidate gets on the ballot or not), would be for a qualified voter of District 2 to get up a petition, under GS 163-123, to have write-in votes for that person to count in the general election.

For county, district, and statewide offices, write-in votes generally do not count. No matter how many voters might write in the name of John Pierce for the District 2 seat, those votes will not count unless Mr. Pierce has gone through the petition procedure set out in the statute. (Note that the rule is different in municipal elections—where the voting is for mayor or city council seats and the elections are held in odd-numbered years. In those elections, write-in votes do count, and no petition procedure is required.)

As with the unaffiliated candidate and her petition, the candidate who wishes to have write-in votes count has time to react to the fact that no candidates filed in the regular filing period. The write-in candidate has more time, in fact, as his petition deadline does not come up until 90 days before the general election—that is, sometime in early August.

The petition procedure is the same as for the unaffiliated candidate, except the requirement is only 100 valid signatures (or 1% if the number of voters in District 2 is less than 5000). If the board of elections determines that the petition has a sufficient number of qualified signatures, then any ballots which have the name John Pierce written in for the District 2 seat will count as votes for Mr. Pierce. One write-in vote will be enough to elect him, if there is no unaffiliated candidate on the ballot and no other verified write-in candidate.

No Candidate at All

What happens if no candidates file to run in the Republican or Democratic primaries (so there is no Republican and no Democratic nominee on the general election ballot), no one gets up a valid petition to run as an unaffiliated candidate (so there is no unaffiliated candidate on the ballot), and no one gets up a valid petition to have write-in votes counted (so no write-in votes count)?

No one is elected.

What happens then? The incumbent commissioner in District 2 (who was elected in a prior election—either two or four years earlier—but decided not to run this time) holds over in the seat. That's what the statute—GS 128-7—provides: "All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified." In this case, no successor will be elected and the old commissioner simply stays in office. For how long? For the entire new term. Of course, the old commissioner did not run for re-election. That likely means she does not want to hold the office. She can resign. If she does that, a vacancy is created and the board of commissioners, as a whole, fills the vacancy and a new commissioner takes the District 2 seat. For how that would work, see [this blog post](#).

A Note about Libertarians

A new political party may be formed in North Carolina at any time by a petition containing verifiable signatures of registered voters equal to 2% of the total vote cast in the most recent election for governor. Once a political party is recognized under the North Carolina statutes, it remains recognized (and thus participates in the primary system and its nominees appear on the general election ballot) if its nominee for governor or its slate of presidential electors receive at least 2% of the total vote in the state at the most recent governor or presidential election. The Republicans and Democrats in North Carolina of course regularly surpass that 2% by a wide margin and they remain recognized as political parties. In 2016 there is one other recognized political party—the Libertarian Party.

It is possible that, in a particular election in which no Republican candidate filed a notice of candidacy and no Democratic candidate did, a Libertarian candidate would. In that case, there would be Libertarian primary if more than one candidate filed, and a Libertarian candidate would appear on the general election ballot. It would still be possible, of course, for a voter to get up a petition to get on the ballot as an unaffiliated candidate or to have votes counted as a write-in candidate.



Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=163-122
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=163-218
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=163-123