

# Candidate Succession Before Election Day

In the unfortunate event that a presidential candidate dies, becomes incapacitated, or resigns before Election Day, political parties have established procedures to replace that candidate and continue with the election. Our political system and election laws rely on political parties to determine a replacement. In the rare instances in U.S. history in which this has happened, political parties have worked effectively to do so.

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## Political parties have control over the process of replacing their candidates.

Before Election Day, the political parties have principal control over how to handle a dead or incapacitated candidate, or one who steps down. No constitutional or statutory provisions cover this scenario and there is strong legal and historical precedent for party control.<sup>1</sup> Indeed, before the era of modern presidential primaries, parties assumed total control of the nomination process and hand-picked the nominees without direct voter input.<sup>2</sup>

The exact rules for the process of nominee succession hinge on the timing of when a candidate dies, steps down, or becomes incapacitated:

### Before the conventions

If a presidential candidate dies, becomes incapacitated or steps down before the party conventions, the party delegates would select their nominee at the convention from among other candidates or new entrants.<sup>3</sup>

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<sup>1</sup>The courts have generally upheld party authority over candidate selection as a First Amendment freedom of association unless it conflicts with another constitutional right (such as when the Democratic Party in Texas was prohibited from excluding citizens from voting in the primary on the basis of race (*Smith v. Allwright*, 321 U.S. 649 (1944))).

<sup>2</sup> <https://constitutioncenter.org/blog/a-brief-history-of-presidential-primaries>

<sup>3</sup> This year the Democratic party may formally nominate President Biden in advance of the convention, through a virtual roll call. <https://apnews.com/article/ohio-ballot-biden-access-3bf359cce8e73714be45cb99a6e31546>

## After the conventions

If a death or incapacity arises after the convention, the two major political parties each have rules for selecting a substitution:

**Democrats:** the members of the Democratic National Committee (DNC) would choose the new nominee by majority vote in a special session called by the chair. The DNC chair is required to consult with Democratic congressional leadership and the Democratic Governors Association, and then reports to DNC members who choose.<sup>4</sup>

This process was used in 1972, for example, when the Democratic Vice Presidential nominee Thomas Eagleton withdrew his nomination and the DNC members voted to replace him on the ticket with Sargent Shriver.

**Republicans:** the Republican National Committee has the power to fill vacancies resulting from “death, declination, or otherwise.”<sup>5</sup> Members would vote as part of their state delegation under the same vote distribution used for the convention itself, and delegation members could divide their votes if they did not agree. Alternatively, the Republicans could reconvene the national convention.

## Election Laws Control How Ballots are Changed and Counted

General election ballots are generally not printed before early fall and changes can typically be made to the ballots before that time. As it gets closer to Election Day, there would be increasing issues about whether ballots can or should be reprinted and other logistical adjustments can be made. Several administrative processes in the lead-up to elections make last-minute changes difficult. For example, election administrators must conduct pre-election programming and testing before ballots are printed. In addition, at least some ballots must be printed well in advance of Election Day to accommodate military and overseas voting as well as absentee or mail-in voting as permitted in the jurisdiction.<sup>6</sup> A combination of federal and state law governs such processes and as such is not uniform across jurisdictions. This lack of uniformity could contribute to confusion.<sup>7</sup>

Despite the tumult the death, resignation or incapacitation of a presidential candidate would surely cause, one protection built into the system is that in a presidential election voters cast their ballots not for a candidate but for a slate of electors pledged to a candidate. In some cases, the names of

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<sup>4</sup> The DNC rule covers vacancies due to “death, resignation or disability of a nominee of the Party for President or Vice President after the adjournment of the National Convention.” (Procedural Rule G: Filling a Vacancy on the National Ticket)

<sup>5</sup> Rule 9 of the party rules

<sup>6</sup> The federal Uniformed and Overseas Citizens Absentee Voting Act requires that ballots be sent at least 45 days in advance of the general election. <https://www.fvap.gov/eo/overview/sending-ballots>

<sup>7</sup> For example, when Senator Robert Torricelli withdrew from the 2002 New Jersey Senate race late in the cycle, the state supreme court ultimately settled whether the new Democratic nominee, Frank Lautenberg, could appear on the ballot under state law. The New Jersey Supreme Court allowed it and ordered state officials to print new ballots even though the state law deadline for such changes had already passed. <https://www.washingtonpost.com/archive/politics/2002/10/03/court-orders-lautenberg-put-on-ballot/862d5f8b-f9ec-4176-aa39-8f44a0e81945/>

the state Electoral College electors appear on the ballot.<sup>8</sup> Even where a replaced presidential or vice presidential candidate's name might remain on the ballot, votes for that candidate's electors would still count and those electors – who are chosen by the parties, usually on the basis of strong loyalty – could transfer their votes to the party's replacement nominee (depending on state law).<sup>9</sup>

## Conclusion

U.S. political parties put voters at the center of the U.S. presidential selection process. But political parties operate as an important safeguard to ensure a rules-based process should a presidential candidate who voters choose in the primary and convention process die, step down or otherwise become incapacitated. It is well within our political norms and the laws of our election processes for a political party to manage such an unfortunate event. Voters should feel confident that political parties and states have rules in place that anticipate such contingencies.

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*This explainer is one in a series of documents published by the National Task Force on Election Crises related to potential developments during the 2024 election. You can read more explainers at [Electiontaskforce.org/Resources](https://electiontaskforce.org/Resources).*

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<sup>8</sup> <https://www.archives.gov/electoral-college/electors#who-selects>

<sup>9</sup> Some states' "faithless elector" laws could require electors to vote for the deceased or incapacitated candidate. No clear precedent in place guides whether Congress must count such votes.