

THE WRITE-IN PROCESS IN TENNESSEE

I. General Election Process – T.C.A. § 2-7-133(i)

A. Candidate's Duties

1. File Certificate of Write-In no later than twelve o'clock (12:00) noon, prevailing time fifty (50) days before the general election. (2009 Amendment added twelve o'clock (12:00) noon as the deadline on the fifth (50th) day. Effective July 1, 2009 –Public Chapter 218)
2. Certificate of Write-In must be timely filed in each county that makes up the district of the listed office. If the candidate fails to file in all counties that make up the legislative district, then the write-in voters shall only be counted in the counties where the certificate has been filed.
3. For the offices of Governor, US Senate and US House of Representatives, this form must be filed with the TN Coordinator of Elections by the applicable deadline.
4. For the office of US President this form and a list of the candidate's eleven (11) electors must be filed with the TN Coordinator of Elections by the applicable deadline.

B. Duties of the County Election Commission

1. Upon timely receiving a certificate of write-in, the county election commission shall promptly inform:
 - a) the state coordinator of elections,
 - b) the registry of election finance, and
 - c) all candidates participating in the affected election.
2. Advise the candidate regarding his or her filing requirements under campaign financial disclosure laws.
3. In those counties where a certificate of write-in has been completed and timely filed, count any write-in votes properly cast for the person.

4. Certify the number of votes received by the certified write-in candidate on the official certification of the general election results.

C. Withdrawal Process – T.C.A. §2-7-133(i)

1. A write-in candidate may withdraw his or her name by filing a letter withdrawal in the same offices in which he or she filed the Certificate of Write-In.
2. The withdrawal letter must be filed no later than five (5) days before the election.
3. If a withdrawal letter is timely filed, then the election commission receiving the withdrawal letter does not count the write-in ballots for that person.

D. To Win the Office and be Elected as a Write-In Candidate

1. If there is not a candidate or candidates on the ballot for the office in question, the write-in candidate must receive at least one vote in order to win the general election.
2. If no candidate qualified to be on the ballot and there are no other candidates who filed a certificate of write-in, then the single write-in candidate needs at least one (1) vote to win on a general election ballot.
3. If no candidate qualified to be on the ballot, but another person timely filed a certificate of write-in for the same office, thereby having at least two people to have timely filed as write-in candidates, then the write-in candidate receiving the most votes will win on a general election ballot.

II. Primary Election Process – T.C.A. § 2-8-113(c)

A. Candidate's Duties

1. File Certificate of Write-In no later than twelve o'clock (12:00) noon, prevailing time fifty (50) days before the primary election. (2009 Amendment added twelve o'clock (12:00) noon as the deadline on the fifth (50th) day. Effective July 1, 2009 – Public Chapter 218)
2. Certificate of Write-In must be timely filed in each county that makes up the district of the listed office. If the candidate fails to file in all counties that make up the legislative district, then the write-in voters

shall only be counted in the counties where the certificate has been filed.

3. For the offices of US President, Governor, US Senate and US House of Representatives, this form must be filed with the TN Coordinator of Elections by the applicable deadline.

B. Duties of the County Election Commission

1. Upon timely receiving a certificate of write-in, the county election commission shall promptly inform:
 - a) the state coordinator of elections,
 - b) the registry of election finance, and
 - c) all candidates participating in the affected election.
2. In those counties where a certificate of write-in has been completed and timely filed, count any write-in votes properly cast for the person.
3. Advise the candidate regarding his or her filing requirements under campaign financial disclosure laws.
4. Certify the number of votes received by the certified write-in candidate on the official certification of the primary election results.

C. Withdrawal Process – T.C.A. §2-8-113(c)

1. A write-in candidate may withdraw his or her name by filing a letter withdrawal in the same offices in which he or she filed the Certificate of Write-In.
2. The withdrawal letter must be filed no later than five (5) days before the election.
3. If a withdrawal letter is timely filed, then the election commission receiving the withdrawal letter does not count the write-in ballots for that person.

D. To Receive the Political Party Nomination as a Write-In Candidate

1. If no candidate qualified to be on the primary ballot, then the office Involved will affect the number of votes needed to receive the party nomination.
 - a) State or Federal Office – If no candidate qualified to be on the primary ballot, to receive the political party nomination, then the write-in candidate must receive a number of write-in votes equal to or greater than five percent (5%) of the total number of registered voters of the district.
 - b) County Office – If no candidate qualified to be on the primary ballot, to receive the political party nomination, the write-in candidate must receive a number of write-in votes equal to or greater than five percent (5%) of the total number of registered voters of the district, or county for a countywide office, and must have received not less than twenty-five (25) votes.
2. If no candidate qualified to be on the primary ballot, but there have been at least two (2) write-in candidates who timely filed a certificate of write-in for the same office, then the write-in candidate meeting the criteria set out above in II.D.1. and receiving the most votes will receive the political party nomination.

For example, if two people properly and timely filed certificates of write-in 50 days before the county primary for a county commission seat, then in order to receive the political party nomination for that office, the write-in candidate receiving the most votes in the primary must also have received a number of write-in votes equal to or greater than five percent (5%) of the total number of registered voters of the county commission district, which must also be a number of twenty-five (25) votes or more.

Thus, if 5% of the total number of registered voters in County Commission District 1 equals one hundred (100) and Write-In Candidate A only received 82 write-in votes and Write-In Candidate B only received 75 write-in votes, then neither write-in candidate receives the political party nomination for the general election because neither candidate received the 5% threshold number of votes.

III. Counting the Votes of a Write-In Candidate

A. Misspelling of the Write-In Candidate's Name

1. The voter's intent must be honored, even if a voter misspells the name of the write-in candidate.
2. If the voter's intent can be "reasonably ascertained," then the election commission must give effect to that voter's intention.

B. Uniform List of Names

1. Once a person has timely filed a certificate of write-in, the election commission must adopt a uniform list of names that will be counted as a vote for that write-in candidate. For multi-county offices, the state coordinator will supply this list.
2. The list must include spellings of the write-in candidate's name that, although misspelled, creates the same sound as the write-in candidate's name; thereby showing the voter's intent to vote for that write-in candidate.
3. EXAMPLE: The following list would be a sample of what the counting board would use to guide them in counting the votes for a write-in candidate named "Franklin Baldwin":

Countable as Votes for Franklin Baldwin		Not Countable as Votes for Franklin Baldwin	
Franklin Baldwin	Franklin Boldwin	Franklin B.	Frankie
Franklin Ballwin	Frank/Franc Baldwin	Frank B.	Franky
Franklin Baldwyn	Frankie/Franky Baldwin	Frank B.	
Franklin Bauldwin	F. Baldwin	Franklin	
Franklin Bauldwin	Baldwin	Frank	

IV. Things to Note

- A. Five percent (5%) of the total number of registered voters of the district requirement

1. In this statutory context, the term “district” must be equated with jurisdiction.
2. If the office involved has legislative district lines, then the 5% will be the total number of registered voters in that legislative district.
3. If the office involved is a countywide office, then the 5% will be the total number of registered voters in the county.
4. If the office is a statewide office, then the 5% will be the total number of registered voters in the state.

B. Total Number of Registered Voters Requirement

1. TCA § 2-2-106(g) provides that “voter registrations that are inactive pursuant to the provisions of this section shall not be included in a county's total of registered voters.”
2. To determine the number of votes needed, the 5% must be multiplied against the total number of **active** voters in the appropriate jurisdiction.
3. The total number of registered voters must be determined based upon the number of active registered voters at the time of the primary election.