

FAQ re: Special Election in Indiana's 2nd Congressional District

Note: The information is current as of Tuesday, August 9, 2022 and will be revised as additional information becomes available. The forms referenced in the text below will be published and available at <https://www.in.gov/sos/elections/election-administrators-portal/election-forms/>

Q1: Why is a special election required to fill this vacancy? Most other elected office vacancies are filled by an appointment process.

A1: A special election is required in this case by Article 1, Section 2 of the Constitution of the United States, as ratified in 1789, which provides that "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies."

Although vacancies in other elected federal offices, such as United States Senator or Vice President, may be filled by appointment, no individual has ever been appointed to serve as a member of the United States House of Representatives. The Framers of the United States Constitution, such as Benjamin Franklin, Alexander Hamilton, and James Madison, looked to the procedures used to select members of many previously existing legislatures in drafting our Constitution's provisions, but were most familiar with the procedure used by the Parliament of Great Britain to fill vacancies in its membership, which then and now provides for calling a "by-election" to fill vacancies in the House of Commons when a vacancy occurs before a general election is scheduled.

Q2: How will a special election be called in this case?

A2: A special election is required to be held under Indiana Code 3-10-8-1(3) "Whenever a vacancy occurs in the office of United States Representative, unless the vacancy occurs less than seventy-four (74) days before a general election." In this case, the vacancy occurred more than 74-days before the November 8, 2022 general election.

Under Indiana Code 3-10-8-3, the Governor shall order a special election by issuing a writ of election directed to the circuit court clerk of each county located wholly or partially within the election district. The writ must specify: (1) the election district in which the election is to be held; (2) the cause and object of the election; (3) the name of the person whose office is vacant; and (4) the day on which the election will be held.

Under Indiana Code 3-10-8-4, each circuit court clerk required to conduct a special election is required to publish a legal notice not later than 21-days before the special election listing: (1) the title of the office, the names and addresses of all candidates who have filed for the office under the proper political party or independent candidate; (2) the date of the election; (3) the hours during which the polls will be open; and (4) the dates, times, and locations of voting at the circuit court clerk's office and at satellite offices of the circuit court clerk established under state law.

Q3: What will happen to the 2nd Congressional District vacancy once the special election is held and the winner determined?

A3: The purpose of the special election is to fill the vacancy existing in the 2nd Congressional District for the remainder of the term of the late Representative Walorski, who was elected in November 2020 by the voters of the Second Congressional District (as its boundaries existed on that date) to fill a two year

term, beginning at noon, January 3, 2021, and ending at noon, January 3, 2023. In the past, the U.S. House has promptly seated the winner of a special election as soon as possible following the special election (assuming that there are no anticipated recounts or other disputes regarding which candidate won the special election) so that the voters would be represented in Congress as soon as possible during the final months remaining in that term.

Q4: How will the candidates of the major political parties (the Democrats and Republicans) be chosen for the special election ballot?

A4: Indiana Code 3-10-8-5(b) and 3-13-1 sets forth a procedure for the two major parties to nominate candidates for this special election: a caucus of the eligible precinct committeemen, called by the state chair of each major party, in which the precinct committeemen who “are entitled to vote for the office for which a candidate is to be selected” can participate.

In this case, since the office to be selected is the 2nd Congressional District (as it existed for the November 2020 election), the precinct committeemen of the “old” CD 2 will be the individuals entitled to participate in the caucus to fill the special election vacancy for that office.

The state chairman (or the chairman’s designee) will issue the call for the caucus (State Form CAN-54), which will state the purpose, date, time, and place of the meeting, and be sent by first class U.S. mail to all persons eligible to participate in the caucus at least 10-days before the meeting. A copy of the notice must also be filed with the Election Division not later than noon, 10-days before the meeting (Indiana Code 3-13-1-9). Although under Indiana Code 3-13-1-7(b), ordinarily the action necessary to fill a vacancy in this case must be taken within 30-days after the occurrence of the vacancy, Indiana Code 3-8-7-15 and 3-5-4-1 provide that in the specific case of a special election called by the Governor, a certificate of nomination (reflecting the result of a party caucus, for example), must be filed with the Indiana Election Division not later than noon, 74-days before the date of the election, meaning noon, Friday, August 26, 2022.

A major party candidate who wishes to be chosen by their party’s caucus must file a declaration of candidacy with both the Indiana Election Division and the chair of the party caucus. (Indiana Code 3-13-1-10.5) The CAN-52 form must be filed in both locations not later than 72 hours before the caucus is scheduled to convene. Indiana Code 3-5-4-1.7 does not permit the filing of a declaration of candidacy by email or fax, and so hand delivery by courier (the candidate or a person acting on the candidate’s behalf) is preferred. Transmittal of the declaration by U.S. mail or other express delivery service is permitted but involves risk to the candidate since state law does not consider the document to have been filed until it is actually received and file-stamped by the

After a major political party caucus chooses its candidate for the special election, the choice must be certified using the certification of nomination (State Form CAN-52) the Indiana Election Division not later than noon August 26, 2022. However, state law also notes the certificate of nomination must be filed within three (3) days (state. (IC 3-5-2-24.5)

excluding Saturdays and Sundays) after the selection of the candidate (IC 3-13-1-15(b)(1) and (d)). The recommendation of the IED co-directors is to file the certificate of nomination not later than noon, three-days from the date the selection was made or not later than noon, August 26, 2022, whichever occurs sooner).

Q5: Can independent candidates or candidates of other political parties run in this special election?

A5: Yes.

The Libertarian Party can nominate a candidate by first filing a notice of intent to fill the vacancy with the Indiana Election Division using State Form CAN-56. not later than noon, 10-days before the state committee of the Libertarian Party fills the vacancy. The Libertarian Party must then file State Form CAN-57 to document the selection of the candidate and the candidate's written consent to be nominated, with the Indiana Election Division not later than noon, three-days days (excluding Saturdays and Sundays) after the candidate selection, and not later than noon, August 26, 2022 (IC 3-13-1-20)

An independent candidate or the candidate of another political party not entitled to automatic ballot access under Indiana law can nominate a candidate for the special election by petition (State Form CAN-58). To be placed on the special election ballot, the candidate would be required to obtain the signatures of at least 4,538 registered voters within the "old" boundaries of the Second Congressional District, submit those petitions to the various county voter registration offices for certification, and then file the county-certified petitions, plus State Form CAN-59, the candidate's consent to be nominated for the special election, with the Indiana Election Division, not later than noon, August 26, 2022, 74-days before the special election.

A write-in candidate may file State Form CAN-55 with the Election Division not later than noon, August 26, 2022. Although the name of a write-in candidate will not be printed on any ballot, a write-in vote cast for a declared write-in candidate who has timely filed the CAN-55 form will be counted.

All filings must be original; therefore, faxed or emailed copies cannot be accepted. A candidate or courier acting on behalf of the candidate can file petitions with the county registration office for petition certification or certified petitions, candidate's consent, or request to be a declared write-in candidate with the Indiana Election Division on or before the filing deadline. Candidates may mail their filings to the Indiana Election Division, but the Division would need to have the documents filed in the office not later than noon, August 26, 2022, and postmarks do not count toward meeting this deadline.

Q6: How will the Republican Party candidate be chosen to fill the ballot vacancy for the Second Congressional District at the November 2022 general election?

A6: The full two year term for the "new" Second Congressional District (which will run from noon, January 3, 2023, through noon, January 3, 2025) will be on the general election ballot. The Republican Party will fill the general election ballot vacancy for the Second Congressional District by using the precinct committeemen caucus process described above, with some significant distinctions.

First, the various actions to fill the ballot vacancy for the general election, such as notice of the caucus, selection of a candidate, and certification of the candidate, must be completed not later than noon, 30-days after the occurrence of the vacancy. The co-directors of the Indiana Election Division notified the Republican State Party chair of the ballot vacancy on August 4, 2022, which would be the date the vacancy occurred. (IC 3-13-1-7)

Secondly, the precinct committeemen eligible to participate in this caucus will be a somewhat different group of individuals (namely, the precinct committeemen of precincts within the boundaries of the

Second Congressional District as established for the 2023-2025 term, meaning the “new CD 2” (Indiana Code 3-13-1-10).

Note: The Democratic Party nominated their candidate for November’s general election at the May 2022 primary. The Libertarian Party’s candidate for the general election was appointed following the Libertarian Party state convention. Therefore, the Democratic and Libertarian parties will not need to take any further action to nominate candidates for the “new” Second Congressional District at the November 8, 2022 general election.

Likewise, the deadlines for an Independent or other minor party candidate to file for November’s general election have passed. Therefore, no additional Independent or minor party candidates can appear on the November 2022 general election ballot for the Second Congressional District.

Q7: Which Republican caucus will be conducted first, the caucus for the “old CD 2” vacancy or the caucus for the “new CD 2 vacancy?”

A7: The Republican Party will determine the order in which the two precinct committeemen caucuses to fill the ballot vacancy or nominate a candidate for the special election will be conducted. However, the deadlines to hold the caucus and file paperwork are not the same as noted above.

Q8: In precincts where both the “old CD 2” and “new CD 2” candidates will appear on the November 8, 2022 ballot, which will appear first?

A8: With regard to the November 8, 2022 election, state law does not specify which of the two CD 2 elections must appear first on the ballot. However, in November 2010, when there was a similar ballot for a special election to fill a vacancy in the Third Congressional District and for a full two year term for the Third Congressional District, the candidates for the full two year term were listed first, and the candidates for the special election to fill the remainder of the term in the vacant Third Congressional District appeared next, and so a similar ballot order could be certified to the county election boards by the Co-Directors of the Indiana Election Division.

Q9: Are all voters in the Second Congressional District eligible to vote in the special election?

A9: Not necessarily. If the special election and general election are held at the same time on November 8, 2022, voters in, Elkhart, Fulton, Marshall, Miami, Pulaski, St. Joseph, Starke, and Wabash counties will have BOTH the special election and general election for CD 2 on their ballot.

Voters in Cass County will not have the special election for CD 2 on their ballot in November. Prior to redistricting, Cass County was wholly contained within the Fourth Congressional District and therefore, ineligible to vote in the special election. Only the candidates for the new term of office in CD 2 will appear on their November ballot for voters in the roughly eastern half of the county. The western half is generally in CD 4.

Not all voters in LaPorte County will have the special election on their ballot in November. Generally, voters in the eastern portion of the county will have BOTH the special election and general election for CD 2 on their ballot. Some voters will have the special election for CD 2 AND the general election for CD 1 on their ballot because the voters were in the “old” CD 2 and are eligible to vote in the special election to select a person to fill the remainder of the term of office. Some voters will ONLY have CD 2 on their

general election ballot, but not the special election because the area was previously in CD 1 before being drawn into the new CD 2. Some voters will ONLY have CD 1 on their ballot, as the northwestern corner of the county did not change between the “old” and “new” maps.

Not all voters in Kosciusko County will have the special election on their ballot in November. Generally, voters in the western half of the county will have BOTH the special election and general election for CD 2 on their ballot. Some voters will have the special election for CD 2 AND the general election for CD 3 on their ballot because the voters were in the “old” CD 2 and are eligible to vote in the special election to select a person to fill the remainder of the term of office. Some voters will ONLY have CD 2 on their general election ballot, but not the special election because the area was previously in CD 3 before being drawn into the new CD 2. Some voters will ONLY have CD 3 on their ballot, as the northwestern corner of the county did not change between the “old” and “new” maps.