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## Constitutional Q&A

### **So You Think You Can Write-In Your Vote? The Options and Limitations of Write-In Voting**

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With election day fast approaching, voters will be making decisions that will affect each of the branches of government in important and lasting ways. For many voters, the task is made all the more difficult because of dissatisfaction over the candidate choices they have been offered by the major parties. Citizens wishing to express their objections to the candidates named on the ballot may seek to vote “outside the box” by writing in the name of a person not listed on the ballot, the so-called “write-in” vote.

While “write-in” voting and candidates are familiar to most citizens and considered a right voters have in a representative government, the practice and rules governing write-in voting are not uniform across the country and are likely not understood by most voters.

The following Q&A aims to help you better understand write-in voting and your options for exercising this important aspect of citizenship.

#### **Q: What is write-in voting?**

**A:** A write-in vote is one in which the voter selects a person for an office who is not named on the voting ballot by manually writing the name of that person on the ballot in a manner and place that indicates the voter is selecting the person written in. Prior to an election, individuals qualify according to the applicable law to be named on the ballot produced by election officials as a candidate for a particular office. For example, a person may qualify for placement on the ballot by obtaining votes in a political party primary election or by obtaining signatures on petitions. If a voter desires to vote for someone who is not named on the ballot, he or she may attempt to write-in that person’s name.

#### **Q: Do citizens have a right to cast a write-in vote?**

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**A:** In a 1992 decision, the U.S. Supreme Court ruled that there is no absolute right to cast a write-in vote in an election.<sup>1</sup> The Court considered a Hawaii law that prohibited write-in voting. A Hawaii resident challenged this restriction as a violation of his First Amendment rights of expression and association. Upholding the law, the Court determined that the purpose of elections is to winnow out and reject all but the chosen candidates. Giving elections a more generalized expressive function, the Court reasoned, would undermine the states' ability to operate elections efficiently. Thus, according to the Court, the U.S. Constitution does not require election officials to allow voters to cast write-in votes. However, the Court also recognized that if state law unduly restricts the opportunity of candidates to appear on the ballot, a prohibition on write-in voting might be unconstitutional.

**Q: How do I know if I know whether I am able to cast a write-in vote?**

**A:** The ability to cast a write-in vote depends upon the law of the state where the vote is cast. State law not only controls the operation of elections for state and local office, but it also regulates elections for federal offices (such as the Presidency and the U.S. Senate) under provisions of the U.S. Constitution that give states legislatures the authority to establish the manner of holding elections for federal offices.<sup>2</sup> Currently, nine states do not allow write-in voting for the President: Arkansas, Hawaii, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, South Carolina, and South Dakota.<sup>3</sup>

**Q: Will my write-in vote be counted?**

**A:** Again, this depends on state law which may impose additional requirements for a write-in vote. For example, Florida law provides that a person desiring to be elected President or Vice-President as a write-in candidate must file an oath with the Department of State during an established period prior to the primary election.<sup>4</sup> Similarly, Texas requires a person to file a declaration of write-in candidacy and if no such declaration is filed, write-in votes for that person are not counted.<sup>5</sup> Most states that allow write-in voting have some pre-election filing requirement.<sup>6</sup>

**Q: Do the rules for write-in candidates apply to all elections?**

**A:** A state may have different rules on write-in voting that apply to state or local elections. And if a state has granted localities, such as cities and towns, the authority to control local elections, there may be a local ordinance that affects the ability to cast a write-in vote and whether that vote is counted.

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<sup>1</sup> *Burdick v. Takushi*, 504 U.S. 428 (1992).

<sup>2</sup> U.S. Const. Art. I, § 4 and Art. II, § 1.

<sup>3</sup> [https://ballotpedia.org/Ballot\\_access\\_for\\_presidential\\_candidates#Requirements\\_for\\_write-in\\_candidates](https://ballotpedia.org/Ballot_access_for_presidential_candidates#Requirements_for_write-in_candidates)

<sup>4</sup> Fla. Stat. § 103.022.

<sup>5</sup> Tex. Election Code § 146.023.

<sup>6</sup> [https://ballotpedia.org/Ballot\\_access\\_for\\_presidential\\_candidates#Requirements\\_for\\_write-in\\_candidates](https://ballotpedia.org/Ballot_access_for_presidential_candidates#Requirements_for_write-in_candidates)

**Q: Is it really possible for a write-in candidate to win an election?**

**A:** Write-in candidates have been successful in nationally-significant elections on a number of occasions. Over the last century, write-in candidates have won at least eight congressional elections. For example, Strom Thurmond, who won as a write-in candidate for a U.S. Senate seat from South Carolina, went on to serve in the Senate for 48 years.<sup>7</sup> In 2010, Lisa Murkowski won the Senate race in Alaska as an incumbent *and* a write-in candidate after she was defeated in the Republican primary for that office.<sup>8</sup> And Franklin Roosevelt won the New Jersey Presidential primary as a write-in candidate.<sup>9</sup>

**Q: If I want to cast a write-in vote, what should I do before going to the polls?**

**A:** In preparing to vote, we suggest you take the following steps:

- Check on the law of your state that applies to write-in voting. The National Association of Secretaries of State provides a [summary of state laws](#) regarding presidential ballot access.<sup>10</sup>
- Obtain a sample ballot prior to election day and determine where on the ballot you may write-in your choice in the election.
- If you are in a state that requires write-in candidates make a pre-election filing to be eligible, you can determine who has qualified as a write-in candidate by contacting your Secretary of State or local election officials. Additionally, the names of persons who have qualified to be eligible for election as write-in candidates are often posted at polling places. Thus, you can ask an official there if such a list is available.

**Q: What if my state doesn't allow write-in candidates. What can I do to change that?**

**A:** The Supreme Court's 1992 *Burdick* decision gives primary authority over write-in election rules to state officials. If a state's restriction on write-in voting results from the provisions of state law, removing that restriction will require action on the part of the state's legislative body (and, most likely, the state's governor). Thus, citizens would need to mobilize an effort to change the law by contacting their state representatives and governor. If the restriction is the result of a rule adopted by a state board or agency that regulates elections, adoption of a law allowing write-in voting by the legislature would override that rule. Alternatively, the administrative rule might be changed using the procedures established by state law for amending agency rules.

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<sup>7</sup> <http://www.bloomberg.com/news/articles/2004-11-01/the-ins-and-outs-of-write-ins>

<sup>8</sup> [http://archive.boston.com/news/politics/articles/2010/11/18/murkowski\\_becomes\\_1st\\_write\\_in\\_senator\\_since\\_54/](http://archive.boston.com/news/politics/articles/2010/11/18/murkowski_becomes_1st_write_in_senator_since_54/)

<sup>9</sup> [https://en.wikipedia.org/wiki/Write-in\\_candidate](https://en.wikipedia.org/wiki/Write-in_candidate)

<sup>10</sup> [http://www.nass.org/component/docman/?task=doc\\_download&gid=1331&Itemid=](http://www.nass.org/component/docman/?task=doc_download&gid=1331&Itemid=)