

MEMORANDUM

To: Al Jaeger, Secretary of State

From: Office of the Attorney General

Date: April 11, 2018

You have asked whether a candidate for the United States Congress may withdraw his nominating petition after the filing deadline related to the primary election.

State law provides that the candidate shall present his nominating petition to the secretary of state "between the first date candidates may begin circulating nominating petitions . . . and before four p.m. of the sixty-fourth day before any primary election . . ." NDCC section 16.1-11-06(1). Upon receipt of the petition, "the secretary of state shall place the applicant's name upon the primary election ballot . . ." NDCC section 16.1-11-10. There is no state law that specifically addresses the withdrawal of a nominating petition before a primary election.

There is a state law that addresses a person's ability to decline a nomination before the general election. If the person files a written notice of that intention with the filing officer before four p.m. on the sixty-fourth day before the election, then the nomination is void. See NDCC section 16.1-12-07. Our office has previously determined that a candidate for elective office may not decline the nomination after the deadline provided for in NDCC section 16.1-12-07. See NDAG 92-16.

Immediately after the filing deadline, the secretary of state makes efforts to finalize the nominees and to provide a certified list of the names to the county auditors so ballots may be published and printed. See NDCC sections 16.1-11-20 and 16.1-12-04(1).

Given that there is no law specifically authorizing the withdrawal of a nominating petition after the filing deadline related to a primary election, and that there is a need to quickly finalize and certify the list of names to the county auditors, it is my opinion that a candidate for the United States Congress may not withdraw his nominating petition after the filing deadline related to the primary election. Thus, the candidate may not withdraw his nominating petition after four p.m. of the sixty-fourth day before the primary election.