

Q&A: Harris 2024? Here's what election and campaign finance laws say

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President Joe Biden announced he is dropping out of the 2024 presidential race, leaving Vice President Kamala Harris the top contender for the Democratic nomination. Biden's decision not to seek re-election comes after the states held their presidential primaries and his campaign raised tens of millions of dollars.

What happens now that the presidential primaries are over, but the winning candidate has decided not to seek office? And if Harris becomes the official nominee, can she use the money that the Biden-Harris campaign raised? Penn State News turned to two experts to discuss the historical precedent and what election and campaign finance laws say about the sudden change to the Democratic ticket.

Has a presidential candidate ever dropped out mid-race in U.S. history?

Robert Speel, associate professor of political science at Penn State Behrend, studies American elections and voting behavior, state and urban politics, Congress and the presidency, public policy and ethnic and racial politics.

Speel: There were no primary elections prior to the 20th century, so I assume there were presidential candidates who let it be known they would welcome the nomination but dropped out some time before the convention during the 19th century. And even during most of the 20th century, presidential primaries were not that important, held by only 10–15 states, and served only to demonstrate potential candidate popularity to the national convention delegates, who were mostly still chosen by state party leaders at a state convention.

Since the modern presidential primary process began in the 1970s, there has not yet been a presidential candidate who dropped out after winning a majority of delegates in primary elections, so Biden is the first.

In 1968, when primaries were mostly symbolic, Lyndon B. Johnson (LBJ) had not officially announced yet whether he was running for re-election, but still won the New Hampshire Democratic primary with write-in votes. Yet LBJ finished with under 50% of the vote, due to large

support for anti-war candidate Eugene McCarthy, and soon after, LBJ announced that he would not seek re-election that year. The situation with President Biden is very different due to the change in importance of [primary elections](#).

If Vice President Harris becomes the official nominee, could she use the funds raised by the Biden-Harris campaign?

Stanley Brand, distinguished fellow in law and government, studies election law, the campaign finance system, the electoral college and the conduct of contested elections. Affiliated with both Dickinson Law and Penn State Law, he also served as general counsel to the U.S. House of Representatives.

Brand: There are competing interpretations of federal election law on this question. The Biden re-election committee has already set in motion the transfer of funds to the Harris campaign by filing amended Federal Election Commission (FEC) forms changing the committee name to "Harris for President." Some Republican lawyers have questioned this, asserting that this can't be done before the nominating convention, while Democratic lawyers maintain that the committee is for both Biden and Harris and her committee can keep it as long as she is still on the ticket.

Normally, this could be resolved by either an advisory opinion by or a complaint to the FEC, but that body is split 3– Republican to Democrat and so a stalemate is likely. While a lawsuit could be filed there are both timing and jurisdictional issues that might prevent a timely resolution of such a suit. It is an untested issue like so many we have seen in the Trump era.

Now that the presidential primaries are over, how will

the Democratic Party choose its nominee? What does election law say about the process?

Speel: In coming weeks, we will see Kamala Harris choose a vice-[presidential candidate](#). We will see if she chooses a running mate who excites and galvanizes the Democratic base—and some independents, the way her candidacy has so far—or if she chooses someone experienced and safe, like Hillary Clinton did with Senator Tim Kaine of Virginia in 2016, and Barack Obama with Biden in 2008, and Michael Dukakis with Senator Lloyd Bentsen of Texas in 1988.

I expect that Republican lawsuits to try to prevent the Democratic National Convention from nominating anyone other than Joe Biden will fail. There is nothing in any law or in the U.S. Constitution regulating how political parties choose candidates, other than campaign contribution limits.

Brand: One other question has been raised by some Republicans about challenging the process involved in endorsing Harris upon Biden's dropping out. The claim is that voters have been disenfranchised by this switch. This challenge, if made, is unlikely to succeed legally because the voters cast ballots for delegates to the convention who were pledged to Biden but who are "unbound" if the candidate withdraws, allowing them to vote for another person at the convention; and the Supreme Court has held that [political parties](#) control the nominating process, and they are entitled to manage how they arrive at a nominee as an incident of their First Amendment associational rights.

Provided by Pennsylvania State University

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