



INDEPENDENT CANDIDATES

MODULE V



What are independent candidates?

- An independent candidate is an individual contesting an election that is not associated with any political party.
- Independent candidates can now run in national and provincial elections. The 2024 national election will be the first national and provincial election where it will be possible to vote for an independent candidate.
- To run as an independent candidate, a person must:
 - Be a South African citizen;
 - Be registered on the South African voters' roll;
 - Obtain 1000 signatures of support in their respective constituencies;
 - Not be a member of a political party registered for the election at the time of nomination; and
 - Not have been declared unqualified to stand in elections by a competent court.

How will independent candidates fit into the electoral system?

Election	Seat description	Independent candidate role
National	Compensatory seat in the National Assembly (200 seats available).	No role
National	Regional seat in the National Assembly (200 seats available). The number of seats per region to be calculated by the Electoral Commission.	Independent candidates may contest regional seats in the region that they are contesting. Each candidate may not obtain more than 1 seat.
Provincial	Provincial Legislature seats. The number of seats per province to be calculated by the Electoral Commission.	Independent candidates may contest provincial seats within their province. Each candidate may not obtain more than 1 seat.

What can voters expect?

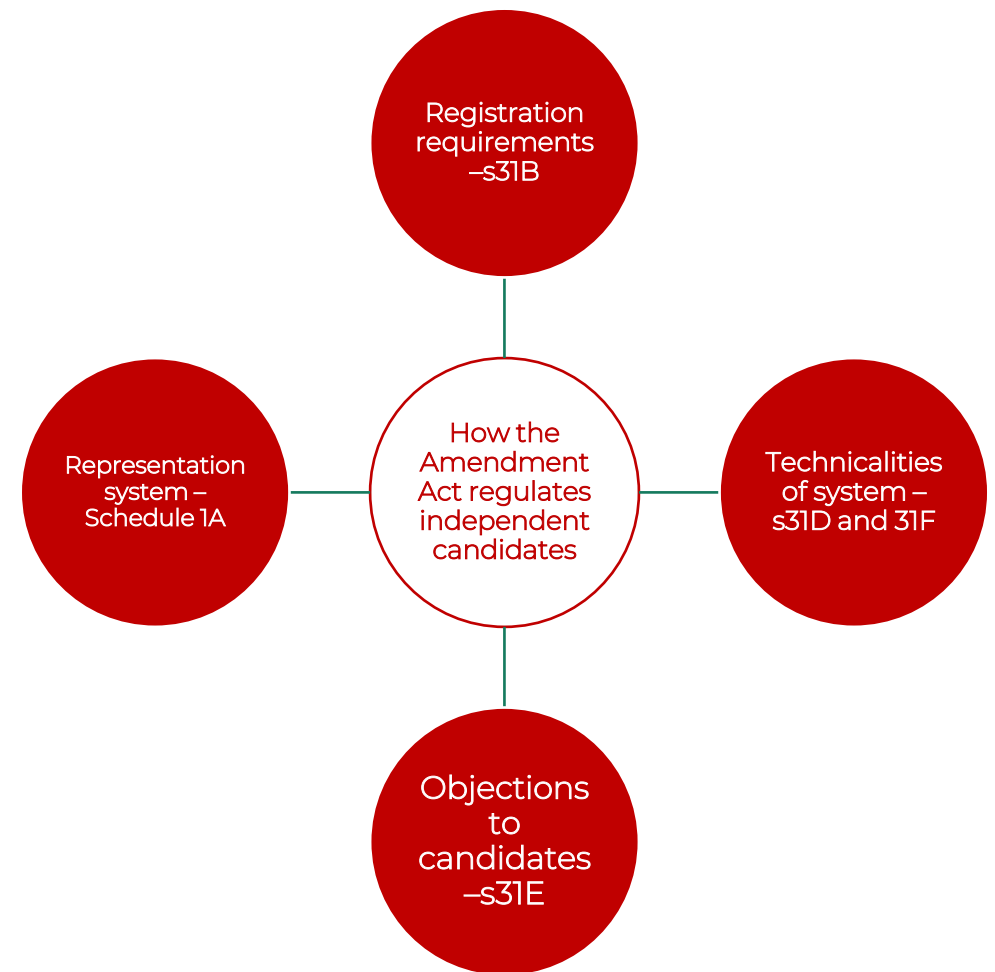
On the election day, voters will be voting in national and provincial elections. They will be presented with 3 ballots:

1. The **first ballot** will be for the election of the compensatory 200 seats in the National Assembly. This ballot will comprise only of political parties.
2. The **second ballot** will be for the election of the regional 200 seats in the National Assembly. This ballot will comprise political parties and independent candidates. This ballot will vary from region to region, as it will reflect the political parties and independent candidates that contest the relevant regional election.
3. The **third ballot** will be for the election of members of the provincial legislature in each province. This ballot will also vary from province to province, as it will contain the names of political parties and independent candidates that are contesting the provincial election in that particular province.

The legal framework

The Electoral Amendment Act 1 of 2023

Section 19 of the Constitution sets out political rights which every citizen is entitled to. The Electoral Act 73 of 1998 was amended in 2023 in compliance with the *New National Movement NPC* judgment to give effect to this right and make provision for independent candidates in national and provincial elections. The new legal framework is now the Electoral Amendment Act 1 of 2023.



Recent case law

New Nation Movement NPC and Others v President of the Republic of South Africa and Others 2020 (6) SA 257 (CC)

The Applicants' argument:

- The Electoral Act was unconstitutional as it unjustifiably limited the rights to stand for public office and to hold office, if elected, as conferred by section 19(3)(b) of the Constitution.
- Making political office accessible only through membership of a political party similarly unjustifiably limited the right to freedom of association in terms of section 18 of the Constitution.

Outcome:

- The Electoral Act is unconstitutional to the extent that it requires that adult citizens may only be elected to the National Assembly and provincial legislatures through membership of a political party.
- The State must remedy this defect.

Recent case law (cont.)

Independent Candidate Association South Africa NPC v President of the Republic of South Africa and Others
2024 (2) SA 104 (CC)

The Applicant's argument:

- The 200/200 split of compensatory and regional seats in the National Assembly, as prescribed by Schedule 1A of the Electoral Amendment Act, is unconstitutional as it results in independent candidates needing more votes to secure a single seat compared to political parties.
- The split unjustifiably limits the right to vote and stand for public office and a different split would negate the risk of overhang.

Outcome:

- The application was dismissed as the 200/200 split passed constitutional muster and is grounded in proportional representation.

Recent case law (cont.)

One Movement South Africa v President of South Africa and Others 2024 (2) SA 148 (CC)

The Applicant's argument:

- The requirement in the Electoral Amendment Act that requires new political parties and independent candidates to obtain supporting signatures amounting to 15% of the quota of the relevant region is unconstitutional as it infringes on the independent candidates' rights to disassociate, their right to make political choices, their right to stand for public office, their right to dignity, and their right not to associate with the political party system.

Outcome:

- The Court held that the 15% requirement was unconstitutional as it placed significant time, resources, and energy burdens on independent candidates which amounted to their section 19 rights being infringed. There was no reasonable justification for this.
- Independent candidates need only obtain 1000 signatures until such time that the State remedy the constitutional defect.

Source: StatsSA, 'An Update to Municipal Spending and Revenue (March 2020)', accessible [here](#).

Suggested resources

- Corruption Watch, 'Independent Candidates' Big Win Ahead of 2024 Polls' (accessible [here](#)).
- Electoral Amendment Act 1 of 2023 (accessible [here](#)).
- Electoral Commission of South Africa, 'Candidates List for 2024 National and Provincial Elections' (accessible [here](#)).
- Electoral Commission of South Africa, 'What's New in the 2024 Elections?' (accessible [here](#)).
- GroundUp, 'Constitutional Court rules 1,000 signatures required for independent candidates to contest elections' (accessible [here](#)).
- Helen Suzman Foundation, 'Electoral Reform: Do Independent Candidates Strengthen the Institution of Parliament?' (accessible [here](#)).
- South African Government, '2024 General Elections, 29 May' (accessible [here](#)).

For more information and resources, please visit:

<https://elections.sanef.org.za>