

Agency # 108.00

**RULES
ON
PROVISIONAL
VOTING**

(Effective April 22, 2006; Revised October 1, 2007)



STATE BOARD OF ELECTION COMMISSIONERS
501 Woodlane, Suite 122 401N
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec

Formatted: Font: 16 pt, Bold

Formatted: Centered

TABLE OF CONTENTS

Scope of Rules.....	3
§ 900 Definitions.....	3-5
§ 901 Voter Identification	
A. Forms.....	5
B. Failure to Provide.....	5-6
§ 902 Precinct Voter Registration List	
A. Voter’s Name Missing.....	6
B. “Voted Absentee” Notation.....	6-7
§ 903 Poll Watcher Challenges	
A. Official Recognition/ Credentials	7
B. Challenges.....	7
§ 904 Other Provisional Ballots Court-Ordered Extension	7-8
§ 905 Voting a Provisional Ballot.....	8-9
§ 906 Preliminary Review of Provisional Ballots.....	9-10
§ 907 Notice to Provisional Voters.....	10
§ 908 Hearing.....	10-11
§ 909 Counting Provisional Ballots.....	11-12
§ 910 Prosecuting Attorney.....	12
§ 911 Preliminary and Unofficial Results.....	12
§ 912 Official Certified Results.....	12
Provisional Voter Envelope (Attachment “A”).....	13-14
List of Provisional Voters (Attachment “B”).....	15
Poll Watcher Authorization Form (Attachment “C”).....	16-17

Formatted: Numbered + Level: 1 +
 Numbering Style: A, B, C, ... + Start at: 1 +
 Alignment: Left + Aligned at: 0.5" + Tab after:
 0.75" + Indent at: 0.75", Tab stops: Not at
 0.75"

Scope of Rules

These rules set forth the procedures for issuing, processing, and counting provisional ballots. These rules are in addition to and not a substitute for the laws of the State of Arkansas.

§ 900 Definitions

- ~~1)(a)~~ (a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners in the courthouse where election officials for absentee ballots meet on election day for the purpose of processing absentee ballots.¹
- ~~2)(b)~~ (b) Ballot Style – a ballot’s combination of contests and issues to be voted upon unique to each precinct.
- ~~3)~~ (c) ~~Challenger – a poll watcher officially recognized to legally question in the form of a formal challenge any person presenting himself or herself in person to vote at the poll or to challenge any absentee voter.~~
- ~~(a)(c)~~ (c) Challenged Ballot Form – the applicable portions of a “provisional voter envelope” (see Attachment “A”) that are completed when a poll watcher challenges a voter, identifying the voter whose vote was challenged, the poll watcher, the reason for the challenge, the applicable provisional voter number from the list of provisional voters (see Attachment “B”), poll, precinct and ballot style, and the date and time of the challenge under the signature of both the poll watcher and the challenged voter.
- ~~4)(d)~~ (d) Counting Site – a location selected by the county board of election commissioners with respect to all elections for the processing and/or counting of votes.²
- ~~5)(e)~~ (e) County Board of Election Commissioners – local election officials responsible for conducting all elections within their respective county comprised of one (1) member appointed selected by the county committee of the majority party (generally the county committee chair), one (1) member appointed selected by the county committee of the minority party (generally the county committee chair), and a third member appointed by the State Board of Election Commissioners from a certified list of five (5) nominees submitted selected by the county committee of the majority party at the same time as the election of party officers.³
- ~~6)(f)~~ (f) Election Officials – members of the county boards of election commissioners and persons designated by the county board to serve as poll workers; to process, count and canvass absentee ballots; or to direct all proceedings at a centralized counting location.⁴

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

¹ [A.C.A. § 7-5-416\(a\)\(1\)](#)

² [A.C.A. § 7-1-101\(6\)](#)

³ [A.C.A. §§ 7-1-101\(8\); 7-4-102\(a\); \(b\)/Act 559 of 2007](#)

⁴ [A.C.A. §§ 7-1-101\(8\); 7-5-414; 7-5-418\(b\)\(2\)/Act 556 of 2007; 7-5-614\(b\)\(2\)/Act 835 of 2007](#)

~~7~~(g) Eligibility Affirmation – a written affirmation executed by a provisional voter in the presence of an election official at the poll stating that he or she is a registered voter in the precinct in which he or she desires to vote and is eligible to vote in that election (see Attachment “A”).⁵

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

~~8~~(h) First-time Voter Registered by Mail – any registered voter, except those exempted by ~~Arkansas Code, Annotated, § 7-5-201(d)(2)~~, who has not previously voted in a federal election in the state and whose registration application arrived at the county clerk’s office or Secretary of State’s office by mail.⁶ “First-time voters registered by mail” who do not provide identification when registering are flagged by the county clerk for the identification requirement. “First-time voters registered by mail” who provided a driver’s license number or the last four (4) digits of their social security number on their voter registration application form are considered as having provided identification. Registration applications arriving in bulk at the registrar’s office or delivered by leaders of voter registration drives are considered to have been delivered in person, not by mail, and are, therefore, not considered “first-time voters registered by mail” and not flagged by the county clerk for the identification requirement.

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

~~9~~(i) Polling Site – a location selected by the county board of election commissioners where votes are cast.⁷

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

~~10~~(j) Poll Watcher – any candidate in person, any authorized representative of a candidate ~~designated in writing~~, any authorized representative of any group seeking passage or defeat of a measure on the ballot ~~designated in writing~~, or any authorized representative of a political party with a candidate on the ballot ~~designated in writing~~ who is present at a polling site or an absentee ballot processing site to observe and ascertain the identity of persons presenting themselves to vote at the polls or to observe and ascertain the identity of absentee voters for the purpose of challenging any voter in person or for the purpose of challenging any absentee vote.⁸ ~~“Poll watchers” representing a~~ A candidate in person or an authorized representative of a candidate or political party may also be present at all counting sites for the purpose of witnessing the counting of ballots by election officials.⁹

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

~~11~~(k) Poll Watcher Authorization Form – an affidavit, in the form specified by law, designating and authorizing a poll watcher. The “poll watcher authorization form” must be filed with the county clerk and a file-marked copy presented to an election official immediately upon entering at the polling site, absentee ballot processing site, or counting site, before a poll watcher can be officially recognized. The form is required of designated representatives only; candidates in person are not required to present the form (see Attachment “C”).¹⁰

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

~~12~~(l) Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.¹¹

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25" + 0.5"

~~(b)~~(m) Precinct Voter Registration List – a list provided by the county clerk and used by election officials in each precinct for every election conducted in the state indicating the name and date of

⁵ [A.C.A. § 7-5-308\(a\)\(2\)306\(b\)\(2\)/Act 224 of 2007](#)

⁶ [A.C.A. §§ 7-1-101\(11\); 7-5-201\(d\)](#)

⁷ [A.C.A. § 7-1-101\(18\)](#)

⁸ [A.C.A. §§ 7-5-312\(a\)\(4\), \(3b\), \(e\)/Act 224 of 2007; 7-5-413\(d\); 7-5-417\(a\)](#)

⁹ [A.C.A. §§ 7-5-312\(ac\), \(e\)/Act 224 of 2007; 7-5-316\(a\); 7-5-413\(d\); 7-5-416\(a\)\(4\); 7-5-527\(b\); 7-5-615\(a\)](#)

¹⁰ [A.C.A. § 7-5-312\(d\), \(e\)\(a\)\(2\), \(3\)/Act 224 of 2007](#)

¹¹ [A.C.A. § 7-1-101\(19\)](#)

the election; identifying the precinct's number and county in which located; and containing the name, address, and date of birth of each registered voter within the precinct with a space for each voter's signature.¹² In any precinct with more than one (1) ballot style, the precinct voter registration list must also identify the district, sub-district, county, municipality, ward, and school zone in which each voter is qualified to vote.¹³

~~(n) Provisional Ballot — a paper ballot cast by a voter in response to a poll watcher challenge or as a result of a voter qualification issue (such as a first-time voter registered by mail without proper identification or a voter whose registration cannot be confirmed by the county clerk's office) that is referred to the county board of election commissioners for a determination prior to certification of the results of the election as to whether the ballot is valid and should be counted. A "provisional ballot" is counted only upon verification of the voter's registration status in the precinct a ballot cast by special procedures to record a vote when there is some question concerning a voter's eligibility and counted contingent upon the verification of the voter's eligibility.~~¹⁴

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25"

(o) Provisional Voter Envelope – an envelope used by poll watchers for voter challenges and by election officials for voter qualification issues containing information relating to provisional voters, including a provisional voter's eligibility affirmation, the reason for voting provisional, the ballot style voted, the county clerk's certification of the provisional voter's registration status, and the disposition of the provisional ballot upon review by the county board of election commissioners. A "provisional voter envelope" ~~shall include~~ shall have printed on it all the information sought by "Attachment "A".

§ 901 Voter Identification

A. Forms

Election officials at the polls must **ASK** all voters to provide one of the following forms of identification:

- A current and valid photo identification (such as a driver's license),
- A copy of a current utility bill showing the voter's name and address,
- A copy of a bank statement showing the voter's name and address,
- A copy of a government check or paycheck showing the voter's name and address, or
- A copy of a government document showing the voter's name and address.¹⁵

~~(p)~~B. Failure to Provide

Only first-time voters who registered by mail and did not provide proper identification when registering (see definition of "first-time voter registered by mail") are **REQUIRED** to provide identification when voting.¹⁶

Formatted: Numbered + Level: 1 +
Numbering Style: A, B, C, ... + Start at: 2 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25"

¹² A.C.A. § 7-5-107

¹³ A.C.A. § 7-5-110

¹⁴ A.C.A. §§ 7-1-101(21)/Act 224 of 2007; 7-5-305(a)(8)(B)(ii); 7-5-306(b); 7-5-308/Act 224 of 2007; 7-5-312(ag)(3); (e)(1); /Act 224 of 2007; 7-5-412(b)/Act 556 of 2007; 7-5-416(b)(1)(F)(iii); 7-5-417(a); 7-5-418(d); 7-7-308(d)

¹⁵ A.C.A. §§ 7-5-201(d)(1)(A); 7-5-305(a)(8)(A)

¹⁶ A.C.A. § 7-5-201(d)(2)(E)

If a first-time voter who registered by mail did not provide identification when registering, the voter must provide identification (as indicated on the precinct voter registration list) at the poll when voting or he or she must vote a **PROVISIONAL** ballot.¹⁷

All first-time voters who registered by mail and did not provide identification when registering are **REQUIRED** to provide identification when voting absentee or the ballot cast by mail must be considered **PROVISIONAL**.¹⁸

For all other voters, if the voter (including first-time voters who registered by mail and provided identification when registering) is unable to provide or declines to provide identification when voting, the election official must indicate on the precinct voter registration list that the voter did not provide identification and give the voter a **REGULAR** ballot.¹⁹

§ 902 Precinct Voter Registration List

A. Voter's Name Missing

When a voter provides his or her name, address, and date of birth to an election official at the poll, and the voter's name is not on the precinct voter registration list, the election official must:

- 1) Contact the county clerk's office to verify the voter's registration status,²⁰ and
- 2) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the election official that the voter is listed as a registered voter of the precinct),²¹ or
- 3) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the election official that the voter transferred his or her registration from another county not later than four (4) days before the election and that the voter is at the correct poll in the new county of registration),²² or
- 4) Send the voter to his or her correct polling site where the voter may cast a **REGULAR** ballot (if the county clerk informs the election official that the voter is listed as a registered voter at a different precinct in the county), or
- 5) Allow the voter to cast a **PROVISIONAL** ballot at the disputed polling site (if the county clerk's office informs the election official that the voter is listed as a registered voter at a different precinct in the county, but the voter insists that he or she is at the correct polling site), or
- 6) Allow the voter to cast a **PROVISIONAL** ballot (if the county clerk's office is unable to verify the voter's registration, but the voter contends that he or she is both registered in the precinct in which he or she desires to vote and is eligible to vote).²³

B. "Voted Absentee" Notation

¹⁷ [A.C.A. §§ 7-5-201\(d\); 7-5-305\(a\)\(8\)\(B\)\(ii\)](#)

¹⁸ [A.C.A. §§ 7-5-201\(d\); 7-5-412\(eb\)/Act 556 of 2007; 7-5-416\(b\)\(1\)\(F\)\(iii\)](#)

¹⁹ [A.C.A. § 7-5-305\(a\)\(8\)\(B\)\(i\)-\(ii\)](#)

²⁰ [A.C.A. §§ 7-5-306\(a\); 7-7-308\(c\)](#)

²¹ [A.C.A. § 7-5-306\(a\)](#)

²² [Amend. 51, §10 of the Arkansas Constitution/Act 560 of 2007](#)

²³ [A.C.A. §§ 7-5-306\(b\); 7-5-418\(d\); 7-7-308\(d\)](#)

Comment [J1]:

Comment [J2R1]:

Formatted: Numbered + Level: 1 +
Numbering Style: A, B, C, ... + Start at: 1 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25", Tab stops: -0.5",
List tab + Not at 0.25"

Formatted: Indent: Left: 0.25", Numbered +
Level: 1 + Numbering Style: 1, 2, 3, ... + Start
at: 1 + Alignment: Left + Aligned at: 0.5" +
Tab after: 0.75" + Indent at: 0.75", Tab
stops: -0.25", List tab + Not at 0.25" + 0.75"

Formatted: Numbered + Level: 1 +
Numbering Style: A, B, C, ... + Start at: 2 +
Alignment: Left + Aligned at: 0" + Tab after:
0.25" + Indent at: 0.25"

Formatted: Spanish (Paraguay)

Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark on the precinct voter registration list provided to indicate each polling site that ~~a voter has been sent~~ an absentee ballot has been delivered to the voter.²⁴

Any person ~~who received~~ to whom an absentee ballot is delivered according to the precinct voter registration list, but who chooses to vote by early voting or to vote at his or her polling site on election day, shall be permitted to provisionally cast at the poll any ballot that he or she is legally entitled to vote.²⁵

§ 903 Poll Watcher Challenges

A. Official Recognition/Credentials

All poll watchers other than candidates in person must file a “poll watcher authorization form” (see Attachment “C”) with the county clerk of the county in which the polling site, absentee ballot processing site, or counting site is located and present a file-marked copy of the valid affidavit to the election officials immediately upon entering at the polling site, absentee ballot processing site, and/or counting site ~~before being officially recognized as a poll watcher.~~²⁶

Poll watchers who are candidates in person are not required to present a “poll watcher authorization form”, but must present some form of identification to an election official immediately upon entering the polling site or counting location for the purpose of confirming the poll watcher as a candidate on the ballot.²⁷

Only one (1) authorized poll watcher per candidate, group, or party at any one (1) time may be officially recognized as a poll watcher at each location within a polling site where voters identify themselves to election officials and at each location within the absentee ballot processing site where absentee ballots are processed.²⁸

Only one (1) authorized poll watcher per candidate or party at any one (1) time may be officially recognized as a poll watcher at the counting of ballots at the polling site, central counting location, or absentee ballot counting location.²⁹

Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.³⁰

B. Challenges

Authorized poll watchers who are officially recognized at a polling site may observe the identity of voters presenting themselves to vote and may challenge any voter upon notifying an election official

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0" + Tab after: 0.25" + Indent at: 0.25"

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 2 + Alignment: Left + Aligned at: 0" + Tab after: 0.25" + Indent at: 0.25"

²⁴ A.C.A. § 7-5-305(a)(4); 7-5-409(h)/Acts 543 and 556 of 2007

²⁵ A.C.A. §§ 7-5-201(e); 7-5-305(a)(4)(1)/Act 1020 of 2007; 7-5-411(eb)/Acts 543 and 556 of 2007

²⁶ A.C.A. § 7-5-312(a)(2), (3)(d)/Act 224 of 2007

²⁷ A.C.A. § 7-5-312(e)/Act 224 of 2007

²⁸ A.C.A. § 7-5-312(a)(3)(b), (e)/Act 224 of 2007

²⁹ A.C.A. § 7-5-312(a)(3)(c), (e)/Act 224 of 2007

³⁰ A.C.A. § 7-5-312(f)/Act 224 of 2007

before ~~the ballot is issued to the voter~~ signs the precinct voter registration list and upon completing ~~the a~~ “challenged ballot form” (see Attachment “A”).³¹

When the election official at the absentee ballot processing site reads the name and voting precinct of an absentee voter, any qualified poll watcher may challenge the vote in the same manner provided by law for personal voting challenges, and the election officials must consider the ballot as a provisional ballot.³²

§ 904 Other Provisional Ballots Court-Ordered Extension

~~If an absentee voter fails to return the required absentee voting materials, the election official processing absentee ballots must place the absentee ballot envelopes in a “provisional voter envelope” and must indicate the reason for the challenge on the envelope and refer it to the county board of election commissioners for a determination of whether the voter is qualified and whether or not to count the ballot.~~

Any voter who votes as a result of a federal or state court order or any other order extending the time for closing the poll **must** vote a provisional ballot. The provisional ballots cast as a result of the order **must be separated and held apart** from other provisional ballots cast by provisional voters not affected by the order.³³

§ 905 Voting a Provisional Ballot

The ballots of provisional voters should be handled as follows:

- 1) If as a result of a poll watcher challenge, the poll watcher must notify an election official of the challenge before the ~~election official issues the ballot to the voter~~ signs the precinct voter registration list and must complete ~~the applicable a~~ “challenged ballot form” portions of the “provisional voter envelope” (See Attachment “A”).³⁴
- 2) If as a result of a poll watcher challenge, an election official must inform the voter that his or her ballot is being challenged ~~before giving the voter the ballot~~.³⁵
- 3) Provisional voters must execute a written eligibility affirmation in the presence of the election official at the polling site stating that he or she is both a registered voter in the precinct in which he or she desires to vote and eligible to vote in that election.³⁶
- 4) The election official shall initial the back of the ballot, remove the ballot stub from the provisional ballot, and place the stub in the stub box provided.³⁷
- 5) The provisional voter shall mark his or her ballot.³⁸
- 6) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope (nothing else goes in this envelope).³⁹

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Tab
after: 0.5" + Indent at: 0.5"

³¹ [A.C.A. § 7-5-312\(a\)\(3\)\(e\), \(g\)/Act 224 of 2007](#)

³² [A.C.A. §§ 7-5-312\(a\)\(3\)\(e\)/Act 224 of 2007; 7-5-417\(a\)](#)

³³ [A.C.A. § 7-5-315\(8\)308\(d\)/Act 224 of 2007](#)

³⁴ [A.C.A. § 7-5-312\(a\)\(3\)\(e\), \(g\)\(2\), \(3\)/Act 224 of 2007](#)

³⁵ [A.C.A. §§ 7-5-312\(a\)\(3\)308\(a\)\(1\), 7-5-312\(g\)\(4\)/Act 224 of 2007](#)

³⁶ [A.C.A. § 7-5-306\(b\)\(2\)308\(a\)\(2\)/Act 224 of 2007](#)

³⁷ [A.C.A. § 7-5-307308\(a\)\(3\)/Act 224 of 2007](#)

³⁸ [A.C.A. § 7-5-312\(b\)\(1\)\(A\)308\(a\)\(4\)/Act 224 of 2007](#)

³⁹ [A.C.A. § 7-5-312\(b\)\(1\)\(B\)308\(a\)\(5\)/Act 224 of 2007](#)

- 7) The provisional voter shall then place the sealed ballot secrecy envelope marked “Provisional Ballot,” containing his or her voted provisional ballot in a “provisional voter envelope”, seal it, and give it to the election official.⁴⁰
- 8) The election officials must provide the provisional voter written information instructing him or her on how to determine whether his or her vote was counted, and if not, the reason the vote was not counted.⁴¹
- 9) The election officials must make and retain a [separate](#) list of the names and addresses of all persons casting a provisional ballot (see Attachment “B”).⁴²
- 10) The election officials must preserve, secure, and separate all provisional ballots from the remaining ballots⁴³ and forward all sealed “provisional voter envelopes” in a secured container provided for that purpose to the county board of election commissioners after the polls close.
- 11) The county board of election commissioners will forward [in a secured container](#) the sealed “provisional voter envelopes” to the county clerk’s office for completion of the certification portion of the envelope [in a secured container](#).
- 12) Upon completion of the certification portion of the envelope, the county clerk returns the secured container of sealed “provisional voter envelopes” to the county board for determination prior to the certification of the election results as to whether the provisional ballots are valid and should be counted.⁴⁴

§ 906 Preliminary Review of Provisional Ballots

The county board of election commissioners shall ~~hold a public meeting at the courthouse or other central counting location in the county to examine all provisional ballots, determine whether the provisional ballots are valid~~ before certifying the election.⁴⁵

The county board should examine the sealed outer “provisional voter envelope” (see Attachment “A”), including the challenged ballot portion, if any, the eligibility affirmation of the provisional voter, and the county clerk’s certification of the provisional voter’s registration status without unsealing the outer “provisional voter envelope” or removing or opening the inner ballot secrecy envelopes marked “PROVISIONAL BALLOT” containing the provisional voter’s voted ballot.

Based upon the examination of the sealed outer “provisional voter envelope” and any additional information available, the county board shall make a preliminary determination of whether the provisional voter is registered in the county and whether the provisional voter cast his or her ballot in the correct precinct.

The county board must complete the disposition portion of the “provisional voter envelope” and notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted, and if not, the reason not counted.

⁴⁰ [A.C.A. § 7-5-312\(b\)\(1\)\(C\)308\(a\)\(6\)/Act 224 of 2007](#)

⁴¹ [A.C.A. § 7-5-306\(b\)\(4\)\(A\)308\(a\)\(7\)/Act 224 of 2007](#)

⁴² [A.C.A. §§ 7-5-306\(e\); 7-5-312\(b\)\(1\); 7-5-308\(a\)\(8\)/Act 224 of 2007; 7-7-308\(e\)/Act 1020 of 2007](#)

⁴³ [A.C.A. § 7-5-312\(b\)\(2\)308\(b\)/Act 224 of 2007](#)

⁴⁴ [A.C.A. §§ 7-5-306\(b\)\(3\); 7-5-312\(b\)\(2\), \(e\)\(1\); 7-5-416\(b\)\(1\)\(H\)\(ii\); 7-5-308\(e\)/Act 224 of 2007; 7-5-417\(c\)/Act 556 of 2007; 7-7-308\(de\)](#)

⁴⁵ [A.C.A. § 7-5-614\(a\)\(2\)308\(e\)/Act 224 of 2007](#)

If upon preliminary review, the county board is unable to verify the provisional voter's registration status, determines that the provisional voter cast his or her ballot in the wrong precinct, and, therefore, makes a preliminary determination that the provisional ballot will not be counted, the county board must notify the provisional voter of his or her right to a hearing before a final determination is made.

When reviewing the provisional ballot of a first-time voter who registered by mail and did not provide identification when registering or voting, the county board should not base its preliminary determination of whether or not to count the ballot solely on the provisional voter's failure to provide identification. The provisional ballot should be rejected only if there is an indication, independent of the failure to show identification, that the person who voted is not the person who registered. The county board must notify the provisional voter of his or her right to a hearing before a final determination is made.

When reviewing the provisional ballot of any person who received an absentee ballot according to the precinct voter registration list, but then chose to vote provisionally by early voting or at his or her polling site on election day, the county board shall:

- 1) Count the voter's absentee ballot rather than the provisional ballot cast at the polling site, if the absentee ballot was returned and processed for counting on election day before the time of counting provisional ballots, or
- 2) Count the voter's provisional ballot cast at the polling site, if the voter's absentee ballot was not returned or was not processed for counting on election day by the time of counting provisional ballots.

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Tab
after: 0.5" + Indent at: 0.5"

~~A situation could occur where both the voter's absentee ballot and the voter's provisional ballot cast at the poll would be counted. For instance, if a voter voted an absentee nonpartisan judicial general election only ballot and then provisionally voted a special election only ballot at the poll, both the absentee ballot for the nonpartisan judicial general election only and the provisional ballot for the special election only would be counted.~~

§ 907 Notice to Provisional Voters

Whenever a person casts a provisional ballot, the election official must provide the voter written information stating that the provisional voter may ascertain whether his or her vote was counted and the reason if not counted by accessing a free access system established by the Secretary of State.⁴⁶

The ~~free access system of notification established by that~~ the Secretary of State has established for provisional voters ~~to determine whether or not their votes were counted, and if not, the reason not counted shall be by~~ involves written notice mailed first class to the provisional voter by the county board of election commissioners stating that the provisional ballot was or was not counted. If the provisional vote was not counted, the notice shall indicate the reason the vote was not counted.

Sample notices may be obtained from the Secretary of State's office.

Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.⁴⁷

⁴⁶ A.C.A. § 7-5-308(c)(1)/Act 224 of 2007

§ 908 Hearing

Once the county board of election commissioners makes a preliminary determination that a provisional ballot should not be counted, the provisional voter must first be afforded the opportunity for a hearing.⁴⁸

The county board must notify these provisional voters, as expeditiously as possible by telephone, if feasible, and by mail, of its reasons for rejecting the provisional voter's ballot and of the date, time, and place for a hearing.

These provisional voters shall be allowed to provide identification or other evidence of their registration status to the county board, county board staff, or the county clerk at any time prior to the scheduled hearing.

These provisional voters must be allowed to appear before the county board to contest the county board's decision to disqualify their vote and allowed to present evidence that they were registered to vote in the precinct where they cast their provisional ballot before the county board makes a final determination.

If these provisional voters do not appear for a hearing or otherwise provide satisfactory evidence of their registration status, then the ballot shall not be counted. The process of hearing and final decision must be completed by the deadline to certify the election results.

§ 909 Counting Provisional Ballots

A provisional ballot shall be counted by the county board of election commissioners before certification of the election **only** upon verification by the county board of the provisional voter's registration status in the precinct.⁴⁹

If following preliminary review or after the hearing process, the county board determines that a provisional ballot was cast in the correct precinct, the county board must ensure the secrecy of the ballot, pursuant to Amendment 81 of the Arkansas Constitution. The provisional ballot is counted as follows:

- 1) the commission completes the commission's portion of the list of provisional voters form (see Attachment "B"),
- 2) an election official opens the outer "provisional voter envelope" (see Attachment "A")
- 3) the election official removes the sealed inner ballot secrecy envelope marked "PROVISIONAL BALLOT" containing the provisional voter's voted ballot,
- 4) the election official places the sealed inner ballot secrecy envelope marked "PROVISIONAL BALLOT" containing the provisional voter's voted ballot in a ballot box provided for that purpose,

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Tab
after: 0.5" + Indent at: 0.5"

⁴⁷ [A.C.A. § 7-5-306\(b\)\(4\)\(B\)308\(c\)\(2\)/Act 224 of 2007](#)

⁴⁸ *Dotson v. Richey*, 211 Ark. 789 (1947)

⁴⁹ [A.C.A. §§ 7-5-306\(b\)\(3\); 7-5-418\(d\); 7-7-308\(d\)](#)

- 5) when all the outer “provisional voter envelopes” have been opened and all the sealed inner ballot secrecy envelopes placed in the ballot box, the election official shakes the ballot box thoroughly to mix the sealed envelopes containing the provisional ballots,
- 6) the ballot box is then opened, the secrecy envelopes containing the voted provisional ballot opened, and the provisional ballots canvassed and counted.

If following the hearing process, the county board is still unable to verify the provisional voter’s registration status or makes a final determination that the provisional ballot was cast in the wrong precinct, the provisional ballot should not be counted. The commission completes the commission’s portion of the list of provisional voters form, and all records are preserved in accordance with the laws governing preservation of ballots and election materials.

§ 910 Prosecuting Attorney

Following each election, the county board of election commissioners may review the precinct voter registration lists for voters not providing identification at the polls and forward the information to the prosecuting attorney for investigation of possible voter fraud.⁵⁰

If, upon examination of any provisional ballots, the county board suspects that a violation of election laws has occurred, the county board may refer the matter to the prosecuting attorney for that county.⁵¹

§ 911 Preliminary and Unofficial Results

The counting process for provisional ballots, including hearings, shall not delay the declaration of preliminary and unofficial results required by Arkansas Code Annotated § 7-5-701. When reporting preliminary and unofficial results, the county board of election commissioners should also report the number of uncounted provisional ballots pending review and the number of outstanding overseas absentee ballots.

§ 912 Official Certified Results

The county board shall include valid provisional ballot results with all other election results for each race in the official certification of results of the election.

⁵⁰ [A.C.A. § 7-5-305\(a\)\(8\)\(B\)\(iii\), \(iv\)](#)

⁵¹ [A.C.A. § 7-5-342\(e\)\(2\)308\(f\)/Act 224 of 2007](#)

Attachment "A"

PROVISIONAL VOTER ENVELOPE

Provisional Voter Number: _____ Date: _____ Time: _____

Poll Name: _____ Precinct #: _____ Ballot Style: _____

CHALLENGED BALLOT FORM

(To be completed when a poll watcher challenges a voter)

Name of Voter Challenged: _____

Name of Poll Watcher: _____

Entity Represented: _____
(Name of candidate, group or party the poll watcher represents from the Poll Watcher Affidavit)

Reason for Challenge: _____

Signature of Poll Watcher: _____

Signature of Challenged Voter: _____

PROVISIONAL VOTER ELIGIBILITY AFFIRMATION

(To be completed on voter qualification issues)

Voter's Name: _____ Prior Name: _____

Current Street Address: _____ Prior Street Address: _____

City, State, Zip: _____ Prior City, State, Zip: _____

Phone Number(s): _____

Date of Birth: _____ Provided Identification: Yes No

I, _____, hereby affirm that the information provided is true
(printed name of provisional voter)
and accurate and that to the best of my knowledge I am a registered voter in this precinct and am eligible to vote in this election.

I understand that the County Board of Election Commissioners will count my ballot only upon verification of my voter registration status. My signature on this form is my request to be notified as to whether or not my vote was counted. I understand that the County Board of Election Commissioners will notify me by first class mail.

Witnessed by:

Signature of Provisional Voter

Signature of Election Official

<p align="center">Reason for Voting Provisional (To be completed by an election official)</p> <p><input type="checkbox"/> Poll Watcher Challenge</p> <p><input type="checkbox"/> Not on Precinct Voter Registration List</p> <p><input type="checkbox"/> First-time Voter Flagged to Show ID (No ID)</p> <p><input type="checkbox"/> Previously Sent Absentee Ballot Failed to Return Required Absentee Materials</p> <p><input type="checkbox"/> Court-ordered Voting Extension</p> <p><input type="checkbox"/> Other _____</p>
--

<p align="center">A. Ballot Style (To be completed by an election official)</p> <p>Ballot Style _____ given to the provisional voter based upon the voter's affirmation of eligibility for this jurisdiction.</p> <p>_____ Signature of Election Official</p>
--

CERTIFICATION

(To be completed by the County Clerk's Office)

County: _____

A. PROVISIONAL VOTER		
Match	No Match	
<input type="checkbox"/>	<input type="checkbox"/>	Name: _____
<input type="checkbox"/>	<input type="checkbox"/>	Prior Name: _____
<input type="checkbox"/>	<input type="checkbox"/>	Current Address: _____
<input type="checkbox"/>	<input type="checkbox"/>	Prior Address: _____
<input type="checkbox"/>	<input type="checkbox"/>	Date of Birth: _____

I, _____, hereby certify that a data search was performed
(printed name of County Clerk or Deputy)
on the foregoing information in an effort to verify the voter registration status for the individual voting this provisional ballot and hereby confirm that the voter is registered in
 _____ in _____
(Name of County) (Precinct Number)

Signature of County Clerk or Deputy

I, _____, hereby certify that a data search was performed
(printed name of County Clerk or Deputy)
on the foregoing information in an effort to verify the voter registration status for the individual voting this provisional ballot, but was unable to confirm the provisional voter's registration status.

Signature of County Clerk or Deputy

DISPOSITION OF PROVISIONAL BALLOT	
(To be completed by the County Board of Election Commissioners)	
Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
Provisional Ballot Counted, if not, Reason Not Counted: _____	
<input type="checkbox"/>	<input type="checkbox"/>
Provisional Voter Notified by First Class Mail Date: _____	
_____ County Election Commissioner County Election Commissioner County Election Commissioner	
(At least one Election Commissioner must sign.)	

POLL WATCHER AUTHORIZATION FORM

[A.C.A. § 7-5-312/Act 224 of 2007]

Representative of a Candidate

I, _____, state that I am a candidate for the office of _____ in the _____ election. I further state that

~~I have designated _____ is designated by me~~ as my authorized representative at the election at polling sites and absentee ballot processing sites for the purpose of Arkansas Code §§ ~~7-5-312, 7-5-316, 7-5-413, 7-5-416, 7-5-417, 7-5-527 and 7-5-615 in precinct _____~~ in _____ County, Arkansas, to observe and ascertain the identity of persons presenting themselves to vote in person or by absentee for the purpose of challenging any voter in accordance with Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417. I further state that I have designated and authorized my representative named above to be present at the ballot counting locations at _____ in _____ eCounty, Arkansas for the purpose of witnessing the counting of ballots by election officials and determining whether ballots are fairly and accurately counted in accordance with Arkansas Code §§ 7-5-312, 7-5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615.

Representative of a Group

I, _____, state that I represent the _____ group which is seeking passage/defeat (*circle one*) of the ballot measure entitled _____ on the ballot in the _____ election at polling sites

and absentee ballot processing sites in _____ County, Arkansas, to observe and ascertain the identity of persons presenting themselves to vote in person or by absentee for the purpose of challenging any voter in accordance with Arkansas Code §§ 7-5-312, 7-5-416 and 7-5-417 in precinct _____ in _____ County, Arkansas.

Representative of a Party

I, _____, state that I am the chairman or secretary of the state/county (*circle one*) committee for the _____ party with candidates on the ballot in the _____ election.

I further state that I have designated _____ is designated by me as a an authorized party representative at the election for the purpose of Arkansas Code §§ 7-5-312, 7-5-316, 7-5-413, 7-5-416, 7-5-417, 7-5-527 and 7-5-615 in precinct _____ at polling sites _____ and absentee ballot processing sites _____ in _____ County, Arkansas, to observe and ascertain the identity of persons presenting themselves to vote in person or by absentee for the purpose of challenging any voter in accordance with Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417. I further state that I have designated and authorized my representative named above to be present at the ballot counting locations at _____ in _____ County, Arkansas, for the purpose of witnessing the counting of ballots by election officials and determining whether ballots are fairly and accurately counted in accordance with Arkansas Code §§ 7-5-312, 7-5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615.

Signature of Candidate, Group Representative, or

Chairman/Secretary of the State/County Committee

Acknowledged before me this ____ day of _____, 20 __.
Notary Public: _____ My Commission Expires: _____

I do hereby state that I am familiar with the rights and responsibilities of a poll watcher as outlined on the back of the poll watcher authorization form and will in good faith comply with the provisions of same.

Signature of Poll Watcher

Acknowledged before me this ____ day of _____, 20 __.
Notary Public: _____ My Commission Expires: _____

I do hereby acknowledge filing ~~of the~~ this poll watcher authorization form with the county clerk's office.

Signature of County Clerk

POLL WATCHER RIGHTS AND RESPONSIBILITIES

A poll watcher may be:

- (1) A candidate in person ~~or by representative designated by a candidate;~~
- (2) An authorized representative of a candidate;
- (3) An authorized representative ~~designated by any~~ of a group seeking the passage or defeat of a measure on the ballot; or
- (4) An authorized representative of a party with a candidate on the ballot.

Official recognition of poll watchers:

- (1) Only one (1) authorized poll watcher per candidate, group, or party at any one (1) given time may be officially recognized as a poll watcher at each location within a polling site where voters identify themselves to election officials;
 - (2) Only one (1) authorized poll watcher per candidate, group, or party at any one (1) given time may be officially recognized as a poll watcher at each location within the absentee ballot processing site where absentee ballots are processed; and
 - (3) Only one (1) authorized poll watcher per candidate or party at any one (1) given time may be officially recognized as a poll watcher at the counting of the ballots. ~~and~~
- Poll watchers must display a valid affidavit in the form of a "Poll Watcher Authorization Form".

Formatted: Outline numbered + Level: 1 + Aligned at: 0" + Indent at: 0.25"

Poll watcher credentials:

- (1) Except for candidates in person, poll watchers must present a valid affidavit in the form of a "Poll Watcher Authorization Form" to an election official immediately upon entering the polling or counting location.
- (2) Candidates in person are not required to present a "Poll Watcher Authorization Form" but must present some form of identification to an election official immediately upon entering the polling ~~site~~ or counting location for the purpose of confirming the poll watcher as a candidate on the ballot.

Formatted

Poll watchers may:

- (1) Observe the election officials;
- (2) Stand close enough to the precinct voter registration lists so as to hear the voter's name and observe the voter's signature;
- (3) Compile lists of persons voting;
- (4) Challenge ballots upon notification to an election official before the ~~ballot is issued to the voter~~ signs the precinct voter registration list and upon completing a "Challenged Ballot Form" (see Attachment "A");
- (5) Call to the attention of the election sheriff any occurrence believed to be an irregularity or violation of election law. The poll watcher may not discuss the occurrence unless the election sheriff invites the discussion; and
- (6) Be present at the opening, processing, and canvassing of absentee ballots for the purpose of challenging ~~absentee the~~ votes in the manner provided by law for personal voting challenges.

Formatted

Poll watchers representing a candidate or political party may:

- (1) Remain at the polling site after the poll closes if ballots are counted at the poll;
- (2) ~~Be~~ Be present at the counting of votes by hand or by an electronic vote tabulating device at a centralized location; and ;
- (3) ~~Be~~ Be present at the counting of absentee ballots for the purpose of witnessing the counting of ballots by election officials and determining whether ballots are fairly and accurately counted; and
- (4) Upon request made to an election official, inspect any or all ballots at the time the ballots are being counted.

Poll watchers may not:

- | (1) Be within six feet (6') of any voting machine or booth used by voters to cast their ballot;
- | (2) Electioneer inside the polling site or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling site;
- | (3) Speak to any voter or in any way attempt to influence a voter inside the polling site or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling site; or
- | (4) Disrupt the orderly conduct of the election.

