

Agency # 108.00

MARK-UP

**RULES  
ON  
POLL WATCHERS,  
VOTE CHALLENGES,  
AND  
PROVISIONAL**

**VOTING**

(Effective April 22, 2006; Revised ~~September 16, 2011~~)



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## Scope of Rules

These rules set forth the procedures for poll watchers, challenging votes, and 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

(a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners in the courthouse where election clerks for absentee ballots meet on election day for the purpose of processing absentee ballots.<sup>1</sup>

(b) Additional Identification Requirement – documentary identification in addition to proof of identity that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include a copy of a current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.<sup>2</sup>

~~(b)~~(c) Ballot Style – a ballot’s combination of contests and issues to be voted upon that is unique to each precinct or part of a precinct.

~~(c)~~(d) 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, ballot style, and the date and time of the challenge under the signature of both the poll watcher and the challenged voter.

~~(d)~~(e) 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.<sup>3</sup>

~~(e)~~(f) County Board of Election Commissioners – the three-member board in each of the 75 counties in this State responsible for conducting all elections within their respective county, including two members elected by the county committee of the majority party and one member elected by the county committee of the minority party or persons appointed by the state chair of either the majority or minority parties to fill a vacancy in that party’s position.<sup>4</sup>

(g) Documentation from the Administrator – a letter, memorandum or notation on facility letterhead, signed by the administrator of the facility and dated no earlier than one day before the date early voting begins, that specifically identifies one or more residents of the facility by the full name of each resident and attesting that each person named therein is a resident of the facility. Such

<sup>1</sup> A.C.A. §§ 7-5-414(a); 7-5-416(a)(1)

<sup>2</sup> A.C.A. § 7-5-201(e) as amended by Act 595 of 2013

<sup>3</sup> A.C.A. § 7-1-101

<sup>4</sup> A.C.A. § 7-4-102(a), as amended by Act 1056 of 2011

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documentation of the administrator may be used by any resident named in the document at the polls in lieu of proof of identity.<sup>5</sup>

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(h) Election Clerk – for the purpose of these rules, a person possessing the same qualifications as a poll worker who is designated by the county board of election commissioners to process, count, and canvass absentee ballots<sup>6</sup> under the supervision of the county board.

(i) Election Official – a person who is a member of the county board of election commissioners or a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff.<sup>7</sup>

(j) Eligibility Affirmation – a written affirmation executed by a provisional voter in the presence of the poll worker 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”).<sup>8</sup>

(k) 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.<sup>9</sup> “First-time voters registered by mail” who do not provide identification when registering are flagged by the county clerk for ~~the~~ an additional identification requirement. “First-time voters registered by mail” who provided a valid 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 if a state or local election official can match the driver’s license or social security number with an existing state identification record bearing the same number, name and date of birth as provided in the registration. Registration applications arriving in bulk by means other than the mail 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 additional identification requirement.

(l) Polling Site – a location selected by the county board of election commissioners where votes are cast.<sup>10</sup>

(m) Poll Watcher – any authorized representative of a candidate, any authorized representative of a group seeking passage or defeat of a measure on the ballot, and any authorized representative of a political party with a candidate on the ballot 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. A candidate may be present at an absentee ballot processing site to observe and ascertain the identity of absentee voters for the purpose of challenging any absentee vote. A candidate 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. A candidate may be present in

<sup>5</sup> A.C.A. § 7-5-201(d)(2) as amended by Act 595 of 2013

<sup>6</sup> A.C.A. § 7-5-414

<sup>7</sup> A.C.A. § 7-1-101

<sup>8</sup> A.C.A. § 7-5-308(a)(2)

<sup>9</sup> A.C.A. §§ 7-1-101; 7-5-201(d)

<sup>10</sup> A.C.A. § 7-1-101

person during early voting only for the purpose of observing whether or not votes are fairly and accurately cast.<sup>11</sup>

~~(h)~~(n) 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 the polling site, absentee ballot processing site, or counting site. Candidates in person at early voting, attending a counting site or an absentee ballot processing site must present identification, but are not required to present a Poll Watcher Authorization Form (see Attachment “C”).<sup>12</sup>

~~(m)~~(o) Poll Worker – an election official designated by the county board of election commissioners to be an election clerk, election judge or election sheriff at a polling site.

~~(n)~~(p) Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.<sup>13</sup>

~~(o)~~(q) Precinct Voter Registration List – a computerized list provided by the county clerk and used by poll workers in each polling place for every election conducted in the state indicating the name and date of 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, including those who have been designated inactive, within the precinct with a space for each voter’s signature.<sup>14</sup> 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.<sup>15</sup>

(r) Proof of Identity:

(1) A voter identification card issued by the county clerk pursuant to Act 595 of 2013 OR

(2) A document or identification card that meets all of the following conditions:

(a) Shows the name of the person to whom the document was issued;

(b) Shows a photograph of the person to whom the document was issued;

(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and

(d) If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.

(3) Documents or Identification cards that comply with the above requirements for proof of identity may include, without limitation, the following:

(a) A driver’s license;

(b) A photo identification card;

(c) A concealed handgun carry license;

(d) A United States passport;

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<sup>11</sup> A.C.A. §§ 7-5-312; 7-5-316(a); 7-5-413(d); 7-5-416(a)(4); 7-5-527(b); 7-5-615(a)

<sup>12</sup> A.C.A. § 7-5-312(d),(e)

<sup>13</sup> A.C.A. § 7-1-101

<sup>14</sup> A.C.A. § 7-5-107

<sup>15</sup> A.C.A. § 7-5-110

- (e) An employee badge or identification document;
- (f) A United States Military identification document;
- (g) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;
- (h) A public assistance identification card; and
- (a)(i) A voter identification card as provided under Act 595 of 2013 and rules propounded by the Secretary of State<sup>16</sup>

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~~(p)(s)~~ Provisional Ballot —a ballot cast and/or considered by special procedures to record a vote when there is some question concerning a voter's eligibility or compliance with certain statutory requirements. Provisional ballots are counted upon verification of a voter's eligibility or compliance with those statutory requirements.~~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.~~<sup>17</sup>

~~(q)(t)~~ Provisional Voter Envelope – an envelope used by poll watchers for voter challenges and by poll workers 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 have printed on it all the information sought by Attachment "A".

<sup>16</sup> A.C.A. § 7-1-101 as amended by Act 595 of 2013

<sup>17</sup> A.C.A. §§ 7-1-101; 7-5-304(c); 7-5-305(a)(8)(B)(ii); 7-5-306(b); 7-5-308; 7-5-312(h); 7-5-412(b); 7-5-416(b)(1)(F)(iii); 7-5-417(a); 7-5-418(d); 7-5-321(c) as provided in Act 595 of 2013

## § 901 Documentary Voter Identification – Proof of Identity

### A. Forms

Poll workers must **ASK** all voters to provide one of the following forms of identification:

- 1) ~~A current and valid photo identification (such as a driver's license);~~
- 2) ~~A copy of a current utility bill showing the voter's name and address;~~
- 3) ~~A copy of a bank statement showing the voter's name and address;~~
- 4) ~~A copy of a government check or paycheck showing the voter's name and address; or~~
- 5) ~~A copy of a government document showing the voter's name and address.~~<sup>18</sup>

### 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.<sup>19</sup>

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.<sup>20</sup>

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**.<sup>21</sup>

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 poll worker must indicate on the precinct voter registration list that the voter did not provide identification and give the voter a **REGULAR** ballot.<sup>22</sup>

### A. Proof of Identity

A person voting at the polls during early voting or on election day who did not present proof of identity, or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide either proof of identity or documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.<sup>23</sup>

### B. Additional Identification Requirement

Unless statutorily exempt, a first-time voter voting at the polls during early voting or on election day who registered by mail and who was flagged on the Precinct Voter Registration List for compliance with the additional identification requirement for such first-time voters shall be offered a provisional ballot.<sup>24</sup>

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<sup>18</sup> A.C.A. §§ 7-5-201(d)(1)(A); 7-5-305(a)(8)(A)

<sup>19</sup> A.C.A. § 7-5-201(d)

<sup>20</sup> A.C.A. §§ 7-5-201(d); 7-5-305(a)(8)(B)(iii)

<sup>21</sup> A.C.A. §§ 7-5-201(d); 7-5-412(b); 7-5-416(b)(1)(F)(iii)

<sup>22</sup> A.C.A. § 7-5-305(a)(8)(B)(i)

<sup>23</sup> A.C.A. § 7-5-321 as provided in Act 595 of 2013

<sup>24</sup> A.C.A. § 7-5-201(e) as amended by act 595 of 2013



### C. Absentee Voters

The absentee ballot of a first-time voter whose name is flagged on the precinct voter registration list for additional identification and who does not submit with the absentee ballot a copy of current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter shall be considered as a provisional ballot.<sup>25</sup>

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<sup>25</sup> A.C.A. § 7-5-201(e) as amended by act 595 of 2013

## § 902 Precinct Voter Registration List

### A. Voter's Name Missing

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

- 1) Contact the county clerk's office to verify the voter's registration status, and
- 2) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the poll worker that the voter is listed as a registered voter of the precinct),<sup>26</sup> or
- 3) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the poll worker 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),<sup>27</sup> 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 poll worker 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 informs the poll worker 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 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).<sup>28</sup>

### B. "Voted Absentee" Notation

Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the electronic voter registration record and the precinct voter registration list to indicate that an absentee ballot has been delivered to the voter under the procedures in this section.<sup>29</sup>

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<sup>26</sup> A.C.A. § 7-5-306(a)

<sup>27</sup> Amend. 51, §10 of the Arkansas Constitution

<sup>28</sup> A.C.A. §§ 7-5-306(b); 7-5-418(d)

<sup>29</sup> A.C.A. § 7-5-409(g)

Any person 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 cast a provisional ballot at the poll.<sup>30</sup>

### **§ 903 Poll Watcher Challenges**

#### **A. Official Recognition/Credentials**

Poll watchers representing a candidate, group, or political party 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 form to the election officials immediately upon entering the polling site, absentee ballot processing site, and/or counting site.<sup>31</sup>

A candidate may not be present in person at the polls on election day as a poll watcher. A candidate may be present in person as a poll watcher during the counting and tabulation of ballots and the processing of absentee ballots.<sup>32</sup>

A candidate may be present in person at early voting locations only for the purpose of observing whether or not votes are fairly and accurately cast, but a candidate may not challenge voters as a poll watcher during early voting and may speak only to a designated poll worker.<sup>33</sup> A candidate who is present in person at an early voting location for the purpose of observing may not speak to voters or disrupt the orderly conduct of the election. A candidate who is a public official and who is present in person at an early voting location for the purpose of observing shall not wear on his or her person any uniform, badge, or other apparel or equipment that identifies the candidate as a public official.

A candidate who is present in person at an early voting location for the purpose of observing or during the counting and tabulation of ballots and the processing of absentee ballots as a poll watcher is not required to present a “poll watcher authorization form”, but must present some form of identification to an election official immediately upon entering the site.

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.<sup>34</sup>

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.<sup>35</sup>

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<sup>30</sup> A.C.A. §§ 7-5-201(e); 7-5-305(a)(11); 7-5-411(b)

<sup>31</sup> A.C.A. § 7-5-312(d)

<sup>32</sup> A.C.A. § 7-5-312(a)(1),(e)

<sup>33</sup> A.C.A. § 7-5-413(d)

<sup>34</sup> A.C.A. § 7-5-312(b),(e)

<sup>35</sup> A.C.A. § 7-5-312(c),(e)

Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.<sup>36</sup>

## B. Challenges

Authorized poll watchers who are officially recognized at a polling site may stand close enough to the place where voters check in to vote so as to hear the voter's name and may challenge an ineligible voter upon notifying a poll worker of the challenge before the voter signs the precinct voter registration list and upon completing a "challenged ballot form" (see Attachment "A").<sup>37</sup>

A poll watcher may challenge a voter only on the grounds that the voter is not eligible to vote in the precinct or that the voter has already voted in the election.<sup>38</sup>

When election clerks appointed by the county election commission to process, count, and canvass absentee ballots read 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 clerks must consider the absentee ballot as a provisional ballot.<sup>39</sup>

## § 904 Court-Ordered Extension

A person who votes in an election as a result of a federal or state court order or any other order extending the time established for closing the polls may vote in the election only by casting 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.<sup>40</sup>

## § 905 Voting a Provisional Ballot

Provisional ballots cast at the polls during early voting or on election day shall be handled as follows:

- 1) If as a result of a poll watcher challenge, the poll watcher must notify a poll worker of the challenge before the voter signs the precinct voter registration list and must complete a "challenged ballot form" (See Attachment "A"). and a poll worker must inform the voter that his or her ballot is being challenged.<sup>41</sup>
- 2) If as a result of failure to meet an identification requirement, a poll worker must inform the voter of the reason the voter is not allowed to cast a regular ballot. a poll watcher challenge, a poll worker must inform the voter that his or her ballot is being challenged.<sup>42</sup>
- 3) The provisional voter must execute a written eligibility affirmation in the presence of the poll worker 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 the election.<sup>43</sup>

<sup>36</sup> A.C.A. § 7-5-312(f)

<sup>37</sup> A.C.A. § 7-5-312(e),(g),(h)

<sup>38</sup> A.C.A. § 7-5-312(g)

<sup>39</sup> A.C.A. §§ 7-5-414; 7-5-417(a)

<sup>40</sup> A.C.A. § 7-5-304(c)

<sup>41</sup> A.C.A. § § 7-5-308(a)(1); 7-5-312(e),(h)

<sup>42</sup> ~~A.C.A. §§ 7-5-308(a)(1); 7-5-312(h)~~

<sup>43</sup> A.C.A. § 7-5-308(a)(2)

- 4) The poll worker shall initial the back of the ballot, remove the ballot stub from the provisional ballot, and place the stub in the stub box provided.<sup>44</sup>
- 5) The provisional voter shall mark his or her ballot.<sup>45</sup>
- 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).<sup>46</sup>
- 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 poll worker.<sup>47</sup>
- 8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906 (a) 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.<sup>48</sup>
- 9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot (see Attachment "B").<sup>49</sup>
- 10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots<sup>50</sup> 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.
- 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 before certification of the election results as to whether the provisional ballots are valid and should be counted.<sup>51</sup>

For absentee ballots which are considered as provisional ballots, the absentee ballot clerk shall place the absentee ballot materials in a provisional voter envelope and state the reason for making the absentee ballot provisional on the form provided on the provisional ballot envelope (Attachment "A").

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#### § 906 Notice to Provisional Voters

- (a) Whenever a person casts a provisional ballot at the polls during early voting or on election day, the poll worker must provide the voter written information stating a copy of a notice that includes the following information:
- That the provisional voter may ascertain will be notified 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 first class mail.<sup>52</sup>
  - That a provisional voter who cast a provisional ballot for failure to present proof of identity may present proof of identity or an affidavit of indigence or religious objection to the county clerk or

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<sup>44</sup> A.C.A. § 7-5-308(a)(3)

<sup>45</sup> A.C.A. § 7-5-308(a)(4)

<sup>46</sup> A.C.A. § 7-5-308(a)(5)

<sup>47</sup> A.C.A. § 7-5-308(a)(6)

<sup>48</sup> A.C.A. § 7-5-308(a)(7)

<sup>49</sup> A.C.A. § 7-5-308(a)(8)

<sup>50</sup> A.C.A. § 7-5-308(b)

<sup>51</sup> A.C.A. §§ 7-5-308(d)(1); 7-5-417(c)

<sup>52</sup> A.C.A. § 7-5-308(c)

the county board of election commissioners by noon of the first Monday following the election in order for the provisional ballot to be counted;

- The name, address, telephone number, and regular office hours of the county clerk;
- The dates of any meetings of the county board of election commissioners scheduled before noon of the next Monday following the election;
- An explanation of the provisional voting process; and
- The date, time, and address of a hearing for the voter if the provisional ballot is rejected.

(b) The system that the Secretary of State has established for provisional voters to be notified whether their ballot was counted requires ~~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. The notice shall include the following:

- A statement whether the provisional ballot was counted or was not counted;
- If the provisional ballot was preliminarily determined to be invalid, the reason the ballot was not counted; and
- The date, time, and address of a hearing by the county board regarding the voter's eligibility to vote in the election.

(c) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.<sup>53</sup>

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#### § 907 ~~Preliminary~~ Review of Provisional Ballots

The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.<sup>54</sup>

The county board ~~should~~shall 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 ballot was cast by ~~a registered~~an eligible voter and was the correct ballot for the precinct of the voter's residence according to the precinct listed on the voter's eligibility affirmation.<sup>55</sup>

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.

<sup>53</sup> A.C.A. § 7-5-308(c)(3)

<sup>54</sup> A.C.A. § 7-5-308(d)(1)

<sup>55</sup> A.C.A. § 7-5-308(d)(2)

If the county board makes a preliminary determination that the provisional ballot will not be counted, the county board must notify the provisional voter of the reason for rejecting the provisional voter's ballot and of the date, time, and place for a hearing and other information as provided in these rules before a final determination is made.<sup>56</sup>

When the information on the outer "provisional voter envelope" indicates that the voter cast a provisional ballot for both failure to present proof of identity and another reason, the county board shall first determine whether the voter is eligible to vote in the precinct. If it is determined that the voter who cast a provisional ballot for failure to provide proof of identity and for another reason is eligible to vote, or if the provisional ballot was cast only for the reason that the voter failed to present proof of identity, then the county board shall count the ballot if proof of identity or an affidavit of indigence or religious objection has been provided to the county board or the county clerk by noon of the first Monday following the election.

When reviewing the provisional ballot of a first-time voter who registered by mail and did not ~~provide-meet the additional~~ identification requirement 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-meet the additional~~ identification requirement. The provisional ballot should be rejected only if the voter failed to provide proof of identity and there is- a determination an indication, independent of the failure to ~~show-meet the additional~~ identification requirement, that the person who voted is not- eligible to vote in the precinct ~~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 was delivered an absentee ballot according to the precinct voter registration list, but then chose to cast a provisional ballot at an early voting or election day polling site, 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.

## **§ 908 Hearing**

~~Having notified each provisional voter by first class mail of its preliminary determination and of a right to a hearing, the county board shall, as expeditiously as possible by telephone, if necessary to provide sufficient notice, notify the provisional voters whose ballots were preliminarily rejected of the date, time, and place for a hearing to be held before a final determination is made-~~

~~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-~~

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<sup>56</sup> *Dotson v. Richey*, 211 Ark. 789 (1947)

~~These provisional~~Provisional voters ~~must~~shall be allowed to appear before the county board to contest the county board's preliminary decision to disqualify their ~~vote ballots~~ and ~~allowed~~ to present evidence that they were registered to vote and voted the correct ballot for the precinct of their residence or, if applicable, that they presented proof of identity during early voting, on election day or by noon of the first Monday after the election.

If these provisional voters do not appear for a hearing or otherwise provide satisfactory evidence of their registration status or proof of identity, then the ballot shall not be counted.

The commission then completes the election commission's portion of the list of provisional voters form (see Attachment "B"), and all records are preserved in accordance with the laws governing preservation of ballots and election materials.

The process of hearing and final decision must be completed by the deadline to certify the election results.

### § 909 Counting Provisional Ballots

Unless enjoined by a court of competent jurisdiction, a provisional ballot shall be counted if:

- 1) ~~It~~ is cast by a registered voter and is the correct ballot for the precinct of the voter's residence according to the precinct listed on the voter's eligibility affirmation;
- 2) It is cast by a registered voter who failed to present proof of identity at a polling place during early voting or on election day but who presents proof of identity or an affidavit of indigence or religious objection to having his or her photograph made to the county clerk or the county board no later than the first Monday following the election; or
- 3) It is an absentee ballot and the county board determines that the voter is eligible to vote in the precinct.<sup>57</sup>

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In counting provisional ballots, the county board must ensure the secrecy of the ballot pursuant to Amendment 81 of the Arkansas Constitution.

Provisional ballots are counted as follows:

- 1) the commission completes the election 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") for those on the list marked to be counted (see Attachment "B"),
- 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,
- 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, and

<sup>57</sup> A.C.A. § 7-5-308(d)(2); 7-5-312(c) as provided in Act 595 of 2013



- 7) 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.<sup>58</sup>

If, upon examination of any provisional ballot, 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.<sup>53</sup>

#### **§ 911 Preliminary and Unofficial Results**

The processing and counting of 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 official certified results of the election shall include the votes cast on all provisional ballots that were determined by the county board of election commissioners to be valid.

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<sup>58</sup> A.C.A. § 7-5-305(a)(8)(B)(iii), (iv)

<sup>53</sup> A.C.A. § 7-5-308(e)

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 or, if applicable, presentation of proof of identity or an affidavit of indigence or religious objection. ~~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

##### Reason for Voting Provisional (To be completed by a poll worker)

- ☐ Poll Watcher Challenge
- ☐ No Proof of Identity Provided
- ☐ Not on Precinct Voter Registration List
- ☐ First-time Voter Flagged to Show Additional ID  
~~(No ID)(No Additional ID Provided)~~
- ☐ Previously Sent Absentee Ballot
- ☐ Court-ordered Voting Extension
- ☐ Other \_\_\_\_\_

#### Signature of Poll Worker

##### Ballot Style (To be completed by a poll worker)

Ballot Style \_\_\_\_\_ given to the provisional voter based upon the voter's affirmation of eligibility for this jurisdiction.

\_\_\_\_\_  
Signature of Poll Worker

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## **CERTIFICATION**

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

County: \_\_\_\_\_

### **A. PROVISIONAL VOTER**

<b>Match</b>	<b>No Match</b>	
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☐☐

Name: \_\_\_\_\_

☐☐

Prior Name: \_\_\_\_\_

☐☐

Current Address: \_\_\_\_\_

☐☐

Prior Address: \_\_\_\_\_

☐☐

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)

<b>Yes</b>	<b>No</b>	
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☐☐

Provisional Ballot Counted, if not, Reason Not Counted: \_\_\_\_\_

☐☐

Provisional Voter Notified by First Class Mail      Date: \_\_\_\_\_

\_\_\_\_\_  
County Election Commissioner    County Election Commissioner    County Election Commissioner  
(At least one Election Commissioner must sign.)

LIST OF PROVISIONAL VOTERS

Arkansas Code Annotated § 7-5-308 requires poll workers to make a list of the names and addresses of all persons voting a provisional ballot and requires county election commissions to determine the validity of each provisional ballot prior to certification of the election.

Date of Election: \_\_\_\_\_ Poll Name: \_\_\_\_\_  
Precinct #(s): \_\_\_\_\_

TO BE COMPLETED BY POLL WORKERS			TO BE COMPLETED BY ELECTION COMMISSION		
No.	Voter's Name	Voter's Address	Vote counted		If not counted, reason
			Yes	No	
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

\_\_\_\_\_  
Commissioner Signature      Commissioner Signature      Commissioner Signature

**POLL WATCHER AUTHORIZATION FORM**

[A.C.A. § 7-5-312]

**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 \_\_\_\_\_ as my authorized representative at 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. 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.

**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.

**Representative of a Party**

I, \_\_\_\_\_, state that I am the chair 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 \_\_\_\_\_ as an authorized party representative at 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. 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 Chair/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 the Poll Watcher**

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Notary Public: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

I do hereby acknowledge the filing of 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, but only during the counting and tabulation of ballots and the processing of absentee ballots;
- (2) An authorized representative of a candidate;
- (3) An authorized representative 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.

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 attending a counting site or absentee ballot processing site 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 site for the purpose of confirming the poll watcher as a candidate on the ballot.

Poll watchers may:

- (1) Observe the election officials;
- (2) Stand close enough to the place where voters check in to vote so as to hear the voter’s name;
- (3) Compile lists of persons voting;
- (4) Challenge ballots upon notification to an election official before 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 votes in the manner provided by law for personal voting challenges.

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 present at the counting of votes by hand or by an electronic vote tabulating device at a central location;
- (3) 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) 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
- (3) Disrupt the orderly conduct of the election.