

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



REQUEST FOR GOVERNOR'S APPROVAL OF PROPOSED RULES

Please submit this form and all required documents in the checklist as a single pdf document. Failure to comply will result in the rule being denied.

Rules identified as mandatory promulgations in Form 2021A must be submitted to the Governor's Office for approval no later than December 31, 2021.

Cabinet Department: Independent Non-Cabinet Level Department

Division/Commission/Board/Agency: State Board of Election Commissioners

Rule Number: ____ **Short Title of Rule:** Rules on Poll Watchers, Vote Challenges, and Provisional Voting

New Rule: ☐ Yes ☒ No **Rule Amendment:** ☒ Yes ☐ No **Rule Repeal:** ☐ Yes ☒ No

Proposed Effective Date: March 22, 2022 **Date Rule Submitted:** November 24, 2021

Emergency Rule: ☐ Yes ☒ No **Expedited Request:** ☐ Yes ☒ No **Reason:** _____

Drafted in Code of Rules Format ☐ Yes ☒ No **If not, explain:** The new provisions of the rule are principally drafted in the format of the Code; however, the BLR advised not to preemptively modify the existing rules into the new format but rather allow their process to update the format of the existing provision. The SBEC has followed this advice with regard to the text but did move the rule into a format more consistent with the code.

Please explain the need for an Emergency/Expedited Rule: _____

AUTHORITY TO PROMULGATE

State Mandate: ☒ Yes ☐ No **Federal Mandate:** ☐ Yes ☒ No **Act No.:** _____

Statutory Authority to Promulgate the Rule: Ark. Const. Amend. 51 §13(b)(7) (Authorizes the SBEC to conduct rulemaking related to the Photo ID portion of this section to the constitution.); A.C.A. §7-4-101(f)(5) (Authorizes the SBEC to promulgate rules for "even and consistent application of the voter registration laws and fair and orderly election procedures." Act 727 of 2021 (Provides that the SBEC may create reasonable restrictions on poll watchers which, under the A.P.A., can only be done through the rule making process.)

Department/Agency Legislation from Legislative Session: ☐ Yes ☒ No **Act No.:** _____

House Sponsor: _____ **Senate Sponsor:** _____

Cabinet Review: ☐ Yes ☒ No **Secretary's Signature:** _____ **Date:** _____

RULE SUMMARY

Purpose of Rule: The purpose of this rule is to provide procedures for the casting and canvassing of provisional ballots as well as rules governing the activities of poll watchers during the election process.

Reason for Creating or Amending the Rule: This amendment fulfills three major functions. It updates the provisional voting procedures to account for the removal of the optional identity affirmation by Act 249 of 2021. It provides reasonable restrictions regarding the inspection of ballots and absentee voter statements pursuant to Act 727 of 2021 as well as other procedures relating to poll watchers in absentee ballot canvassing and ballot counting. It also provides a textual procedure for the casting of a provisional ballot for a voter who is marked in the poll as having already voted. In addition, the amendment eliminates forms from inclusion in this Rule.

How does the Rule deviate from the Act: With respect to Act 249 of 2021, the amendment merely brings the procedures described in the rule into line with the modifications made by the act. With respect to the poll watcher provisions, Act 727 only stated that the SBEC was to provide "reasonable restrictions." The rule also provides some procedures beyond the provision contemplated by this act in the new poll watcher subsection pursuant to the SBEC authority to enact rules for fair and orderly election procedures.

Other provisions of the rule are not based on a 2021 election related Act.

Rule Based on a Rule From Different Jurisdictions: ☐ Yes ☒ No **Jurisdictions:** _____

Short Summary of New Rule or Rule Changes: (explain in greater detail in your executive summary)

The amendment to this rule eliminates the optional identity affirmation from the rules governing provisional voting. It also provides rules governing poll watchers in absentee ballot canvassing and vote counting which allow the poll watchers to inspect documents but provide rules to ensure the integrity of the process is not compromised or that the process is not disrupted by the poll watchers. The amendment provides a textual procedure governing a voter who presents to vote despite being marked as having already voted in the precinct voter registration (PVR) list. Finally, the rule eliminates the previously promulgated forms and replaces the forms with a section providing that the relevant forms will be adopted by the SBEC in a public meeting and posted on the agency's website.

Applicable Federal Regulations: ☐ Yes ☒ No **C.F.R. No:** _____

Proposed Rule the Least Restrictive Alternative: ☒ Yes ☐ No. **If not, why?** _____

Does it Mirror Federal Regulations or Impose Additional Requirements: ☐ Yes ☒ No
Explain: _____

Note: In addition to these explanations, the Department/Agency seeking to promulgate this rule shall submit the attached executive summary. Failure to include the summary will result in the rule being denied.

CONTROVERSY

Rule Controversial: ☐ Yes ☒ No **Act Controversial in Legislative Session:** ☒ Yes ☐ No

Known Interested Parties: The League of Women Voters has filed a lawsuit challenging Act 249 of 2021. Other interested parties include local election officials and voters generally. Regarding the remaining provisions of the rule, interested parties will primarily include political parties, campaigns, groups supporting or opposing a ballot issue, and their poll watchers. Other interested parties include voting and political advocacy groups, local election officials, and voters generally.

Comments Made at Legislative Session: The comments and corresponding controversy regarding the voter ID issue that would be affected by this rule relate only to the Act and would not cause this technical amendment to be controversial separately from the substantive debate over the Act.

Comments in favor of the Act argue that these changes are necessary in order to ensure the election process has a high degree of integrity and that it also has the appearance of a high degree of integrity. It was also argued that these changes are necessary to fulfill the intent and expectation of voters who adopted Amendment 99 to the Arkansas Constitution. Comments against cite a low incidence of voter impersonation fraud and an argument that some Arkansans may have difficulty presenting a qualifying photo ID.

No comments were identified by the SBEC regarding Act 727.

Public Hearing: ☒ Yes ☐ No **Expect public comment from:** The SBEC's practice is to always schedule a public hearing. Whether there will be any public comment on either issue is unknown at this time.

FINANCIAL IMPACT

Financial Impact: ☐ Yes ☒ No **Total Impact: FY2020:** _____ **FY2021:** _____

Impact Mitigated by Federal Funding: ☐ Yes ☐ No **FY2020:** _____ **FY2021:** _____

Reasons for Financial Impact: _____

FINAL CHECKLIST

Please note that the Governor's office will not begin the approval process of the foregoing rule if any of the following applicable documents are not enclosed in the order listed in a single PDF file.

- ☒ Rule Request Form
- ☒ Executive Summary
- ☒ Mark-Up Version of the Proposed Rule
- ☒ Clean Version of the Proposed Rule
- ☒ BLR Questionnaire
- ☒ BLR Financial Impact Statement
- ☒ Copy of Act or Regulation

STATE BOARD OF ELECTION COMMISSIONERS

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Executive Summary of the 2021 Proposed Amendment to the RULES ON POLL WATCHERS, VOTE CHALLENGES, AND PROVISIONAL VOTING

The State Board of Election Commissioners met on November 3, 2021 and approved changes to the “Rules on Poll Watchers, Vote Challenges, and Provisional Voting.” This proposed amendment is being promulgated to update the existing rule which reflect changes made to the Voter ID laws during the 93rd General Assembly.

PURPOSE

This update is required by Act 249 of 2021 which eliminated the optional identity affirmation from the process of verifying a voter's registration with a photo ID and the subsequent provisional voting process for an ID related provisional ballot. The second major purpose of this amendment is to provide “reasonable restrictions” to the process of poll watchers inspecting ballots and absentee voter statements pursuant to Act 727 of 2021. The tertiary purpose of this amendment is to provide a textual basis for offering a voter, who is marked as already voted, a provisional ballot. The amendment also eliminates forms from the rule pursuant to the requirements of the codification of rules.

BACKGROUND

Prior to Act 249, a voter who could not satisfy the photo ID requirement was able to sign an optional identity affirmation that required the CBEC to count the ballot so long as there were no issues unrelated to the ID requirement.

Regarding the inspections by poll watchers and Act 727, the legislature appears to have reacted to instances in Arkansas and nationally in which the role of poll watchers and others in the canvassing process required additional clarity.

Regarding voters who are marked as having already voted, the SBEC has long instructed that such voters should be offered a provisional ballot. State law explicitly requires a voter who is identified as having been sent an absentee ballot to vote provisionally but is silent in this case. The SBEC has seen situations in which older voters simply forgot they had early voted and were allowed to vote again as well as situations where the primary election's poll book was fielded in the general election

causing the poll workers to believe that every voter who voted in the primary was ineligible to cast a general election ballot.

SUMMARY OF KEY CHANGES

Because Act 249 of 2021 eliminated the optional affirmation process from the Code and from Amendment 51, the proposed amendment is being promulgated in order to eliminate these provisions from the Rule governing this provisional voting process as it relates to ID issues.

Pursuant to Act 727, § 904(c)(1) provides rules for the observation and inspection of the absentee ballot canvassing process by poll watchers. The first key provision requires a poll watcher to be no less than 3 feet from the canvassing process and prohibits election officials from requiring poll watchers to be more than 6 feet from the process. In addition, a poll watcher may inspect an absentee voter statement; however, the poll watcher may not use the ability to inspect voter statements to obstruct the canvassing process. A procedure is established to remove a poll watcher by a unanimous vote of the CBEC if the poll watcher is acting in bad faith.

With respect to the counting of ballots, § 904(c)(2) governs this process as it relates to poll watchers. The fundamental rule established by existing law is that a poll watcher may never take physical possession of a ballot. They may; however, be permitted to inspect a ballot upon request so long as they do not touch it. In addition, poll watchers are required to be able to view the entire counting process. To ensure this is the case, the rule establishes a new procedure which requires ballots to be taken to and from the public counting area in a sealed container.

Regarding voters marked as having already voted, §903(c) provides that a voter for whom the PVR List shows has voted but who asserts they have not voted must be allowed to cast a provisional ballot. This provisional ballot is to be counted unless the CBEC determines that the voter cast more than one ballot in that election, or the ballot is disqualified for an unrelated reason. The CBEC is required to report any provisional ballots that fall into this category to the SBEC due to the high degree of likelihood that fraud or a procedural error has occurred in such an instance.

The final key provision is in §914 and provides that, rather than the relevant forms for this rule being promulgated, they will simply be adopted by the SBEC outside the APA process and referenced by the rule.

ADDITIONAL DISCUSSION

In addition to the substantive changes, the amendment does include some updating of the formatting of subsections to better comply with the codification of rules by the Bureau of Legislative Research.

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

(Effective April 22, 2006; Revised _____, 2021)



STATE BOARD OF ELECTION COMMISSIONERS

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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.

§ ~~901~~ 900 Definitions

- (a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners where election clerks for absentee ballots meet on election day or during the one-week period before election day for the purpose of processing absentee ballots.¹
- (b) 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) Challenged Ballot Form – the applicable portions of a “provisional voter envelope” 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, 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) 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
- (e) 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.³
- (f) 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 ballots⁴ under the supervision of the county board.
- (g)(1) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, 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, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.⁵

¹ A.C.A. §§ 7-5-414(a); 7-5-416(a)(1)

² A.C.A. § 7-1-101

³ A.C.A. § 7-4-102(a)

⁴ A.C.A. § 7-5-414

⁵ ~~A.C.A. § 7-1-101 as amended by Act 1042 of 2015~~

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(2) Election Official - includes a person who serves as:

(A) A member of the county board of election commissioners;

(B) A person who is appointed by the county board of election commissioners to serve as:

(i) an election coordinator;

(ii) a person appointed to preform tasks related to the election which require the handling of ballots or other election materials or equipment;

(iii) an election clerk;

(iv) an election judge;

(v) an election sheriff; or

(vi) an absentee ballot clerk; or

(C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

- (h) Electronic Poll Book – hardware or software or a combination of hardware and software that allows election officials to view voter registration records and voting information during an election at an early voting location or at a polling site. The functions of an electronic poll book may include voter lookup, voter verification, voter identification, precinct assignment, ballot assignment, a recording of when a voter presents himself or herself to an election official to request a ballot, and direction to the correct polling site. An electronic poll book may be used as the precinct voter registration list.⁶
- (i) Eligibility Affirmation – a written affirmation executed under penalty of perjury 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.⁷
- (j) First-time Voter Registered by Mail – any registered voter, except those exempted by Arkansas Code Annotated § 7-5-201(e)(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.⁸ “First-time voters registered by mail” who do not provide identification when registering are flagged by the county clerk for the 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-

⁶ A.C.A. §§ 7-1-101; 7-5-107

⁷ A.C.A. § 7-5-308

⁸ A.C.A. §§ 7-1-101; 7-5-201(e)

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time voters registered by mail” and not flagged by the county clerk for the additional identification requirement.

- (k) Polling Site – a location selected by the county board of election commissioners where votes are cast.⁹
- (l) 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 person during early voting only for the purpose of observing whether ~~or not~~ votes are fairly and accurately cast.¹⁰
- (m) 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.¹¹
- (n) 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.
- (o) Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.¹²
- (p) 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.¹³ 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. An electronic poll book may be used as the precinct voter registration list.¹⁴

⁹ A.C.A. § 7-1-101

¹⁰ 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)

¹¹ A.C.A. § 7-5-312(d),(e)

¹² A.C.A. § 7-1-101

¹³ A.C.A. § 7-5-107

¹⁴ A.C.A. §§ 7-5-110; 7-5-107(a)(2)

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- (q) 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 constitutional and statutory requirements. Provisional ballots are counted upon verification of a voter’s eligibility or compliance with those legal requirements.¹⁵
- (r) 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, a space for the county clerk’s certification of the provisional voter’s registration status, and a space for the disposition of the provisional ballot upon review by the county board of election commissioners. The form for the “provisional voter envelope” is determined by the State Board of Election Commissioners and approved in a public meeting. The CBEC shall ensure the information contained on the approved form appears on the provisional voter envelope.
- (s) Unverified Provisional Ballot – any ballot which has been cast as a provisional ballot due to the failure of a voter to verify his or her voter registration under Amendment 51, §13 when required to do so by law.
- ~~(t) Verification of Identity Affirmation – the signed written statement in which a voter affirms that the voter is registered to vote in this state and that he or she is the person registered to vote. If properly executed and included with a provisional ballot, this oath will cause a vote that has been cast provisionally to be counted if the vote was cast provisionally only because the voter failed to verify his or her voter registration.~~
- ~~(t)-(u)~~ Verification of Voter Registration – The process by which an individual seeking to vote presents a photo identification to an election official for the purpose of confirming that the individual physically present at the poll is the same individual to whose voter registration the vote cast will be credited. Refer to SBEC Rules for the Verification of Voter Registration for additional information regarding this process and the meaning of photo identification as referred to in this process.¹⁶
- ~~(u)~~ General Provisional Ballot – A ballot that has been cast as a provisional ballot for any reason other than the voter was required to verify his or her voter registration under Amendment 51, §13 and failed to do so.

§ ~~902~~ 901 Failure to Verify Voter Registration or Provide Voter Identification

(a) ~~A.~~ Early Voting and Election Day Voting

A person voting at the poll during early voting or on election day who did not verify his or her voter registration or, if a resident of a long-term care or residential care facility licensed by the state, did not provide documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot. However, a first-time voter who registered by mail

¹⁵ Ark. Const. amend. 51, §13; A.C.A. §§ 7-1-101; 7-5-304(c); 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)

¹⁶ A.C.A. § 7-1-101(38)

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and has been flagged as having to comply with additional identification requirements must only comply with the requirements of A.C.A. 7-5-201(e)(2).¹⁷

(b) ~~B~~. Additional Identification Requirement for Flagged First-Time Voters Who Registered by Mail

A first-time voter voting at the polls during early voting or on election day who was flagged on the precinct voter registration list for compliance with the additional identification requirement and who did not provide required identification shall be offered a provisional ballot.¹⁸ Voters that fall into this category are not required to verify their voter registration under Amendment 51 §13.¹⁹ Rather, the voter must provide current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, other government document that shows the name and address of the voter in order to cast a regular ballot. If these voters fail to provide one of the forms of identification, they will be required to vote a provisional ballot.²⁰

(c) ~~C~~. Absentee Voters Generally

The absentee ballot of a voter who fails to verify his or her voter registration under the requirements of Amendment 51 by submitting a copy of the required document or identification card pursuant to SBEC Rules for the Verification of Voter Registration shall be considered as a provisional ballot.²¹

(d) ~~D~~. Absentee Voters that are Flagged First-Time Voters Who Registered by Mail

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.²²

§ ~~903~~ 902 Precinct Voter Registration List

(a) ~~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

¹⁷ Ark. Const. amend. 51, §13; A.C.A. § 7-5-201(e)

¹⁸ A.C.A. §§ 7-5-201(e)(1)(A); 7-5-305(8)(B)(iii)

¹⁹ Ark. Const. amend. 51, §13(b)(6)

²⁰ A.C.A. § 7-5-201(e); 7-5-305(8)(B)(iii)

²¹ Ark. Const. amend. 51, §13(b)(3)

²² A.C.A. § 7-5-201(e)(1)(B)

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- 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),²³ 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),²⁴ 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).²⁵

(b) ~~B.~~ "Voted Absentee" Notation

(1) 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.²⁶

(2) 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.²⁷

(c) Marked as Having Already Voted In-Person

(1) If the precinct voter registration list indicates that a voter has already been marked as having voted in person in that election and the voter asserts they have not voted in that election then the poll worker shall permit the voter to cast a provisional ballot.

(2) In the event a provisional ballot is cast due to a voter having been marked as already voted in the precinct voter registration list, the county board of election commissioners shall report this occurrence to the State Board of Election Commissioners within 30 days of the election.

(3) The county board of election commissioners should count the provisional ballot cast under this section unless:

²³ A.C.A. § 7-5-306(a)

²⁴ Ark. Const. amend. 51, §10

²⁵ A.C.A. §§ 7-5-306(b); 7-5-418(d)

²⁶ A.C.A. § 7-5-409(g)

²⁷ A.C.A. §§ 7-5-201(f); 7-5-305(a)(11); 7-5-411(b)

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(A) The county board of election commissioners determines that the voter cast more than one ballot in that election: or

(B) The county board of election commissioners is otherwise prohibited from counting the provisional ballot under this rule.

§ 904 ~~903~~ Poll Watchers Challenges

(a) ~~A~~-Official Recognition/Credentials

(1) 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.²⁸

(2) A poll watcher may list multiple sites on one poll watcher authorization form or write the word “all” in lieu of listing each polling site, if the poll watcher intends to be a poll watcher at multiple polling sites in the county.

(3) 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.²⁹

(4) 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.³⁰ 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.

(5) 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.

(6) 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.³¹

²⁸ A.C.A. § 7-5-312(d)

²⁹ A.C.A. § 7-5-312(a)(1),(e)

³⁰ A.C.A. § 7-5-413(d)

³¹ A.C.A. § 7-5-312(b),(e)

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(7) 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.³²

(8) Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.³³

(b) ~~B~~-Challenges

(1) 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").³⁴

(2) 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.³⁵

(3) 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.³⁶

(c) Inspection of Absentee Voter Statements and Ballots

(1)(A) The poll watcher shall be allowed to inspect a voter statement during the canvassing and counting of absentee ballots.³⁷ The canvassing process shall be conducted so that a poll watcher is able to generally view the paperwork as it is being processed. Election officials must require the poll watcher to stand or otherwise be in a position permitting them to hear the information read aloud and generally view the documents. The poll watchers are not required to be able to read the full text of every document and may be required to remain at a sufficient distance to ensure the integrity of the canvassing process.

(B) Poll watchers may not be permitted closer than three (3) feet from the canvassing process, unless they are inspecting a voter statement, and may not be required to be more than six (6) feet from the canvassing process.

(C) At no time shall a poll watcher have physical possession of an absentee ballot whether it is within the ballot secrecy envelope or whether it has been removed for counting.

³² A.C.A. § 7-5-312(c),(e)

³³ A.C.A. § 7-5-312(f)

³⁴ A.C.A. § 7-5-312(e),(g),(h)

³⁵ A.C.A. § 7-5-312(g)

³⁶ A.C.A. §§ 7-5-414; 7-5-417(a)

³⁷ A.C.A. § 25-19-105(b)(27)(B)

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(D) If a poll watcher requests to conduct an inspection of a voter statement which they believe may be subject to challenge, the poll watcher shall be allowed to view the voter statement in the presence of the election officials but shall not be permitted to remove the voter statement from the canvassing area.

(E) A poll watcher may not individually review every absentee voter statement and shall not use the ability to inspect a document in bad faith to impede the canvassing process.

(F)(i) The county board of election commissioners may, by unanimous vote of those members present, suspend the ability of a poll watcher to individually review absentee voter statements if that poll watcher:

(a) has requested to review more than thirty (30) absentee voter statements in less than an hour during a day of canvassing; and

(b) has been determined by the county board of election commissioners to be acting in bad faith so that the inspections operate to obstruct the canvassing process.

(ii) This shall not prevent the candidate, party, or group from appointing a substitute poll watcher, who shall not be subject to the suspension.

(2)(A) The county board of election commissioners, and those subordinate officials appointed to canvass and count ballots, shall ensure that the ballots are secured in a box or other containment device when the ballots are placed into storage and that the ballots are only removed from the storage or containment device at a time and location when and where poll watchers may be present.

(B) Poll Watchers shall be permitted to view the entire process of counting ballots from the time the ballots are removed from storage in a secured container until the time the ballots are returned to storage in a secured container. Poll Watchers are not permitted to access, touch, or otherwise take physical possession of a ballot.³⁸

(C) Poll watchers shall be allowed to inspect the process of counting ballots.³⁹ If a poll watcher requests to view a ballot during the counting process, the election official conducting the counting process shall place the ballot in view of the poll watcher while retaining physical custody of the ballot. The poll watcher shall not manipulate or otherwise take physical possession of the ballot.

§ ~~905~~ 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

³⁸ A.C.A. § 7-5-615(b)

³⁹ A.C.A. § 25-19-105(b)(27)(B)

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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.⁴⁰

§ ~~906~~ **905 Voting a Provisional Ballot**

(a) ~~A.~~ Provisional ballots cast at the polls during early voting or on election day for reasons other than the failure to verify voter registration 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.⁴¹
- (2) If as a result of failure to meet an identification requirements of a first time voter who did not provide a copy of his or her photo identification or otherwise satisfy the requirements of 7-5-201, when that voter registered to vote, a poll worker must inform the voter of the reason the voter is not allowed to cast a regular ballot.
- (3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and 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.⁴²
- (4) If the provisional ballot is cast on a preprinted paper ballot, the ~~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.⁴³
- (5) The provisional voter shall mark his or her ballot.⁴⁴
- (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).⁴⁵
- (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.⁴⁶
- (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a).⁴⁷
- (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”~~).⁴⁸
- (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁴⁹ 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 certification of each provisional voter’s registration status.

⁴⁰ A.C.A. § 7-5-304(c)

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

⁴² A.C.A. § 7-5-308(a)(2)

⁴³ A.C.A. § 7-5-308(a)(3)

⁴⁴ A.C.A. § 7-5-308(a)(4)

⁴⁵ A.C.A. § 7-5-308(a)(5)

⁴⁶ A.C.A. § 7-5-308(a)(6)

⁴⁷ A.C.A. § 7-5-308(a)(7)

⁴⁸ A.C.A. § 7-5-308(a)(8)

⁴⁹ A.C.A. § 7-5-308(c)

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- (12) Upon completion of the certification, 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.⁵⁰

~~(b) B-~~Provisional ballots cast at the polls during early voting or on election day because a voter was required to verify his or her voter registration and failed to do so, shall be handled as follows:

- (1) The poll worker shall indicate on the precinct voter registration list that the voter did not present a required document or identification card.⁵¹
- (2) The poll worker shall notify the voter that the voter must cast a provisional ballot in that election.⁵²
- (3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and 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.⁵³
- ~~(4) The poll worker shall inform the voter that he or she may complete a Verification of Identity Affirmation which will allow the voter to affirm he or she is registered to vote in the State of Arkansas and that he or she is the person who is registered to vote.⁵⁴~~
- ~~(5) If the voter chose to complete the Verification of Identity Affirmation, the voter shall sign the affirmation located on the front of the envelope marked “Provisional Ballot.” (see Attachment “A”)~~
- (6) If the provisional ballot is cast on a preprinted paper ballot, the 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.⁵⁵
- (7) The provisional voter shall mark his or her ballot.⁵⁶
- (8) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope.⁵⁷
- (9) 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” and seal the envelope.
- (10) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a)⁵⁸ and ensure that the provisional ballot envelope is sealed.
- (11) 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”).~~⁵⁹
- (12) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁶⁰ 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.

⁵⁰ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

⁵¹ A.C.A. § 7-5-308(b)(1)

⁵² A.C.A. § 7-5-308(b)(2)

⁵³ A.C.A. § 7-5-308(b)(3)

⁵⁴ A.C.A. § 7-5-308(b)(4)

⁵⁵ A.C.A. § 7-5-308(b)(5)

⁵⁶ A.C.A. § 7-5-308(b)(6)

⁵⁷ A.C.A. § 7-5-308(b)(7)

⁵⁸ A.C.A. § 7-5-308(b)(9)

⁵⁹ A.C.A. § 7-5-308(b)(10)

⁶⁰ A.C.A. § 7-5-308(c)

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- (13) The county board of election commissioners will forward, in a secured container, the sealed “provisional voter envelopes” to the county clerk’s office for certification of each provisional voters’ registration status.
- (14) Upon completion of the certification, 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.⁶¹

(c) For an absentee ballot which becomes a provisional ballot, the absentee ballot canvassing official shall place the absentee ballot materials in a provisional voter envelope and should check the “Other” box and write the word “Absentee” next to the box marked “Other” on the form provided on the provisional ballot envelope (~~Attachment “A”~~).

(d) The absentee ballot canvassing official should also indicate the reason for making the absentee ballot provisional on the form provided on the provisional ballot envelope (~~Attachment “A”~~). When the absentee voter’s voter statement is inconsistent with the absentee ballot return envelope with regard to the identity of a bearer or agent the absentee ballot canvassing official should write “Inconsistent Bearer [or Agent] – Envelope/Statement” after the word “Absentee” next to the “Other” box on the provisional ballot envelope. When the absentee voter’s voter statement is inconsistent with the absentee ballot application with regard to the identity of a bearer the absentee ballot canvassing official should write “Inconsistent Bearer – Application/Statement” after the word “Absentee” next to the “Other” box on the provisional ballot envelope.

(e) When the absentee voter’s voter statement is inconsistent with the absentee ballot application the voter’s ballot is shall not be counted.⁶²

§ ~~907~~ 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 a copy of a notice that includes the following information:

- (1) That the provisional voter will be notified by first class mail whether his or her vote was counted and the reason if not counted.⁶³
- (2) The address, telephone number, and regular office hours of the county clerk;
- (3) An explanation of the provisional voting process;
- (4) An explanation of how a voter who cast a provisional ballot because the voter failed to verify his or her voter registration ~~and who did not sign the Verification of Identity Affirmation~~ can return to the clerk or the county board to verify their voter registration before Monday at noon following the election.
- (5) 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 written notice mailed first class to the provisional voter by the county

⁶¹ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

⁶² A.C.A. § 7-5-416(b)(1)(F)(ii)

⁶³ A.C.A. § 7-5-902

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board of election commissioners. Sample notices may be obtained from the Secretary of State's office. The notice shall include the following:

- (1) A statement whether the provisional ballot was counted or was not counted;
- (2) If the provisional ballot was preliminarily determined to be invalid, the reason the ballot was not counted; and
- (3) 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.⁶⁴

(d) If the county board determines that a provisional ballot or an absentee ballot which has been made provisional will not be counted, the board must send written notice to the voter who cast the ballot and state the reason or reasons the ballot was not counted.⁶⁵

§ ~~908~~ **907 Review of Provisional Ballots**

(a) The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.⁶⁶

(1) Based upon its examination of the "Provisional Voter Eligibility Affirmation," the "Challenged Ballot Form," if applicable, the "Reason for Voting Provisional," the county clerk's certification, ~~the "Verification of Identity Affirmation," if applicable,~~ and any additional information available, the county board shall make a determination of whether the provisional ballot was cast by 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 or the registration address of the absentee voter.⁶⁷

(2) If the county board makes an initial 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.⁶⁸

(b) ~~A.~~ Procedures for the review of General Provisional Ballots

(1) When reviewing the provisional ballot cast at the polls by a flagged first-time voter who registered by mail and did not meet the additional identification requirement when registering or

⁶⁴ A.C.A. § 7-5-308(d)(3)

⁶⁵ A.C.A. § 7-5-902

⁶⁶ A.C.A. § 7-5-308(e)(1)

⁶⁷ A.C.A. § 7-5-308(e)(2)

⁶⁸ *Dotson v. Richey*, 211 Ark. 789 (1947)

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voting, the county board should not base its initial determination of whether ~~or not~~ to count the ballot solely on the provisional voter's failure to meet the additional identification requirement. The provisional ballot should be rejected if there is a determination, independent of the failure to meet the additional identification requirement that the person who voted is not eligible to vote in the precinct.

(2) When reviewing the provisional absentee ballot of a flagged first-time voter who registered by mail and did not meet the additional identification requirement when registering or voting, the county board should not base its initial determination of whether to count the ballot solely on the provisional voter's failure to meet the identification requirement. The provisional ballot of a flagged first-time voter should be rejected if the voter failed to provide the required identification and there is a determination independent of the failure to meet the identification requirement that the person who voted is not eligible to vote in the precinct or that the person failed to meet any of the other statutory requirements that would cause a voter's absentee ballot to be rejected.⁶⁹

(3) 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:

(A) 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

(B) 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.

(c) B. Procedures for the review of all Unverified Provisional Ballots

~~When reviewing a ballot of an unverified provisional voter, the county board shall determine whether the voter executed a Verification of Identity Affirmation. An unverified provisional ballot that is accompanied by a Verification of Identity Affirmation shall be counted when the county board makes its initial determination so long as there is no additional reason, unrelated to the verification of the voter's registration, that would also cause the ballot to be treated as provisional.~~⁷⁰

~~Unverified provisional ballots that were cast at the poll or cast as absentee ballots and are not accompanied by a Verification of Identity Affirmation will not be counted at the time the county board makes its initial determinations.~~

(1) The county board shall review the unverified provisional ballots ~~that were not accompanied by a Verification of Identity Affirmation~~ after 12:00 noon on the Monday following the election in order to determine whether the persons who cast each ballot returned to either the county clerk or the county board in order to verify his or her voter registration. If, at this time, the board determines that the voter who cast the unverified provisional ballot did return to the county board or county clerk before 12:00 noon on the Monday following the election and the county board determines

⁶⁹ A.C.A. §§ 7-5-412(a)(2), (d); 7-5-308 (e)(2)

⁷⁰ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

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there are no other grounds that would cause the ballot not to be counted then the ballot shall be counted.⁷¹

(2) If the county board determined that the voter who cast an unverified provisional ballot failed to execute a Verification of Identity Affirmation at the time the ballot was cast at the poll or, in the case of an absentee ballot, when the ballot was returned to the county clerk and also failed to return to the county clerk or county board before 12:00 noon on the Monday following the election to verify his or her voter registration, that ballot shall not be counted.⁷²

(3) The county board, through at least one of its members, must attest to the disposition of each provisional ballot, stating:

- 1) (A) Whether or not the ballot was counted, and
- 2) (B) If rejected, the reason for not counting the ballot.

(d) The county board shall notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted.

§ ~~909~~ 908 Hearing

(a) Provisional voters who cast a general provisional ballot shall be allowed to appear before the county board to contest the county board's initial decision to disqualify their ballots and to present evidence that they were registered to vote and voted the correct ballot for the precinct of their residence. (Provisional voters who cast unverified provisional ballot must satisfy the requirements of Amendment 51 and this rule in order to have their ballot counted.)

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

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

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

§ ~~910~~ 909 Counting Provisional Ballots

(a) Unless enjoined by a court of competent jurisdiction, a general provisional ballot shall be counted if no other grounds exist that would cause the ballot to not be counted as an unverified provisional ballot and:

⁷¹ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

⁷² Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

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- (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; or
- (2) It is an absentee ballot and the county board determines that the voter is eligible to vote in the precinct and has met all other statutory requirements necessary for an absentee ballot to be counted.⁷³

(b) Unless enjoined by a court of competent jurisdiction, an unverified provisional ballot shall be counted if no other grounds exist that would cause the ballot to not be counted as a general provisional ballot and:

- 1) ~~The voter executed a verification of identity affirmation at the time the voter cast his or her ballot at the poll or returned a verification of identity affirmation with his or her absentee ballot; or~~
- 2) The the voter returns to the county clerk or county board of election commissioners before 12:00 noon on the Monday following the election and verified his or her voter registration.⁷⁴

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

(d) Provisional ballots are counted as follows:

- (1) the commission, through at least one of its members, either completes the election commission's portion of the list of provisional voters form from each precinct (~~see Attachment "B"~~) or attests to a comprehensive list that shows the disposition of each provisional ballot in the election,
- (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 of the outer "provisional voter envelopes" have been opened and all of the sealed inner ballot secrecy envelopes are 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
- (7) all records are preserved in accordance with the laws governing preservation of ballots and election materials.

§ ~~911~~ 910 Prosecuting Attorney

⁷³ A.C.A. § 7-5-308(e)(2)

⁷⁴ Ark. Const. amend. 51, §13(b)

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(a) 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.⁷⁵

(b) 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.⁷⁶

§ ~~912~~ 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.

§ ~~913~~ 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.

§ 914 Forms Utilized Under this Rule

(a) The “provisional voter envelope” utilized under this rule shall be the most current version of the provisional voter envelope approved for use by an affirmative vote of the State Board of Election Commissioners and available on its website.

(b) The “List of Provisional Voters” utilized under this rule shall be the most current version of the list of provisional voters approved for use by an affirmative vote of the State Board of Election Commissioners and available on its website.

(c) The “poll watcher authorization form” is established by state statute and must reflect the requirements of A.C.A. §7-5-312. The State Board of Election Commissioners has created a version of this form which is formatted for easy printing and utilization. The reverse side of the poll watcher authorization form is required to contain the “poll watcher rights and responsibility form.” The most current version of this form is available on the agency’s website.

(d) The “poll watcher rights and responsibility form” is established by state statute and must reflect the requirements of A.C.A. §7-5-312. The State Board of Election Commissioners has created a

⁷⁵ A.C.A. § 7-5-305(a)(8)(B)(iv)

⁷⁶ A.C.A. § 7-5-308(g)

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version of this form which is formatted for easy printing and utilization. The most current version of this form is available on the agency's website.

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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)

Name of Registered Voter: _____ Prior Name: _____

Address of Registered Voter: _____ Prior Street Address: _____

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

Phone Number: _____ Date of Birth: _____ Provided ID: Yes ☐ No ☐

I, _____, (printed name of provisional voter) hereby affirm, under penalty of perjury, that the information provided is true 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.

Signature of Provisional Voter _____ Witnessed by: _____ Signature of Poll Worker _____

VERIFICATION OF IDENTITY AFFIRMATION (OPTIONAL)

(Available to voters who are unable to verify their Voter Registration)

I, _____, hereby affirm, under penalty of perjury, that I am registered to vote in the State of Arkansas and that I am the person who is registered to vote using the information reproduced above.

Signature of Voter _____

Note: Perjury is defined by Arkansas law as a Class C Felony and is punishable by no less than three years and no more than 10 years in prison and up to a \$10,000 fine. A.C.A. §§ 5-4-201, 5-4-401.

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

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

A. 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 _____

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.)

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: _____

	TO BE COMPLETED BY POLL WORKER					TO BE COMPLETED BY ELECTION COMMISSION			
____ Voter's Signature	Voter's Name	Voter's Address	Reason Provis.		Precinct	Vote counted		If not counted, reason	
			A	B		Y	N		

Provisional Ballot Reason: A) General Provisional B) Unverified Registration Provisional

Commissioner Signature Commissioner Signature Commissioner Signature

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

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.~~

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Agency # 108.00

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

(Effective April 22, 2006; Revised _____, 2021)



STATE BOARD OF ELECTION COMMISSIONERS

**501 Woodlane, Suite 122 South
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec**

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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.

§ 901 Definitions

- (a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners where election clerks for absentee ballots meet on election day or during the one-week period before election day for the purpose of processing absentee ballots.¹
- (b) 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) Challenged Ballot Form – the applicable portions of a “provisional voter envelope” 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, 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) 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
- (e) 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.³
- (f) 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 ballots⁴ under the supervision of the county board.
- (g)(1) Election Official – a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, 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, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.⁵

¹ A.C.A. §§ 7-5-414(a); 7-5-416(a)(1)

² A.C.A. § 7-1-101

³ A.C.A. § 7-4-102(a)

⁴ A.C.A. § 7-5-414

⁵ A.C.A. § 7-1-101 as amended by Act 1042 of 2015

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(2) Election Official - includes a person who serves as:

(A) A member of the county board of election commissioners;

(B) A person who is appointed by the county board of election commissioners to serve as:

- (i) an election coordinator;
- (ii) a person appointed to perform tasks related to the election which require the handling of ballots or other election materials or equipment;
- (iii) an election clerk;
- (iv) an election judge;
- (v) an election sheriff; or
- (vi) an absentee ballot clerk; or

(C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

- (h) Electronic Poll Book – hardware or software or a combination of hardware and software that allows election officials to view voter registration records and voting information during an election at an early voting location or at a polling site. The functions of an electronic poll book may include voter lookup, voter verification, voter identification, precinct assignment, ballot assignment, a recording of when a voter presents himself or herself to an election official to request a ballot, and direction to the correct polling site. An electronic poll book may be used as the precinct voter registration list.⁶
- (i) Eligibility Affirmation – a written affirmation executed under penalty of perjury 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.⁷
- (j) First-time Voter Registered by Mail – any registered voter, except those exempted by Arkansas Code Annotated § 7-5-201(e)(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.⁸ “First-time voters registered by mail” who do not provide identification when registering are flagged by the county clerk for the 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.

⁶ A.C.A. §§ 7-1-101; 7-5-107

⁷ A.C.A. § 7-5-308

⁸ A.C.A. §§ 7-1-101; 7-5-201(e)

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- (k) Polling Site – a location selected by the county board of election commissioners where votes are cast.⁹
- (l) 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 person during early voting only for the purpose of observing whether ~~or not~~ votes are fairly and accurately cast.¹⁰
- (m) 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.¹¹
- (n) 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.
- (o) Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.¹²
- (p) 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.¹³ 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. An electronic poll book may be used as the precinct voter registration list.¹⁴
- (q) 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 constitutional

⁹ A.C.A. § 7-1-101

¹⁰ 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)

¹¹ A.C.A. § 7-5-312(d),(e)

¹² A.C.A. § 7-1-101

¹³ A.C.A. § 7-5-107

¹⁴ A.C.A. §§ 7-5-110; 7-5-107(a)(2)

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and statutory requirements. Provisional ballots are counted upon verification of a voter's eligibility or compliance with those legal requirements.¹⁵

- (r) 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, a space for the county clerk's certification of the provisional voter's registration status, and a space for the disposition of the provisional ballot upon review by the county board of election commissioners. The form for the "provisional voter envelope" is determined by the State Board of Election Commissioners and approved in a public meeting. The CBEC shall ensure the information contained on the approved form appears on the provisional voter envelope.
- (s) Unverified Provisional Ballot – any ballot which has been cast as a provisional ballot due to the failure of a voter to verify his or her voter registration under Amendment 51, §13 when required to do so by law.
- (t) Verification of Voter Registration – The process by which an individual seeking to vote presents a photo identification to an election official for the purpose of confirming that the individual physically present at the poll is the same individual to whose voter registration the vote cast will be credited. Refer to SBEC Rules for the Verification of Voter Registration for additional information regarding this process and the meaning of photo identification as referred to in this process.¹⁶
- (u) General Provisional Ballot – A ballot that has been cast as a provisional ballot for any reason other than the voter was required to verify his or her voter registration under Amendment 51, §13 and failed to do so.

§ 902 Failure to Verify Voter Registration or Provide Voter Identification

(a) Early Voting and Election Day Voting

A person voting at the poll during early voting or on election day who did not verify his or her voter registration or, if a resident of a long-term care or residential care facility licensed by the state, did not provide documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot. However, a first-time voter who registered by mail and has been flagged as having to comply with additional identification requirements must only comply with the requirements of A.C.A. 7-5-201(e)(2).¹⁷

¹⁵ Ark. Const. amend. 51, §13; A.C.A. §§ 7-1-101; 7-5-304(c); 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)

¹⁶ A.C.A. § 7-1-101(38)

¹⁷ Ark. Const. amend. 51, §13; A.C.A. § 7-5-201(e)

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(b) Additional Identification Requirement for Flagged First-Time Voters Who Registered by Mail

A first-time voter voting at the polls during early voting or on election day who was flagged on the precinct voter registration list for compliance with the additional identification requirement and who did not provide required identification shall be offered a provisional ballot.¹⁸ Voters that fall into this category are not required to verify their voter registration under Amendment 51 §13.¹⁹ Rather, the voter must provide current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, other government document that shows the name and address of the voter in order to cast a regular ballot. If these voters fail to provide one of the forms of identification, they will be required to vote a provisional ballot.²⁰

(c) Absentee Voters Generally

The absentee ballot of a voter who fails to verify his or her voter registration under the requirements of Amendment 51 by submitting a copy of the required document or identification card pursuant to SBEC Rules for the Verification of Voter Registration shall be considered as a provisional ballot.²¹

(d) Absentee Voters that are Flagged First-Time Voters Who Registered by Mail

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.²²

§ 903 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),²³ 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),²⁴ or

¹⁸ A.C.A. §§ 7-5-201(e)(1)(A); 7-5-305(8)(B)(iii)

¹⁹ Ark. Const. amend. 51, §13(b)(6)

²⁰ A.C.A. § 7-5-201(e); 7-5-305(8)(B)(iii)

²¹ Ark. Const. amend. 51, §13(b)(3)

²² A.C.A. § 7-5-201(e)(1)(B)

²³ A.C.A. § 7-5-306(a)

²⁴ Ark. Const. amend. 51, §10

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- (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).²⁵

(b) "Voted Absentee" Notation

- (1) 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.²⁶
- (2) 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.²⁷

(c) Marked as Having Already Voted In-Person

- (1) If the precinct voter registration list indicates that a voter has already been marked as having voted in person in that election and the voter asserts they have not voted in that election then the poll worker shall permit the voter to cast a provisional ballot.
- (2) In the event a provisional ballot is cast due to a voter having been marked as already voted in the precinct voter registration list, the county board of election commissioners shall report this occurrence to the State Board of Election Commissioners within 30 days of the election.
- (3) The county board of election commissioners should count the provisional ballot cast under this section unless:
 - (A) The county board of election commissioners determines that the voter cast more than one ballot in that election: or
 - (B) The county board of election commissioners is otherwise prohibited from counting the provisional ballot under this rule.

²⁵ A.C.A. §§ 7-5-306(b); 7-5-418(d)

²⁶ A.C.A. § 7-5-409(g)

²⁷ A.C.A. §§ 7-5-201(f); 7-5-305(a)(11); 7-5-411(b)

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§ 904 Poll Watchers

(a) Official Recognition/Credentials

(1) Poll watchers representing a candidate, group, or political party must file a “poll watcher authorization form” 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.²⁸

(2) A poll watcher may list multiple sites on one poll watcher authorization form or write the word “all” in lieu of listing each polling site, if the poll watcher intends to be a poll watcher at multiple polling sites in the county.

(3) 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.²⁹

(4) 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.³⁰ 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.

(5) 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.

(6) 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.³¹

(7) 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.³²

(8) Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.³³

²⁸ A.C.A. § 7-5-312(d)

²⁹ A.C.A. § 7-5-312(a)(1),(e)

³⁰ A.C.A. § 7-5-413(d)

³¹ A.C.A. § 7-5-312(b),(e)

³² A.C.A. § 7-5-312(c),(e)

³³ A.C.A. § 7-5-312(f)

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(b) Challenges

(1) 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."³⁴

(2) 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.³⁵

(3) 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.³⁶

(c) Inspection of Absentee Voter Statements and Ballots

(1)(A) The poll watcher shall be allowed to inspect a voter statement during the canvassing and counting of absentee ballots.³⁷ The canvassing process shall be conducted so that a poll watcher is able to generally view the paperwork as it is being processed. Election officials must require the poll watcher to stand or otherwise be in a position permitting them to hear the information read aloud and generally view the documents. The poll watchers are not required to be able to read the full text of every document and may be required to remain at a sufficient distance to ensure the integrity of the canvassing process.

(B) Poll watchers may not be permitted closer than three (3) feet from the canvassing process, unless they are inspecting a voter statement, and may not be required to be more than six (6) feet from the canvassing process.

(C) At no time shall a poll watcher have physical possession of an absentee ballot whether it is within the ballot secrecy envelope or whether it has been removed for counting.

(D) If a poll watcher requests to conduct an inspection of a voter statement which they believe may be subject to challenge, the poll watcher shall be allowed to view the voter statement in the presence of the election officials but shall not be permitted to remove the voter statement from the canvassing area.

(E) A poll watcher may not individually review every absentee voter statement and shall not use the ability to inspect a document in bad faith to impede the canvassing process.

(F)(i) The county board of election commissioners may, by unanimous vote of those members present, suspend the ability of a poll watcher to individually review absentee voter statements if that poll watcher:

³⁴ A.C.A. § 7-5-312(e),(g),(h)

³⁵ A.C.A. § 7-5-312(g)

³⁶ A.C.A. §§ 7-5-414; 7-5-417(a)

³⁷ A.C.A. § 25-19-105(b)(27)(B)

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(a) has requested to review more than thirty (30) absentee voter statements in less than an hour during a day of canvassing; and

(b) has been determined by the county board of election commissioners to be acting in bad faith so that the inspections operate to obstruct the canvassing process.

(ii) This shall not prevent the candidate, party, or group from appointing a substitute poll watcher, who shall not be subject to the suspension.

(2)(A) The county board of election commissioners, and those subordinate officials appointed to canvass and count ballots, shall ensure that the ballots are secured in a box or other containment device when the ballots are placed into storage and that the ballots are only removed from the storage or containment device at a time and location when and where poll watchers may be present.

(B) Poll Watchers shall be permitted to view the entire process of counting ballots from the time the ballots are removed from storage in a secured container until the time the ballots are returned to storage in a secured container. Poll Watchers are not permitted to access, touch, or otherwise take physical possession of a ballot.³⁸

(C) Poll watchers shall be allowed to inspect the process of counting ballots.³⁹ If a poll watcher requests to view a ballot during the counting process, the election official conducting the counting process shall place the ballot in view of the poll watcher while retaining physical custody of the ballot. The poll watcher shall not manipulate or otherwise take physical possession of the ballot.

§ 905 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.⁴⁰

§ 906 Voting a Provisional Ballot

(a) Provisional ballots cast at the polls during early voting or on election day for reasons other than the failure to verify voter registration 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

³⁸ A.C.A. § 7-5-615(b)

³⁹ A.C.A. § 25-19-105(b)(27)(B)

⁴⁰ A.C.A. § 7-5-304(c)

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“challenged ballot form,” and a poll worker must inform the voter that his or her ballot is being challenged⁴¹

- (2) If as a result of failure to meet an identification requirements of a first time voter who did not provide a copy of his or her photo identification or otherwise satisfy the requirements of 7-5-201, when that voter registered to vote, a poll worker must inform the voter of the reason the voter is not allowed to cast a regular ballot.
 - (3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and 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.⁴²
 - (4) If the provisional ballot is cast on a preprinted paper ballot, 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.⁴³
 - (5) The provisional voter shall mark his or her ballot.⁴⁴
 - (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).⁴⁵
 - (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.⁴⁶
 - (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a).⁴⁷
 - (9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot.⁴⁸
 - (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁴⁹ 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 certification of each provisional voter’s registration status.
 - (12) Upon completion of the certification, 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.⁵⁰
- (b) Provisional ballots cast at the polls during early voting or on election day because a voter was required to verify his or her voter registration and failed to do so, shall be handled as follows:

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

⁴² A.C.A. § 7-5-308(a)(2)

⁴³ A.C.A. § 7-5-308(a)(3)

⁴⁴ A.C.A. § 7-5-308(a)(4)

⁴⁵ A.C.A. § 7-5-308(a)(5)

⁴⁶ A.C.A. § 7-5-308(a)(6)

⁴⁷ A.C.A. § 7-5-308(a)(7)

⁴⁸ A.C.A. § 7-5-308(a)(8)

⁴⁹ A.C.A. § 7-5-308(c)

⁵⁰ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

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- (1) The poll worker shall indicate on the precinct voter registration list that the voter did not present a required document or identification card.⁵¹
 - (2) The poll worker shall notify the voter that the voter must cast a provisional ballot in that election.⁵²
 - (3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and 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.⁵³
 - (4) If the provisional ballot is cast on a preprinted paper ballot, 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.⁵⁴
 - (5) The provisional voter shall mark his or her ballot.⁵⁵
 - (6) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope.⁵⁶
 - (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” and seal the envelope.
 - (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a)⁵⁷ and ensure that the provisional ballot envelope is sealed.
 - (9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot.⁵⁸
 - (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁵⁹ 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 certification of each provisional voters’ registration status.
 - (12) Upon completion of the certification, 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.⁶⁰
- (c) For an absentee ballot which becomes a provisional ballot, the absentee ballot canvassing official shall place the absentee ballot materials in a provisional voter envelope and should check the “Other” box and write the word “Absentee” next to the box marked “Other” on the form provided on the provisional ballot envelope.
- (d) The absentee ballot canvassing official should also indicate the reason for making the absentee ballot provisional on the form provided on the provisional ballot envelope. When the absentee

⁵¹ A.C.A. § 7-5-308(b)(1)

⁵² A.C.A. § 7-5-308(b)(2)

⁵³ A.C.A. § 7-5-308(b)(3)

⁵⁴ A.C.A. § 7-5-308(b)(5)

⁵⁵ A.C.A. § 7-5-308(b)(6)

⁵⁶ A.C.A. § 7-5-308(b)(7)

⁵⁷ A.C.A. § 7-5-308(b)(9)

⁵⁸ A.C.A. § 7-5-308(b)(10)

⁵⁹ A.C.A. § 7-5-308(c)

⁶⁰ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

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voter's voter statement is inconsistent with the absentee ballot return envelope with regard to the identity of a bearer or agent the absentee ballot canvassing official should write "Inconsistent Bearer [or Agent] – Envelope/Statement" after the word "Absentee" next to the "Other" box on the provisional ballot envelope. When the absentee voter's voter statement is inconsistent with the absentee ballot application with regard to the identity of a bearer the absentee ballot canvassing official should write "Inconsistent Bearer – Application/Statement" after the word "Absentee" next to the "Other" box on the provisional ballot envelope.

(e) When the absentee voter's voter statement is inconsistent with the absentee ballot application the voter's ballot shall not be counted.⁶¹

§ 907 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 a copy of a notice that includes the following information:

- (1) That the provisional voter will be notified by first class mail whether his or her vote was counted and the reason if not counted.⁶²
- (2) The address, telephone number, and regular office hours of the county clerk;
- (3) An explanation of the provisional voting process;
- (4) An explanation of how a voter who cast a provisional ballot because the voter failed to verify his or her voter registration can return to the clerk or the county board to verify their voter registration before Monday at noon following the election.
- (5) 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 written notice mailed first class to the provisional voter by the county board of election commissioners. Sample notices may be obtained from the Secretary of State's office. The notice shall include the following:

- (1) A statement whether the provisional ballot was counted or was not counted;
- (2) If the provisional ballot was preliminarily determined to be invalid, the reason the ballot was not counted; and
- (3) 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.⁶³

(d) If the county board determines that a provisional ballot or an absentee ballot which has been made provisional will not be counted, the board must send written notice to the voter who cast the ballot and state the reason or reasons the ballot was not counted.⁶⁴

⁶¹ A.C.A. § 7-5-416(b)(1)(F)(ii)

⁶² A.C.A. § 7-5-902

⁶³ A.C.A. § 7-5-308(d)(3)

⁶⁴ A.C.A. § 7-5-902

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§ 908 Review of Provisional Ballots

(a) The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.⁶⁵

(1) Based upon its examination of the “Provisional Voter Eligibility Affirmation,” the “Challenged Ballot Form,” if applicable, the “Reason for Voting Provisional,” the county clerk’s certification, and any additional information available, the county board shall make a determination of whether the provisional ballot was cast by 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 or the registration address of the absentee voter.⁶⁶

(2) If the county board makes an initial 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.⁶⁷

(b) Procedures for the review of General Provisional Ballots

(1) When reviewing the provisional ballot cast at the polls by a flagged first-time voter who registered by mail and did not meet the additional identification requirement when registering or voting, the county board should not base its initial determination of whether to count the ballot solely on the provisional voter’s failure to meet the additional identification requirement. The provisional ballot should be rejected if there is a determination, independent of the failure to meet the additional identification requirement that the person who voted is not eligible to vote in the precinct.

(2) When reviewing the provisional absentee ballot of a flagged first-time voter who registered by mail and did not meet the additional identification requirement when registering or voting, the county board should not base its initial determination of whether to count the ballot solely on the provisional voter’s failure to meet the identification requirement. The provisional ballot of a flagged first-time voter should be rejected if the voter failed to provide the required identification and there is a determination independent of the failure to meet the identification requirement that the person who voted is not eligible to vote in the precinct or that the person failed to meet any of the other statutory requirements that would cause a voter’s absentee ballot to be rejected.⁶⁸

(3) 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:

(A) 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

⁶⁵ A.C.A. § 7-5-308(e)(1)

⁶⁶ A.C.A. § 7-5-308(e)(2)

⁶⁷ *Dotson v. Richey*, 211 Ark. 789 (1947)

⁶⁸ A.C.A. §§ 7-5-412(a)(2), (d); 7-5-308 (e)(2)

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(B) 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.

(c) Procedures for the review of all Unverified Provisional Ballots

(1) The county board shall review the unverified provisional ballots after 12:00 noon on the Monday following the election in order to determine whether the persons who cast each ballot returned to either the county clerk or the county board in order to verify his or her voter registration. If, at this time, the board determines that the voter who cast the unverified provisional ballot did return to the county board or county clerk before 12:00 noon on the Monday following the election and the county board determines there are no other grounds that would cause the ballot not to be counted then the ballot shall be counted.⁶⁹

(2) If the county board determined that the voter who cast an unverified provisional ballot failed to return to the county clerk or county board before 12:00 noon on the Monday following the election to verify his or her voter registration, that ballot shall not be counted.⁷⁰

(3) The county board, through at least one of its members, must attest to the disposition of each provisional ballot, stating:

- (A) Whether or not the ballot was counted, and
- (B) If rejected, the reason for not counting the ballot.

(d) The county board shall notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted.

§ 909 Hearing

(a) Provisional voters who cast a general provisional ballot shall be allowed to appear before the county board to contest the county board's initial decision to disqualify their ballots and to present evidence that they were registered to vote and voted the correct ballot for the precinct of their residence. (Provisional voters who cast unverified provisional ballot must satisfy the requirements of Amendment 51 and this rule in order to have their ballot counted.)

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

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

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

⁶⁹ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

⁷⁰ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

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§ 910 Counting Provisional Ballots

(a) Unless enjoined by a court of competent jurisdiction, a general provisional ballot shall be counted if no other grounds exist that would cause the ballot to not be counted as an unverified provisional ballot and:

- (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; or
- (2) It is an absentee ballot and the county board determines that the voter is eligible to vote in the precinct and has met all other statutory requirements necessary for an absentee ballot to be counted.⁷¹

(b) Unless enjoined by a court of competent jurisdiction, an unverified provisional ballot shall be counted if no other grounds exist that would cause the ballot to not be counted as a general provisional ballot and the voter returns to the county clerk or county board of election commissioners before 12:00 noon on the Monday following the election and verified his or her voter registration.⁷²

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

(d) Provisional ballots are counted as follows:

- (1) the commission, through at least one of its members, either completes the election commission's portion of the list of provisional voters form from each precinct or attests to a comprehensive list that shows the disposition of each provisional ballot in the election,
- (2) an election official opens the outer "provisional voter envelope" for those on the list marked to be counted,
- (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 of the outer "provisional voter envelopes" have been opened and all of the sealed inner ballot secrecy envelopes are 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
- (7) all records are preserved in accordance with the laws governing preservation of ballots and election materials.

⁷¹ A.C.A. § 7-5-308(e)(2)

⁷² Ark. Const. amend. 51, §13(b)

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§ 911 Prosecuting Attorney

(a) 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.⁷³

(b) 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.⁷⁴

§ 912 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.

§ 913 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.

§ 914 Forms Utilized Under this Rule

(a) The “provisional voter envelope” utilized under this rule shall be the most current version of the provisional voter envelope approved for use by an affirmative vote of the State Board of Election Commissioners and available on its website.

(b) The “List of Provisional Voters” utilized under this rule shall be the most current version of the list of provisional voters approved for use by an affirmative vote of the State Board of Election Commissioners and available on its website.

(c) The “poll watcher authorization form” is established by state statute and must reflect the requirements of A.C.A. §7-5-312. The State Board of Election Commissioners has created a version of this form which is formatted for easy printing and utilization. The reverse side of the poll watcher authorization form is required to contain the “poll watcher rights and responsibility form.” The most current version of this form is available on the agency’s website.

(d) The “poll watcher rights and responsibility form” is established by state statute and must reflect the requirements of A.C.A. §7-5-312. The State Board of Election Commissioners has created a version of this form which is formatted for easy printing and utilization. The most current version of this form is available on the agency’s website.

⁷³ A.C.A. § 7-5-305(a)(8)(B)(iv)

⁷⁴ A.C.A. § 7-5-308(g)

State of Arkansas

As Engrossed: H1/26/21

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1112

By: Representatives Lowery, Beaty Jr., Beck, Bentley, M. Berry, S. Berry, Boyd, Breaux, Brooks, Brown, Bryant, Cavanaugh, Cloud, Coleman, Crawford, Deffenbaugh, Dotson, Eaves, Eubanks, Evans, Fortner, Furman, Gonzales, M. Gray, Haak, Hawks, Hollowell, Jean, Ladyman, Lundstrum, Lynch, J. Mayberry, McClure, McCollum, McGrew, McNair, S. Meeks, Milligan, Payton, Pilkington, Ray, Richmond, Rye, B. Smith, S. Smith, Underwood, Vaught, Warren, Watson, Wing
By: Senators A. Clark, Irvin, M. Johnson, Rapert

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING VOTER IDENTIFICATION; TO AMEND THE LAW CONCERNING VERIFICATION OF PROVISIONAL BALLOTS; TO AMEND AMENDMENT 51 OF THE ARKANSAS CONSTITUTION; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING VOTER IDENTIFICATION; TO AMEND THE LAW CONCERNING VERIFICATION OF PROVISIONAL BALLOTS; AND TO AMEND AMENDMENT 51 OF THE ARKANSAS CONSTITUTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Constitution, Amendment 51, § 13(b)(4) and (5), concerning fail-safe voting and verification of voter registration, are amended to read as follows:

(4) A provisional ballot cast by a voter who did not present a required document or identification card shall be counted if:

~~(A)(i)(a) The voter completes a sworn statement at the polling site when voting either early or at the polls on election day stating~~



1 ~~that the voter is registered to vote in this state and that he or she is the~~
2 ~~person registered to vote.~~

3 ~~(b) A sworn statement completed under~~
4 ~~subdivision (b)(4)(A)(i)(a) of this section is not required to be notarized~~
5 ~~but the voter shall execute the sworn statement under penalty of perjury.~~

6 ~~(c) A sworn statement completed at the polling~~
7 ~~site shall be delivered to the county board of election commissioners so that~~
8 ~~the provisional ballot may be counted; and~~

9 ~~(ii) The county board of election commissioners does~~
10 ~~not determine that the provisional ballot is invalid and should not be~~
11 ~~counted based on other grounds; or~~

12 ~~(B)(i)(A)~~ The voter returns to the county board of
13 election commissioners or the county clerk by 12:00 noon on the Monday
14 following the election and presents a document or identification card that
15 complies with the requirements of subdivision (b)(1)(A)(i) of this section;
16 and

17 ~~(ii)(B)~~ The county board of election commissioners does
18 not determine that the provisional ballot is invalid and should not be
19 counted based on other grounds.

20 (5) A provisional ballot cast by an absentee voter who failed to
21 submit with an absentee ballot documentation that complies with subdivision
22 (b)(1)(A)(ii) of this section shall be counted if:

23 ~~(A)(i)(a) The voter completes and returns the sworn~~
24 ~~statement portion of the absentee ballot form stating that the voter is~~
25 ~~registered to vote in this state and that he or she is the person registered~~
26 ~~to vote.~~

27 ~~(b) A sworn statement returned under~~
28 ~~subdivision (b)(5)(A)(i)(a) of this section is not required to be notarized~~
29 ~~but the voter shall execute the sworn statement under penalty of perjury; and~~

30 ~~(ii) The county board of election commissioners does~~
31 ~~not determine that the provisional ballot is invalid and should not be~~
32 ~~counted based on other grounds; or~~

33 ~~(B)(i)(A)~~ The voter returns to the county board of
34 election commissioners or the county clerk by 12:00 noon on the Monday
35 following the election and presents a copy of a document or identification
36 card that complies with the requirements of subdivision (b)(1)(A)(i) of this

1 section; and

2 ~~(ii)~~(B) The county board of election commissioners
3 does not determine that the provisional ballot is invalid and should not be
4 counted based on other grounds.

5
6 SECTION 2. Arkansas Constitution, Amendment 51, § 13(b)(7), concerning
7 fail-safe voting and verification of voter registration, is amended to read
8 as follows:

9 (7) The State Board of Election Commissioners shall promulgate
10 rules necessary to implement subsection (b) of this section, ~~including~~
11 ~~without limitation the preparation of a sworn statement to be used by voters~~
12 ~~who cast a provisional ballot under subsection (b) of this section.~~

13
14 SECTION 3. Arkansas Code § 7-5-308(b)(4)-(10), concerning provisional
15 ballot procedures, is amended to read as follows:

16 ~~(4)(A) The poll worker shall inform the voter that the voter may~~
17 ~~complete a sworn statement stating that the voter is registered to vote in~~
18 ~~this state and that he or she is the person who is registered to vote.~~

19 ~~(B) A sworn statement completed under subdivision~~
20 ~~(b)(4)(A) of this section is not required to be notarized, but the voter~~
21 ~~shall execute the sworn statement under penalty of perjury.~~

22 ~~(C) The sworn statement under subdivision (b)(4)(A) of~~
23 ~~this section shall be delivered to the county board of election commissioners~~
24 ~~so that the provisional ballot may be counted under subsection (f) of this~~
25 ~~section.~~

26 ~~(5)~~(4) Unless a provisional ballot is cast using a ballot
27 marking device, the poll worker shall initial the back of the provisional
28 ballot, remove the provisional ballot stub from the provisional ballot, and
29 place the stub in the stub box provided;

30 ~~(6)~~(5) The voter shall mark his or her provisional ballot;

31 ~~(7)~~(6) The voter shall place the voted provisional ballot in a
32 provisional ballot secrecy envelope marked "provisional ballot" and seal the
33 envelope;

34 ~~(8)~~(7) The voter shall place the sealed provisional ballot
35 envelope containing the voted provisional ballot in a voter envelope, seal
36 the envelope, and give it to the poll worker;

1 ~~(9)~~(8) The poll worker shall provide the voter written
2 information instructing him or her on how to determine whether his or her
3 provisional ballot was counted, and if not, the reason the ballot was not
4 counted; and

5 ~~(10)~~(9) The poll worker shall make a separate list of the names
6 and addresses of all persons voting a provisional ballot under this
7 subsection, and each person voting a provisional ballot shall sign his or her
8 name to this list.

9
10 SECTION 4. Arkansas Code § 7-5-308(f), concerning provisional ballot
11 procedures, is amended to read as follows:

12 (f) Unless enjoined by a court ~~of competent~~ with jurisdiction, a
13 provisional ballot under subsection (b) of this section shall be counted if:

14 ~~(1)(A) The voter completes a sworn statement at the polling site~~
15 ~~when voting either early or at the polls on election day stating that the~~
16 ~~voter is registered to vote in this state and that he or she is the person~~
17 ~~registered to vote; and~~

18 ~~(B) The county board of election commissioners does not~~
19 ~~determine that the provisional ballot is invalid and should not be counted~~
20 ~~based on other grounds; or~~

21 ~~(2)(A)(1)~~ The voter returns to the county board of election
22 commissioners or the county clerk by 12:00 noon on the Monday following the
23 election and presents a document or identification card that complies with
24 the requirements of Arkansas Constitution, Amendment 51, § 13; and

25 ~~(B)(2)~~ The county board of election commissioners does not
26 determine that the provisional ballot is invalid and should not be counted
27 based on other grounds.

28
29 SECTION 5. Arkansas Code § 7-5-412(b), concerning the marking, return,
30 and delivery of mailed absentee ballots, is amended to read as follows:

31 (b)~~(1)~~ A voter who desires to cast an absentee ballot but who does not
32 meet the identification requirements of subdivision (a)(2) of this section
33 may cast his or her absentee ballot by mail, and the absentee ballot shall be
34 considered as a provisional ballot.

35 ~~(2)(A) The voter statement accompanying the absentee ballot~~
36 ~~shall include a sworn statement portion that may be completed by the voter~~

1 ~~stating that the voter is registered to vote and that he or she is the person~~
2 ~~who is registered.~~

3 ~~(B) The sworn statement portion of the voter statement is~~
4 ~~not required to be notarized, but the voter shall execute the sworn statement~~
5 ~~under penalty of perjury.~~

6
7 /s/Lowery

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10 **APPROVED: 3/3/21**
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State of Arkansas

As Engrossed: S3/22/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 488

By: Senators K. Hammer, M. Johnson, Beckham, J. English, Flippo, Irvin, B. Johnson, Rapert, Rice, B. Sample, G. Stubblefield, J. Sturch, D. Sullivan, D. Wallace

By: Representatives Lowery, Brown, Barker, Beaty Jr., Beck, Bentley, S. Berry, Boyd, Bragg, Brooks, Carr, Cavanaugh, Christiansen, Cloud, Coleman, Cozart, Crawford, Dalby, M. Davis, Eaves, Eubanks, Evans, L. Fite, Gazaway, Gonzales, Haak, Hawks, Hollowell, Ladyman, Lundstrum, Maddox, McCollum, McGrew, McNair, S. Meeks, Payton, Penzo, Pilkington, Richmond, Rye, B. Smith, S. Smith, Speaks, Vaught, Warren, Watson, Wing, *M. Berry, C. Cooper, M. Gray, Wooten*

For An Act To Be Entitled

AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967; TO CREATE AN EXEMPTION TO THE EXAMINATION AND COPYING OF PUBLIC RECORDS; TO AMEND THE LAW CONCERNING THE FREEDOM OF INFORMATION ACT OF 1967 AND VOTED BALLOTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967; TO CREATE AN EXEMPTION TO THE EXAMINATION AND COPYING OF PUBLIC RECORDS; AND TO AMEND THE LAW CONCERNING THE FREEDOM OF INFORMATION ACT OF 1967 AND VOTED BALLOTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 25-19-105(b), concerning the examination and copying of public records under the Freedom of Information Act of 1967, is amended to add an additional subdivision to read as follows:

(27)(A) Ballots, other than sample ballots, unless otherwise ordered by a court of law;



1 (B) Subdivision (b)(27)(A) of this section does not apply
2 to a poll watcher during an election, who shall be allowed to inspect a voter
3 statement and ballot while ensuring the secrecy of the vote is maintained and
4 subject to reasonable restrictions prescribed by the State Board of Election
5 Commissioners.

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8 */s/K. Hammer*

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11 **APPROVED: 4/15/21**
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QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY State Board of Election Commissioners

DIVISION N/A

DIVISION DIRECTOR Daniel J. Shults

CONTACT PERSON Richard Chris Madison

ADDRESS 501 Woodlane St. Ste. 122S, Little Rock, AR 72201

PHONE NO. 501-682-1447 **FAX NO.** 501-682-1782

E-MAIL Chris.madison@arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Daniel J. Shults, Director

PRESENTER E-MAIL Daniel.Shults@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- Rules on Poll Watchers, Vote Challenges, and
Provisional Voting
1. What is the short title of this rule?
- The rule provides procedures governing
provisional ballots and poll watchers in the
election process.
2. What is the subject of the proposed rule?
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No **X**
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No **X**
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative

Procedure Act?

Yes No

5. Is this a new rule? Yes No **X**
If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes No **X**
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes **X** No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

The amendment to this rule eliminates the optional identity affirmation from the rules governing provisional voting. It also provides rules governing poll watchers in absentee ballot canvassing and vote counting. The amendment provides a textual procedure governing a voter who presents to vote despite being marked as having already voted and eliminates the previous forms in favor of a provision that the forms be adopted in a public meeting and posted online.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Ark. Const. Amend. 51 §13(b)(7) (Authorizes the SBEC to conduct rulemaking related to the Photo ID portion of this section to the constitution.); A.C.A. §7-4-101(f)(5) (Authorizes the SBEC to promulgate rules for "even and consistent application of the voter registration laws and fair and orderly election procedures." Act 727 of 2021 (Provides that the SBEC may create reasonable restrictions on poll watchers which, under the A.P.A., can only be done through the rule making process.)

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of this rule is to provide procedures for the casting and canvassing of provisional ballots as well as rules governing the activities of poll watchers during the election process.

This amendment fulfills three major functions. It updates the provisional voting procedures to account for the removal of the optional identity affirmation by Act 249 of 2021. It provides reasonable restrictions regarding the inspection of ballots and absentee voter statements pursuant to Act 727 of 2021 as well as other procedures relating to poll watchers in absentee ballot canvassing and ballot counting. It also provides a textual procedure for the casting of a provisional ballot for a voter who is marked in the poll as having already voted. In addition, the amendment eliminates forms from the Rule.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.Arkansas.gov/sbec

9. Will a public hearing be held on this proposed rule? Yes **X** No
If yes, please complete the following:

Date: February 7, 2022

Time: 1:30 p.m.

Place: Timberlands Conference room, 501 Woodlane

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

4:30 p.m. on February 22, 2022

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

April 25, 2022

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

See Attached Exhibit A - Copy of Notice and Exhibit B - Email confirmation of publication dates.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).

See attached Exhibit C- Email transmitting Documents to SOS for publication. See attached Exhibit D – transmittal to Arkansas State Library.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

None

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION N/A

PERSON COMPLETING THIS STATEMENT Daniel J. Shults, Director

TELEPHONE 501-682-1834 **FAX** 501-682-1782 **EMAIL:** Daniel.shults@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules on Poll Watchers, Vote Challenges, and Provisional Voting

- | | | |
|---|--------------|-------------|
| 1. Does this proposed, amended, or repealed rule have a financial impact? | Yes | No X |
| 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? | Yes X | No |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? | Yes X | No |

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>

Next Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>

Total \$0.00

Total \$0.00

- (b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
Total	<u>\$0.00</u>

Next Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
Total	<u>\$0.00</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ \$0.00

Next Fiscal Year

\$ \$0.00

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ \$0.00

Next Fiscal Year

\$ \$0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes

No **X**

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.