

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State

John Thurston

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Name of Department State Board of Election Commissioners

Agency or Division Name N/A/

Other Subdivision or Department, If Applicable N/A

Previous Agency Name, If Applicable N/A

Contact Person Chris Madison - Director

Contact E-mail Chris.Madison@Arkansas.gov

Contact Phone 501-682-1447

Name of Rule Rules on Poll Watchers, Vote Challenges, and Provisional Voting

Newspaper Name Arkansas Democrat Gazette

Date of Publishing February 9th, 10th, and the 11th of 2024.

Final Date for Public Comment March 11, 2024

Location and Time of Public Meeting: N/A



STATE OF ARKANSAS
SARAH HUCKABEE SANDERS GOVERNOR

Request for Governor's Approval of Proposed Rule or Regulation

Department /Agency: State Board of Election Commissioners

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

New Rule: ☐ Yes ☒ No

Amendment to Existing Rule: ☒ Yes ☐ No

State Mandate: ☒ Yes ☐ No

Federal Mandate: ☐ Yes ☒ No

If yes, please provide the legal citation of the mandate: Act 444 of 2023 and Act 329 of 2023; See also A.C.A. §§ 7-4-101(f)(17) and 7-5-617(e)(2)(C).

Legal Authority for Rule: A.C.A. §§ 7-4-101(f)(17)(B); 7-4-101(f)(5); and 7-5-617(e)(2)(C).

Proposed Effective Date: May 1, 2024

Emergency Rule: ☐ Yes ☒ No

Expedited Rule Requested: ☒ Yes ☐ No

Summary of Proposed New Rule or Proposed Amendment to Existing Rule:

The State Board amends the Rule for Poll Watchers to incorporate legislative changes caused by the adoption of Act 444 of 2023 and Act 329 of 2023. As for Poll Watchers, the Rule is amended to incorporate the requirement that Poll Watchers complete and pass a training program offered by the State Board. The Rule mirrors legislative direction for Clerks to ensure that the prospective Poll Watcher provides a "Certificate of Completion" evidencing the Poll Watcher has completed and passed the State Board's training and requires Poll Watchers to wear a name tag while serving as a Poll Watcher. The Rule defines that a Poll Watcher's name tag only provides the Poll Watcher's name and identifies them as a Poll Watcher. As to provisional voting process, the Rule incorporates Act 329 of 2023's changes. A County Board must provide a copy or images of the provisional ballot envelope and list to the County Clerk for the Clerk's processing. The Rule also clarifies the requirements for the Clerk's certification of provisional ballots.

Financial Impact: ☐ Yes ☒ No ☐ Unknown; If yes or unknown, please explain:

Public Hearing Occurred on Rule: ☐ Yes ☒ No

Controversial: ☐ Yes ☒ No

If yes, please explain and provide detail of expected opposition.

Two Rules Repealed: NO **Exception from the Governor:** Yes

First Rule Repealed:

Brief explanation of why repeal is appropriate:

Second Rule Repealed:

Brief explanation of why repeal is appropriate:

Documents Required for Approval Process

Please note that the Governor's office will not begin the approval process if any of the following applicable documents are not enclosed with the approval request.

- X BLR Questionnaire
- X BLR Financial Impact Statement
- X Proposed Rule - clean version
- X Mark-Up of Rule, if amended from previous version
- X Copy of Act or Regulation, if Rule is pursuant to State or Federal mandate

Contact Information

Department POC for Rules Process: Chris Madison – Director
Chris.Madison@Arkansas.gov

Department POC for this Rule: Chris Madison – Director
Chris.Madison@Arkansas.gov

NOTE: All documents must be returned to the Governor's Counsel as a single PDF file.

**QUESTIONNAIRE FOR FILING PROPOSED RULES
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT: Independent Agency

BOARD/COMMISSION: State Board of Election Commissioners

BOARD/COMMISSION DIRECTOR: Chris Madison

CONTACT PERSON: Chris Madison

ADDRESS: 501 Woodlane Street, Ste. 122S, Little Rock, Arkansas, 72201

PHONE NO.: 501-682-1447 **EMAIL:** Chris.Madison@Arkansas.gov

NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING: Director Chris Madison

PRESENTER EMAIL(S): Chris.Madison@Arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach:

- X (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes;
- X (2) both a markup and clean copy of the rule; and
- X (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

- * 1. What is the official title of this rule?

Rules on Poll Watchers, Vote Challenges, and Provisional Voting.

2. What is the subject of the proposed rule? **Rules Governing Poll Watchers, Challenges to Voters, and the Provisional Voting Process.**

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? **No**

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? N/A

4. Is this rule being filed for permanent promulgation? Yes

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? No

If yes, what was the effective date of the emergency rule? N/A.

On what date does the emergency rule expire? N/A.

5. Is this rule required to comply with a *federal* statute, rule, or regulation? No.

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes

If yes, please provide the state statute and/or rule citation. Act 444 of 2023 and Act 329 of 2023; See also A.C.A. §§ 7-4-101(f)(17)(B) and 7-5-617(e)(2)(C).

7. Are two (2) rules being repealed in accord with Executive Order 23-02? No.

If yes, please list the rules being repealed.

If no, please explain.

The Rule incorporates legislative changes made by Act 444 of 2023 and Act 329 of 2023. These incorporations are necessary as Poll Watchers, vote challenges, and Provisional voting procedures exist and requires amendment to the Rules to comply with current law.

8. Is this a new rule? No.

Does this repeal an existing rule? No.

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes.

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup. See Attached, Draft Markup and Draft Clean Copies.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s). A.C.A. § 7-4-101(f)(17)(B) and 7-4-101(f)(5).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?

Yes.

If yes, please provide the year of the act(s) and act number(s). **Act 444 of 2023 and Act 329 of 2023.**

11. What is the reason for this proposed rule? Why is it necessary? **To incorporate the changes created by Acts 444 and 329 of 2023. These Rules existed previously which governed Poll Watchers, their vote challenges, and Provisional Voting processes and procedures. The amendments are necessary to incorporate legislative changes into the Rules.**

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1). **<https://www.arkansas.gov/sbec/rules/>**

13. Will a public hearing be held on this proposed rule? **No.**

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

2. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. **March 11, 2024.**

3. What is the proposed effective date for this rule? **May 1, 2024.**

4. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice. See Attached.

Copy of the Notice.

Proof of Publication will be added following publication on February 9, 10, and 11, 2024.

Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A). **See Attached "Arkansas Register – Proposed Rule Cover Sheet"**

5. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known. **None.**

6. Is the rule expected to be controversial? **No.**

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT: Independent Agency

BOARD/COMMISSION: State Board of Election Commissioners

PERSON COMPLETING THIS STATEMENT: Chris Madison - Director

TELEPHONE NO.: 501-682-1447

EMAIL: Chris.Madison@Arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents.

Please attach additional pages, if necessary.

TITLE OF THIS RULE: Poll Watchers, Vote Challenges, and Provisional Voting.

1. Does this proposed, amended, or repealed rule have a financial impact?
No.
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.
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes.

If no, please explain:

- (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and
 - (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.
4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
N/A.
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify)_____

Other (Identify)_____

Total_____

Total_____

(b) What is the additional cost of the state rule? **None**

Current Fiscal Year

Next Fiscal Year

General Revenue: **\$0**

General Revenue: **\$0**

Federal Funds_____

Federal Funds_____

Cash Funds_____

Cash Funds_____

Special Revenue_____

Special Revenue_____

Other (Identify)_____

Other (Identify)_____

Total: **\$0**

Total: **\$0**

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

Current Fiscal Year

Next Fiscal Year

\$0

\$0

6. What is the total estimated cost by fiscal year to a state, county, or 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

Next Fiscal Year

\$0

\$0

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?

No.

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.

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane, Suite 122 South
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996



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Election Administration Supervisor

Tena Arnold
Business Operations Manager

Executive Summary of the 2023 Proposed Amendment to the RULES ON POLL WATCHERS, VOTE CHALLENGES, AND PROVISIONAL VOTING

The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules on Poll Watchers, Vote Challenges, and Provisional Voting.” This proposed amendment is being promulgated to incorporate changes approved by Acts 444 and 329 of 2023.

PURPOSE AND SUMMARY OF SUBSTANTIVE CHANGES

This amendment is required by Acts 444 and 329 of 2023. Act 444, which is known at the “Arkansas Poll Watchers Bill of Rights Act of 2023” made several changes to the process of becoming a Poll Watcher. Specifically, the Act created a responsibility for the State Board of Election Commissioners, (“SBEC”) to develop a training program for Poll Watchers, which a Poll Watcher must complete prior to serving as a Poll Watcher. The Act also obligated the SBEC to adopt and promulgate rules for training Poll Watchers. The Rule also creates an appeal process for a Poll Watcher who is unable to obtain a Certificate of Completion. Among other requirements, the Act obligates Poll Watchers to wear a name badge identifying the Poll Watcher by Name.

Act 329 of 2023 added slight modifications to the Provisional Ballot handling and processing procedures. The Proposed Amended Rule incorporates these changes. First it incorporates the necessity for the County Board of Election Commissioners (“CBEC”) to provide a copy or image of the Provisional Voter Envelope to the County Clerk, so the Clerk may perform his or her certification process. Secondly, it describes the certification elements the County Clerk must provide to the CBEC.

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.

NOTICE OF RULEMAKING

Pursuant to the Administrative Procedure Act, notice is hereby given that the State Board of Election Commissioners (Board) is proposing to amend the following: (1) Rules for Poll Watchers, Vote Challenges, and Provisional Voting; (2) Rules of Procedure for Citizen Complaint Regarding Violations of State Election and Voter Registration Law; (3) Rules for Reimbursement of Expenses for State-Funded Elections; (4) Rules for the Verification of Voter Registration; and (5) Rules of Practice and Procedure.

These amendments reflect changes enacted during the 94th General Assembly. You may view the proposed amended rules and their accompanying Executive Summaries at www.arkansas.gov/sbec/rules or you may obtain copies by contacting the Board by email at info.sbec@arkansas.gov, by phone at 501-682-1834, or by mailed request to: Arkansas State Board of Election Commissioners, 501 Woodlane, Suite 122S, Little Rock, AR 72201.

You may provide written comments regarding these proposed amendments. Comments must be received by 4:30 p.m. on Monday, March 11, 2024. Comments may be sent by email to info.sbec@arkansas.gov or by mail to: Arkansas State Board of Election Commissioners, 501 Woodlane, Suite 122S, Little Rock, AR 72201.

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Agency # 108.00

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

(Effective April 22, 2006; Revised _____)



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.

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

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

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(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.⁵
- (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.⁶
- (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.⁷ “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.
- (k) Polling Site – a location selected by the county board of election commissioners where votes are cast.⁸

⁵ A.C.A. §§ 7-1-101; 7-5-107

⁶ A.C.A. § 7-5-308

⁷ A.C.A. §§ 7-1-101; 7-5-201(e)

⁸ A.C.A. § 7-1-101

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- (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-votes are fairly and accurately cast.⁹
- (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.¹⁰
- (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.¹¹
- (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.¹² In any precinct with more than one (1) ballot style, the precinct voter registration list must also identify the district, sub-district, county, municipality, ward, and school zone in which each voter is qualified to vote. An electronic poll book may be used as the precinct voter registration list.¹³
- (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.¹⁴

⁹ 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)

¹⁰ A.C.A. § 7-5-312(d),(e)

¹¹ A.C.A. § 7-1-101

¹² A.C.A. § 7-5-107

¹³ A.C.A. §§ 7-5-110; 7-5-107(a)(2)

¹⁴ 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)

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- (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.¹⁵
- (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).¹⁶

(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.¹⁷ Voters that fall into this category are not required to verify their voter registration under Amendment 51 §13.¹⁸ Rather, the voter must provide current and valid photo identification or a copy of a current utility bill, bank statement,

¹⁵ A.C.A. § 7-1-101(38)

¹⁶ Ark. Const. amend. 51, §13; A.C.A. § 7-5-201(e)

¹⁷ A.C.A. §§ 7-5-201(e)(1)(A); 7-5-305(8)(B)(iii)

¹⁸ Ark. Const. amend. 51, §13(b)(6)

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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.¹⁹

(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.²⁰

(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.²¹

§ 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 a qualified voter of the precinct),²² 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),²³ 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).²⁴

¹⁹ A.C.A. § 7-5-201(e); 7-5-305(8)(B)(iii)

²⁰ Ark. Const. amend. 51, §13(b)(3)

²¹ A.C.A. § 7-5-201(e)(1)(B)

²² A.C.A. § 7-5-306(a)

²³ Ark. Const. amend. 51, §10

²⁴ A.C.A. §§ 7-5-306(b); 7-5-418(d)

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(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.²⁵

(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.²⁶

(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.

§ 904 Poll Watchers

(a) Official Recognition/Credentials

(1) Prior to acting as a poll watcher, a prospective poll watcher must complete the poll watcher training offered on the state board of election commissioner’s website.

(2)(A) 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.²⁷

²⁵ A.C.A. § 7-5-409(g)

²⁶ A.C.A. §§ 7-5-201(f); 7-5-305(a)(11); 7-5-411(b)

²⁷ A.C.A. § 7-5-312(d)

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(B) Before accepting and file marking a “poll watcher authorization form,” a county clerk must first review the certificate of completion to confirm that the poll watcher has completed the required poll watcher training.

(C) When file marking the “poll watcher authorization form,” the county clerk shall provide the poll watcher with three copies of the file marked form without cost.

(3) 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.

(4) 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.²⁸

(5) 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.²⁹ 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.

(6) 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.

(7) 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.³⁰

(8) 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 the counting of ballots at the polling site, central counting location, or absentee ballot counting location.³¹

(9) Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.³²

²⁸ A.C.A. § 7-5-312(a)(1),(e)

²⁹ A.C.A. § 7-5-413(d)

³⁰ A.C.A. § 7-5-312(b),(e)

³¹ A.C.A. § 7-5-312(c),(e)

³² A.C.A. § 7-5-312(f)

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(10) A poll watcher shall wear a name tag while present in the polling site or other location where an election process is occurring.

(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."³³

(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.³⁴

(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.³⁵

(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.³⁶ 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.

³³ A.C.A. § 7-5-312(e),(g),(h)

³⁴ A.C.A. § 7-5-312(g)

³⁵ A.C.A. §§ 7-5-414; 7-5-417(a)

³⁶ A.C.A. § 25-19-105(b)(27)(B)

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(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.³⁷

(C) Poll watchers shall be allowed to inspect the process of counting ballots.³⁸ 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 because 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 because of the order must be separated and held apart from other provisional ballots cast by provisional voters not affected by the order.³⁹

³⁷ A.C.A. § 7-5-615(b)

³⁸ A.C.A. § 25-19-105(b)(27)(B)

³⁹ A.C.A. § 7-5-304(c)

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§ 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 “challenged ballot form,” and a poll worker must inform the voter that his or her ballot is being challenged⁴⁰
 - (2) If as a result of failure to meet an identification requirement 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.⁴¹
 - (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.⁴²
 - (5) The provisional voter shall mark his or her ballot.⁴³
 - (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).⁴⁴
 - (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.⁴⁵
 - (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a).⁴⁶
 - (9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot.⁴⁷
 - (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁴⁸ 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 shall submit a copy or image of the “provisional voter envelope” form to the county clerk within one business day of the election.
 - (12) Based on the information provided on the provisional voter envelope, the county clerk shall certify to the county board of election commissioners:
 - (A) Whether the voter is registered to vote in the county;
 - (B) If registered, what the ballot style the voter was qualified to cast; and
 - (C) Whether an absentee ballot was returned for that voter if that question is relevant to the provisional ballot.

⁴⁰ A.C.A. §§ 7-5-308(a)(1); 7-5-312(e),(h)

⁴¹ A.C.A. § 7-5-308(a)(2)

⁴² A.C.A. § 7-5-308(a)(3)

⁴³ A.C.A. § 7-5-308(a)(4)

⁴⁴ A.C.A. § 7-5-308(a)(5)

⁴⁵ A.C.A. § 7-5-308(a)(6)

⁴⁶ A.C.A. § 7-5-308(a)(7)

⁴⁷ A.C.A. § 7-5-308(a)(8)

⁴⁸ A.C.A. § 7-5-308(c)

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(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.⁴⁹
- (2) The poll worker shall notify the voter that the voter must cast a provisional ballot in that election.⁵⁰
- (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.⁵¹
- (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.⁵²
- (5) The provisional voter shall mark his or her ballot.⁵³
- (6) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope.⁵⁴
- (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)⁵⁵ 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.⁵⁶
- (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁵⁷ 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 shall submit a copy or image of the “provisional voter envelope” form to the county clerk within one business day of the election.
- (12) Based on the information provided on the provisional voter envelope, the county clerk shall certify to the county board of election commissioners:
 - (A) Whether the voter is registered to vote in the county;
 - (B) If registered, what the ballot style the voter was qualified to cast; and
 - (C) Whether an absentee ballot was returned for that voter if that question is relevant to the provisional ballot.

(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

⁴⁹ A.C.A. § 7-5-308(b)(1)

⁵⁰ A.C.A. § 7-5-308(b)(2)

⁵¹ A.C.A. § 7-5-308(b)(3)

⁵² A.C.A. § 7-5-308(b)(5)

⁵³ A.C.A. § 7-5-308(b)(6)

⁵⁴ A.C.A. § 7-5-308(b)(7)

⁵⁵ A.C.A. § 7-5-308(b)(9)

⁵⁶ A.C.A. § 7-5-308(b)(10)

⁵⁷ A.C.A. § 7-5-308(c)

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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 voter’s voter statement is inconsistent with the absentee ballot return envelope regarding 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 regarding 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.

§ 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.⁵⁸
- (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.

(c) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.⁵⁹

(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.⁶⁰

⁵⁸ A.C.A. § 7-5-902

⁵⁹ A.C.A. § 7-5-308(d)(3)

⁶⁰ 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.⁶¹

(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.⁶²

(2) If the county board makes an initial determination that an absentee ballot designated as a general 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.⁶³

(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.⁶⁴

(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

⁶¹ A.C.A. § 7-5-308(e)(1)

⁶² A.C.A. § 7-5-308(e)(2)

⁶³ *Dotson v. Richey*, 211 Ark. 789 (1947)

⁶⁴ 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.⁶⁵

(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.⁶⁶

(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.

⁶⁵ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

⁶⁶ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

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

§ 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.⁶⁷

(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.⁶⁸

(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 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.

⁶⁷ A.C.A. § 7-5-308(e)(2)

⁶⁸ 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.⁶⁹

(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.⁷⁰

§ 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

⁶⁹ A.C.A. § 7-5-305(a)(8)(B)(iv)

⁷⁰ A.C.A. § 7-5-308(g)

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

§ 915 Poll Watcher Training

- (a) Any person may complete the poll watcher training available on the website of the State Board.
- (b) To obtain a certificate of completion, the prospective poll watcher shall:
 - (1) review all required training materials; and
 - (2) complete an assessment with a passing score as determined by the State Board.
- (c) When a trainee obtains a passing score on the assessment, the State Board shall:
 - (1) Keep a record of the trainees who obtain a passing score; and
 - (2) Electronically deliver a certificate of completion of the poll watcher training to the trainee within 2 business days.
- (d) A trainee shall be qualified to act as a poll watcher for a 180-day period from the date the training is successfully completed.
- (e) The candidate, group, or party appointing a poll watcher is responsible for ensuring the trainee has access to the technology necessary to complete the poll watcher training.
- (f)(1) If a poll watcher is unable to obtain a certificate of completion, the poll watcher may:
 - (A) re-review all required training materials and retake the assessment;
 - (B) lodge an appeal with the State Board.
- (2) An appeal must be made, in writing, to the director of the State Board stating clearly the reasons the trainee believes he or she was wrongfully denied a certificate of completion.
- (3) Within three (3) business days of receiving an appeal, the director shall:
 - (A) Provide the trainee a certificate of completion of the poll watcher training; or
 - (B) A written response stating why the certificate was not issued.
- (4) If the director denies the appeal, the trainee may notify the director that he or she wishes to submit the appeal to the State Board at which point the director shall:
 - (A) forward the written appeal to all members of the state board; and

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(B) notify the chairman if any one-member requests to consider the appeal in a public meeting.

(5) If a member requests to consider an appeal in a public meeting, the chairman shall call a meeting within two weeks of notice by the director that an appeal must be reviewed for the purposes of determining whether the trainee is entitled to a certificate of completion of the poll watcher training.

(g) In order to promote the poll watcher training, the State Board shall:

(1) include information regarding the training program in the Running for Public Office Handbook provided at no cost to candidates;

(2) include information regarding the training program on the agency's website;

(3) provide a flier to county clerks prior to candidate filing which explains the poll watcher training program for distribution at candidate filing;

(4) distribute a flier at candidate filing for state and federal candidates which explains the poll watcher training program; and

(5) provide a flier to recognized political parties which explains the poll watcher training program.

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

(Effective April 22, 2006; Revised May 7, 2022 _____)



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 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.

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

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

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(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.⁵
- (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.⁶
- (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.⁷ “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.
- (k) Polling Site – a location selected by the county board of election commissioners where votes are cast.⁸

⁵ A.C.A. §§ 7-1-101; 7-5-107

⁶ A.C.A. § 7-5-308

⁷ A.C.A. §§ 7-1-101; 7-5-201(e)

⁸ A.C.A. § 7-1-101

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- (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-votes are fairly and accurately cast.⁹
- (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.¹⁰
- (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.¹¹
- (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.¹² In any precinct with more than one (1) ballot style, the precinct voter registration list must also identify the district, sub-district, county, municipality, ward, and school zone in which each voter is qualified to vote. An electronic poll book may be used as the precinct voter registration list.¹³
- (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.¹⁴

⁹ 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)

¹⁰ A.C.A. § 7-5-312(d),(e)

¹¹ A.C.A. § 7-1-101

¹² A.C.A. § 7-5-107

¹³ A.C.A. §§ 7-5-110; 7-5-107(a)(2)

¹⁴ 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)

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- (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.¹⁵
- (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).¹⁶

(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.¹⁷ Voters that fall into this category are not required to verify their voter registration under Amendment 51 §13.¹⁸ Rather, the voter must provide current and valid photo identification or a copy of a current utility bill, bank statement,

¹⁵ A.C.A. § 7-1-101(38)

¹⁶ Ark. Const. amend. 51, §13; A.C.A. § 7-5-201(e)

¹⁷ A.C.A. §§ 7-5-201(e)(1)(A); 7-5-305(8)(B)(iii)

¹⁸ Ark. Const. amend. 51, §13(b)(6)

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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.¹⁹

(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.²⁰

(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.²¹

§ 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 a qualified ~~listed as a registered~~ voter of the precinct),²² 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),²³ 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).²⁴

¹⁹ A.C.A. § 7-5-201(e); 7-5-305(8)(B)(iii)

²⁰ Ark. Const. amend. 51, §13(b)(3)

²¹ A.C.A. § 7-5-201(e)(1)(B)

²² A.C.A. § 7-5-306(a)

²³ Ark. Const. amend. 51, §10

²⁴ A.C.A. §§ 7-5-306(b); 7-5-418(d)

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(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.²⁵

(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.²⁶

(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.

§ 904 Poll Watchers

(a) Official Recognition/Credentials

(1) Prior to acting as a poll watcher, a prospective poll watcher must complete the poll watcher training offered on the state board of election commissioner’s website.

(2)(A) 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.²⁷

²⁵ A.C.A. § 7-5-409(g)

²⁶ A.C.A. §§ 7-5-201(f); 7-5-305(a)(11); 7-5-411(b)

²⁷ A.C.A. § 7-5-312(d)

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(B) Before accepting and file marking a “poll watcher authorization form,” a county clerk must first review the certificate of completion to confirm that the poll watcher has completed the required poll watcher training.

(C) When file marking the “poll watcher authorization form,” the county clerk shall provide the poll watcher with three copies of the file marked form without cost.

~~(2)~~(3) 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)~~(4) 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.²⁸

~~(4)~~(5) 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.²⁹ 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)~~(6) 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)~~(7) 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.³⁰

~~(7)~~(8) 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 the counting of ballots at the polling site, central counting location, or absentee ballot counting location.³¹

~~(8)~~(9) Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.³²

²⁸ A.C.A. § 7-5-312(a)(1),(e)

²⁹ A.C.A. § 7-5-413(d)

³⁰ A.C.A. § 7-5-312(b),(e)

³¹ A.C.A. § 7-5-312(c),(e)

³² A.C.A. § 7-5-312(f)

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(10) A poll watcher shall wear a name tag while present in the polling site or other location where an election process is occurring.

(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."³³

(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.³⁴

(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.³⁵

(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.³⁶ 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.

³³ A.C.A. § 7-5-312(e),(g),(h)

³⁴ A.C.A. § 7-5-312(g)

³⁵ A.C.A. §§ 7-5-414; 7-5-417(a)

³⁶ A.C.A. § 25-19-105(b)(27)(B)

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(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.³⁷

(C) Poll watchers shall be allowed to inspect the process of counting ballots.³⁸ 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 because 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 because of the order must be separated and held apart from other provisional ballots cast by provisional voters not affected by the order.³⁹

§ 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:

³⁷ A.C.A. § 7-5-615(b)

³⁸ A.C.A. § 25-19-105(b)(27)(B)

³⁹ A.C.A. § 7-5-304(c)

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- (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,” and a poll worker must inform the voter that his or her ballot is being challenged⁴⁰
- (2) If as a result of failure to meet an identification requirement 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.⁴¹
- (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.⁴²
- (5) The provisional voter shall mark his or her ballot.⁴³
- (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).⁴⁴
- (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.⁴⁵
- (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a).⁴⁶
- (9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot.⁴⁷
- (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁴⁸ 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.~~
- (11) The county board of election commissioners shall submit a copy or image of the “provisional voter envelope” form to the county clerk within one business day of the election.
- ~~(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.⁴⁹~~
- (12) Based on the information provided on the provisional voter envelope, the county clerk shall certify to the county board of election commissioners:

(A) Whether the voter is registered to vote in the county;

⁴⁰ A.C.A. §§ 7-5-308(a)(1); 7-5-312(e),(h)

⁴¹ A.C.A. § 7-5-308(a)(2)

⁴² A.C.A. § 7-5-308(a)(3)

⁴³ A.C.A. § 7-5-308(a)(4)

⁴⁴ A.C.A. § 7-5-308(a)(5)

⁴⁵ A.C.A. § 7-5-308(a)(6)

⁴⁶ A.C.A. § 7-5-308(a)(7)

⁴⁷ A.C.A. § 7-5-308(a)(8)

⁴⁸ A.C.A. § 7-5-308(c)

⁴⁹ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

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(B) If registered, what the ballot style the voter was qualified to cast; and

(C) Whether an absentee ballot was returned for that voter if that question is relevant to the provisional ballot.

- (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.⁵⁰
 - (2) The poll worker shall notify the voter that the voter must cast a provisional ballot in that election.⁵¹
 - (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.⁵²
 - (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.⁵³
 - (5) The provisional voter shall mark his or her ballot.⁵⁴
 - (6) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope.⁵⁵
 - (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)⁵⁶ 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.⁵⁷
 - (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁵⁸ 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.~~
 - (11) The county board of election commissioners shall submit a copy or image of the “provisional voter envelope” form to the county clerk within one business day of the election.
 - ~~(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.⁵⁹~~

⁵⁰ A.C.A. § 7-5-308(b)(1)

⁵¹ A.C.A. § 7-5-308(b)(2)

⁵² A.C.A. § 7-5-308(b)(3)

⁵³ A.C.A. § 7-5-308(b)(5)

⁵⁴ A.C.A. § 7-5-308(b)(6)

⁵⁵ A.C.A. § 7-5-308(b)(7)

⁵⁶ A.C.A. § 7-5-308(b)(9)

⁵⁷ A.C.A. § 7-5-308(b)(10)

⁵⁸ A.C.A. § 7-5-308(c)

⁵⁹ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

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(12) Based on the information provided on the provisional voter envelope, the county clerk shall certify to the county board of election commissioners:

- (A) Whether the voter is registered to vote in the county;
- (B) If registered, what the ballot style the voter was qualified to cast; and
- (C) Whether an absentee ballot was returned for that voter if that question is relevant to the provisional ballot.

(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 voter’s voter statement is inconsistent with the absentee ballot return envelope regarding 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 regarding 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.~~⁶⁰

§ 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.⁶¹
- (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:~~

⁶⁰ A.C.A. § 7-5-416(b)(1)(F)(ii)

⁶¹ A.C.A. § 7-5-902

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- ~~(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.⁶²

(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.⁶³

§ 908 Review of Provisional Ballots

(a) The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.⁶⁴

(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.⁶⁵

(2) If the county board makes an initial determination that an absentee ballot designated as a general 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.⁶⁶

(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.

⁶² A.C.A. § 7-5-308(d)(3)

⁶³ A.C.A. § 7-5-902

⁶⁴ A.C.A. § 7-5-308(e)(1)

⁶⁵ A.C.A. § 7-5-308(e)(2)

⁶⁶ *Dotson v. Richey*, 211 Ark. 789 (1947)

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(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.⁶⁷

(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) 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.⁶⁸

(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.⁶⁹

(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.

⁶⁷ A.C.A. §§ 7-5-412(a)(2), (d); 7-5-308 (e)(2)

⁶⁸ Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

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

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§ 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.

§ 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.⁷⁰
- (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.⁷¹
- (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:

⁷⁰ A.C.A. § 7-5-308(e)(2)

⁷¹ Ark. Const. amend. 51, §13(b)

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- (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 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 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.⁷²
- (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.⁷³

§ 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

⁷² A.C.A. § 7-5-305(a)(8)(B)(iv)

⁷³ A.C.A. § 7-5-308(g)

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- (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.

§ 915 Poll Watcher Training

- (a) Any person may complete the poll watcher training available on the website of the State Board.
- (b) To obtain a certificate of completion, the prospective poll watcher shall:
 - (1) review all required training materials; and
 - (2) complete an assessment with a passing score as determined by the State Board.
- (c) When a trainee obtains a passing score on the assessment, the State Board shall:
 - (1) Keep a record of the trainees who obtain a passing score; and
 - (2) Electronically deliver a certificate of completion of the poll watcher training to the trainee within 2 business days.
- (d) A trainee shall be qualified to act as a poll watcher for a 180-day period from the date the training is successfully completed.
- (e) The candidate, group, or party appointing a poll watcher is responsible for ensuring the trainee has access to the technology necessary to complete the poll watcher training.
- (f)(1) If a poll watcher is unable to obtain a certificate of completion, the poll watcher may:

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(A) re-review all required training materials and retake the assessment;

(B) lodge an appeal with the State Board.

(2) An appeal must be made, in writing, to the director of the State Board stating clearly the reasons the trainee believes he or she was wrongfully denied a certificate of completion.

(3) Within three (3) business days of receiving an appeal, the director shall:

(A) Provide the trainee a certificate of completion of the poll watcher training; or

(B) A written response stating why the certificate was not issued.

(4) If the director denies the appeal, the trainee may notify the director that he or she wishes to submit the appeal to the State Board at which point the director shall:

(A) forward the written appeal to all members of the state board; and

(B) notify the chairman if any one-member requests to consider the appeal in a public meeting.

(5) If a member requests to consider an appeal in a public meeting, the chairman shall call a meeting within two weeks of notice by the director that an appeal must be reviewed for the purposes of determining whether the trainee is entitled to a certificate of completion of the poll watcher training.

(g) In order to promote the poll watcher training, the State Board shall:

(1) include information regarding the training program in the Running for Public Office Handbook provided at no cost to candidates;

(2) include information regarding the training program on the agency's website;

(3) provide a flier to county clerks prior to candidate filing which explains the poll watcher training program for distribution at candidate filing;

(4) distribute a flier at candidate filing for state and federal candidates which explains the poll watcher training program; and

(5) provide a flier to recognized political parties which explains the poll watcher training program.

State of Arkansas

As Engrossed: H3/2/23

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1487

By: Representatives Lundstrum, Wing, Achor, Andrews, Barker, Beaty Jr., Beck, Bentley, M. Berry, Breaux, Brooks, K. Brown, M. Brown, Burkes, Joey Carr, C. Cooper, Cozart, Evans, C. Fite, L. Fite, Fortner, Furman, Gazaway, Gonzales, Gramlich, Haak, Hawk, Hollowell, Jean, Ladyman, Long, Lynch, McAlindon, McClure, McCollum, M. McElroy, McGrew, B. McKenzie, McNair, S. Meeks, Miller, Milligan, K. Moore, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, Tosh, Underwood, Vaught, Womack, Wooten

By: Senators K. Hammer, Dees, M. McKee, J. Petty, Stone

For An Act To Be Entitled

AN ACT TO CREATE THE BALLOT SECURITY ACT OF 2023; TO
AMEND ELECTION LAW CONCERNING THE HANDLING OF
ELECTION BALLOTS; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE BALLOT SECURITY ACT OF
2023; AND TO AMEND ELECTION LAW
CONCERNING THE HANDLING OF ELECTION
BALLOTS.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Ballot Security Act Of 2023".

SECTION 2. Arkansas Code § 7-5-407(a), concerning the preparation and delivery of ballots, is amended to read as follows:

(a)(1) The county board of election commissioners shall:

(A) prepare ~~prepare~~ Prepare official absentee ballots and securely deliver them to the county clerk for mailing to all qualified applicants as



1 soon as practicable but not later than forty-seven (47) days before a
2 preferential primary election, general election, school election, nonpartisan
3 general election, nonpartisan runoff election, or special election;

4 (B) Provide a ballot count report to the county clerk
5 listing the:

6 (i) Date of delivery;

7 (ii) Method of delivery;

8 (iii) Total number of ballots provided by ballot
9 style; and

10 (iv) Names and signatures of the persons delivering
11 the ballots;

12 (C) Maintain the ballot count report for each additional
13 delivery of ballots with separate entries per delivery by ballot style and
14 date; and

15 (D) Keep a record of the ballot count report available to
16 the public.

17 (2) Upon the receipt of the absentee ballots, the county clerk
18 shall begin delivering ballots to absentee voters as soon as practicable and,
19 no later than forty-six (46) days before the applicable election, shall
20 deliver ballots to those absentee voters who made timely application under:

21 (A) Section 7-5-406; or

22 (B) The Uniformed and Overseas Citizens Absentee Voting
23 Act, 52 U.S.C. § 20301 et seq., as existing on January 1, ~~2011~~ 2023.

24
25 SECTION 3. Arkansas Code § 7-5-416(a)(1) and (2), concerning counting
26 of absentee ballots, are amended to read as follows:

27 (a)(1) The election officials for absentee ballots ~~may~~ shall meet in a
28 place designated by the county board of election commissioners no earlier
29 than the Tuesday before the election for the purpose of opening the outer
30 envelope, processing, and canvassing of absentee ballot paper work of the
31 outer envelope and no earlier than 8:30 a.m. on election day for the purpose
32 of opening the inner absentee ballot envelope and counting the absentee
33 ballots.

34 (2) The county board of election commissioners shall:

35 (A) give ~~Give~~ public notice of the time and location of
36 the opening, processing, canvassing, and counting of absentee ballots and

1 early voting ballots as provided in § 7-5-202; and

2 (B) Allow public access for the in-person viewing of the
3 absentee canvassing process.

4
5 SECTION 4. Arkansas Code § 7-5-602(d), concerning the number of
6 ballots, process for marking spoiled ballots, and the process for providing
7 ballots to the election sites, is amended to read as follows:

8 (d)(1) A voter who shall by accident or mistake ~~may~~ mark or spoil any
9 ballot so that he or she cannot conveniently or clearly vote on the ballot
10 may return it to the poll workers and receive another ballot, not to exceed
11 three (3) ballots in total.

12 (2)(A) Spoiled ballots shall be cancelled by a poll worker by
13 using a stamp marked "CANCELLED" on the face of the ballot.

14 (B) The poll worker shall write the date and time, and
15 print and sign his or her name next to the stamp marked "CANCELLED".

16 (C) The election judge shall report the total number of
17 spoiled ballots to the county board of election commissioners.

18 (3) The cancelled ballots shall be securely preserved separately
19 from other ballots with the total number of cancelled ballots and returned to
20 the county board of election commissioners and shall be open to public
21 inspection.

22
23 SECTION 5. Arkansas Code Title 7, Chapter 5, Subchapter 6, is amended
24 to add an additional section to read as follows:

25 7-5-617. Transport of ballots and chain of custody.

26 (a) Marked absentee or provisional ballots shall be transported in a
27 secure manner during the election period between locations, including without
28 limitation between:

29 (1) Polling sites;

30 (2) Vote centers;

31 (3) Offices of the county clerk;

32 (4) Designated absentee or provisional ballot counting
33 facilities; or

34 (5) Other government offices.

35 (b) Marked absentee ballots shall be transported in a secure manner by
36 at least two (2) election officials with the marked absentee ballots inside

1 of a sealed ballot transfer container to the location designated by the
2 county board of election commissioners.

3 (c) Marked absentee or provisional ballots are subject to the
4 following procedure as a chain of custody:

5 (1) A person collecting marked absentee or provisional ballots
6 shall swear an oath in the same form as § 7-4-110;

7 (2) A marked absentee or provisional ballot team shall include a
8 minimum of two (2) election officials;

9 (3) The ballot transport team shall complete and sign a ballot
10 transfer form upon removing the marked absentee or provisional ballots,
11 including the following information, the:

12 (A) Date;

13 (B) Time;

14 (C) Location the marked absentee or provisional ballots
15 are picked up;

16 (D) Number of marked absentee or provisional ballots per
17 container;

18 (E) Identity of each person collecting the ballots; and

19 (F) Destination location for delivery of the marked
20 absentee or provisional ballots;

21 (4) The ballot transport team shall immediately transfer the
22 secured marked absentee or provisional ballots to the county board of
23 election commissioners, or its designee; and

24 (5)(A) The county board of election commissioners or its
25 designee shall sign the marked absentee or provisional ballot transfer form
26 upon receipt of the marked absentee or provisional ballots.

27 (B) The marked absentee or provisional ballot transfer
28 form under subsection (c)(3) of this section shall be considered a public
29 record.

30 (d)(1) Upon receiving a sealed ballot envelope from a person casting a
31 provisional ballot, the poll worker or election official shall verify that
32 the information requested on the outer ballot envelope is complete.

33 (2) The poll worker or election official shall clearly write and
34 sign his or her name, the polling location, the date, and the reason the
35 ballot is considered provisional on the outer envelope and record the
36 information.

1 (3)(A) The poll worker shall direct the person casting the
2 provisional ballot to place the ballot envelope into the secure container for
3 provisional ballots.

4 (B) The secure container for provisional ballots shall be
5 located within the enclosed space in the polling place where it can be
6 monitored by poll workers and observed by the public.

7 (e)(1) Once the polls have closed, two (2) election officials shall
8 return the secure container of provisional ballots to the county board of
9 election commissioners with the following information marked clearly on the
10 exterior of each secure container, the:

11 (A) Total number of marked provisional ballots;
12 (B) Location the provisional ballots were collected; and
13 (C) Identity of the election officials transporting the
14 marked provisional ballots.

15 (2)(A) Upon receipt of the provisional ballots, the county board
16 of election commissioners, or its designee, shall electronically record the:

17 (i) First and last name of the person casting the
18 provisional ballot;

19 (ii) Address of the person casting the provisional
20 ballot;

21 (iii) Date of birth of the person casting the
22 provisional ballot;

23 (iv) Date the provisional ballot was marked;

24 (v) Early voting or polling location, including
25 precinct number, where the provisional ballot was marked;

26 (vi) Name of the election official recorded on the
27 sealed outer envelope;

28 (vii) Reason for the provisional ballot reflected on
29 the sealed outer envelope; and

30 (viii) Other information deemed necessary by the
31 county board of election commissioners.

32 (B) The county board of election commissioners shall
33 create one (1) paper copy of the outside of each outside provisional envelope
34 to be delivered to the county clerk.

35 (C) The county board of election commissioners shall
36 provide the provisional ballot envelope copies and the electronic provisional

1 ballot list to the county clerk no later than one (1) business day following
2 election day.

3 (3) Following receipt of the electronic provisional ballot list,
4 including the provisional ballot envelope copies, the county board of
5 election commissioners shall reconcile the total number of provisional
6 ballots reviewed by the county clerk to the total number of provisional
7 ballots received and secured by the county board of election commissioners.

8
9 /s/Lundstrum

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12 **APPROVED: 3/21/23**
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State of Arkansas *As Engrossed: H2/28/23 H3/9/23*

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1457

By: Representatives Furman, Wing, Achor, Andrews, Barker, Beaty Jr., Beck, Bentley, M. Berry, Breaux, Brooks, K. Brown, M. Brown, Burkes, Joey Carr, C. Cooper, Cozart, Evans, C. Fite, L. Fite, Fortner, Gazaway, Gonzales, Gramlich, Haak, Hawk, Hollowell, Jean, Ladyman, Long, Lundstrum, Lynch, McAlindon, McClure, McCollum, M. McElroy, McGrew, B. McKenzie, McNair, S. Meeks, Miller, Milligan, K. Moore, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, Tosh, Underwood, Vaught, Womack, Wooten

By: Senators K. Hammer, Dees, M. McKee, J. Petty, Stone

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS POLL WATCHERS BILL OF RIGHTS ACT OF 2023; TO AMEND THE LAW CONCERNING POLL WATCHERS; TO AMEND THE LAW CONCERNING ELECTION PROCEDURES; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS POLL WATCHERS BILL OF RIGHTS ACT OF 2023; TO AMEND THE LAW CONCERNING POLL WATCHERS; AND TO AMEND THE LAW CONCERNING ELECTION PROCEDURES.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Arkansas Poll Watchers Bill Of Rights Act Of 2023".

SECTION 2. Arkansas Code § 7-4-101(f), concerning the duties of the State Board of Election Commissioners, is amended to add an additional subdivision to read as follows:



1 (17) Develop a training program for poll watchers, including
2 without limitation:

3 (A) Develop training materials, including on-line training
4 materials concerning the duties, rights, and responsibilities of poll
5 watchers; and

6 (B) Adopt and promulgate rules to establish procedures for
7 training poll watchers.

8
9 SECTION 3. Arkansas Code § 7-5-312 is amended to read as follows:

10 7-5-312. ~~Challenge of voter's ballot by poll~~ Poll watchers,
11 candidates, or designees ~~– Rights – Challenge of a voter's ballot.~~

12 (a) Poll watchers shall include any:

13 (1) Candidate in person, but only during the counting and
14 tabulation of ballots and the processing of absentee ballots;

15 (2) Authorized representative of a candidate;

16 (3) Authorized representative of a group seeking the passage or
17 defeat of a measure on the ballot; and

18 (4) Authorized representative of a county or state political
19 party with a candidate on the ballot or seeking the passage or defeat of a
20 measure on the ballot.

21 (b) A poll watcher shall:

22 (1)(A) Be a qualified elector of the state.

23 (B) A poll watcher is not required to be a qualified
24 elector of the election precinct they are observing; and

25 (2) Complete a training course approved and administered by the
26 State Board of Election Commissioners.

27 (c)(1) The county board of election commissioners shall designate
28 observation areas for poll watchers at each location where ballots are cast,
29 including without limitation a:

30 (A) Courthouse;

31 (B) Early voting site;

32 (C) Vote center; or

33 (D) Polling location.

34 (2) An observation area required under subdivision (c)(1) of
35 this section shall be not fewer than three feet (3') and no more than six
36 feet (6') from the:

1 (A) Location at which an elector announces their name and
2 address to be issued a ballot; or

3 (B) Table at which a person may register to vote.

4 (d) A poll watcher shall be provided uniform and nondiscriminatory
5 access to observe all stages of the election process, including without
6 limitation:

7 (1) Certification and testing of election technologies;

8 (2) In-person absentee voting;

9 (3) Return of absentee ballots by designated bearers;

10 (4) Canvassing of absentee ballots;

11 (5) Casting of ballots;

12 (6) Spoiling of ballots;

13 (7) Remaking of ballots;

14 (8) Vote tabulation;

15 (9) Voter registration at a polling location;

16 (10) Audits; and

17 (11) Recounts.

18 (e) A poll watcher who is observing an election process shall wear a
19 badge with the name of the individual.

20 (f) A poll watcher shall not:

21 (1) Wear campaign material advocating voting for or against a
22 candidate or for or against a position on a ballot question;

23 (2) Interfere with an elector in the preparation or casting of
24 the elector's ballot; or

25 (3) Hinder or prevent the performance of the duties of any
26 election official.

27 (g) A poll watcher may:

28 (1) Bring in voter lists to observe;

29 (2) Challenge a ballot for review by the county board of
30 election commissioners as a provisional ballot;

31 (3) Speak to a poll worker to initiate a challenge to a ballot;
32 and

33 (4) Speak to a poll judge to execute a challenge to a ballot.

34 (h) A poll watcher who violates this section may be expelled from all
35 polling locations in the county for the duration of the election by the
36 county board of election commissioners, the county clerk, or other designated

1 election official.

2 (i) A person who uses force, intimidation, harassment, or coercion to
3 interfere with a registered voter's ability to vote, an election official's
4 duties, or a poll watcher's duties, is guilty upon conviction of a Class A
5 misdemeanor.

6 (j) Each candidate, group, or political party may have at any given
7 time during the election, including early voting:

8 (1) One (1) authorized representative present at any one (1)
9 time at each location within a polling site where voters identify themselves
10 to election officials, for absentee, in-person, or provisional voting, so as
11 to observe and ascertain the identity of those persons presenting themselves
12 to vote for the purpose of challenging voters; and

13 (2) One (1) authorized representative present at any one (1)
14 time at each location or area within the absentee ballot processing site
15 where absentee ballots are processed, canvassed, duplicated, or tabulated, so
16 as to observe and ascertain the identity of absentee voters for the purpose
17 of challenging any absentee vote.

18 ~~(e)~~(k) In accordance with §§ 7-5-316, 7-5-413, 7-5-416, 7-5-527, and
19 7-5-615, a candidate in person or an authorized representative of a candidate
20 or political party may be present at a polling site, vote center, early
21 voting site, alternative site for central counting location, and absentee
22 ballot counting location for the purpose of witnessing the counting of
23 ballots by election officials and determining whether ballots are fairly and
24 accurately counted.

25 ~~(d)~~(1)(1) The document designating and authorizing a representative of
26 a candidate, a representative of a group seeking the passage or defeat of a
27 measure on the ballot, and a representative of a political party with a
28 candidate on the ballot, or a political party seeking the passage or defeat
29 of a measure on the ballot shall be filed with the county clerk.

30 (2) The county clerk shall provide a poll watcher three (3)
31 file-marked copies of the document required under subdivision (1)(1) of this
32 section without a fee. and

33 (3) a A file-marked copy shall be presented for viewing by the
34 poll watcher to the election official immediately upon entering the polling
35 site, vote center, early voting site, alternative voting site, absentee
36 ballot processing site, or counting location in the following form:

1 "POLL WATCHER AUTHORIZATION FORM

2 Representative of a Candidate

3 I,....., state that I am a candidate for the office of
4 in the election. I further state that I
5 have designated as my authorized representative at the election
6 at polling sites and absentee ballot processing sites
7 in County, Arkansas, to observe and
8 ascertain the identity of persons presenting themselves to vote in person or
9 by absentee for the purpose of challenging any voter in accordance with
10 Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417. I further state that I have
11 designated and authorized my representative named above to be present at the
12 ballot counting locations at in
13 County, Arkansas, for the purpose of witnessing the
14 counting of ballots by election officials and determining whether ballots are
15 fairly and accurately counted in accordance with Arkansas Code §§ 7-5-312, 7-
16 5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615. I further state that
17 as my designated and authorized representative meets all of the
18 requirements under Arkansas Code § 7-5-312.

19 Representative of a Group

20 I,, state that I represent the
21 group that is seeking passage/defeat (circle one)
22 of the ballot measure entitled on the ballot in the
23 election at polling sites and absentee ballot
24 processing sites in
25 County, Arkansas, to observe and ascertain the identity of persons presenting
26 themselves to vote in person or by absentee for the purpose of challenging
27 any voter in accordance with Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417.
28 I further state that I meet all of the requirements under Arkansas Code § 7-
29 5-312.

30 Representative of a Party

31 I,, state that I am the chair or secretary of the
32 state/county (circle one) committee for the party
33 with candidates on the ballot in the election. I
34 further state that I have designated as an
35 authorized party representative at the election at polling sites
36 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. I further state that as a designated and authorized representative meets all of the requirements under Arkansas Code § 7-5-312.

.....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, the requirements under Arkansas Code § 7-5-312 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".

~~(e)~~(m) Poll watcher rights and responsibilities shall be printed on the back of the document in the following form:

"POLL WATCHER RIGHTS AND RESPONSIBILITIES

A poll watcher may be:

(1) A candidate in person, but only during the counting and tabulation of ballots and the processing of absentee ballots;

1 (2) An authorized representative of a candidate;

2 (3) An authorized representative of a group seeking the passage
3 or defeat of a measure on the ballot; or

4 (4) An authorized representative of a party with a candidate on
5 the ballot or seeking the passage or defeat of a measure on the ballot.

6 Official recognition of poll watchers:

7 (1) Only one (1) authorized poll watcher per candidate, group,
8 or party at any one (1) given time may be officially recognized as a poll
9 watcher at each location or area within a polling site, early voting site,
10 vote center, or alternative site where voters identify themselves to election
11 officials;

12 (2) Only one (1) authorized poll watcher per candidate, group,
13 or party at any one (1) given time may be officially recognized as a poll
14 watcher at each location or area within the absentee ballot processing site
15 where absentee ballots are processed; and

16 (3) Only one (1) authorized poll watcher per candidate or party
17 at any one (1) given time may be officially recognized as a poll watcher at
18 the counting of the ballots.

19 Poll watcher credentials:

20 (1) Except for candidates in person, poll watchers must present
21 a valid affidavit in the form of a 'Poll Watcher Authorization Form' to an
22 election official immediately upon entering the polling or counting location;
23 and

24 (2) Candidates in person attending a counting site or absentee
25 ballot processing site are not required to present a 'Poll Watcher
26 Authorization Form' but must present some form of identification to an
27 election official immediately upon entering the site for the purpose of
28 confirming the poll watcher as a candidate on the ballot.

29 Poll watchers may:

30 (1) Observe the election officials or designees;

31 (2) Stand close enough to the place where voters check in to
32 vote so as to hear the voter's name;

33 (3) Compile lists of persons voting;

34 (4) Challenge ballots upon notification to an election official
35 before the voter signs the precinct voter registration list and upon
36 completing a 'Challenged Ballot Form';

1 (5) Call to the attention of the election sheriff any occurrence
2 believed to be an irregularity or violation of election law. The poll watcher
3 may not discuss the occurrence unless the election sheriff invites the
4 discussion; and

5 (6) Be present at the opening, processing, duplication, and
6 canvassing of absentee ballots for the purpose of challenging absentee votes
7 in the manner provided by law for personal voting challenges.

8 Poll watchers representing a candidate or political party may:

9 (1) Remain at the polling site after the poll closes if ballots
10 are counted at the poll;

11 (2) Be present at the counting of votes by hand or by an
12 electronic vote tabulating device at a central location;

13 (3) Be present at the counting of absentee ballots for the
14 purpose of witnessing the counting of ballots by election officials and
15 determining whether ballots are fairly and accurately counted; and

16 (4) Upon request made to an election official, inspect any or
17 all ballots at the time the ballots are being counted.

18 Poll watchers may not:

19 (1) Be within six feet (6') of any voting machine or booth used
20 by voters to cast their ballot;

21 (2) Speak to any voter or in any way attempt to influence a
22 voter inside the polling site or within one hundred feet (100') of the
23 primary exterior entrance used by voters to the building containing the
24 polling site; or

25 (3) Disrupt the orderly conduct of the election."

26 ~~(f)~~(n) Poll watcher rights and responsibilities shall be posted in
27 plain view at each polling site, absentee ballot processing site, and
28 counting site.

29 ~~(g)~~(o) A poll watcher may notify an election official they are
30 ~~challenge~~ challenging a voter only on the grounds that the voter:

31 (1) ~~is~~ Is not eligible to vote in the precinct; or

32 (2) ~~that the voter has~~ Has previously voted at that election.

33 ~~(h)~~(1)(p)(1) When the ballot of any voter is thus challenged, it shall
34 be treated as a provisional ballot.

35 (2) The poll watcher shall notify an election official of the
36 challenge before the voter signs the precinct voter registration list.

1 (3) The poll watcher shall complete a challenged ballot form.

2 (4) The election official shall inform the voter that his or her
3 ballot is being challenged.

4 (5) The procedures for casting a provisional ballot under § 7-5-
5 308 shall be followed.

6 (q) As used in this section, "group seeking the passage or defeat of a
7 measure on the ballot" means a group that is registered or files reports with
8 the Secretary of State under § 7-6-201 et seq.

9
10 SECTION 4. Arkansas Code § 7-5-413(a)(2), concerning voting machines
11 and related duties, is amended to read as follows:

12 (2) Those persons entitled under the law to vote early by personal
13 appearance shall cast their votes on voting systems under the laws applicable
14 to early voting, and the clerk or election official shall enter the name of
15 each voter on a list at the time he or she votes in the presence of an
16 authorized poll watcher, if any.

17
18 SECTION 5. Arkansas Code § 7-5-413(c)(1), concerning voting machines
19 and related duties, is amended to read as follows:

20 (c)(1)(A) At the time designated in the notice of election, a
21 set of election officials for the machines used for early voting shall
22 canvass the vote in the manner provided for regular polling sites in the
23 presence of an authorized poll watcher, if any.

24 (B) After the canvass has been made, the machines shall be
25 secured and shall remain inaccessible to voting in the presence of an
26 authorized poll watcher, if any.

27
28 SECTION 6. Arkansas Code § 7-5-615(d), concerning the tabulation of
29 votes, defective ballots, and certification of returns, is amended to read as
30 follows:

31 (d)(1) If any ballot is damaged or defective so that it cannot
32 properly be counted by the electronic vote tabulating device, a true
33 duplicate copy shall be made of the damaged ballot in the presence of
34 tabulation election officials and designated poll watchers, if any, if the
35 votes are tabulated at a central location.

36 (2) The duplicate shall be substituted for the damaged ballot.

1 (3) All duplicate ballots shall be clearly labeled “duplicate”
2 and shall be counted in lieu of the damaged or defective ballot.

3 (4) An election official under subdivision (d)(1) of this
4 section shall maintain a recorded count of damaged ballots to be duplicated
5 in the presence of authorized poll watchers, if any, and provide the report
6 to the county board of election commissioners.

7
8 SECTION 7. DO NOT CODIFY. Rules.

9 No later than January 1, 2024, the State Board of Election
10 Commissioners shall:

11 (1) Develop all training materials for poll watchers;

12 (2) Develop rules that establish:

13 (A) The procedure to record completion of the training
14 program by a poll watcher;

15 (B) How the training program will be promoted by the State
16 Board of Election Commissioners; and

17 (C) An appeal process if a certification of completion of
18 the training program is not granted to a poll watcher.

19
20 /s/Furman

21
22
23 APPROVED: 4/4/23