

PROCEDURES FOR SENATE ELECTION CONTEST

QUESTIONS PRESENTED

If an unsuccessful candidate for a Senate seat (hereafter “petitioner”) wishes to contest the election of an individual to serve in the Senate (hereafter “respondent”), the petitioner shall petition the Senate to conduct an election contest to address the following questions:

- (1) Did fraud or irregularities exist in the election to the point that the election of the respondent was invalid?
- (2) If yes, absent the fraud or irregularities, would the petitioner have been elected to the Senate seat at issue?

PREHEARING SCHEDULE

Each party shall submit a brief detailing his or her position on the questions at issue pursuant to a schedule issued by the Senate. The petitioner shall submit his or her brief first. Each party may attach to the brief any evidence deemed relevant to the matter, including affidavits and depositions of witnesses. Each party shall include in their briefs all arguments they plan to present at the hearing.

Each party shall submit a witness list and an exhibit list pursuant to a schedule issued by the Senate. The witness list shall contain a summary of the expected testimony of each witness. If there are witnesses requiring a subpoena to appear, the State Agencies and Governmental Affairs committee will issue such subpoenas. Information regarding any subpoenas needed shall be provided in conjunction with the witness list.

The exhibit list shall contain a description of each exhibit and its relevance to the matter. Any amendments to the witness list or exhibit list shall be made pursuant to a schedule issued by the Senate.

All briefs, exhibit lists, and witness lists shall be submitted by the close of business (4:30 p.m.) on the due date.

The Senate recognizes, due to timing and the location of the election contest, it may be impractical or impossible to present some individuals as witnesses. The Senate will accept affidavits and depositions of witnesses until the hearing date. However, any person who executes an affidavit or is deposed shall be identified in the respective party’s witness list.

Parties shall submit briefs, witness lists, and exhibit lists by both electronic mail and U.S. mail to the opposing party and to the chair of the State Agencies and Governmental Affairs Committee in care of the Chief Counsel of the Senate. The Senate shall provide contact information for the Chief Counsel to the parties along with the schedule of proceedings.

PROCEDURES FOR HEARING

The hearing shall commence on a date scheduled by the Senate and shall take place in the Old Supreme Court chamber on the second floor of the Arkansas State Capitol Building.

At the opening of the hearing, each party may make an opening statement not to exceed ten (10) minutes. The petitioner shall present his or her opening statement first.

Each side will have one and one-half (1 ½) days to present evidence on the questions at issue. Evidence will be presented first by the petitioner. Parties may present necessary evidence and call witnesses before the committee. All witnesses will be sworn. Each party will be provided an opportunity to cross-examine all witnesses. Cross-examination shall be limited to the scope of the direct examination. Redirect and recross examinations normally will not be permitted. Cross-examination of any particular witness shall be limited to one (1) attorney for each party.

At the close of the hearing, each party may make a closing statement not to exceed ten (10) minutes. The petitioner shall present his or her closing statement first.

At the conclusion of closing statements, the State Agencies and Governmental Affairs committee shall be allowed to question attorneys for the parties regarding issues relevant to their decision-making process that were not answered to their satisfaction during the hearing.

As a legislative forum is not a court of law, the traditional rules of evidence are inapplicable to the hearing. However, the chair of the Senate State Agencies and Governmental Affairs committee reserves the right to exclude any evidence deemed irrelevant, immaterial, or unduly repetitious.

If either the petitioner or the respondent is a member of the State Agencies and Governmental Affairs Committee, he or she shall stand aside during the course of the proceedings pursuant to Senate rules.

FINAL DETERMINATION BY SENATE

At the conclusion of the hearing, the State Agencies and Governmental Affairs committee shall deliberate in a manner consistent with the powers granted to the Senate under the Arkansas Constitution and then issue a written recommendation to the full Senate regarding the resolution of the election contest. The committee shall make one (1) of four (4) recommendations:

(1) If the evidence indicates fraud or irregularities influenced the results of the election and the fraud or irregularities rose to a level that would have changed the outcome of the election, the committee shall recommend that the respondent be expelled from the Senate seat in question and the petitioner be placed in the Senate seat in question;

(2) If the evidence indicates fraud or irregularities influenced the results of the election and it is not possible to determine whether the fraud or irregularities rose to a level that would have changed the outcome of the election, the committee shall recommend that the respondent be expelled from the Senate seat in question and the Senate seat be declared vacant;

(3) If the evidence indicates fraud or irregularities that existed with regard to the election do not rise to a level that influenced the results of election and the respondent was duly elected to the Senate seat in question, the committee shall recommend that the respondent maintain his or her current position in the Senate; or

(4) If the evidence indicates no fraud or irregularities existed with regard to the election and the respondent was duly elected to the Senate seat in question, the committee shall recommend that the respondent maintain his or her current position in the Senate.

The chair of the State Agencies and Governmental Affairs committee shall present the recommendation, a summary of the hearing proceedings, and a transcript of the proceedings to the President Pro Tempore. The members of the Senate shall be given time to review the written recommendation and any documentation pertaining to or associated with the summary of hearing proceedings, as well as the record of the hearing to include all briefs, exhibits, and hearing transcript. The Senate shall then convene to consider approval of the recommendation of the State Agencies and Governmental Affairs committee. The Senate may amend the committee's recommendation by a majority vote of its membership. A motion to expel the respondent requires an affirmative vote of two-thirds (2/3) of the Senate, in accordance with Arkansas Constitution Article 5, section 12.

AMENDMENTS TO PROCEDURES

The chair of the Senate State Agencies and Governmental Affairs committee may amend the election contest procedures at his or her discretion to address procedural issues that may arise during the election contest proceedings.

SCHEDULE FOR SENATE ELECTION CONTEST

Friday, February 15 → Scheduling conference with attorneys for both parties.

Friday, February 29 → Petitioner written brief due (10 days from scheduling conference excluding weekends).

Monday, March 3 → Witness list and exhibit list due.

Monday, March 10 → Deadline for amendments to witness list and exhibit list.

Friday, March 14 → Respondent written brief due (10 days from due date of contestant brief excluding weekends).

Tuesday, March 25 – Thursday, March 27 → Election contest hearing (Old Supreme Court chamber, second floor of Arkansas State Capitol Building).

Parties shall submit briefs, witness lists, and exhibit lists by both electronic mail and U.S. mail to the opposing party and to Senator Steve Faris, chair of the State Agencies and Governmental Affairs Committee, in care of:

Mr. Steve Cook
Chief Counsel, Arkansas Senate
State Capitol Building, Rm. 320
Little Rock, Arkansas 72201
stevec@arkleg.state.ar.us

PROCEDURAL OUTLINE FOR ELECTION CONTEST HEARING

1. Opening Remarks by Sen. Steve Faris, Chair of Senate State Agencies and Governmental Affairs Committee.
2. Petitioner's (Willis) Opening Statement (10 minutes).
3. Respondent's (Crumbly) Opening Statement (10 minutes).
4. Petitioner's Case (presentation of witnesses and documentary evidence to last one and one-half (1 1/2) days maximum).
5. Question and Answer Period (*At the conclusion of petitioner's case*, the members will be permitted to question the petitioner's attorney on any issues upon which they would like further clarification. Committee members will not be permitted to question the parties or any witnesses. Questioning by committee members will not be permitted during the presentation of the petitioner's case.)
6. Respondent's Case (presentation of witnesses and documentary evidence to last one and one-half (1 1/2) days maximum).
7. Question and Answer Period (*At the conclusion of respondent's case*, the members will be permitted to question the respondent's attorney on any issues upon which they would like further clarification. Committee members will not be permitted to question the parties or any witnesses. Questioning by committee members will not be permitted during the presentation of the respondent's case.)
8. Petitioner's Closing Arguments (10 minutes or may be longer at the discretion of the committee chair).
9. Respondent's Closing Arguments (10 minutes or may be longer at the discretion of the committee chair).
10. Committee Deliberations.
11. Issuance of written recommended decision by the committee to the full Senate (containing findings of fact, legal conclusions, and a recommended action).
12. Senate review period (during which time members of the Senate may review the record of the proceedings, including all briefs, exhibits, and transcripts).
13. Senate debate (including the opportunity to question the parties' attorneys) and Senate vote.

INSTRUCTIONS TO WITNESSES

If you are scheduled to be called as a witness, you will report to the Old Supreme Courtroom on the second floor of the State Capitol Building. A Capitol policeman will be posted at the entrance. The officer will escort you to Room 207 which is just to the side of the courtroom. Any person who is scheduled to be called as a witness will not be allowed entrance into the courtroom while the hearing is in progress. You will remain in Room 207 until you are called to give your testimony. All witnesses shall refrain from discussing any issue which is related to their testimony with other witnesses.