

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY State Board of Election Commissioners

DIVISION _____

DIVISION DIRECTOR Keith Rutledge, Director

CONTACT PERSON Daniel Shults, Attorney

ADDRESS 501 Woodlane Street, Suite 401N, Little Rock, Arkansas, 72201

PHONE NO. (501) 682-1447 FAX NO. (501) 682-1782 E-MAIL daniel.shults@arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Daniel Shults

PRESENTER E-MAIL daniel.shults@arkansas.gov

INSTRUCTIONS

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

Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201

1. What is the short title of this rule? Emergency Rules on Poll Watchers, Vote Challenges, and Provisional Voting

2. What is the subject of the proposed rule? This rule deals with provisional voting and the process of casting and counting provisional ballots. The changes reflect the new process required by Act 633 of 2017 that will cause most voter who fail to verify his or her voter registration to cast a provisional ballot. These rules explain how provisional ballot will be cast and counted.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X

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

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes X No _____

If yes, what is the effective date of the emergency rule? Effective upon legislative approval and filing (estimated date August 15, 2017)

When does the emergency rule expire? (estimated date December 23, 2017)

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes X No _____

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

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 Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire.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

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

This amendment updates the SBEC Rules governing provisional ballots to reflect the changes in law caused by Act 633. This Act requires most voters to verify their voter registration before they cast a ballot in Arkansas. If a voter fails to verify his or her voter registration, that voter must cast a provisional ballot. These rules explain how provisional ballot will be cast and counted under the new system.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 633 of 2017 codified as Ark. Const. amend. 51, §13(b)(7) and Ark Code Ann. §7-4-101(f)(5)
7. What is the purpose of this proposed rule? Why is it necessary? This rule is necessary to ensure local election officials understand the changes in law implemented by Act 633 pertaining to provisional voting. It is also essential to establish a uniform procedure for the treatment of provisional ballot.
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). (Will be posted on) <http://www.arkansas.gov/sbec/>
9. Will a public hearing be held on this proposed rule? Yes _____ No X
If yes, please complete the following:
Date: _____
Time: _____
Place: _____
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

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

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.
13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION _____

PERSON COMPLETING THIS STATEMENT Daniel Shults, Attorney

TELEPHONE NO. (501) 682-1447 FAX NO. (501) 682-1782 EMAIL: daniel.shults@arkansas.gov

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

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

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X_____

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X_____ No _____

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X_____ No _____

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

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

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

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

 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

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

Next Fiscal Year

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

Other (Identify) _____

Other (Identify) _____

Total 0

Total 0

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

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, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

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

Current Fiscal Year

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?

Yes _____ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

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

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street, Suite 401N
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996

Secretary of State
Mark Martin
Chairman

Rhonda Cole
Chad W. Pekron
Charles Roberts
J. Harmon Smith
Stuart Soffer
James Sharp
Commissioners



Keith Rutledge
Director

Heather McKim
Deputy Director

Daniel Shults
Legal Counsel

Jon Davidson
Educational Services Manager

July 11, 2017

Ms. Marty Garrity, Director
Bureau of Legislative Research
Room 315, State Capitol Building
Little Rock, Arkansas 72201

RE: Emergency Rule Statement

Ms. Garrity:

The State Board of Election Commissioners finds that it is necessary for the emergency Rules for the Verification of Voter Registration and the emergency Rules for Poll Watchers, Vote Challenges, and Provisional Voting to be effective immediately upon filing because of imminent peril to the public welfare. The votes of certain legal absentee voters may not be counted unless the procedures established in these rules are implemented. Furthermore, it is essential that uniform procedures be established to ensure Act 633 of 2017 is implemented in such a way that voters in one portion of the state are subject to the same requirements and processes as a voter in another portion of the state.

Please let me know if any additional information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Rutledge".

Keith Rutledge
Director

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street, Suite 401N
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996

Secretary of State
Mark Martin
Chairman

Rhonda Cole
Chad W. Pekron
Charles Roberts
J. Harmon Smith
Stuart Soffer
James Sharp
Commissioners



Keith Rutledge
Director

Heather McKim
Deputy Director

Daniel Shults
Legal Counsel

Jon Davidson
Educational Services Manager

Summary of the *EMERGENCY* Revisions to the RULES ON POLL WATCHERS, VOTE CHALLENGES, AND PROVISIONAL VOTING

The State Board of Election Commissioners met on June 21, 2017 and approved emergency changes to the “Rules on Poll Watchers, Vote Challenges, and Provisional Voting”

These emergency rules approved by the SBEC are designed to operate together with the emergency rules dealing directly with the verification of voter registration in order to implement and explain Act 633 of 2017. The purpose of this rule is to provide a concise statement of the relevant legal provisions set out in Act 633 and to provide additional rules where necessary in order to ensure fair and orderly election procedures.

The first section that is amended establishes definitions for words or phrases used in the rule. The second section amended, §901, updates portions of the rule that no longer reflect current law regarding the result of a failure to present a document with the voter’s photograph to a poll worker when voting. The third section amended, §905, updates the procedures for voting a provisional ballot to conform to the requirements of Act 633. The next section amended, §906, which deals with notice to the voters, inserts a requirement that the notice given to a provisional voter at the poll include an explanation of how that voter can cause their ballot to be counted if the only reason the ballot has been cast as provisional is that the voter failed to verify his or her voter registration and did not sign the affirmation of identity. This same section is also amended to reflect the requirements of Act 1014 of 2017 that states written notice must be given to all voters, including absentee voters, whose votes are not counted. The fifth section amended, §907, which addressed the review of provisional ballots, is also updated to include the requirements of Act 633. The sixth section, §908, clarifies that the system of granting a hearing in order to determine whether provisional ballots are to be counted applies only to general provisional ballots and that ballots made provisional under Act 633 must comply with the requirements of Act 633 in order to be counted. The seventh section amended, §909, updates the rule governing when provisional ballots are to be counted to include when ballots made provisional because the voter did not verify his or her voter registration. Attachment A, the Provisional Voter Envelope, and Attachment B, the provisional voter list, are updated to comply with Act 633.

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

(Effective April 22, 2006; Revised ~~December 29, 2015~~ _____, 2017)



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

TABLE OF CONTENTS

Scope of Rules.....	3
§ 900 Definitions.....	3
§ 901 <u>Failure to Verify Voter Registration or Provide Documentary Voter Identification</u>	
A. <u>Forms Early Voting and Election Day Voting</u>	65
B. Additional Identification Requirement for <u>Flagged First-Time Voter who Registered by Mail</u>	6
C. Absentee Voters <u>Generally</u>	76
D. <u>Absentee Voters that are Flagged First-Time Voters Who Registered by Mail</u>	7
§ 902 Precinct Voter Registration List	
A. Voter’s Name Missing.....	76
B. “Voted Absentee” Notation.....	77
§ 903 Poll Watcher Challenges	
A. Official Recognition/Credentials.....	87
B. Challenges.....	98
§ 904 Court-Ordered Extension	98
§ 905 Voting a Provisional Ballot.....	9
§ 906 Notice to Provisional Voters.....	12-10
§ 907 Review of Provisional Ballots.....	13-10
A. <u>Procedures for the Review of General Provisional Ballots</u>	13
B. <u>Procedures for the Review of Unverified Provisional Ballots</u>	14
§ 908 Hearing.....	15-12
§ 909 Counting Provisional Ballots	15-12
§ 910 Prosecuting Attorney.....	16-13
§ 911 Preliminary and Unofficial Results.....	16-13
§ 912 Official Certified Results.....	16-13
<u>§ 913 Effective Date</u>	<u>16</u>
Provisional Voter Envelope (Attachment “A”).....	17-14
List of Provisional Voters (Attachment “B”).....	19-16
Poll Watcher Authorization Form (Attachment “C”).....	20-17

Scope of Rules

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

§ 900 Definitions

- (a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners 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” (see Attachment “A”) that are completed when a poll watcher challenges a voter, identifying the voter whose vote was challenged, the poll watcher, the reason for the challenge, the applicable provisional voter number from the list of provisional voters (see Attachment “B”), poll, precinct, ballot style, and the date and time of the challenge under the signature of both the poll watcher and the challenged voter.
- (d) 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) Election Official – a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.⁵
- (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

¹ A.C.A. §§ 7-5-414(a); 7-5-416(a)(1)

² A.C.A. § 7-1-101

³ A.C.A. § 7-4-102(a)

⁴ A.C.A. § 7-5-414

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

election at an early voting location or at a polling site. The functions of an electronic poll book may include voter lookup, voter verification, voter identification, precinct assignment, ballot assignment, a recording of when a voter presents himself or herself to an election official to request a ballot, and direction to the correct polling site. An electronic poll book may be used as the precinct voter registration list.⁶

- (i) Eligibility Affirmation – a written affirmation executed under penalty of perjury by a provisional voter in the presence of the poll worker at the poll stating that he or she is a registered voter in the precinct in which he or she desires to vote and is eligible to vote in that election (see Attachment “A”).⁷
- (j) First-time Voter Registered by Mail – any registered voter, except those exempted by Arkansas Code Annotated § 7-5-201(e)(2), who has not previously voted in a federal election in the state and whose registration application arrived at the county clerk’s office or Secretary of State’s office by mail.⁸ “First-time voters registered by mail” who do not provide identification when registering are flagged by the county clerk for the additional identification requirement. “First-time voters registered by mail” who provided a valid driver’s license number or the last four (4) digits of their social security number on their voter registration application form are considered as having provided identification if a state or local election official can match the driver’s license or social security number with an existing state identification record bearing the same number, name and date of birth as provided in the registration. Registration applications arriving in bulk by means other than the mail at the registrar’s office or delivered by leaders of voter registration drives are considered to have been delivered in person, not by mail, and are, therefore, not considered “first-time voters registered by mail” and not flagged by the county clerk for the additional identification requirement.
- (k) Polling Site – a location selected by the county board of election commissioners where votes are cast.⁹
- (l) Poll Watcher – any authorized representative of a candidate, any authorized representative of a group seeking passage or defeat of a measure on the ballot, and any authorized representative of a political party with a candidate on the ballot who is present at a polling site or an absentee ballot processing site to observe and ascertain the identity of persons presenting themselves to vote at the polls or to observe and ascertain the identity of absentee voters for the purpose of challenging any voter in person or for the purpose of challenging any absentee vote. A candidate may be present at an absentee ballot processing site to observe and ascertain the identity of absentee voters for the purpose of challenging any absentee vote. A candidate or an authorized representative of a candidate or political party may also be present at all counting sites for the purpose of witnessing the counting of ballots by election officials. A candidate may be present in person during early voting only for the purpose of observing whether or not votes are fairly and accurately cast.¹⁰

⁶ A.C.A. §§ 7-1-101; 7-5-107

⁷ A.C.A. § 7-5-308(a)(2)

⁸ A.C.A. §§ 7-1-101; 7-5-201(e)

⁹ A.C.A. § 7-1-101

¹⁰ A.C.A. §§ 7-5-312; 7-5-316(a); 7-5-413(d); 7-5-416(a)(4); 7-5-527(b); 7-5-615(a)

- (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 (see Attachment “C”).¹¹
- (n) Poll Worker – an election official designated by the county board of election commissioners to be an election clerk, election judge or election sheriff at a polling site.
- (o) Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.¹²
- (p) Precinct Voter Registration List – a computerized list provided by the county clerk and used by poll workers in each polling place for every election conducted in the state indicating the name and date of the election; identifying the precinct’s number and county in which located; and containing the name, address, and date of birth of each registered voter, including those who have been designated inactive, within the precinct with a space for each voter’s signature.¹³ In any precinct with more than one (1) ballot style, the precinct voter registration list must also identify the district, sub-district, county, municipality, ward, and school zone in which each voter is qualified to vote. An electronic poll book may be used as the precinct voter registration list.¹⁴
- (q) Provisional Ballot – a ballot cast and/or considered by special procedures to record a vote when there is some question concerning a voter’s eligibility or compliance with certain constitutional and statutory requirements. Provisional ballots are counted upon verification of a voter’s eligibility or compliance with those statutory legal requirements.¹⁵
- (r) Provisional Voter Envelope – an envelope used by poll watchers for voter challenges and by poll workers for voter qualification issues containing information relating to provisional voters, including a provisional voter’s eligibility affirmation, the reason for voting provisional, the ballot style voted, a space for the county clerk’s certification of the provisional voter’s registration status, and a space for the disposition of the provisional ballot upon review by the county board of election commissioners. A “provisional voter envelope” shall have printed on it all the information sought by Attachment “A”.
- (s) Unverified Provisional Ballot – any ballot which has been cast as a provisional ballot due to the failure of a voter to verify his or her voter registration under Amendment 51, §13 when required to do so by law.
- (t) Verification of Identity Affirmation – the signed written statement in which a voter affirms that the voter is registered to vote in this state and that he or she is the person registered to vote. If properly executed and included with a provisional ballot, this oath will cause a vote that has been

¹¹ A.C.A. § 7-5-312(d),(e)

¹² A.C.A. § 7-1-101

¹³ A.C.A. § 7-5-107

¹⁴ A.C.A. §§ 7-5-110; 7-5-107(a)(2)

¹⁵ Ark. Const. amend. 51, §13; A.C.A. §§ 7-1-101; 7-5-304(c); 7-5-306(b); 7-5-308; 7-5-312(h); 7-5-412(b); 7-5-416(b)(1)(F)(iii); 7-5-417(a); 7-5-418(d)

cast provisionally to be counted if the vote was cast provisionally only because the voter failed to verify his or her voter registration.

- (u) Verification of Voter Registration – The process by which an individual seeking to vote presents a photo identification to an election official for the purpose of confirming that the individual physically present at the poll is the same individual to whose voter registration the vote cast will be credited. Refer to SBEC Rules for the Verification of Voter Registration for additional information regarding this process and the meaning of photo identification as referred to in this process.¹⁶
- (v) 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.

§ 901 Failure to Verify Voter Registration or Provide Documentary Voter Identification

A. Forms—Early Voting and Election Day Voting

~~Poll workers must ASK all voters not otherwise excluded under the voter identify to provide one of the following forms of identification:~~

- ~~1) A current and valid photo identification (such as a driver's license);~~
- ~~2) A copy of a current utility bill showing the voter's name and address;~~
- ~~3) A copy of a bank statement showing the voter's name and address;~~
- ~~4) A copy of a government check or paycheck showing the voter's name and address; or~~
- ~~5) A copy of a government document showing the voter's name and address.~~¹⁷

~~Unless otherwise noted on the precinct voter registration list, if the voter (including first time voters who registered by mail and provided identification when registering) is unable to provide or declines to provide identification when voting, the poll worker must indicate on the precinct voter registration list that the voter did not provide identification and give the voter a **REGULAR** ballot.~~

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).¹⁸

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

¹⁶ A.C.A. § 7-1-101(38)

¹⁷ A.C.A. § 7-5-201(e)(1)(A)

¹⁸ Ark. Const. amend. 51, §13; A.C.A. § 7-5-201(e)

did not provide required identification shall be offered a provisional ballot.¹⁹ Voters that fall into this category are not required to verify their voter registration under Amendment 51 §13.²⁰ Rather, the voter must provide current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, other government document that shows the name and address of the voter in order to cast a regular ballot. If these voters fail to provide one of the forms of identification, they will be required to vote a provisional ballot.²¹

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.²²

C.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.²³

§ 902 Precinct Voter Registration List

A. Voter's Name Missing

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

- 1) Contact the county clerk's office to verify the voter's registration status, and
- 2) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the poll worker that the voter is listed as a registered voter of the precinct),²⁴ 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),²⁵ 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

¹⁹ A.C.A. §§ 7-5-201(e)(1)(A); 7-5-305(8)(B)(iii)

²⁰ Ark. Const. amend. 51, §13(b)(6)

²¹ A.C.A. § 7-5-201(e); 7-5-305(8)(B)(iii)

²² Ark. Const. amend. 51, §13(b)(3)

²³ A.C.A. § 7-5-201(e)(1)(B)

²⁴ A.C.A. § 7-5-306(a)

²⁵ Ark. Const. Amend. 51, §10 of the Arkansas Constitution

- 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).²⁶

B. "Voted Absentee" Notation

Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the electronic voter registration record and the precinct voter registration list to indicate that an absentee ballot has been delivered to the voter under the procedures in this section.²⁷

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.²⁸

§ 903 Poll Watcher Challenges

A. Official Recognition/Credentials

Poll watchers representing a candidate, group, or political party must file a "poll watcher authorization form" (see Attachment "C") with the county clerk of the county in which the polling site, absentee ballot processing site, or counting site is located and present a file-marked copy of the valid form to the election officials immediately upon entering the polling site, absentee ballot processing site, and/or counting site.²⁹

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.

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.³⁰

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.³¹ 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

²⁶ A.C.A. §§ 7-5-306(b); 7-5-418(d)

²⁷ A.C.A. § 7-5-409(g)

²⁸ A.C.A. §§ 7-5-201(f); 7-5-305(a)(11); 7-5-411(b)

²⁹ A.C.A. § 7-5-312(d)

³⁰ A.C.A. § 7-5-312(a)(1),(e)

³¹ A.C.A. § 7-5-413(d)

person at an early voting location for the purpose of observing shall not wear on his or her person any uniform, badge, or other apparel or equipment that identifies the candidate as a public official.

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

Only one (1) authorized poll watcher per candidate, group, or party at any one (1) time may be officially recognized as a poll watcher at each location within a polling site where voters identify themselves to election officials and at each location within the absentee ballot processing site where absentee ballots are processed.³²

Only one (1) authorized poll watcher per candidate or party at any one (1) time may be officially recognized as a poll watcher at the counting of ballots at the polling site, central counting location, or absentee ballot counting location.³³

Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.³⁴

B. Challenges

Authorized poll watchers who are officially recognized at a polling site may stand close enough to the place where voters check in to vote so as to hear the voter’s name and may challenge an ineligible voter upon notifying a poll worker of the challenge before the voter signs the precinct voter registration list and upon completing a “challenged ballot form” (see Attachment “A”).³⁵

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.³⁶

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.³⁷

§ 904 Court-Ordered Extension

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

³² A.C.A. § 7-5-312(b),(e)

³³ A.C.A. § 7-5-312(c),(e)

³⁴ A.C.A. § 7-5-312(f)

³⁵ A.C.A. § 7-5-312(e),(g),(h)

³⁶ A.C.A. § 7-5-312(g)

³⁷ A.C.A. §§ 7-5-414; 7-5-417(a)

provisional ballot. The provisional ballots cast as a result of the order must be separated and held apart from other provisional ballots cast by provisional voters not affected by the order.³⁸

§ 905 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” (See Attachment “A”), and a poll worker must inform the voter that his or her ballot is being challenged³⁹
- 2) If as a result of failure to meet an identification requirements of a first time voter who did not provide a copy of his or her photo identification or otherwise satisfy the requirements of 7-5-201, when that voter registered to vote, a poll worker must inform the voter of the reason the voter is not allowed to cast a regular ballot.
- 3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and in the presence of the poll worker stating that he or she is both a registered voter in the precinct in which he or she desires to vote and eligible to vote in the election.⁴⁰
- 4) The poll worker shall initial the back of the ballot, remove the ballot stub from the provisional ballot, and place the stub in the stub box provided.⁴¹
- 5) The provisional voter shall mark his or her ballot.⁴²
- 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).⁴³
- 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.⁴⁴
- 8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906 (a).⁴⁵
- 9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot (see Attachment “B”).⁴⁶
- 10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots⁴⁷ 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.

³⁸ A.C.A. § 7-5-304(c)

³⁹ A.C.A. §§ 7-5-308(a)(1); 7-5-312(e),(h)

⁴⁰ A.C.A. § 7-5-308(a)(2)

⁴¹ A.C.A. § 7-5-308(a)(3)

⁴² A.C.A. § 7-5-308(a)(4)

⁴³ A.C.A. § 7-5-308(a)(5)

⁴⁴ A.C.A. § 7-5-308(a)(6)

⁴⁵ A.C.A. § 7-5-308(a)(7)

⁴⁶ A.C.A. § 7-5-308(a)(8)

⁴⁷ A.C.A. § 7-5-308(b)(c)

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.⁴⁸

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) The poll worker shall inform the voter that he or she may complete a Verification of Identity Affirmation which will allow the voter to affirm he or she is registered to vote in the State of Arkansas and that he or she is the person who is registered to vote.⁵²
- 5) If the voter chose to complete the Verification of Identity Affirmation, the voter shall sign the affirmation located on the front of the envelope marked “Provisional Ballot.” (see Attachment “A”)
- 6) 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
- 7) The provisional voter shall mark his or her ballot.⁵⁴
- 8) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope.⁵⁵
- 9) The provisional voter shall then place the sealed ballot secrecy envelope marked “Provisional Ballot.” containing his or her voted provisional ballot in a “provisional voter envelope” and seal the envelope.
- 10) The poll worker must provide the provisional voter a copy of the notice prescribed in §906 (a)⁵⁶ and ensure that the provisional ballot envelope is sealed.
- 11) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot (see Attachment “B”).⁵⁷
- 12) 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.
- 13) The county board of election commissioners will forward, in a secured container, the sealed “provisional voter envelopes” to the county clerk’s office for certification of each provisional voters’ registration status.

⁴⁸ A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

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)(4)

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)

- 14) Upon completion of the certification, the county clerk returns the secured container of sealed “provisional voter envelopes” to the county board for determination before certification of the election results as to whether the provisional ballots are valid and should be counted.⁵⁹

For an absentee ballot which becomes a provisional ballot, the absentee ballot canvassing official shall place the absentee ballot materials in a provisional voter envelope and should check the “Other” box and write the word “Absentee” next to the box marked “Other” on the form provided on the provisional ballot envelope (Attachment “A”). The absentee ballot canvassing official should also indicate the reason for making the absentee ballot provisional on the form provided on the provisional ballot envelope (Attachment “A”). When the absentee voter’s voter statement is inconsistent with the absentee ballot return envelope with regard to the identity of a bearer or agent the absentee ballot canvassing official should write “Inconsistent Bearer [or Agent]” 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 the voter’s ballot is not counted.⁶⁰

§ 906 Notice to Provisional Voters

(a) Whenever a person casts a provisional ballot at the polls during early voting or on election day, the poll worker must provide the voter a copy of a notice that includes the following information:

- 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
- The address, telephone number, and regular office hours of the county clerk;
- An explanation of the provisional voting process;
- An explanation of how a voter who cast a provisional ballot because the voter failed to verify his or her voter registration and who did not sign the Verification of Identity Affirmation can return to the clerk or the county board to verify their voter registration before Monday at noon following the election.
- 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:

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

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

⁶⁰ A.C.A. § 7-5-416(b)(1)(F)(ii)

⁶¹ A.C.A. § 7-5-308(e) 902

(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

§ 907 Review of Provisional Ballots

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

Based upon its examination of the “Provisional Voter Eligibility Affirmation,” the “Challenged Ballot Form,” if applicable, the “Reason for Voting Provisional,” the county clerk’s certification, the “Verification of Identity Affirmation,” if applicable, and any additional information available, the county board shall make a determination of whether the provisional ballot was cast by an eligible voter and was the correct ballot for the precinct of the voter’s residence according to the precinct listed on the voter’s eligibility affirmation or the registration address of the absentee voter.⁶⁵

If the county board makes an initial determination that the provisional ballot will not be counted, the county board must notify the provisional voter of the reason for rejecting the provisional voter’s ballot and of the date, time, and place for a hearing and other information as provided in these rules before a final determination is made.⁶⁶

A) Procedures for the review of General Provisional Ballots

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

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

⁶² A.C.A. § 7-5-308(ed)(3)

⁶³ A.C.A. § 7-5-901

⁶⁴ A.C.A. § 7-5-308(de)(1)

⁶⁵ A.C.A. § 7-5-308(de)(2)

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

§ 912 Official Certified Results

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

§ 913 Effective Date

These emergency rules are effective upon filing.

Attachment "A"

PROVISIONAL VOTER ENVELOPE

Provisional Voter Number: _____ Date: _____ Time: _____

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

CHALLENGED BALLOT FORM

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

Name of Voter Challenged: _____

Name of Poll Watcher: _____

Entity Represented: _____

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

Reason for Challenge: _____

Signature of Poll Watcher: _____

Signature of Challenged Voter: _____

PROVISIONAL VOTER ELIGIBILITY AFFIRMATION

(To be completed on voter qualification issues)

Name of Registered Voter: _____ Prior Name: _____

Address of Registered Voter: _____ Prior Street Address: _____

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

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

I, _____, (printed name of provisional voter) hereby affirm, under penalty of perjury, that the information provided is true and accurate and that to the best of my knowledge I am a registered voter in this precinct and am eligible to vote in this election. I understand that the County Board of Election Commissioners will count my ballot only upon verification of my voter registration status.

Signature of Provisional Voter

Witnessed by: Signature of Poll Worker

VERIFICATION OF IDENTITY AFFIRMATION (OPTIONAL)

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

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

Signature of Voter

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

<p align="center">Reason for Voting Provisional (To be completed by a poll worker)</p> <p><input type="checkbox"/> No Verification of Voter Registration</p> <p><input type="checkbox"/> Poll Watcher Challenge</p> <p><input type="checkbox"/> Not on Precinct Voter Registration List</p> <p><input type="checkbox"/> First-time Voter Flagged to Show Additional ID (No Additional ID Provided)</p> <p><input type="checkbox"/> Previously Sent Absentee Ballot</p> <p><input type="checkbox"/> Court-ordered Voting Extension</p> <p><input type="checkbox"/> Other _____</p>
--

<p align="center">A. Ballot Style (To be completed by a poll worker)</p> <p>Ballot Style _____ given to the provisional voter based upon the voter's affirmation of eligibility for this jurisdiction.</p> <p>_____ Signature of Poll Worker</p>

CERTIFICATION

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

County: _____

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

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

Signature of County Clerk or Deputy

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

Signature of County Clerk or Deputy

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

Attachment B

LIST OF PROVISIONAL VOTERS

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

Date of Election: _____ Poll Name: _____

Voter's Signature	TO BE COMPLETED BY POLL WORKER		TO BE COMPLETED BY ELECTION COMMISSION	
	Voter's Name	Voter's Address	Precinct	Vote counted
	A	B	Y	N

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

Commissioner Signature

Commissioner Signature

Commissioner Signature

POLL WATCHER AUTHORIZATION FORM

[A.C.A. § 7-5-312]

Representative of a Candidate

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

Representative of a Group

I, _____, state that I represent the _____ group which is seeking passage/defeat (*circle one*) of the ballot measure entitled _____ on the ballot in the _____ election at polling sites _____ and absentee ballot processing sites _____ in _____ County, Arkansas, to observe and ascertain the identity of persons presenting themselves to vote in person or by absentee for the purpose of challenging any voter in accordance with Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417.

Representative of a Party

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

Signature of Candidate, Group Representative, or Chair/Secretary of the State/County Committee

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

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

Signature of the Poll Watcher

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

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

Signature of County Clerk

A poll watcher may be:

- (1) A candidate in person, but only during the counting and tabulation of ballots and the processing of absentee ballots;
- (2) An authorized representative of a candidate;
- (3) An authorized representative of a group seeking the passage or defeat of a measure on the ballot; or
- (4) An authorized representative of a party with a candidate on the ballot.

Official recognition of poll watchers:

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

Poll watcher credentials:

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

Poll watchers may:

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

Poll watchers representing a candidate or political party may:

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

Poll watchers may not:

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



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Jim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

Memorandum

TO: Members, ALC – Executive Subcommittee

FROM: Jessica Sutton, Administrator, Administrative Rules Review
Section, Legal Services Division

CC: Marty Garrity, Director, Bureau of Legislative Research

DATE: July 14, 2017

SUBJECT: Legal Authorization for the Emergency Rules on Poll Watchers,
Vote Challenges, and Provisional Voting

The State Board of Election Commissioners is authorized to “[f]ormulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures.” Ark. Code Ann. § 7-4-101(f)(5). These rules implement Act 633 of 2017, which amends Amendment 51 of the Arkansas Constitution concerning verification of voter registration. Under Act 633, a provisional ballot cast by a voter who did not present a required document or identification card shall be counted if the voter’s ballot is not invalid for any other reason and the voter completes one of the two steps: (1) the voter submits a sworn statement that states that he or she is registered to vote in the State of Arkansas and that he or she is the person who registered to vote or (2) the voter verifies his or her voter registration in person to either the county clerk or the county board of election commissioners by noon on the Monday following the election. *See* Ark. Const. Amend. 51, § 13; *see also* Ark. Code Ann. § 7-5-308 (as amended by Act 633 of 2017). The board is required to promulgate rules necessary to implement the requirements for verification of voter registration in accordance with Act 633.

Additionally, the rules reflect the requirements of Act 1014 of 2017, which creates the Voting and Elections Transparency Act of 2017 and requires the county board of election commissioners to promptly notify a person who cast a vote that was not counted. The notification shall be in writing and shall state the reason(s) the vote was not counted. *See* Ark. Code Ann. § 7-5-902 (as amended by Act 1014 of 2017).

Acts 633 and 1014 become effective on August 1, 2017. The State Board of Election Commissioners requests emergency promulgation of these rules with a proposed date of August 15, 2017, so that these rules may operate together to ensure fair and orderly election procedures.

