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Proposed Rulemaking

Title

Promulgated by:
State Board of Election Commissioners

Title 7. Elections

Chapter III. State Board of Election Commissioners

Subchapter F. Voting

Part 92. Voter Intent and Ballot Remake

Subpart 1. Generally

7 CAR § 92-101. Scope.

~~(a)~~ ~~(a)~~ This part sets forth the procedures for determining voter intent.

(b) Remaking of defective or unscannable ballots.

~~(b)~~ (c) This part is subject to revisions due to the use of new types of equipment and/or ballot formats or changes in laws and is in addition to and not a substitute for the laws of the State of Arkansas.

7 CAR § 92-102. Definitions.

As used in this part:

(1) "Candidate area" means the area or areas on a ballot where candidates' names appear;

(2) "Electronic vote tabulating device" means a device, commonly referenced as an optical scanner, used to electronically scan a marked paper ballot for the purpose of tabulation;

(3) "Issue area" means the area or areas on a ballot where measures appear;

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(4)(A) "Marking device" means any approved device operated by a voter to record the voter's choices through marking or creating a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device.

(B) Paper ballots counted by hand shall be marked using permanent ink.

(C) If an electronic vote tabulating device (optical scanner) is used to count paper ballots, a marking instrument recommended by the manufacturer of the optical scanner for proper marking shall be used;

(5) "Measure" means an amendment, act, ordinance, referendum, issue, question, plebiscite, or proposal not involving the election of candidates that appears on a ballot;

(6) "Over-vote" means a ballot containing marks for more than the maximum allowable number of candidates in any one (1) contest or containing marks both "FOR" and "AGAINST" a single measure;

(7)(A) "Paper ballot" means a paper vote sheet that is either counted by hand or by use of an electronic vote tabulating device.

(B) The heading of each paper ballot must read: "OFFICIAL BALLOT (description) ELECTION (date), (year). Vote by placing an appropriate mark opposite the person for whom you wish to vote".

(C) If the paper ballot contains an initiated or referred amendment, act, or other measure, the heading must also include the language: "Vote on amendments, acts, and measures by placing an appropriate mark below the amendment (or act or measure) either "FOR" or "AGAINST"".

(D) Every paper ballot must contain printed instructions under the heading that inform the voter of the effect of casting multiple votes for an office or measure and how to correct the ballot before it is cast and counted.

(E) The paper ballot must contain a place for marking a vote for a candidate adjacent to and on the same line as the name of each candidate.

(F) Below each act, amendment, or other measure to be voted on, the words "FOR" and "AGAINST" shall be situated one above the other with a place for

marking a vote for each act, amendment, or other measure adjacent to and on the same line of each word;

(8) "Properly marked" means a paper ballot appropriately marked in the appropriate places for marking a vote that contains no marks for more than the maximum allowable number of candidates in any one (1) contest or marks both "FOR" and "AGAINST" any single measure;

(9) "Target area" means the place on the paper ballot for marking a vote for candidates and measures;

(10) "Under-vote" means no vote is recorded for a contest; and

(11) "Voting machine" means either:

(A) ~~A direct recording electronic voting machine that:~~

~~—————(i) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;~~

~~—————(ii) Processes data by means of a computer program;~~

~~—————(iii) Records voting data and ballot images in internal and external memory components; and~~

~~—————(iv) Produces a tabulation of the voting data stored in a removable memory component and in a printed copy; or~~

~~—————(B) One (1) or more electronic devices that operate independently or as a combination of a ballot marking device and an electronic vote tabulating device.~~

7 CAR § 92-103. Paper ballots.

(a) The following standards shall apply in determining whether a paper ballot has been properly marked and whether a vote should be counted for any contest in question:

(1) When paper ballots are not scanned in the presence of the voter due to malfunction of a precinct electronic vote tabulating device and the prescribed counting machine will not accept an individual paper ballot during tabulating;

(2) When using an electronic vote tabulating device at a central counting location and the prescribed counting machine will not accept an individual paper ballot; or

(3) When counting paper ballots manually by hand.

(b) **Standards.** The following instructions assume a single-seat office, that is, the voter is only permitted to vote for one (1) candidate per contest.

(1) Any paper ballot that is properly marked, as specified by the ballot instructions, in the target area for one (1) candidate or in the target area as either for or against a measure shall be counted as a vote for that candidate or on that measure for that contest.

Vote to be counted:

For Attorney General (Vote for one)	
<input type="radio"/>	Lucille Ball
<input checked="" type="radio"/>	Jack Benny
<input type="radio"/>	Desi Arnaz

(2) Any paper ballot that is properly marked with any device other than the approved marking device which prevents a machine count shall be counted as a vote.

(3) Any paper ballot with identical marks for more than one (1) candidate or with identical marks both for and against a measure, without additional clarifying marks, shall be deemed an over-vote, and no vote shall be counted in that contest.

Votes NOT counted:

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Proposed Constitutional Amendment No. 1
(Referred to the People by the General Assembly)
(Popular Name)

An amendment to limit the increase in the assessed value of a taxpayer's real property after a countywide reappraisal and to require a property tax credit.

FOR Proposed Referred Constitutional Amendment No. 1

AGAINST Proposed Referred Constitutional Amendment No. 1

(4) Any paper ballot with the names for all but one (1) candidate stricken shall be counted for the one (1) candidate whose name was not stricken.

Vote to be counted (for candidate *not* stricken):

For Attorney General
(Vote for one)

Lucille Ball

~~Jack Benny~~

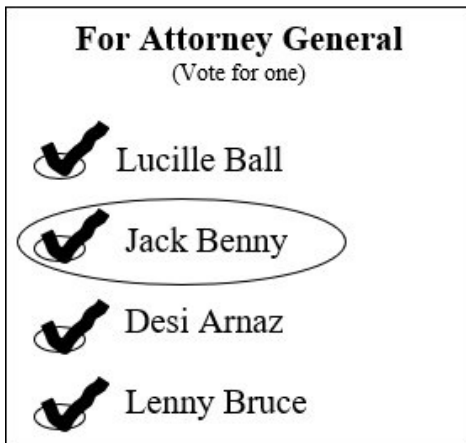
~~Desi Arnaz~~

Lenny Bruce

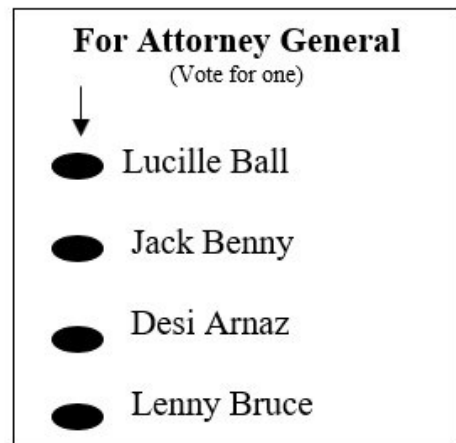
Vote counted for Lucille Ball

(5) Any paper ballot with identical marks for more than one (1) candidate or with identical marks both for and against a measure in a contest, clarified by an additional mark or marks that indicate support for a single candidate or support for or against a measure, shall be counted as a vote for the candidate or on the measure with the additional clarifying marks.

Votes to be counted (for candidate with additional clarifying mark):



Vote counted for Jack Benny



Vote counted for Lucille Ball

(6) Any paper ballot that has any mark in the target area, candidate area, or issue area for only one (1) candidate or either for or against a measure, including circling or making a mark through the target area, candidate area, or issue area, provided there is no other similar marking in the contest, shall be counted as a vote for that candidate or on that measure, unless the mark is clearly a negative comment.

Votes to be counted:

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

Vote NOT counted:

For Attorney General
(Vote for one)

NO

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

(7) Any paper ballot that has a mark in the target area or candidate or issue area for one (1) candidate or either for or against a measure, which partially extends into one (1) or more other target areas or candidate or issue areas, shall be counted as a vote for the candidate or on the measure so marked, only if it is readily apparent that most of the mark is in that candidate or issue area or target area.

Votes to be counted:

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

(8) Any paper ballot that has a mark in the target area or candidate or issue areas for one (1) candidate or either for or against a measure and on which marks in other target areas or candidate or issue areas have been partially erased, scratched out, or otherwise removed shall be counted as a vote for the candidate or on the measure for which the mark was not erased, scratched out, or otherwise removed.

Votes to be counted:

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

For Attorney General
(Vote for one)

Lucille Ball













Jack Benny

Desi Arnaz

Lenny Bruce

(9) Any paper ballot in which writings or remarks appear to be ranking the candidates (letters, numbers) shall be counted as a vote for the top ranked candidate.

Vote to be counted for Jack Benny in all cases

For Attorney General (Vote for one)	For Attorney General (Vote for one)	For Attorney General (Vote for one)
 Lucille Ball	 Lucille Ball	 Lucille Ball
 Jack Benny	 Jack Benny	 Jack Benny
 Desi Arnaz	 Desi Arnaz	 Desi Arnaz
 Lenny Bruce	 Lenny Bruce	 Lenny Bruce

(10) Any paper ballot with positive or negative writings or remarks regarding one (1) or more candidates or for and/or against a measure, shall not be counted as a vote in that contest, unless clarified by an additional mark or marks that indicate support for a single candidate or support either for or against the measure.

Votes NOT counted:

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

Votes to be counted:

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

Vote counted for Lucille Ball

For Attorney General
(Vote for one)

Lucille Ball

Jack Benny

Desi Arnaz

Lenny Bruce

Vote counted for Desi Arnaz

(11) Any paper ballot on which the voter casts a vote on the ballot and writes in a different, qualified candidate in the write-in area shall be considered an over-vote for that contest and neither vote shall be counted.

Vote NOT counted:

For Attorney General (Vote for one)	
<input type="radio"/>	Lucille Ball
<input type="radio"/>	Jack Benny
<input checked="" type="radio"/>	Desi Arnaz
<input checked="" type="radio"/>	<u>Lenny Bruce</u>

~~(12)(A) A write-in vote is not counted unless the name written on the paper ballot is the same name listed on the write-in candidate's political practices pledge.~~

~~—————(B) Any abbreviation, misspelling, or other minor variation in the handwritten form of the name of a qualified write-in candidate must be disregarded if the intention of the voter can be reasonably determined.~~

~~—————(13)(A)~~ (12)(A) If a paper ballot is left at a voting booth or anywhere else in the polling site without being inserted by the voter into the ballot box before departing the polling site, a poll worker shall write "Abandoned" on the ballot and place it into an "Abandoned Ballot" envelope with a notation on the outside of the envelope of the circumstances surrounding the abandoned ballot.

(B) The ballot shall not be counted.

~~(14)(A)~~ (13)(A) If a paper ballot that is fed by a voter into an electronic vote tabulating device is rejected by the device but is in the receiving part of the counter, and the voter has departed the polling site without instructing a poll worker to cancel or replace the ballot, then two (2) poll workers shall override warnings and complete the process of casting the ballot.

(B) The poll workers shall document:

- (i) The time they completed the process of casting the ballot;
- (ii) The name of the voter;

- (iii) The names of the poll workers completing the process; and
- (iv) All other circumstances surrounding the abandoned ballot.

7 CAR § 92-104. Direct recording electronic voting machine.

(a)(1) Voting machines are constructed to notify a voter when more than the maximum allowable number of selections in any one (1) contest are made, thus preventing the voter from over-voting any contest on the ballot.

(2) Voting machines can be programmed to alert the voter of any under-voted contest.

(b)(1) If a voter fails to complete the process of casting an electronic ballot on a voting machine and departs the polling site without notifying a poll worker of his or her desire to cancel the ballot prior to departing, two (2) poll workers shall take action to complete the process of casting the ballot.

(2) The poll workers must document:

(A) The time;

(B) The name of the voter, if known;

(C) The names of the poll workers completing the process of casting the ballot; and

(D) All other circumstances surrounding the abandoned ballot.

7 CAR § 92-105. Duplication of ballots

(a) (1) The duplication of ballots as prescribed in Arkansas Code § 7-5-615(d) shall occur no earlier than 24 hours after the opening of the polls on election day and no later than noon the Monday following election day and it shall be open to the public.

(i) The time and place that the duplication of ballots will take place shall be included in the required public notice of elections detailed in Arkansas Code § 7-5-202.

(ii) The County Board of Election Commissioners shall assign an election official to serve as the Supervisor of the duplication process.

(A) The Supervisor shall be identified in such a way so that it is clear to the public that they are the supervisor.

(B) Additionally the Supervisor shall be a member of the

(2) A second duplication shall be scheduled for a time between noon the Monday following election day and the deadline for certification of the election for the duplication of any lawfully returned ballots which have a deadline of ten days after the election for receipt by the county.

(i) The time and place that the secondary duplication of ballots will take place shall be included in the required public notice of elections detailed in Arkansas Code § 7-5-202.

(ii) The County Board of Election Commissioners shall assign an election official to serve as the Supervisor of the secondary duplication process.

(A) The Supervisor shall be identified in such a way so that it is clear to the public that they are the supervisor.

(B) Additionally the Supervisor shall be a member of the County Board of Election Commissioners

(b) The Procedure for Duplication shall be as follows:

(1) There shall be no less than four (4) Election Officials handling the duplication of ballots.

(i) One of the Four Election Officials Shall be the Supervisor who is a member of the County Board of Election Commissioners

(ii) All four election officials shall sign both the remake and original identifying that they completed the true duplication of the originally voted ballot.

(2) The Original ballot shall be marked with a label or stamp denoting it as the original.

(3) The Remade ballot shall be denoted as a remake.

(4) The Original and its true duplicate Remade ballot shall be serialized to identify the connection between the original and remake for auditing and verification that the duplicate is a true duplicate of all selection made by the voter as reflected on the originally voted ballot.

(5) After Election Officials have reviewed the duplication of the ballot, but prior to the tabulation of the remake, poll watchers and candidates shall be given an opportunity to review the duplication, if present and if they so choose to review.

(i) Neither Poll watchers nor candidates may touch or manipulate the original or duplicate ballot.

(A) Election officials shall orient and place the ballots in such way so that the poll watchers or candidates can observe the original votes and the duplicated votes to verify the

duplicate is a true duplicate of the original ballot.

- (ii) If either a poll watcher or a candidate finds an error in the duplication of the ballot they may raise the error with the supervisor of the respective duplication process.

- (6) If an issue of voter intent is discovered during the duplication process, then the ballot shall be set aside for the County Board of Election Commissioners to make a specific determination of the voter's intent.
- (i) The ballot shall not be remade until the commission, as a body, votes to determine the voter's intent, determine whether it is an over-vote, or if no vote in that contest or issue can be determined.
 - (A) Once the voter intent issue has been resolved by the commission, then the ballot may be duplicated at that duplication event, or at the later scheduled duplication event.
 - (ii) If it is determined that the voter over-voted a contest or issue, and if the duplicated ballot is being completed on a ballot marking device, then the race shall be left blank.
 - (A) Subsequently the duplicated ballot shall be processed through the tabulation device and then marked as an over-vote for the race or issue that was skipped on the remake because of the originally voted ballot's over-vote.
- (7) The original and duplication ballots shall be tracked and stored separately from other ballots.
- (i) All duplicated ballots shall be tabulated in such a way as to create their own results tape.
 - (ii) Both the Remake and the Original Ballots are to be stored together, and all pairs of original and duplicates are to be stored separately from other ballots for purposes of audit review.
- (c) On election night the total number of all ballots that are to be remade to shall be transmitted to the Secretary of State.
- (1) This total remake number shall be sent to the Secretary of State in the same manner as the total number of provisional ballots.

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

HOUSE BILL 1693

5 By: Representative Hawk
6 By: Senator K. Hammer
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE LAW CONCERNING DAMAGED OR
10 DEFECTIVE BALLOTS; TO ALLOW THE STATE BOARD OF
11 ELECTION COMMISSIONERS TO PROMULGATE RULES REGARDING
12 THE DUPLICATION OF DAMAGED OR DEFECTIVE BALLOTS; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15
16
17 TO AMEND THE LAW CONCERNING DAMAGED OR
18 DEFECTIVE BALLOTS; AND TO ALLOW THE
19 STATE BOARD OF ELECTION COMMISSIONERS TO
20 PROMULGATE RULES REGARDING THE
21 DUPLICATION OF DAMAGED OR DEFECTIVE
22 BALLOTS.
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 7-5-615(d), concerning the tabulation of
27 votes and damaged or defective ballots, is amended to read as follows:

28 (d)(1) If any ballot is damaged or defective so that it cannot
29 properly be counted by the electronic vote tabulating device, a true
30 duplicate copy shall be made of the damaged ballot.

31 (2) When duplicating a ballot, and in the presence of another
32 election official and designated poll watchers, if any, an election official
33 shall:

34 (A) Reproduce the selections of the voter on a second
35 ballot that is the same ballot style as the ballot cast by the voter;

36 (B) Stamp or write the word "duplicate" on the duplicated



1 ballot;

2 (C) Stamp or write the word "original" on the original
3 damaged or defective ballot;

4 (D) Label both the original damaged or defective ballot
5 and the duplicate ballot with the same unique serial number;

6 (E) Substitute the duplicated ballot for the original
7 damaged or defective ballot;

8 (F) Count the duplicated ballots in the same manner as
9 other ballots in that election; and

10 (G) Secure and separately store the original damaged or
11 defective ballots in the same manner as other ballots in that election.

12 ~~(3) The duplication of a damaged or defective ballot counted at~~
13 ~~the central counting facility shall be conducted by an election official at~~
14 ~~the same time and location that ballots with no defects are counted.~~

15 ~~(4)~~ The duplication of a damaged or defective ballot cast at a
16 polling site shall be delivered securely to the county board of election
17 commissioners to be duplicated by election officials ~~or added to the~~
18 ~~precinct's count manually on the night of the election.~~

19 ~~(5)~~(4) An election official under subdivision (d)(2) of this
20 section shall maintain a recorded count of damaged ballots to be duplicated
21 in the presence of authorized poll watchers, if any, and provide the report
22 to the county board of election commissioners.

23

24 SECTION 2. Arkansas Code § 7-5-615, concerning the tabulation of votes
25 and damaged or defective ballots, is amended to add an additional subsection
26 to read as follows:

27 (g) The State Board of Election Commissioners shall promulgate
28 necessary rules regarding the duplication of damaged or defective ballots
29 under this section.

30

31 SECTION 3. Arkansas Code § 7-5-701(a)(3)(C), concerning the
32 certification, delivery, and custody of returns of election results, is
33 amended to read as follows:

34 (C) On election night for all state and federal elections,
35 immediately after the count of the vote is complete but no later than twenty-
36 four (24) hours after polls close on election night, the county board of

1 election commissioners shall:

2 (i) Declare preliminary and unofficial results of
3 the election, including a statement of the number of outstanding:

4 (a) Ballots of voters who requested ballots
5 under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §
6 20301 et seq.; ~~and~~

7 (b) Provisional ballots; and

8 (c) Number of ballots required to be
9 duplicated under § 7-5-615; and

10 (ii) Immediately transmit the results by precinct to
11 the Secretary of State through the election night reporting interface
12 provided by the Secretary of State.

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APPROVED: 4/3/25