

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: H2/28/23

A Bill

HOUSE BILL 1457

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

11 By: Senators K. Hammer, Dees, M. McKee, J. Petty, Stone
12

For An Act To Be Entitled

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

20 TO ESTABLISH THE ARKANSAS POLL WATCHERS
21 BILL OF RIGHTS ACT OF 2023; TO AMEND THE
22 LAW CONCERNING POLL WATCHERS; AND TO
23 AMEND THE LAW CONCERNING ELECTION
24 PROCEDURES.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. DO NOT CODIFY. Title.

31 This act shall be known and may be cited as the "Arkansas Poll Watchers
32 Bill Of Rights Act Of 2023".
33

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



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

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

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

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

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

12 (a) Poll watchers shall include any:

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

15 (2) Authorized representative of a candidate;

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

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

21 (b) A poll watcher shall:

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

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

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

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

30 (A) Courthouse;

31 (B) Early voting site;

32 (C) Vote center; or

33 (D) Polling location.

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

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

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

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

7 (1) Certification and testing of election technologies;

8 (2) In-person absentee voting;

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

10 (4) Canvassing of absentee ballots;

11 (5) Casting of ballots;

12 (6) Spoiling of ballots;

13 (7) Remaking of ballots;

14 (8) Vote tabulation;

15 (9) Voter registration at a polling location;

16 (10) Audits; and

17 (11) Recounts.

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

20 (f) A poll watcher shall not:

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

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

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

27 (g) A poll watcher may:

28 (1) Bring in voter lists to observe;

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

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

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

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

1 election official.

2 (i) An election official, public official, or public employee who
3 purposely prevents a poll watcher from the exercise of the duties of a poll
4 watcher under this section is upon conviction guilty of a Class A
5 misdemeanor.

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

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

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

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

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

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

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

1 "POLL WATCHER AUTHORIZATION FORM

2 Representative of a Candidate

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

19 Representative of a Group

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

30 Representative of a Party

31 I,, state that I am the chair or secretary of the
32 state/county (circle one) committee for the party
33 with candidates on the ballot in the election. I
34 further state that I have designated as an
35 authorized party representative at the election at polling sites
36 and absentee ballot processing sites

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

13Signature of Candidate, Group Representative,
 14 or Chair/Secretary of the State/County Committee
 15 Acknowledged before me this day of, 20..
 16 Notary Public:

17 My Commission Expires:.....

18 I do hereby state that I am familiar with the rights and responsibilities of
 19 a poll watcher as outlined on the back of the poll watcher authorization
 20 form, the requirements under Arkansas Code § 7-5-312 and will in good faith
 21 comply with the provisions of same.

22
 23 Signature of the Poll Watcher
 24 Acknowledged before me this ... day of, 20..
 25 Notary Public:

26 My Commission Expires:

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

29
 30 Signature of County Clerk”.

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

33 “POLL WATCHER RIGHTS AND RESPONSIBILITIES
 34 A poll watcher may be:

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

- 1 (2) An authorized representative of a candidate;
2 (3) An authorized representative of a group seeking the passage
3 or defeat of a measure on the ballot; or
4 (4) An authorized representative of a party with a candidate on
5 the ballot or seeking the passage or defeat of a measure on the ballot.

6 Official recognition of poll watchers:

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

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

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

19 Poll watcher credentials:

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

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

29 Poll watchers may:

30 (1) Observe the election officials or designees;

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

33 (3) Compile lists of persons voting;

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

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

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

8 Poll watchers representing a candidate or political party may:

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

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

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

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

18 Poll watchers may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

9

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

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

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

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

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

27

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

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

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

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

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

7
8 SECTION 7. DO NOT CODIFY. Rules.

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

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

12 (2) Develop rules that establish:

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

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

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

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20 /s/Furman
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