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).23

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.24

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.25

§ 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.26

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.27

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.28 A candidate who is present in person at an early voting location for the purpose of observing may not speak to voters or disrupt the orderly conduct of the election. A candidate who is a public official and who is present in person at an early voting location for the purpose of observing shall not wear on his or her person any uniform, badge, or other apparel or equipment that identifies the candidate as a public official.

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.

23 A.C.A. §§ 7-5-306(b); 7-5-418(d)
24 A.C.A. § 7-5-409(g)
25 A.C.A. §§ 7-5-201(c); 7-5-305(a)(11); 7-5-411(b)
26 A.C.A. § 7-5-312(d)
27 A.C.A. § 7-5-312(a)(1), (c)
28 A.C.A. § 7-5-413(d)
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.  

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.  

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

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").  

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.  

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.  

§ 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 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.  

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29 A.C.A. § 7-5-312(b),(e)  
30 A.C.A. § 7-5-312(c),(e)  
31 A.C.A. § 7-5-312(f)  
32 A.C.A. § 7-5-312(e),(g),(h)  
33 A.C.A. § 7-5-312(g)  
34 A.C.A. §§ 7-5-414; 7-5-417(a)  
35 A.C.A. § 7-5-304(c)
§ 905 Voting a Provisional Ballot

Provisional ballots cast at the polls during early voting or on election day 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 challenged. 36
2) If as a result of failure to meet an identification requirement, 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 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. 37
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. 38
5) The provisional voter shall mark his or her ballot. 39
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). 40
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. 41
8) The poll worker must provide the provisional voter a copy of the notice prescribed in § 906 (a). 42
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"). 43
10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots and forward all sealed "provisional voter envelopes" in a secured container provided for that purpose to the county board of election commission 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 completion of the certification portion of the envelope.
12) Upon completion of the certification portion of the envelope, 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. 45

For absentee ballots which become a provisional ballot, the absentee ballot clerk shall place the absentee ballot materials in a provisional voter envelope and should check the "Absentee" next to the box marked "Other" on the form provided on the provisional ballot envelope (Attachment "A"). The absentee ballot clerk should also indicate the reason for making the

36 A.C.A. §§ 7-5-308(a)(1); 7-5-312(e),(h)
37 A.C.A. § 7-5-308(a)(2)
38 A.C.A. § 7-5-308(a)(3)
39 A.C.A. § 7-5-308(a)(4)
40 A.C.A. § 7-5-308(a)(5)
41 A.C.A. § 7-5-308(a)(6)
42 A.C.A. § 7-5-308(a)(7)
43 A.C.A. § 7-5-308(a)(8)
44 A.C.A. § 7-5-308(b)
45 A.C.A. §§ 7-5-308(d)(1); 7-5-417(c)
absentee ballot provisional (i.e. No ID or Poll Watcher Challenge) on the form provided on the provisional ballot envelope (Attachment “A”). For inconsistent Voter Statements, the absentee clerk should write “inconsistent statement” after the word “Absentee” after the “Other” box on the provisional ballot envelope.

§ 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.46
- That a provisional voter who cast a provisional ballot for failure to present proof of identity may present proof of identity or an affidavit of indigence or religious objection to the county clerk or the county board of election commissioners by noon of the first Monday following the election in order for the provisional ballot to be counted;
- The address, telephone number, and regular office hours of the county clerk;
- The dates of any meetings of the county board of election commissioners scheduled before noon of the next Monday following the election;
- An explanation of the provisional voting process; and
- The date, time, and address of a hearing for the voter if the provisional ballot is rejected.

(b) Whenever an absentee ballot is made provisional for failure to submit required identification with the ballot, the county election commission must send notice by first-class mail to the voter’s absentee mailing address and the voter’s registration address and deliver such notice electronically or by telephone, if possible. The notice shall include 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.47
- That a provisional voter who cast a provisional ballot for failure to provide required identification may present the required identification or an affidavit of indigence or religious objection to the county clerk or the county board of election commissioners in any matter allowed for in § 806 of the Rules for Voter Identification by noon of the first Monday following the election in order for the provisional ballot to be counted;
- The address, telephone number, and regular office hours of the county clerk;
- The dates of any meetings of the county board of election commissioners scheduled before noon of the next Monday following the election;
- An explanation of the process by which the voter’s ballot was made provisional; and
- The date, time, and address of a hearing for the voter if the provisional ballot is rejected.

(c) 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;

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46 A.C.A. § 7-5-308(c)
47 A.C.A. § 7-5-308(c)
- 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.

(d) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.48

§ 907 Review of Provisional Ballots

The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.49

The county board shall examine the sealed outer “provisional voter envelope” (see Attachment “A”), including the challenged ballot portion, if any, the eligibility affirmation of the provisional voter, if any, and the county clerk’s certification of the provisional voter’s registration status without unsealing the outer “provisional voter envelope” or removing or opening the inner ballot secrecy envelopes marked “PROVISIONAL BALLOT” containing the provisional voter’s voted ballot.

Based upon the examination of the sealed outer “provisional voter envelope” 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.50

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.51

When the information on the outer “provisional voter envelope” indicates that a voter at the polls cast a provisional ballot for both failure to present proof of identity and another reason, the county board shall first determine whether the voter is eligible to vote in the precinct. If it is determined that the voter who cast a provisional ballot for failure to provide proof of identity and for another reason is eligible to vote, or if the provisional ballot was cast only for the reason that the voter failed to present proof of identity, then the county board shall count the ballot if proof of identity or an affidavit of indigence or religious objection has been provided to the county board or the county clerk by noon of the first Monday following the election.

When the information on the outer “provisional voter envelope” indicates that an absentee ballot is being considered as a provisional ballot for both failure to present identification and another reason, the county board shall first determine whether the voter is eligible to vote in the precinct. If it is determined that the voter whose ballot is being considered as a provisional ballot for failure to

48 A.C.A. § 7-5-308(c)(3)
49 A.C.A. § 7-5-308(d)(1)
50 A.C.A. § 7-5-308(d)(2)
51 Dotson v. Richey, 211 Ark. 789 (1947)
provide identification and for another reason is eligible to vote, or if the ballot was made provisional only for the reason that the absentee voter failed to present identification, then the county board shall count the ballot if identification has been provided to the county board or the county clerk by noon of the first Monday following the election pursuant to these rules and the Rules for Voter Identification.

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. As long as proof of identity has already been provided, the provisional ballot should be rejected only if the voter failed to provide additional identification and 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.\textsuperscript{52}

When reviewing the provisional ballot of any person who was delivered an absentee ballot according to the precinct voter registration list, but then chose to cast a provisional ballot at an early voting or election day polling site, the county board shall:

1) Count the voter’s absentee ballot rather than the provisional ballot cast at the polling site, if the absentee ballot was returned and processed for counting on election day before the time of counting provisional ballots, or

2) Count the voter’s provisional ballot cast at the polling site, if the voter’s absentee ballot was not returned or was not processed for counting on election day by the time of counting provisional ballots.

The county board must complete the disposition portion of the “provisional voter envelope” and notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted.

\textsuperscript{52} § 803 of the State Board of Election Commissioners’ Rules on Voter Identification
§ 908 Hearing

Provisional voters shall be allowed to appear before the county board to contest the county board’s initial decision to disqualify their ballots and to present evidence that they were registered to vote and voted the correct ballot for the precinct of their residence or, if applicable, that they presented required identification during early voting, on election day or by noon of the first Monday after the election.

If these provisional voters do not appear for a hearing or otherwise provide satisfactory evidence of their registration status or required identification, then the ballot shall not be counted.

The commission then completes the election commission’s portion of the list of provisional voters form (see Attachment “B”), and all records are preserved in accordance with the laws governing preservation of ballots and election materials.

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

§ 909 Counting Provisional Ballots

Unless enjoined by a court of competent jurisdiction, a provisional ballot shall be counted if:

1) It is cast by a registered voter who provided required identification and it is the correct ballot for the precinct of the voter’s residence according to the precinct listed on the voter’s eligibility affirmation; or

2) It is cast by a registered voter who failed to present proof of identity at a polling place during early voting or on election day but who presents proof of identity or an affidavit of indigence or religious objection to having his or her photograph made to the county clerk or the county board no later than the first Monday following the election; or

3) It is the absentee ballot of a voter who is required to provide identification with his or her ballot and who failed to provide the required identification, but who complies with the post-election submission procedures contained in the Rules for Voter Identification § 806. 53

In counting provisional ballots, the county board must ensure the secrecy of the ballot pursuant to Amendment 81 of the Arkansas Constitution.

Provisional ballots are counted as follows:

1) the commission completes the election commission’s portion of the list of provisional voters form (see Attachment “B”),

2) an election official opens the outer “provisional voter envelope” (see Attachment “A”) for those on the list marked to be counted (see Attachment “B”),

3) the election official removes the sealed inner ballot secrecy envelope marked “PROVISIONAL BALLOT” containing the provisional voter’s voted ballot,

4) the election official places the sealed inner ballot secrecy envelope marked “PROVISIONAL BALLOT” containing the provisional voter’s voted ballot in a ballot box provided for that purpose,

53 A.C.A. § 7-5-308(d)(2); 7-5-321(c) as provided in Act 595 of 2013
5) when all the outer “provisional voter envelopes” have been opened and all the sealed inner ballot secrecy envelopes placed in the ballot box, the election official shakes the ballot box thoroughly to mix the sealed envelopes containing the provisional ballots,
6) the ballot box is then opened, the secrecy envelopes containing the voted provisional ballot opened, and the provisional ballots canvassed and counted, and
7) all records are preserved in accordance with the laws governing preservation of ballots and election materials.

§ 910 Prosecuting Attorney

Following each election, the county board of election commissioners may review the precinct voter registration lists for voters not providing identification at the polls and forward the information to the prosecuting attorney for investigation of possible voter fraud.54

If, upon examination of any provisional ballot, the county board suspects that a violation of election laws has occurred, the county board may refer the matter to the prosecuting attorney for that county.53

§ 911 Preliminary and Unofficial Results

The processing and counting of provisional ballots, including hearings, shall not delay the declaration of preliminary and unofficial results required by Arkansas Code Annotated § 7-5-701. When reporting preliminary and unofficial results, the county board of election commissioners should also report the number of uncounted provisional ballots pending review and the number of outstanding overseas absentee ballots.

§ 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.

54 A.C.A. § 7-5-305(a)(8)(B)(iii), (iv)
55 A.C.A. § 7-5-308(e)
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)

Voter’s Name: __________________________ Prior Name: __________________________

Current Street Address: __________________________ Prior Street Address: __________________________

City, State, Zip: __________________________ Prior City, State, __________________________

Phone Number(s): __________________________

Date of Birth: __________________________

Printed Identification: Yes ☐ No ☐

I, __________________________ (Print name of provisional voter)

I hereby affirm that the information provided is true and complete 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 or, if applicable, presentation of proof of identity or an affidavit of indigence or religious objection.

Witnessed by: __________________________

Signature of Poll Worker __________________________

Reason for Voting Provisional
(To be completed by a poll worker)

☐ Poll Watcher Challenge

☐ No Proof of Identity Provided

☐ Not on Precinct Voter Registration List

☐ First-time Voter Flagged to Show Additional ID
   (No Additional ID Provided)

☐ Previously Sent Absentee Ballot

☐ Court-ordered Voting Extension

☐ Other

Ballot Style
(To be completed by a poll worker)

Ballot Style _______ given to the provisional voter based upon the voter’s affirmation of eligibility for this jurisdiction.

Signature of Poll Worker __________________________
CERTIFICATION
(To be completed by the County Clerk's Office)

County: __________________________

A. PROVISIONAL VOTER

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Name: __________________________

Prior Name: __________________________

Current Address: __________________________

Prior Address: __________________________

Date of Birth: __________________________

I, __________________________, hereby certify that a data search was performed 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) (Printer's Name)

Signature of County Clerk or Deputy

I, __________________________, hereby certify that a data search was performed 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 ☐

Provisional Ballot Counted, if not, Reason Not Counted: __________________________

Provisional Voter Notified by First Class Mail ☐ Date: __________________________

County Election Commissioner ☐ County Election Commissioner ☐ County Election Commissioner
(At least one Election Commissioner must sign.)
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: ___________________________

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Commissioner Signature ___________________________ Commissioner Signature ___________________________ Commissioner Signature ___________________________

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ADD. 152
POLL WATCHER AUTHORIZATION FORM
[ACA § 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, 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

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Attachment “C”  POLL WATCHER RIGHTS AND RESPONSIBILITIES

A poll watcher may be:

(1) A candidate in person, but only during the counting and tabulation of ballots and the processing of absentee ballots;
(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.
EMERGENCY RULES FOR VOTER IDENTIFICATION
(Effective January 1; Revised March 4, 2014)

State Board of Election Commissioners
501 Woodlane, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec
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Scope of Rules

These rules will set forth the procedures for processing and administering voter identification requirements. These rules are in addition to and not a substitute for the laws of the State of Arkansas and rules promulgated by the Secretary of State.

§800 Definitions

(a) Additional Identification Requirement – documentary identification in addition to proof of identity that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include 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.¹

(b) Administrator - the administrative head of a long-term care or residential care facility licensed by the state.

(c) Proof of Identity:
(1) A voter identification card issued by the county clerk pursuant to Act 595 of 2013; OR
(2) A document or identification card that meets all of the following conditions:
   (a) Shows the name of the person to whom the document was issued;
   (b) Shows a photograph of the person to whom the document was issued;
   (c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
   (d) If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.
(3) Documents or Identification cards that comply with the above requirements for proof of identity may include, without limitation, the following:
   (a) A driver’s license;
   (b) A photo identification card;
   (c) A concealed handgun carry license;
   (d) A United States passport;
   (e) An employee badge or identification document;
   (f) A United States Military identification document;
   (g) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;

¹ A.C.A. § 7-5-201(e) as amended by Act 595 of 2013

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(h) A public assistance identification card; and

(i) A voter identification card as provided under Act 595 of 2013 and rules propounded by the Secretary of State.²

(d) Documentation from the Administrator – a letter on facility letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter and is valid for one year after the date it is signed and issued. The letter issued by the administrator can be used by a resident of a long-term care facility as identification during early voting, on election day at a polling location, and when voting by absentee ballot.³

§ 801 Proof of Identity Required When Voting at the Polls

All voters except those who reside in a long-term care or residential care facility licensed by the state must present “proof of identity” to cast a regular ballot at the polls during early voting and on election day.

A person who resides in a long-term care or residential care facility licensed by the state may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility in lieu of the requirement to present proof of identity before voting.⁴

§ 802 Poll Worker Assessment of Validity of Proof of Identity

The proof of identity shall be used to verify the name and appearance of the voter, except that when a voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013, the card shall also be used to verify the voter’s identification number. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter’s address in the list to the address stated by the voter.

The poll worker to whom proof of identity is presented shall:

(1) Verify that the name on the proof of identity is consistent with the name in the Precinct Voter registration list, allowing for abbreviations and nicknames;

(2) If the voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013 and rules propounded by the Secretary of State, verify that the registrant identification number on the card is the same as the registrant identification number on the Precinct Voter Registration List.

² A.C.A. § 7-1-101 as amended by Act 595 of 2013
³ A.C.A. § 7-5-201(d)(2) as amended by Act 595 of 2013 and §16.0 of the Arkansas Secretary of State’s Rules on Voter Identification
⁴ A.C.A. § 7-5-201(d) as amended by Act 595 of 2013

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A first-time voter who registered by mail who did not present the additional identification, if required under §803, shall be offered a provisional ballot.7

§805 Identification Required When Voting Absentee

The absentee voter must submit with the 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.8

A resident of a long-term or residential care facility licensed by the State of Arkansas may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility as identification.

The ballot of a voter who failed to provide required identification with his or her absentee ballot shall be considered a provisional ballot.9

Uniformed services and merchant marine voters and their spouses and dependents who are away from the county because of the active duty status of a uniformed services or merchant marine member are exempt from the identification requirement for absentee ballots.10

§ 806 Postelection Submission of Identification or Affidavit of Indigence or Religious Objection

A. Voters At the Polls

A provisional ballot cast because a voter failed to present proof of identity when voting at the polls during early voting or on election day shall be counted and included in the certified results of the election if:

(1) The voter’s ballot is not successfully challenged for any other reason; and
(2) The voter provides to either the county clerk or the county board of election commissioners by noon on the Monday following the election either the voter’s proof of identity or an affidavit that the voter cannot provide proof of identity because of indigence or a religious objection to being photographed.

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7 A.C.A. § 7-5-305(a)(8)(B)(iii)
8 A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013
9 A.C.A. §§ 7-5-412(b); 7-5-321
10 A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013
The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county board by presenting the proof of identity or the affidavit at any meeting of the county board held before noon on the Monday following the election.

The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county clerk by presenting the proof of identity or the affidavit to the county clerk before noon on the Monday following the election.

The voter shall present the proof of identity or deliver the affidavit of indigence or religious objection in person.  

B. Absentee Voters

The ballot of an absentee voter that was made provisional for failure to provide required identification with his or her absentee ballot shall be counted and included in the certified results of the election if:

1. The absentee voter’s ballot is not successfully challenged for any other reason; and
2. The absentee voter provides to either the county clerk or the county board of election commissioners by noon on the Monday following the election the voter’s required identification or an affidavit that the voter cannot provide the required identification because of indigence or a religious objection to being photographed.

The absentee voter may provide his or her required identification or his or her affidavit of indigence or religious objection to the county board by presenting the required identification or the affidavit at any meeting of the county board held before noon on the Monday following the election.

The absentee voter may alternatively provide his or her required identification or his or her affidavit of indigence or religious objection to the county clerk by presenting the required identification or the affidavit to the county clerk before noon on the Monday following the election.

The absentee voter shall present the required identification or his or her affidavit of indigence or religious objection by mail, in person by the voter, or in person by a third person designated by the voter.

When the identification is delivered by a third person, it must be accompanied by a written statement of the voter, signed and dated by the voter, stating the person’s name and address and that the person has been authorized by the voter to deliver the identification for the voter. Other than the administrator of a long-term care or residential care facility licensed by the state, no person may deliver to the clerk or election commission the identification of more than two

11 A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
(3) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics;

(4) If the poll worker is satisfied that the voter is the person depicted in the photograph and the name is consistent with the name in the Precinct Voter Registration List, then issue the voter a regular ballot;

(5) If the voter's name is different from the name in the Precinct Voter Registration List or the name as stated by the voter but the poll worker is satisfied that the voter is the person depicted in the photograph, issue the person a regular ballot after the voter completes a voter registration application form for the purpose of updating the voter's information; and

(6) If the poll worker determines that the proof of identity does not depict the voter, then the poll worker shall offer the voter a provisional ballot.

§ 803 Additional Identification Requirement for Certain First-Time Voters

Certain first-time voters who register by mail and who, when registering to vote do not provide statutorily required identification documentation, will be flagged on the Precinct Voter Registration List for possible additional identification documentation when voting at the polls during early voting or on election day or by absentee ballot. These first-time voters, like all other voters, are required to present proof of identity in order to vote at the polls during early voting or on election day. A flagged voter who presents a valid proof of identity that is also current (not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid proof of identity that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter must also show a 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.5

§ 804 Failure to Present Proof of Identity or Other Required Documentation at the Polls

A person voting at the polls during early voting or on election day who did not present proof of identity, or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide either proof of identity or documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.6

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5 A.C.A. § 7-5-201 (e) as amended by Act 595 of 2013
6 A.C.A. § 7-5-321 as amended by Act 595 of 2013
absentee voters. If no written statement is included with the required identification delivered by a third person, the ballot shall not be counted.

An administrator of a long-term care or residential care facility licensed by the state may deliver to the clerk or election commission the identification documentation from any of the residents of the administrator’s facility who submitted absentee ballots.

§ 807 Assessment of Validity of Photo Identification Submitted Postelection

A. Assessment of Validity of Proof of Identity Submitted Postelection by In Person Voters

The county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

The county clerk or the county board receiving a proof of identity shall make a photocopy of the proof of identity and retain the copy with the voter's provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

1. The name of the county clerk, or each county board member present at the meeting where the proof of identity was presented;

2. The name of the voter who presented the proof of identity;

3. The date and time the proof of identity was presented to the clerk or county board;

4. If it is determined that the photograph on the proof of identity depicts the voter, then a declaration of that finding;

5. If it is determined that the photograph on the proof of identity does not depict the voter, then a declaration of that finding including the reason for that finding; and

6. Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt.\(^\text{12}\)

B. Assessment of Validity of Photo Identification Submitted Postelection In Person by Absentee Voters

\(^{12}\text{A.C.A. § 7-5-321(c) as provided in Act 595 of 2013}\)
The county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

The county clerk or the county board receiving the required identification shall make a photocopy of the identification and retain the copy with the voter’s provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

(1) The name of the county clerk, or each county board member present at the meeting where the identification was presented;

(2) The name of the voter who presented the identification;

(3) The date and time the identification was presented to the clerk or county board;

(4) If it is determined that the photograph on the identification depicts the voter, then a declaration of that finding;

(5) If it is determined that the photograph on the identification does not depict the voter, then a declaration of that finding including the reason for that finding; and

(6) Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt.13

§ 808 Postelection Submission of Affidavit of Indigence or Religious Objection

The county clerk or county board receiving an affidavit of indigence or religious objection in person shall make a photocopy of the affidavit, provide the copy to the voter and retain the original affidavit with the voter’s provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

(1) The name of the county clerk, or each county board member present at the meeting where the affidavit was delivered;

(2) The name of the voter who delivered the affidavit;

(3) The date and time the affidavit was delivered to the clerk or county board; and

(4) Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt.

13A.C.A. § 7-5-321(o) as provided in Act 595 of 2013
§809 County Clerk to Provide Required Identification or Affidavits to Election Commission

The county clerk who receives required identification or an affidavit of indigence or religious objection shall provide the copy of the voter’s required identification or the original affidavit and a copy of the voter’s receipt to the county board.¹⁴

§810 Vote Counted When Required Identification or Affidavits Properly Submitted

The county board shall count the vote and include it in the certified returns upon receipt of a copy of a voter’s valid and timely delivered proof of identity, required identification of an absentee voter, or affidavit of indigence or religious objection.¹⁵

§811 Effective Date

These emergency rules are effective upon filing.

¹⁴ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
¹⁵ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

SIXTH DIVISION

PULASKI COUNTY ELECTION COMMISSION;
LEONARD A. BOYLE, SR., CHRIS BURKS, and
ALEX REED, in their official capacities as the
COMMISSIONERS of the PULASKI COUNTY
ELECTION COMMISSION; and LARRY CRANE,
in his official capacity as the PULASKI COUNTY
CIRCUIT/COUNTY CLERK

PLAINTIFFS

VS.

CASE NO. 60CV-14-1019

ARKANSAS STATE BOARD OF ELECTION
COMMISSIONERS

DEFENDANTS

MOTION FOR INTERVENTION
BY DOYLE WEBB CHAIRMAN
OF THE REPUBLICAN PARTY
OF ARKANSAS

Chairman Doyle Webb on behalf of the Republican Party of Arkansas and
its collective membership respectfully moves this Court for leave to intervene in
the instant Action. Attached as Exhibit “A” is his proposed motion to dismiss this
action for failure to state a legal claim pursuant to Rule 12(b)(6) of the Arkansas
Rules of Civil Procedure.
I

BACKGROUND

In 2013, the Arkansas General Assembly passed SB 2. It required citizens of Arkansas to provide proof of identification in order to vote. On April 2, 2013, SB 2 became law as ACT 59 after both the Senate and the House overrode Governor Beebe’s veto.

ACT 595, provides a “cure” period for voters who fail to present proper identification at the polling place. They can vote provisionally and their ballots are counted if they provide proof of identification to the County Election Board or the County Clerk by 12:00 p.m. on the Monday following the election. (Ark. Code Ann. §§ 7-5-305(a)(8)(B); 7-5-321(c)(1).) Early voters were also expressly permitted to vote provisionally and the opportunity to cure problems with their identification documents by the following Monday. (Ark. Code Ann. § 7-5-418(d)(2)(A).)

ACT 595, however, failed to expressly provide such a cure period for absentee voters. To correct what some perceived to be a problem, the State Board of Election Commissioners adopted emergency regulations that provided an equivalent cure period for absentee voters. Those Rules were filed with the Secretary of State on March 4th.
Even though these emergency regulations were validly adopted, the Pulaski County Election Commission and the Pulaski County Clerk, without legal authority, refused to follow them during the recent March 11, 2014 Pulaski Tech Millage Election.

II

THE LEGAL BASIS FOR INTERVENTION

The main Declaratory Relief action is brought by the Pulaski County Election Commission. They seek to overturn regulations adopted by the Arkansas State Board of Election Commissioners which they previously refused to enforce or follow. Those regulations would:

1) Maximize the rights of Arkansas citizens under the recently enacted voter I.D. statute, ACT 595;

2) Insure that voters who cast absentee ballots are treated equally with those who vote in person.

This Motion to Intervene is brought because the Republican Party and its members have vested rights and interests in insuring that:

1) Elections in this State are conducted fairly;

2) Votes of all eligible persons who cast ballots are counted; and

3) Voting laws not be applied or interpreted in a manner that disenfranchises any class of voters.
IV

INADEQUATE REPRESENTATION

The Arkansas State Board of Election Commissioners will be represented in this action by the Attorney General. The Attorney General cannot as a matter of law provide the Commission with effective and vigorous representation. The Attorney General has recently published legal opinions which are directly and unequivocally adverse to the interpretation of ACT 595 adopted by the Commission as well as the Secretary of State. Moreover, the Attorney General Opinions form one of the primary legal sources the Pulaski County Election Commission relied on in attacking and refusing to implement the regulations of the State Board of Election Commissioners.

V

RULE 24 OF THE ARKANSAS RULES OF CIVIL PROCEDURE

This Motion is brought pursuant to Rule 24 of the Arkansas Rules of Civil Procedure. Rule 24 permits intervention either as:

(a) A matter of right; or

(b) By permissive intervention.

Rule 24(a) permits intervention as a matter of right when:

1) A timely application has been filed;
2) The party claiming an interest which is the subject of the action cannot as a practical matter protect that interest because of inadequate representation of the existing parties to the litigation.

Permissive intervention under Rule 24(b) is allowed when:

1) An applicant’s claim or defense and the main action have a question of law or fact in common.

The Brief in Support of this Motion will demonstrate that:

1) A timely application has been filed:

2) Proposed Intervenors have an interest in the subject matter of this action;

3) The Proposed Intervenors’ interests will not be adequately protected by the current representation of existing parties; and,

4) In the alternative, the Proposed Intervenors have raised defenses in their attached Motion to Dismiss which raise common issues of law and fact with the main action.

For all of the reasons set forth in this Motion and the accompanying Brief filed in support, Doyle Webb on behalf of the Republican Party of Arkansas and its collective membership respectfully requests that this Court grant them leave to intervene in this Action.
Respectfully submitted

RITTER LAW

By /s/ George P. Ritter
   George P. Ritter
   Attorney at Law
   Ark. Bar No. 2011167
   P.O. Box 13263
   Maumelle, AR 72113
   501-813-0954
   501-734-8372(fax)

By /s/ Bilenda Harris-Ritter
   Bilenda Harris-Ritter
   Attorney at Law
   Ark. Bar No. 2011046
   P.O. Box 13263
   Maumelle, AR 72113
   501-747-7650
   501-734-8372(fax)
CERTIFICATE OF SERVICE

I, George P. Ritter, do hereby certify that on March 26, 2014, I electronically filed the foregoing MOTION FOR INTERVENTION BY DOYLE WEBB CHAIRMAN OF THE REPUBLICAN PARTY OF ARKANSAS with the Clerk of the Court using the CM/ECF System which will automatically send notice to Karla Burnett, attorney for Plaintiffs in this Action.

I also served the foregoing MOTION FOR INTERVENTION BY DOYLE WEBB CHAIRMAN OF THE REPUBLICAN PARTY OF ARKANSAS electronically by emailing a copy to:

kburnett@co.pulaski.ar.us

/s/ George P. Ritter
George P. Ritter
EXHIBIT A
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

SIXTH DIVISION

PULASKI COUNTY ELECTION COMMISSION;
LEONARD A. BOYLE, SR., CHRIS BURKS, and
ALEX REED, in their official capacities as the
COMMISSIONERS of the PULASKI COUNTY
ELECTION COMMISSION; and LARRY CRANE,
in his official capacity as the PULASKI COUNTY
CIRCUIT/COUNTY CLERK

PLAINTIFFS

VS.

CASE NO. 60CV-14-1019

ARKANSAS STATE BOARD OF ELECTION
COMMISSIONERS

DEFENDANTS

PROPOSED MOTION TO DISMISS

Proposed Intervenors Doyle Webb on behalf of the Republican Party of
Arkansas and its collective membership respectfully move this Court to dismiss
this action for failure to state a legal claim pursuant to Rule 12(b)(6) of the
Arkansas Rules of Civil Procedure.
I

THE PULASKI COUNTY BOARD OF ELECTION COMMISSIONERS HAS FAILED TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED

On April 2, 2013, the Arkansas General Assembly overrode Governor Beebe’s veto and passed ACT 595. That Act requires citizens of Arkansas to provide proof of identification in order to vote. It also provided a “cure” period for voters who fail to present proper identification at the polling place. They can vote provisionally and their ballots are counted if they provide proof of identification to the County Election Board or the County Clerk by 12:00 p.m. on the Monday following the election. (Ark. Code Ann. §§ 7-5-305(a)(8)(B); 7-5-321(c)(1).)

Early voters were also expressly given an equivalent cure period. (Ark. Code Ann. § 7-5-418(d)(2)(A).) ACT 595, however, failed to expressly provide one for absentee voters. To address a cure period for absentee voters, the State Board (“State Board”) adopted emergency regulations that provided an equivalent cure period for absentee voters.

Plaintiffs have challenged the validity of these regulations under Arkansas Code Annotated § 25-15-207. It provides in part that:

The validity or applicability of a rule may be determined in an action for declaratory judgment if it is alleged that the rule, or its threatened application, injures or threatens to injure the plaintiff in his person, business, or property. [Emphasis added.]
Plaintiffs cannot state a valid claim under this Statute unless they allege that the Regulations of the State Board "[injure] or [threaten] to injure [them] in [their] person, business, or property."

Plaintiffs have not nor can they do this. They did not bring this Action in their individual or personal capacities. Both the County Election Commissioners and the County Clerk sued in their official capacities. Therefore, the real parties in interest are their named government agencies, not the individuals who comprise those agencies. Paragraph 2 of the Complaint alleges:

Plaintiff Commissioners are charged with overseeing and administering the counting of absentee ballots.

Likewise, the County Clerk:

[I]s the custodian of the absentee ballots. His duties concern the application for, the issuance of, and the voting of absentee ballots. . . . Additionally, all ballots are returned to his office. (Complaint at ¶ 4.)

How would regulations issued by the State Board create an adverse impact?

The answer is found in Paragraph 37 of the Complaint.

The [State Board] has adopted Rules that are in conflict with statutes and opinions issued by the Attorney General. As a result, the [Pulaski County Election Commission] faces uncertainty in administering elections, specifically with regard to the processing of absentee ballots. This uncertainty will likely result in future election challenges and contests in close races wherein there are a sufficient number of absentee ballots to change the outcome of the election. [Emphasis added.]

The problem is not the State Board's rules per se, but rather it stems from the allegation that these "Rules . . . are in conflict."
But this statement presumes too much. If this is successful, all that anyone need do in order to challenge a regulation of a State agency through a Declaratory Relief action is to claim that a "conflict" exists with respect to that rule.

The County Board of Election Commissioners did not allege that the Rules themselves were uncertain. Rather, it claims the rules are in conflict with other laws. This hypothetical conflict, in turn, will create "uncertainty." Therefore, the County Election Commission is in essence claiming it is or will be injured because of legal uncertainty.

A. **Legal Uncertainty Does Not Equal Adverse Impact**

Legal uncertainty is not the same as injury or threatened injury in a plaintiff's person, business or property. Giving absentee voters a cure period clearly does not adversely impact the voter. Nor does it adversely impact the County Election Commission. Nor will legal uncertainty have any impact on the manner in which the Commission performs its duties.

The Pulaski County Election Commission is charged with counting absentee ballots. Either there is a cure period for ballots with defective identification or there isn't. If there is a cure period, election officials count the ballots if the voter can provide sufficient identification. If there is no cure period, the ballots are not counted. Either way there cannot, as a matter of law, be any uncertainty as to how the County Election Commission is to perform its duties and count ballots **unless**
some of its officials question whether they should follow existing laws and regulations.

So if there is any injury, it will be that of the County Election Commission's own making. The culprit will therefore be the County itself – not regulations adopted by the State Board.

This “uncertainty” can in no way be equated with injury or threatened injury to the Plaintiffs in conjunction with performing their official duties. Those duties will have to be performed with or without regulations adopted by the State Board.

B. Baseless speculation about future election challenges does not equal injury or threatened injury

The best the Plaintiffs can do is speculate about future election challenges. They allege:

“This uncertainty will likely result in future election challenges . . . .”

Election challenges, however, are already part of the legal landscape. County election officials already are required to deal with them as part of their duties. There is nothing injurious per se about these challenges. They are part of the election process. If they occur, County officials are not “injured.” The officials simply address them in the normal course of their duties. In other words, whatever possible impact these regulations might have would be dealt with by County officials in the normal course of their work.
Thus, at best, the complaint of the County Election Commission is that:

"These regulations may make us do more work." That is not injury or threatened injury.

C. The allegations in the Complaint fail the cause-and-effect test

Plaintiffs' speculations about future election challenges is bereft of any causal connections. How does giving an absentee voter the opportunity to cure his or her identification lead to an election challenge? One could just as easily argue the opposite. If more absentee ballots are counted because of the State Board's regulations, there would be fewer election challenges.

The County Agencies also ignore the obvious. Close elections are not caused by State agency regulations, but the way people vote.

With or without the State Board's regulations, ballots will still have to be counted and stored. Whether a particular ballot is counted depends on whatever laws are in place at the time. There can be no adverse impact on the Pulaski County Election Commission on performing its duties and deciding which ballots it must count. If Plaintiff's adverse impact theory were credible, then any time regulations governing procedures for counting ballots were changed, it could claim those regulations were invalid.

There is nothing "uncertain" about giving absentee voters the opportunity to cure identity issues associated with their ballots. There is nothing "uncertain"
about the existence of these regulations. The only “uncertainty” is whether Pulaski County officials will follow them.

II

THE COUNTY CLERK HAS FAILED TO STATE A VALID CLAIM FOR RELIEF UNDER ARK. ANN. CODE § 25-15-207

The Complaint appears to only contain one paragraph concerning the alleged injurious impact of the regulations adopted by the State Board. (See ¶ 37.) However, those allegations only concern the County Board of Election Commissioners. There do not appear to be any allegations with respect to the County Clerk. Therefore, as a matter of law, and also for the reasons stated in the previous section of this brief, the County Clerk has not stated a claim that can be the basis for any relief under Arkansas Code Annotated Section 25-15-207.

III

THE STATE BOARD WAS ACTING WITHIN ITS DELEGATED POWERS WHEN IT ADOPTED THE REGULATIONS THAT APPLY TO ABSENTEE VOTERS

Plaintiffs claim the State Board “does not have the authority to amend the statutory definition of a qualified voter by adopting a Rule.” (Complaint at ¶ 40.) Plaintiffs misconstrue the nature of the State Board’s regulations. They amended nothing with respect to the identification requirements a voter must meet in order
to cast a ballot. The regulations added a procedure an absentee voter can utilize in order to become qualified to have his or her ballot counted.

Plaintiffs attempt to artificially shrink the regulatory authority of the State Board. They claim in sweeping terms that the Board’s authority is “one of implementation rather than creation.” (Complaint ¶ 47.) In support, they cite *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965).

Plaintiffs have taken *Faubus* completely out of context. The issue it decided involved an interpretation of Section 6 of Amendment 51 of the Arkansas Constitution. Section 6 provided specific items that must appear on a voter’s application for registration. The State Board claimed it had the power to add an additional item to the list. The Supreme Court disagreed. It specifically held with respect to subsection (c) of Section 6:

[W]as intended merely to give the Board the power to implement the section as a whole, to the end that the designated items of fact might be obtained and set forth with facility and with clarity. (388 S.W.2d at 560.)

This is a far cry from Plaintiffs’ general assertion that the Board only has the powers of implementation. Its regulatory powers are to:

Formulate, 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(f5) [Emphasis added].)

Its regulations can be used to implement, interpret or prescribe law or policy. (See Ark. Code Ann. § 25-15-202(8)(A).)
Thus, the State Board was clearly acting within those powers when it adopted regulations to “assure even and consistent application” of the Voter Identification laws. Had it not done so, there would have been an uneven application between in person and absentee voters.

Plaintiffs claim that giving absentee voters a period in which to cure defects in their identification documents “extend[ed] the statutory scheme that applies solely to absentee voters.” (Complaint ¶45.)

Plaintiffs assume that if a procedure is applied to one class of voters in a statute, the same procedure cannot also be applied to another class of voters by means of a State agency’s regulations. The key is not whether the procedure is statutory per se, but whether it is expressly limited or reserved for the particular class addressed in the statute. If it is not so limited, then a State agency can utilize the same procedure and apply it to a different class of regulated entities as long as it is within its delegated powers.

ACT 595 does not prohibit the State Board from adopting regulations concerning voting procedures. It also does not prohibit absentee voters from having the opportunity to cure any voter I.D. issues.

Existing law expressly gives the State Board the authority to adopt regulations that address such issues. It can adopt “necessary rules to assure even
and consistent application of . . . fair and orderly election procedures.” (Ark. Code
Ann. § 7-4-101(f)(5)

"Fair and orderly election procedures” would include extending to absentee
voters the right to remedy any identification problems that in-person voters have.

IV

THE STATE BOARD
REGULATIONS ARE NOT ONLY CONSISTENT
WITH THE INTENT OF THE LEGISLATURE
BUT ALSO WITH THE ARKANSAS CONSTITUTION

ACT 595 added the following provision to the election laws.

When a voter is unable to provide proof of identity, the voter and the
election official shall follow the procedure under § 7-5-321. (Ark. Code
Ann. 7-5-305(a)(8)(B)(ii).)

Section 7-5-321, in turn, provides the “cure” period that extends to the
Monday following the election for voters who did not initially provide “proof of
identity.”

Plaintiffs seize on the phrase “proof of identity” and by inference claim that
it is a term of statutory limitation. They appear to argue that because “proof of
identity” is only associated with in-person voting, any provision of the election
laws which use this term cannot be applied to absentee voters. That includes
Section 7-5-321 which established the Monday-after-the-election cure procedure.
Thus, they assert that the “statutory scheme . . . applies solely to an in person
voter.” (Complaint ¶ 45.)
Plaintiffs’ view of the election statutes cannot withstand analysis. Absentee voters also are required to provide proof of their identity. The only difference is that the statutes setting out the identification requirements for these voters do not use the phrase “proof of identity.” (See Ark. Code Ann. § 7-5-201(d)(1)(B); Ark. Code Ann. § 7-5-412(a)(2).)

Plaintiffs also ignore the obvious. Nowhere in the Sections they cite is there an express prohibition on using the procedures found in Section 7-5-321 for absentee ballots. Nor is there language that states: “Section 7-5-321 can only be applied to in-person ballots.”

“Proof of identity” is not the legal bellwether Plaintiffs think it is. The key is whether a voter is entitled to cast a provisional ballot. If a ballot qualifies as provisional, then the voting laws either expressly or implicitly recognize the right for the ballot to be “cured.”

For example, when a person votes at the polls, he or she is now required to provide proof of identity. If the voter is unable to do this, the poll worker shall:

Permit the voter to cast a provisional ballot. (Ark. Code Ann. § 7-5-305(a)(8)(B)(i)(b).)

And:
When a voter is unable to provide proof of identity, the voter and the election official shall follow the procedure under § 7-5-321 (i.e. The "Monday cure" procedure.) (Ark. Code Ann. § 7-5-305(a)(8)(B)(ii).)

Therefore, if an in-person voter is permitted to cast a provisional ballot, he or she is also given the opportunity to cure any problems regarding his or her identity by the following Monday.

Should the same procedure be used for an absentee voter? The answer is "yes." The reason is that the Arkansas Legislature permits absentee voters who fail to meet identification requirements to cast provisional ballots. Arkansas Code Annotated Section 7-5-412(b) provides:

A voter who desires to cast an absentee ballot but who does not meet the identification requirements . . . may cast his or her absentee ballot by mail, and the absentee ballot shall be considered as a provisional ballot.

[Emphasis added.]

If the Legislature permits absentee voters to cast provisional ballots, then the logical inference that can be drawn is that the Legislature intended that these voters be provided an opportunity to cure whatever identity issues are associated with that ballot. The only thing missing was a "cure" procedure the absentee voter could use.
When the State Board adopted its regulations providing absentee voters with the same remedy it solved two pressing problems. It removed the uncertainty about whether absentee voters should be given until the Monday following an election to resolve any personal identity issues. It forestalled a potential serious constitutional challenge to ACT 595.

The only reason any uncertainty currently exists about this procedure is because of the refusal of the Pulaski County Election Commission and the Pulaski County Clerk to follow valid regulations adopted by a State agency.

Had the status quo remained, absentee voters whose ballots were not counted would have claims under both the Arkansas and United States Constitutions for violation of their rights to Equal Protection. If one class of voters is afforded additional time to cure their ballots, why should this right be denied to another class of voters? Because of the regulations adopted by the State Board, the State of Arkansas will not have to face that particular constitutional challenge.

V

ALL OF THE LEGAL PRESUMPTIONS REGARDING THE INTERPRETATION OF REGULATIONS FAVOR THE STATE BOARD OF ELECTION COMMISSIONERS

It is well-settled that:

[T]he interpretation placed on a statute or regulation by an agency or department charged with its administration is entitled to great deference and should not be overturned unless clearly wrong. (Seiz Company v. Arkansas

The State Board is charged with the responsibility of adopting regulations concerning ballot procedures. The only way Plaintiffs can prevail is to demonstrate that the regulations adopted with respect to absentee ballots are “clearly wrong.” Plaintiffs clearly have not met this burden.

Plaintiffs also base their action on the erroneous premise that permitting absentee voters to have a period to cure their ballots is forbidden by the Legislature. This is clearly contrary to the intent and letter of existing statutory law. It makes no sense to suggest that the Legislature intended to afford one class of voters greater rights than another. To this end:

Courts interpret a statute in context, looking not solely at the words of the particular section but also at how it fits in with the larger statutory context and regulatory regime. (Singleton v. State, 2009 Ark. 594, 357 S.W. 3d 891, 893 (2009).)

The basic rule of statutory construction is to give effect to the intent of the General Assembly. [Citation.] Reviewing issues of statutory interpretation, we first construe a statute just as it read, giving the words their ordinary and usually accepted meaning in common language. [Citation.] When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory construction. [Citation.] Our court also strives to reconcile statutory provisions to make them consistent, harmonious, and sensible. (Barwick v. Govt. Employee Ins. Co., Inc., 2011 Ark. 128, * 4-5 (Sup. Ct. 2011) [Emphasis added].)
Under these maxims of statutory interpretation, the only conclusion one can reach is that regulations adopted by the State Board are consistent with the overriding intent of the Arkansas General Assembly to treat all classes of voters equally.

VI

CONCLUSION

For all of the reasons stated above, Proposed Intervenors respectfully request that this Court dismiss the Action brought by the Pulaski County Election Commission and the Pulaski County Clerk.

Respectfully submitted

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

SIXTH DIVISION

PULASKI COUNTY ELECTION COMMISSION;
LEONARD A. BOYLE, SR., CHRIS BURKS, and
ALEX REED, in their official capacities as the
COMMISSIONERS of the PULASKI COUNTY
ELECTION COMMISSION; and LARRY CRANE,
in his official capacity as the PULASKI COUNTY
CIRCUIT/COUNTY CLERK

PLAINTIFFS

VS.

ARKANSAS STATE BOARD OF ELECTION
COMMISSIONERS

DEFENDANTS

CASE NO. 60CV-14-1019

BRIEF IN SUPPORT OF
MOTION FOR INTERVENTION
BY DOYLE WEBB
CHAIRMAN OF THE REPUBLICAN
PARTY OF ARKANSAS

I

BACKGROUND

In 2013, the Arkansas General Assembly passed SB 2. It required citizens
of Arkansas to provide proof of identification in order to vote. On April 2, 2013,
SB 2 became law as ACT 595 after both the Senate and the House overrode
Governor Beebe’s veto.
ACT 595 provides a "cure" period for voters who fail to present proper identification at the polling place. They can vote provisionally and their ballots are counted if they provide proof of identification to the County Election Board or the County Clerk by 12:00 p.m. on the Monday following the election. (Ark. Code Ann. §§ 7-5-305(a)(8)(B); 7-5-321(c)(1).) Early voters were also expressly permitted to vote provisionally and afforded the opportunity to cure problems with their identification documents by the following Monday. (Ark. Code Ann. § 7-5-418(d)(2)(A).)

ACT 595, however, failed to expressly provide such a cure period for absentee voters. The Attorney General was asked to issue an opinion on this matter. He was asked if, like in-person and early voters, whether individuals casting absentee ballots could also vote provisionally and subsequently fix any identification problems.

His answer was a resounding "No." In Op. No. 2014-012 issued on February 10, 2014 he stated:

* * * *

The statutory scheme is thus quite straightforward and unambiguous. According to my review, there is no comparable procedure for absentee voters who fail to submit the requisite identification with their ballots.

* * * *

With the exception of the first-time voter provisions, none of the provisional balloting statutes can be read to encompass the person who votes absentee and does not provide the identification required by [ACT 595]. I note, additionally, that a 'provisional ballot' is one that is '[c]ast by special procedures to record a vote when there is some question concerning a
voter’s eligibility ....’ These procedures include notice by the poll worker that the individual may vote a provisional ballot, and written information from the poll worker instructing the voter on how to determine whether their provisional ballot will be counted. *The latter statutory provisions plainly do not extend to the absentee voter; and I have found no language elsewhere establishing any similar procedure applicable to the absentee voter.*

*Considering the plain language of the statutes, therefore, I cannot say that the legislature intended for the absentee voter to cast a provisional vote and then return later with identification. . . . In my opinion, a court faced with the question will not read such a procedure into the statutory scheme as regards absentee voters.* It is well established that unless a different legislative intent is indicated, a court will not resort to a strained construction for the purpose of restricting or expanding the meaning of a statute. I believe it would require a strained construction to conclude that the provisional ballot procedure applicable to those who vote in person and do not provide ‘proof of identity’ also applies to those who vote absentee. Further bolstering this conclusion is the court’s adherence to the view that ‘there must be strict compliance with statutory provisions regarding the application for and casting of absentee ballots. . . .

*In sum, therefore, I must conclude that the answer to your question is ‘no,’ an absentee voter who is not exempt from the identification requirements and fails to submit identification as required by [ACT 595] should not have his or her ballot considered a provisional ballot and be allowed the opportunity to provide identification by 12:00 p.m. of the Monday following the election.* (Op. Att’y. Gen. No. 2014-012 at 3-4 [Emphasis added].)

A second opinion followed three days later. The Attorney General stated:

In my opinion, current Arkansas law does not allow an absentee voter to cast a provisional ballot if they [sic] failed to submit the required identification when casting their absentee ballot. (Op. Att’y. Gen. No. 2014-018.)

There was nothing equivocal about either Opinion. The Attorney General spoke in absolute terms. For example, he stated:
• "I must conclude . . . ."

• "The statutory scheme is thus quite straightforward and unambiguous."

• "[A] court faced with the question will not read such a procedure [i.e. "cure"] into the statutory scheme as regards absentee voters."

The Attorney General claimed "the legislature did not intend . . . an absentee voter to cast a provisional ballot if they failed to submit the required identification when casting their absentee ballot." This statement is questionable at best.

Absentee voters are permitted to cast provisional ballots pursuant to Arkansas Code Annotated Section 7-5-412(b). It provides that:

A voter who desires to cast an absentee ballot but who does not meet the identification requirements of subdivision (a)(2) of this section may cast his or her absentee ballot by mail, and the absentee ballot shall be considered as a provisional ballot.

This Section was cited by the Attorney General in one of his opinions. It should, at a minimum, have given him pause before he summarily dismissed the possibility that absentee voters could vote provisionally under ACT 595. The fact that he did so demonstrates an obvious bias against ACT 595 and voter I.D. laws.

In addition, he did not even entertain the possibility that:
1) AB 595 *did not expressly prohibit* the use of a “cure” period for absentee voters.

2) Giving absentee voters a “cure” period would be consistent with the intent of the General Assembly.

3) *If current statutory law requires* absentee ballots cast without proper identification to be “considered as . . . provisional ballot[s],” is it not more consistent with that law to provide a “cure” period for those voters? (See Ark. Code Ann. § 7-5-412(b).)

4) Because ACT 595 did not expressly prohibit a “cure” period for absentee voters, regulations adopted by the State Board of Election Commissioners permitting such a procedure would not be inconsistent with statutory law and are in harmony with the intent of the General Assembly.

5) The State Board of Election Commissioners had the regulatory authority to fill an unintended gap left open by the Legislature in Act 595.

6) The State Board of Election Commissioners would be well within its authority to establish a “cure” procedure for those voters who initially fail to provide adequate identification.
II

THE STATE BOARD'S REGULATIONS

On February 28, 2014, the State Board of Election Commissioners adopted emergency regulations that solved the issue created with respect to absentee voters. Those Rules were filed with the Secretary of State on March 4th.

In the adoption of these Rules, the Commissioners:

1) Interpreted the Arkansas Voter I.D. Law in a way that afforded the maximum rights to voters.

2) Remedied a potential constitutional equal protection problem where one class of voters (those voting in person) would have received greater rights than those casting absentee ballots.

Even though these emergency regulations were validly adopted, the Pulaski County Election Commission and the Pulaski County Clerk without legal authority refused to follow them during the recent Pulaski Tech Millage Election.
III

THE INTERVENORS REPRESENT THE RIGHTS OF REPUBLICAN VOTERS WHOSE RIGHTS HAVE ALREADY BEEN INFRINGED BY PULASKI COUNTY OFFICIALS WHO ARE CONTINUING TO ATTACK THOSE RIGHTS WITH THIS LEGAL ACTION

Doyle Webb is the Chairman of the Republican Party of Arkansas. For the first time in recent history, Republican majorities have controlled both houses of the General Assembly of Arkansas. One of the priorities of those majorities was to bring integrity to the election process in the State of Arkansas. For that reason, the General Assembly passed ACT 595 which requires voters to provide proof of their identity.

Requiring voter identity is one way the integrity of the voting process can be preserved. It also prevents dilution of the rights of legitimate voters.

Those rights can be diluted in other ways. One is through the instant action brought by the Pulaski County Clerk and the Pulaski County Election Commission. They are asking this Court to invalidate regulations designed to preserve the rights of legitimate absentee voters. Many of those voters are Republicans. Those voters have no realistic way to protect their interests in this litigation. Plaintiffs seek to strip these absentee voters of their right to provide proper identification in order to vote.
IV

AS A MATTER OF LAW
THE ATTORNEY GENERAL CANNOT
DEFEND THE REGULATIONS OF THE STATE
ELECTION COMMISSION OR THE RIGHTS OF
REPUBLICAN VOTERS IN THE STATE OF ARKANSAS

Voting rights of not only Republicans but all Arkansas citizens cannot be
adequately protected in this litigation given the current alignment of the parties.
The Pulaski County Election Commission and County Clerk seek to attack those
rights. The regulatory agency which seeks to preserve them is the Arkansas State
Board of Election Commissioners. But it is represented by the Attorney General
who has taken an official position which is diametrically opposed to that taken by
the Commission. Moreover, his position is in lock step with that of Pulaski County
election officials who heavily relied on his opinions in its deliberations concerning
whether to bring this action for Declaratory Relief.

This action therefore presents the classic example of the fox guarding the
hen house. Arkansas Republican voters are being attacked on two fronts. One
comes from the Attorney General. The other from Pulaski County election
officials.

Under the present alignment of parties, Arkansas Republicans have no viable
defense or legal representation. Counsel for the State Board of Election
Commissioners is the Attorney General. But he has put himself in a legal box
from which there is no escape. In order to defend the regulations adopted by the
State Board of Election Commissioners he must take a position that is
diametrically opposite from the one he already has taken in two of his formal
Opinions. He cannot vigorously defend the State Board unless he not only
disavows but discredits the very legal opinions he authored. He cannot have it
both ways. His position is therefore legally untenable.

V

INTERVENTION AS A MATTER OF RIGHT
WILL RECTIFY THE LACK OF
ADEQUATE REPRESENTATION IN THIS ACTION

Rule 24(a) of the Arkansas Rules of Civil Procedure permits intervention as
a matter of right when:

1) A timely application has been filed;

2) The party claiming an interest which is the subject of the action
cannot as a practical matter protect that interest because of inadequate
representation of the existing parties to the litigation.

A. **Intervention is Timely**

Less than thirty days have elapsed since the Complaint in this Action was
filed on March 12, 2014. Defendant has not even filed a response. Therefore, this
Motion to Intervene is timely and will not prejudice existing parties.
B. The Intervenors Have a Direct Interest in Preserving the Integrity of the Election Process in Arkansas

ACT 595 was enacted to protect the integrity of the election process in Arkansas. The Pulaski County Election Commission and the Pulaski County Clerk seek to undermine the effectiveness of ACT 595 by creating an imaginary conflict in its voter identification procedures. If they succeed, confidence in the integrity of voter identification laws will be undermined. "The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." (Crawford v. Marion County Election Bd., 533 U.S. 181, 197 (2008), quoting Commission on Federal Election Reform, Building Confidence in U.S. Elections § 25 (Sept. 2005) [Emphasis added].)

Likewise, members of the Republican Party who wish to cast absentee ballots have a direct and fundamental interest in this litigation. It involves the issue of whether they can cast their ballots on an equal footing with other voters in this State.

C. Intervenors Have No Effective Representation in this Action

Intervenors have a direct interest in the outcome of this litigation. That interest will be inadequately represented by the Attorney General as a matter of law.

For these reasons, Doyle Webb and the Republican Party of Arkansas should be permitted to intervene in this action as a matter of right.
VI

IN THE ALTERNATIVE,
PERMISSIVE INTERVENTION
SHOULD BE GRANTED

Permissive intervention is permitted under Rule 24(b) of the Arkansas Rules of Civil Procedure when:

An applicant’s claim or defense and the main action have a question of law or fact in common.

Prospective Intervenors have claims and defenses in common with the factual allegations and legal issues raised by the County’s action. Prospective Intervenor Doyle Webb contends that ACT 595 was enacted to protect the integrity of elections in Arkansas, that in case of any ambiguity the interpretation of that law should be the one which affords the greatest rights to voters. Alternately, if the County prevails in this Action, Republican voters in the State of Arkansas will see their rights under the election process narrowed and the integrity of the voting process put in jeopardy.

For these reasons, if the Court does not grant intervention as a matter of right to Mr. Webb and the Republican Party of Arkansas under Rule 24(a), it should permit them to intervene under Rule 24(b).
VII

CONCLUSION

For all of the reasons set forth above and in the Motion that has been filed simultaneously with this Brief, Proposed Intervenors Chairman Doyle Webb and the Republican Party of Arkansas respectfully request that this Court grant them leave to intervene in this Action.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, George P. Ritter, do hereby certify that on March 26, 2014, I electronically filed the foregoing BRIEF IN SUPPORT OF MOTION FOR INTERVENTION BY DOYLE WEBB CHAIRMAN OF THE REPUBLICAN PARTY OF ARKANSAS with the Clerk of the Court using the CM/ECF System which will automatically send notice to Karla Burnett, attorney for Plaintiffs in this Action.

I also served the foregoing BRIEF IN SUPPORT OF MOTION FOR INTERVENTION BY DOYLE WEBB CHAIRMAN OF THE REPUBLICAN PARTY OF ARKANSAS electronically by emailing a copy to:

kburnett@co.pulaski.ar.us

/s/ George P. Ritter
George P. Ritter
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

PULASKI COUNTY ELECTION COMMISSION;
LEONARD A. BOYLE, SR., CHRIS BURKS, and
ALEX REED, in their official capacities as the
COMMISSIONERS of the PULASKI COUNTY
ELECTION COMMISSION; and LARRY CRANE,
in his official capacity as the PULASKI COUNTY
CIRCUIT/COUNTY CLERK

PLAINTIFFS

VS.

CASE NO. CV2014-1019

ARKANSAS STATE BOARD OF ELECTION
COMMISSIONERS

DEFENDANTS

FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT

Come Plaintiffs, Pulaski County Board of Election Commission, Leonard A. Boyle, Sr.,
Chris Burks, Alex Reed, and Pulaski County Circuit/County Clerk Larry Crane, by and through
the Pulaski County Attorney’s Office, and for their Petition for Declaratory Judgment, state as
follows:

1. Plaintiffs Leonard A. Boyle, Sr., Chris Burks, and Alex Reed are the duly appointed and
   serving Commissioners of the Pulaski County Election Commission (hereinafter referred to
   collectively as the “PCEC”).

2. As Commissioners of the Pulaski County Election Commission, Plaintiff Commissioners
   are charged with overseeing and administering the counting of absentee ballots. Ark. Code Ann.
   §7-5-416.

3. Plaintiff Larry Crane is the duly elected Pulaski County Circuit/County Clerk.

4. As the duly elected Pulaski County Circuit/County Clerk, Plaintiff Crane is the custodian
   of the absentee ballots. His duties concern the application for, the issuance of, and the voting of

5. The Arkansas State Board of Election Commissioners (hereinafter referred to as the “SBEC”) is the state agency having the authority 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).

6. This Court has subject matter jurisdiction of the matters stated herein, and venue is proper in this Court pursuant to Ark. Code Ann. §25-15-507.

FACTUAL BACKGROUND

7. On January 8, 2013, after reviewing proposed Senate Bill 2 (hereinafter “SB2”), Tim Humphries, Legal Counsel for the SBEC, sent an e-mail to bill’s sponsor outlining suggested amendments to the bill. In that e-mail, it is stated that if absentee ballots not accompanied by copies of ID are intended to be provisional, “this needs to be clarified.” See Attachment A.

8. On January 14, 2013, SB2, titled “An Act To Require That A Voter Provide Proof Of Identity When Voting; To Provide For The Issuance Of A Voter Identification Card; And For Other Purposes” was filed during the Regular Session of the 89th General Assembly. No changes were made pertaining to absentee voting. See Attachment B.

9. SB2 was referred to the Senate Committee on State Agencies and Governmental Affairs. The bill was amended in committee to make changes to the definition of “proof of identity” along with other changes. See Attachment C.

10. On February 20, 2013, SB2 was adopted by the Senate as amended and referred to the House of Representatives where it was referred to the House Committee on State Agencies and
Governmental Affairs. It was amended in committee to make further changes to the definition of “proof of identity.” See Attachment D.

11. On March 13, 2013, SB2, as amended, was adopted by the House of Representatives and re-referred to the Senate where it was re-referred to the Senate Committee on State Agencies and Governmental Affairs.

12. On March 19, 2013, SB2, as amended, was adopted by the Senate and delivered to the Governor.

13. On March 25, 2013, SB2 was returned to the Senate having been vetoed by the Governor.

14. On March 27, 2013, the Senate voted to override the Governor’s veto.

15. On April 1, 2013, the House of Representatives, on reconsideration, voted to override the Governor’s veto and returned SB2 to the Senate. That same day, SB2 was transmitted to the Secretary of State.

16. On April 2, 2013, notice was issued that SB2 was now Act 595 of 2013. See Attachment E.

17. Section 1 of Act 595 of 2013 (hereinafter “the Act”) amended Ark. Code Ann. §7-1-101 by adding a new subdivision to read as follows:

(25)(A) "Proof of identity" means:

(i) A voter identification card under § 7-5-322; or

(ii) A document or identification card that:

(a) Shows the name of the person to whom the document was issued;

(b) Shows a photograph of the person to whom the document was issued;

(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and

(d) If displaying an expiration date:

(1) Is not expired; or

(2) Expired no more than four (4) years before the date of the election in which the person seeks to vote;
(B) A "proof of identity" that complies with the requirements under (25)(A) of this section may include without limitation:

(i) A driver's license;
(ii) A photo identification card;
(iii) A concealed handgun carry license;
(iv) A United States passport;
(v) An employee badge or identification document;
(vi) A United States military identification document;
(vii) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;
(viii) A public assistance identification card; and
(ix) A voter identification card under § 7-5-322.

18. Section 3 of the Act amended Ark. Code Ann. §7-5-201, concerning voter qualification, as follows:

(d)(1) Except as provided in subdivision (d)(2) and subsection (e) of this section, any person desiring to vote in this state shall:
(A) Present proof of identity to the election official when appearing to vote in person either early or at the polls on election day; or
(B) When voting by absentee ballot, submit with the ballot a copy of a 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 unless the voter is:
   (i) A member of the uniformed services or active duty who is absent from the county on election day because of active duty;
   (ii) A member of the merchant marine who is absent from the county on election day because of his or her service in the merchant marine; or
   (iii) The spouse or dependent of a member identified in (d)(1)(B)(i) or (d)(1)(B)(ii) who is absent from the county on election day because of the active duty or service of the member.

(2)(A) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.
(B) A person not required to provide proof of identity under subdivision (d)(2)(A) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

19. Section 5 of the Act added Ark. Code Ann. §7-5-321, entitled “Procedure when voter fails to provide proof of identity.” The Section provides:

(a) If the voter is listed on the precinct voter registration list but fails to provide proof of identity, the election official shall:
(1) Indicate on the precinct voter registration list that the voter did not provide proof of identity; and
(2) Permit the voter to cast a provisional ballot.
(b)(1) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.
(2) A person not required to provide proof of identity under subdivision (b)(1) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.
(c) A provisional ballot cast by a voter who did not provide proof of identity shall be counted if:
   (1) The voter returns to the county board of election commissioners or the county clerk by 12:00 p.m. on the Monday following the election and:
      (A) Provides proof of identity; or
      (B) Provides an affidavit stating that the voter cannot provide proof of identity because the voter:
         (i) Is indigent; or
         (ii) Has a religious objection to being photographed; and
   (2) The voter has not been challenged or required to vote a provisional ballot for any other reason.

20. Section 6 of the Act amends Ark. Code Ann. §7-5-418(d) by providing that if “the voter fails to provide proof of identity, the election official shall follow the procedure in §7-5-321.”

21. After the adoption of the Act, the SBEC proposed Rules for Voter Identification and Rules on Poll Watchers, Vote Challenges, and Provisional Voting. At the SBEC’s meeting on June 19, 2013, both rules were approved for public comment by a unanimous vote. See Attachment F.

22. At the SBEC’s meeting on August 21, 2013, the Rules on Poll Watchers, Vote Challenges, and Provisional Voting were taken up for consideration. See Attachment G. Justin Clay, the Director of the SBEC, reported that thirteen public comments were received on the Rules for Voter Identification. A summary of the public comment received, staff’s responses to comments, and staff’s proposed changes as a result of the comments were presented. See Attachment H. Public comments were heard. A motion was made to retain some stricken language and change language at the end of Section 905 from “are considered as” to “become a.”
The motion was passed unanimously. See Attachment I. The Rule was then unanimously adopted as amended. See Attachment I.

23. At the SBEC’s meeting on August 21, 2013, the Rules for Voter Identification were taken up for consideration. See Attachment J. Justin Clay, the Director of the SBEC, reported that twenty-five public comments were received on the Rules for Voter Identification. A summary of the public comment received, staff’s responses to comments, and staff’s proposed changes as a result of the comments were presented. See Attachment K. A motion was made to strike Item 802-7 in the proposed Rules for Voter Identification on the basis “the State Board does not have statutory authority to make a rule on this issue.” See Attachment I. The motion was passed with the acting chairman voting in favor of the motion. See Attachment I. After discussion, a motion was made to strike the language in the last two paragraphs in Section 810 from the proposed rule and to send a letter to the Secretary of State expressing concern and asking the Secretary of State to consider issuing a standard form to be made available to the County Clerks to send as an addendum. The motion passed unanimously. The Rule was then unanimously adopted as amended. See Attachment I.

24. On January 14, 2014, Craighead County held a special election in the District 21 State Senate race. Of the 133 absentee ballots cast in that race, 63 did not include the required voter identification documents. See Attachment L.

25. Pursuant to §810 of the Rules for Voter Identification adopted by the SBEC, “[i]n order for an absentee ballot to be counted, the absentee voter must submit with the 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.” See Attachment J (See also, Ark. Code Ann. §7-5-201(d)(1)(B).) Based upon this rule, SBEC staff advised that the votes could not be counted.

26. On the other hand, the Arkansas Secretary of State's Office recommended "that absentee voters who failed to provide proper identification should be treated like voters who cast their ballots at a polling location and should be allowed the opportunity to provide identification to the county board of election commissioners or the county clerk within the cure period." See Attachment M.

27. Concerned with the uncertainty caused by the conflicting opinions regarding counting absentee ballots that were submitted without proper identification, the PCEC voted on January 30, 2014 to request an Attorney General's opinion on the matter pursuant to Ark. Code Ann. §25-16-706. See Attachment N.

28. On February 10, 2014, the Attorney General issued Opinion Number 2014-012. In that opinion, the Attorney General concluded that "an absentee voter who is not exempt from the identification requirements and fails to submit identification as required by Ark. Code Ann. §7-5-201(d)(1)(B) should not have his or her ballot considered a provisional ballot and be allowed the opportunity to provide identification by 12:00 p.m. of the Monday following the election.” See Attachment O.

29. On February 13, 2014, the Attorney General issued Opinion Number 2014-018. In that opinion, the Attorney General stated, "In my opinion, current Arkansas law does not allow an absentee voter to cast a provisional ballot if they failed to submit the required identification when casting their absentee ballot. . . . the procedure for casting a provisional ballot with the opportunity to provide identification by 12:00 p.m. of the Monday following the election applies to those voting in person who fail to provide the required "proof of identity." See Attachment P.
30. On February 19, 2014, the SBEC met. After hearing a presentation of the Secretary of State’s position on this issue and receiving public comments, a motion was made “direct[ing] the staff of the State Board to meet with the staff of the Secretary of State as expeditiously as possible to come up with an emergency rule for board consideration in order to establish a process that is consistent with the Secretary of State’s interpretation of Act 595 of 2013 allowing for absentee ballots that are returned without required identification to be counted.” The motion passed unanimously. See Attachment Q.

31. On February 28, 2014, the SBEC met and approved emergency changes to the “Rules for Voter Identification” and the “Rules on Poll Watchers, Vote Challenges, and Provisional Voting” under the emergency provisions of the Administrative Procedures Act. See Attachment R.

32. The Emergency Rules on Poll Watchers, Vote Challenges, and Provisional Voting were filed on March 4, 2014. See Attachment S.

33. The Emergency Rules for Voter Identification were filed on March 4, 2014. See Attachment T.

34. The Rules were amended, in pertinent part, to remove the requirement that in order for an absentee ballot to be counted, the absentee voter must submit certain required identification with the ballot. Further, the Rules were amended to require that the absentee ballot of a voter who failed to provide certain required identification to be considered a provisional ballot, and to allow an absentee voter who fails to submit certain required identification to provide the required identification or an affidavit of indigence or religious objection to being photographed to either the county clerk or to a meeting of the county board of election commissioners by noon on the Monday following the election. In addition, the Rules were amended to allow the postelection submission of identification to be provided by mail, in person by the voter, or in person by a
third person designated by the voter. The amended Rules add a requirement that the county election commission send notice by first-class mail to the voter’s absentee mailing address and the voter’s registration address and deliver such notice electronically or telephonically, if possible, to inform voters of their ability to present required identification to the proper parties by noon on Monday following the election. Finally, the Rules were amended to add procedures for the consideration of provisional ballots cast by absentee voters who failed to present required identification and to add procedures for counting absentee ballots that were made provisional if the voter complies with the post-election submission procedures contained in the Rules. See Attachments S and T.

35. The Emergency Rules filed on March 4, 2014 were not accompanied by the agency’s finding that immediate effectiveness was necessary because of imminent peril to the public health, safety, or welfare, and, therefore did not become effective immediately. Ark. Code Ann. §25-15-204(f)(2)(A). The required statement was filed on March 14, 2014. See, Attachment U. The Emergency Rules were effective on March 14, 2014. See, Attachment V.

36. On March 13, 2014, Mr. Stuart D. Soffer, the Republican Party Designee to the SBEC, filed a complaint with the SBEC against Plaintiffs Leonard A. Boyle and Chris Burks for allegedly violating the Emergency Rules for Voter Identification. He requested “imposition of the maximum fine of $1,000 and referral of Mr. Burks to the Arkansas Judiciary for a review with regards to their Rules of Professional conduct.” See Attachment W.

37. Despite the fact that records relating to investigations by the board are exempt from the Freedom of Information Act until a hearing is set or the investigation by the Director of the Board of Election Commissioners is closed, Mr. Soffer forwarded his complaint to numerous media outlets. See Ark. Code Ann. §7-4-118(g)(2). In the email he sent to the media, he states
that he is also “contemplating a Judiciary complaint against Pulaski County Attorney Karla Burnett for her role in events.” See Attachment X.

38. Later that same day, Mr. Soffer decided to “pull” the complaint and ask the state Board to consider filing a complaint itself. See Attachment Y.

DECLARATORY JUDGMENT

39. Pursuant to Ark. Code Ann. §25-15-207, the “validity or applicability of a rule may be determined in an action for declaratory judgment if it is alleged that the rule, or its threatened application, injures or threatens to injure the plaintiff in his person, business, or property.”

40. Pursuant to Ark. Code Ann. §16-111-102, the purpose of the Declaratory Judgments Act is “to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.”

41. The SBEC has adopted Rules that are in conflict with statutes and opinions issued by the Attorney General. As a result, the PCEC faces uncertainty in administering elections, specifically with regard to the processing of absentee ballots. This uncertainty will likely result in future election challenges and contests in close races wherein there are a sufficient number of absentee ballots to change the outcome of the election.

42. Election Commissioners are required to take an oath to uphold the Constitution of the United States and the Constitution of the State of Arkansas. Ark. Code Ann. §7-4-102 and Ark. Const. Art. 19, §20. Attorneys take a similar oath upon admission to the bar. Rules Governing Admission to the Bar, Rule VII.

43. The Rule adopted by the Defendants is in conflict with statutes and was adopted in violation of Article 4, §§1 and 2 of the Arkansas Constitution, which require separation of the
legislative and executive departments of the government of the State of Arkansas, and prohibit
one of these departments from exercising any power belonging to either of the others.

44. Plaintiffs are now threatened with investigations and fines if they refuse to follow a rule
that violates the law. Following such a rule would require them to violate the oaths they took.

45. Arkansas Code Ann. §7-5-201(d)(1)(B) provides, that any person desiring to vote in this
state shall when "voting by absentee ballot, submit with the ballot a copy of a 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 unless
the voter is: (i) A member of the uniformed services on active duty who is absent from the
county on election day because of active duty; (ii) A member of the merchant marine who is
absent from the county on election day because of his or her service in the merchant marine; or
(iii) The spouse or dependent of a member identified in (d)(1)(B)(i) or (d)(1)(B)(ii) who is absent
from the county on election day because of the active duty or service of the member." [emphasis
added].

46. The SBEC amended its Rules for Voter Identification to allow absentee voters who do
not "submit with the ballot" the required identification documents to have their ballots
considered provisional and counted if the identification is brought in later.

47. The SBEC does not have the authority to amend the statutory definition of a
qualified voter by adopting a Rule.

48. Arkansas Code Ann. §7-5-321(c) provides that a "provisional ballot cast by a voter who
did not provide proof of identity shall be counted if: (1) The voter returns to the county board of
election commissioners or the county clerk by 12:00 p.m. on the Monday following the election
and: (A) Provides proof of identity; or (B) Provides an affidavit stating that the voter cannot
provide proof of identity because the voter: (i) is indigent; or (ii) has a religious objection to being photographed; and (2) the voter has not been challenged or required to vote a provisional ballot for any other reason.” [emphasis added]


50. According to Ark. Code Ann. §7-5-321, the provisional ballot cast by a voter who did not provide proof of identity shall be counted if the voter returns to the county board of election commissioners or county clerk by noon on the Monday following the election and provides proof of identity or an affidavit of indigence or religious objection.

51. The SBEC amended its Rules for Voter Identification to allow absentee voters to provide “to either the county clerk of county board of election commissioners by noon on the Monday following the election the voter’s required identification or an affidavit that the voter cannot provide the required identification because of indigence or a religious objection to being photographed.” Additionally, the Rule allows the absentee voter to “present the required identification or his or her affidavit of indigence or religious objection by mail, in person by the voter, or in person by a third person designated by the voter.” [emphasis added]

52. The SBEC does not have the authority to extend the statutory scheme that applies solely to an in person voter to an absentee voter merely by adopting a rule allowing the voter to return the required identification that was not submitted with the ballot. However, the SBEC goes even further by allowing the required identification to be sent by mail or brought in by a third person designated by the voter. This is clearly beyond anything contemplated in the statutes.
53. The SBEC is attempting to require county boards of election commissioners to send notice to every absentee voter who does not return the required identification with his or her ballot by first class mail to their registration address and absentee mailing address. Additionally, notice is to be given electronically and telephonically, if possible. This requirement is not required by any statute.

54. The State Board of Election Commission’s authority under Amendment 51 is one of implementation rather than creation. *Faubus v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965) (holding the State Board of Election Commission could not add two items of information not specified by the amendment to the Affidavits of Registration and that the Board had exceeded its powers in attempting to permit the oaths to be administered by someone other than the Registrar and his deputies).

55. It is well settled that an agency has no right to promulgate a rule or regulation contrary to statute. *Dept. of Human Servs. v. Howard*, 367 Ark. 55, 238 S.W.3d 1 (2006); *McClane Co., Inc. v. Davis*, 353 Ark. 539, 110 S.W.3d 251 (2003); *McLane Co., Inc. v. Weiss*, 332 Ark. 284, 965 S.W.2d 109 (1998); and *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

56. Where a statute is not ambiguous, the courts will not interpret it to mean anything other than what it says. *Yamaha Motor Corp. U.S.A. v. Richard’s Honda Yamaha*, 344 Ark. 44, 38 S.W.3d 356 (2001).

57. There must be strict compliance with statutory provisions regarding the application for and casting of absentee ballots, even if the challenge is brought after the election has occurred. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000) (invalidating absentee votes when no reason for voting absentee was indicated on the absentee-ballot applications).
58. The SBEC has exceeded its authority by adopting and implementing rules that create procedures to allow the counting of absentee ballots that should not be counted pursuant to statutes.

Wherefore, the Plaintiffs pray that the Emergency Rules promulgated by the SBEC be declared invalid, for attorneys' fees and costs, and all other relief to which they may be entitled.

Respectfully submitted,

PULASKI COUNTY ATTORNEY'S OFFICE
201 South Broadway, Suite 400
Little Rock, Arkansas 72201
(501) 340-8285

By: /s/ Karla M. Burnett
Karla M. Burnett, 94130
Amanda M. Mitchell, 97010
CERTIFICATE OF SERVICE

I, Karla M. Burnett, do hereby certify that on April 3, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will automatically send notice to George P. Ritter and Belinda Ritter-Harris, attorney for proposed intervenor in this action. Additionally, I served the foregoing electronically by emailing a copy to: ritterlawfirm@aol.com.

I also served the foregoing electronically by emailing a copy to Senior Assistant Attorney General Joe Cordi, attorney for the Defendant at joe.cordi@arkansasag.gov.

/s/ Karla M. Burnett
Karla M. Burnett
Rep. King

Matthew Miller did his usual fine job in drafting SB 2. However, in reviewing the bill from my perspective as one who deals with the election code on a daily basis, I think that there are a couple of technical tweaks that might be beneficial in the context of the overall statutory scheme. Attached are some proposed revisions for your consideration.

My goal was to:

- Apply SB2’s expanded and more precise definition of long-term care facilities as they affect absentee voters to other parts of the absentee code that deal with voters in such facilities;
- Apply SB2’s requirement for voter ID consistently throughout the election code; and
- Clarify voting procedures in light of SB2’s voter ID requirement;

Toward that goal, this proposal:

- Changes the election law definition of “administrator” to match that suggested by SB2;
- Replaces existing language in the absentee voting code dealing with patients in long-term care facilities with the language from SB2 that identifies those facilities;
- Moves voter ID language out of 7-5-201 (which is about voter qualifications, not procedures) and into the various parts of the code dealing with procedures at polling places (election day and early voting);
- Eliminates Sections 2 and 3 of SB 2 for reasons stated below; and
- Generally clarifies some procedures in affected code sections.

Following is a section-by-section recap of the proposed changes:

7-1-101.

Changes the election law definition of “administrator” to match that suggested by SB2 because SB2’s definition of long-term care facility is more precise. Note that the SB2 definition clearly allows residents of out-of-state facilities to vote, a good change for residents of border communities. Current law implies that the facilities must be licensed by Arkansas.
7-5-201.

- Take out Sections 2 and 3 of SB2, which amend current 7-5-201(d). Section 2 replaces the current 7-5-201(d), which deals with an ID requirement for first-time voters, with the new ID requirement. As such, it is basically the heart of the bill. It seems to me though, that the ID requirement (either as it stands now for first-time voters or as amended for all voters) is misplaced here. ID is not a qualification, but is rather a procedural step, like voting in the correct precinct. It seems to me that such a requirement more properly belongs in the procedural codes for in-person and absentee voting, and that is where this proposed revision puts it.

- Section 3 seems to require first time voters who registered by mail to submit both proof of identification and other forms of identification as well, and then exempts from this requirement certain categories of voters. I'm not sure that I am reading this the way it is intended. It might be that the purpose is to exempt certain voters from the ID requirement. Whatever the purpose, I would like to take a stab at re-writing it to clarify what is meant to occur. However, because I'm not clear on the intent, I have drafted my proposals on the assumption that all voters, including first-time voters would be subject to the requirement to show proof of identity.

- I also struck (e) because it is also not a qualification and the language is already in another part of the code (7-5-305(a)(11)).

7-5-305.

- Clarifies in (a) that this section deals with polling place procedures.

- In (a)(1) includes a requirement, not necessarily linked to ID, that the poll worker call out the voter’s name and address if poll watchers are present. Also eliminates the requirement that the voter state his or her date-of-birth. Many voters feel that the “out loud” DOB requirement compromises their security and it seems unnecessary where photo ID is required. These are “cleanup” provisions that I think could logically be included here. The provision that the poll worker call out the voter’s name and address is not substantively related to voter ID, though, so you might not want to deal with it.

- The voter ID requirement is in (a)(4) instead of (8) because of other cleanup.

7-5-308.

- Clarifies in (a) that these are the rules for casting and counting provisional ballots.

- In (a)(6), requires the poll worker to note the reason for the provisional ballot on the voter envelope.
- In new section (d)(2)(A) provides for a voter to bring ID to the clerk (instead of the election commission, as in SB2) and for the affidavit of indigence and religious objection.
- Specifically provides that provisional ballots of no-id voters will not be counted.

The voter should be able to bring ID to the clerk, in my opinion, because in most counties, the election commissions do not have offices and voters typically do not know who the commissioners are.

7-5-403, 404, 405, 409, 411, and 412

Makes those sections consistent with SB2 nomenclature for long-term care facilities.

7-5-409 and 412

Also in 7-5-409(b)(4)(A)(v) and 7-5-412(a)(2) requires absentee voters to provide copies of required ID. In 412(b), specifically states that absentee ballots not accompanied by copies of ID are not counted. It may be with regard to the latter that you want such absentee ballots to be provisional and allow absentee voters to bring in ID. I assumed not, though, because absentee voters, unlike in-person voters, are not on notice. If they are intended to be provisional, this needs to be clarified.

Additional Questions

If no-ID absentees are provisional (and subject to the cure period) should the instructions to absentee voters include an instruction that if they can’t make a copy when they send in their ballots, they can bring their id to the county clerk by the deadline? Should no-ID voters at the polls receive notice (posted? handed to them on paper?) about the deadline for bringing in ID? Is it assumed that nursing home voters vote absentee, and that is why the administrator affidavit is not mentioned in the cure process in SB2? (I assumed the answer to this question is “no” and that nursing home voters could present the administrator affidavit at the polls or during the cure period if they vote at the polls. If this is incorrect, I’ll need to make some changes in my proposed revisions.)

FINAL NOTE

I hope these notes are helpful. My goal is to not change the intent of the bill of the bill in any way, but to make it work in the broader statutory scheme. Please let me know if you have further questions or comments.
EXPLAINER

The purpose of these proposed amendments to SB 2 (Voter ID) is to

- adopt SB2’s expanded and more precise definition of long-term care facilities as they affect absentee voters;
- Apply SB2’s requirement for voter ID consistently throughout the election code; and
- Clarify voting procedures in light of SB2’s voter ID requirement;

Toward that goal, this proposal:

- Changes the election law definition of “administrator” to match that suggested by SB2;
- Replaces existing language in the absentee voting code dealing with patients in long-term care facilities with the language from SB2 that more specifically identifies those facilities;
- Moves voter ID language out of 7-5-201 (which is about voter qualifications, not procedures) and into the various parts of the code dealing with procedures at polling places (election day and early voting);
- Eliminates Section 3 of SB 2 which appears to deal with first-time voters in a different way than others - such a provision is not necessary where all are subject to the photo id requirement; and
- Generally clarifies some procedures in affected code sections.


As used in this title, unless the context or chapter otherwise requires:

(1) "Administrator" means the administrative head of a licensed hospital, licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care of a long-term care or residential care facility licensed by the state who is authorized in writing by a patient of the long-term care or residential care facility to deliver the application for an absentee ballot and to obtain or deliver the absentee ballot to the county clerk;

7-5-201. Voter qualification.

(a) To be qualified to vote, a person shall have registered at least thirty (30) calendar days immediately prior to the election and in the manner set forth by Arkansas Constitution, Amendment 51.
(b) "Voting residence" shall be a voter's domicile and shall be governed by the following provisions:

(1) The domicile of a person is that place in which his or her habitation is fixed to which he or she has the intention to return whenever he or she is absent;

(2) A change of domicile is made only by the act of abandonment, joined with the intent to remain in another place. A person can have only one (1) domicile at any given time;

(3) A person does not lose his or her domicile if he or she temporarily leaves his or her home and goes to another country, state, or place in this state with the intent of returning;

(4) The place where a person's family resides is presumed to be his or her place of domicile, but a person may acquire a separate residence if he or she takes another abode with the intention of remaining there;

(5) A married person may be considered to have a domicile separate from that of his or her spouse for the purposes of voting or holding office. For those purposes, domicile is determined as if the person were single; and

(6) Persons who are temporarily living in a particular place because of a temporary work-related assignment or duty post or as a result of their performing duties in connection with their status as military personnel, students, or office holders shall be deemed residents of that place where they established their home prior to beginning such assignments or duties.

(c) No person may be qualified to vote in more than one (1) precinct of any county at any one (1) time.

(d)(1) Any person registering to vote by mail and who has not previously voted in a federal election in this state shall:

(A) Present to the election official a current and valid photo identification or copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter when appearing to vote in person either early or at the polls on election day, or

(B) When voting by mail, submit with the ballot a copy of a 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.
(2) The provision of subdivision (d)(1) of this section does not include:

(A) Persons whose applications are transmitted by state or federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act;

(D) Persons who are entitled to vote otherwise than in person under any other federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (d)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver's license number or at least the last four (4) digits of the individual's social security number and with respect to whom a state or local election official matches the license number or social security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(e) Any person who receives an absentee ballot according to the precinct voter registration list but who elects 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.

7-5-305. Requirements to obtain a ballot – Proof of identity.

(a) Before a person is permitted to vote at a polling place, the poll worker shall:

(1) Request the voter to state his or her name and address and then the poll worker shall repeat, in a voice audible to poll watchers present, the full name and address stated by the voter identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

(2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;

(3) Determine that the voter's date of birth and address are the same as those shown on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;
(5) (A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct:

(i) Verify with the county clerk's office the proper precinct; and

(ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;

(63) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;

(4) Request the voter to provide proof of identity or, if the voter is a resident of a licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care, provide an affidavit from the administrator of the facility attesting to the person's residence in the facility;

(A) If a voter is unable to provide proof of identity or the affidavit of an administrator, the poll worker shall indicate on the precinct voter registration list that the voter did not provide identification;

(B) Any voter who does not provide proof of identity shall be offered a provisional ballot;

(C) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing proof of identity at the polls to the prosecuting attorney who may investigate possible voter fraud;

(75)(A) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;

(B) If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;
(8) (A) Request the voter for purposes of identification to provide a 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.

(B) (i) If a voter is unable to provide this identification, the poll worker shall indicate on the precinct voter registration list that the voter did not provide identification.

(ii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of subdivision (n)(8)(A) of this section may cast a provisional ballot.

(iii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.

(iv) The prosecuting attorney may investigate possible voter fraud;

(96) Record the voter's name or request the voter to print his or her name on the list-of-voters form;

(107) Follow the procedures under §§ 7-5-310 and 7-5-311 if the person is a voter with a disability and presents himself or herself to vote; and

(118) Permit the person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.

(b) A person not listed on the precinct voter registration list may vote only in accordance with § 7-5-306.

7-5-308. Provisional ballot procedure.

(a) When the voter is required by law to cast a provisional ballot, the ballot shall be cast and counted pursuant to the following procedures:

(1) A poll worker shall notify the individual that the individual may cast a provisional ballot in that election;

(2) The voter shall execute a written eligibility affirmation in the presence of the poll worker 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;
(3) 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;

(4) The voter shall mark his or her provisional ballot;

(5) The voter shall place the voted provisional ballot in a ballot secrecy envelope marked "provisional ballot" and seal the envelope;

(6) The voter shall place the sealed provisional ballot envelope containing the voted provisional ballot in a voter envelope, seal the envelope, and give it to the poll worker who shall note on the voter envelope the reason that the voter was required to vote a provisional ballot;

(7) The poll worker shall provide the voter written information instructing him or her on how to determine whether his or her provisional ballot was counted, and if not, the reason the ballot was not counted; and

(8) The poll worker shall make a separate list of the names and addresses of all persons voting a provisional ballot.

(b) The poll worker shall preserve, secure, and separate all provisional ballots from the remaining ballots so that the right of any person to vote may be determined later by the county board of election commissioners or the court in which an election contest may be filed.

(c) (1) Whenever a person casts a provisional ballot, the poll worker shall provide the voter written information that states that the individual who casts a provisional ballot will be able to ascertain whether the vote was counted, and if not, the reason the vote was not counted.

(2) The Secretary of State shall establish a free access system to allow a provisional voter to ascertain whether his or her vote was counted, and if not, the reason his or her vote was not counted.

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

(d) (1) Before certification of the results of the election, the county board shall determine whether the provisional ballots are valid.

(2) Unless enjoined by a court of competent jurisdiction, a provisional ballot shall be counted if it is cast by a registered voter and is the correct ballot, according to the precinct listed on the voter's eligibility affirmation, for the precinct of the voter's residence.
(A) However, provisional ballots cast by voters at a polling place who fail to provide proof of identity or an affidavit of an administrator pursuant to 7-5-305(a)(4) shall be not be counted unless the voter provides in person to the county clerk by noon on the Monday following the election:

(i) Proof of identity or the affidavit from an administrator; or

(ii) An affidavit, on a form prescribed by the State Board of Election Commissioners, that the voter cannot provide proof of identity because the voter is indigent or has a religious objection to being photographed.

(e) If, upon examination of any provisional ballots, the county board suspects that a violation of the election laws has occurred, the county board may refer the matter to the prosecuting attorney.

7-5-403. Designated bearers, authorized agents, and administrators.

(b) (1) An authorized agent may deliver applications for absentee ballots to the county clerk and obtain absentee ballots from the county clerk for not more than two (2) voters who cannot cast a ballot at the appropriate polling place on election day because the voter is a patient in a licensed hospital or a licensed nursing home, residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care, hospital or long-term care or residential care facility licensed by the state.

(2) At no time shall an authorized agent have more than two (2) absentee ballots in his or her possession.

(3) (A) An authorized agent receiving an absentee ballot from the county clerk for a voter shall deliver the absentee ballot directly to the voter.

(B) An authorized agent receiving an absentee ballot from a voter shall deliver the absentee ballot directly to the county clerk.

(4) (A) In order for an authorized agent to obtain a ballot from the county clerk, the authorized agent shall submit to the county clerk an affidavit from the administrator, administrative head of a hospital or a licensed nursing home, residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care, long-term care or residential care facility licensed by the state that the applicant is a patient in the administrator's facility or hospital or long-term care or residential care facility licensed by the state and is thereby unable to vote on the election day at his or her regular polling site.

(B) A copy of the affidavit shall be retained by the county clerk as an attachment to the
application for an absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk, the:

(A) Authorized agent shall present current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating receipt of the voter's ballot.

(6) Upon delivering an absentee ballot to the county clerk, the:

(A) Authorized agent shall show some form of current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating delivery of the voter's ballot.

(c) (1) The county clerk shall keep a register of designated bearers and authorized agents.

(2) The designated bearer and authorized agent register shall contain the following oath on each page: "IF YOU PROVIDE FALSE INFORMATION ON THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS ($10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL AND STATE LAWS."

(d) (1) An administrator may deliver to the county clerk an application for an absentee ballot for any voter who is a patient of the administrator's licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care, long-term care or residential care facility licensed by the state and who names the administrator on his or her application as the administrator of the facility where the voter resides.

(2) An administrator may receive absentee ballots for as many qualified residents of the facility as apply for absentee ballots upon presentation of photographic identification to the county clerk.

(3) (A) An administrator may deliver the absentee ballot to the county clerk for any voter who names the administrator on his or her application and voter statement.
(B) Absentee ballots may be delivered to the county clerk in person by the administrator or by mail.

(4) An administrator shall submit to the county clerk an affidavit, signed and dated by the administrator, stating:

(A) That he or she is the administrative head of a long-term care or residential care facility licensed by the state;

(B) The name and address of the facility; and

(C) That he or she has been authorized by the voters of his or her facility who named him or her in their applications for absentee ballot and voter statement to deliver their absentee ballots.

(e) Any person who knowingly makes a false statement on an affidavit required by this section shall be guilty of perjury and subject to a fine of up to ten thousand dollars ($10,000) or imprisonment of up to ten (10) years.

7-5-404. Applications for ballots.

(b) (1) Any person eligible to vote by absentee ballot may request the county clerk to mail to an address within the continental United States an application for an absentee ballot.

(2) (A) For those persons voting by absentee ballot who reside outside the county in which they are registered to vote, the application shall remain in effect for one (1) year unless revoked by the voter, and the county clerk shall thereafter automatically mail, no later than twenty-five (25) days before each election, an absentee ballot for each election.

(B) (i) Except for persons of long-term care or residential facilities licensed by the state patients of licensed hospitals, licensed nursing homes, licensed residential care facilities, licensed assisted living facilities or any licensed facility that provides long-term medical or personal care, or other persons who are voters with disabilities as defined in § 7-5-311(d), for those persons voting by absentee ballot who reside within the county in which they are registered to vote, the application shall be valid for only one (1) election cycle.

(ii) The election cycle shall include any one (1) election and the corresponding runoff election.
7-5-405. Application form.

(b) The Secretary of State may prescribe separate absentee ballot application forms for:

(1) (A) Persons who reside within the county in which they are registered to vote and will be unavoidably absent from the polls on the date of the election.

(B) The application shall be valid for one (1) election cycle, which includes any one (1) election and the corresponding runoff election;

(2) (A) Persons whose application would be valid for one (1) calendar year.

(B) This includes the following:

(i) Persons who reside outside the county in which they are registered to vote;

(ii) Persons in a licensed hospital, licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care long-term care or residential facilities licensed by the state, and

(iii) Voters with disabilities; and

(3) Persons whose applications would be valid through the next two (2) regularly scheduled general elections for federal office, including any resulting runoff elections.

7-5-409. Materials furnished to qualified voters.

(b) If the applicant is registered or is otherwise eligible to vote absentee, the county clerk, prior to mailing or delivering the ballot, shall detach the ballot stub and deposit the ballot stub into a sealed box designated as "Absentee Stub Box" and deliver to the applicant or to the applicant's designated bearer, authorized agent, or administrator for delivery to the applicant the following materials:

(1) An official absentee ballot for each election named in the application;

(2) Instructions for voting and returning the official absentee ballot to the county clerk;
(3) An official absentee ballot secrecy envelope on which there shall be written or printed the words "Ballot Only";

(4) (A) (i) A voter statement.

(ii) The voter statement shall include the following heading in bold capitalized letters: "THIS VOTER STATEMENT MUST BE COMPLETED AND RETURNED IN THE MAILING ENVELOPE OR THE ABSENTEE BALLOT WILL NOT BE COUNTED."

(iii) The voter statement shall include the following statement in bold capitalized letters at the bottom of the page: "THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS ($10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."

(iv) The voter statement shall include a statement that the voter resides at the address on his or her application.

(v) The voter statement shall include the following statement for a first-time voter who registers by mail: "If I am a newly registered voter of this county and this is the first time I am voting in this county, I am enclosing a copy of a document or card showing proof of identity, current and valid photo identification card or a current utility bill, bank statement, government check, paycheck, or other government document that shows my name and address, or the affidavit of the administrator of a licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care facility attesting to my residence in the facility."

(B) Blanks shall be provided for the voter to provide his or her printed name, signature, address, date of birth, signature of administrator, authorized agent, or designated bearer, and address of the administrator, authorized agent, or designated bearer;

(5) A sealable envelope upon which shall be printed or written the words: "Return Envelope", the address of the county clerk, the precinct of the voter, and the words: "ABSENTEE BALLOT, ........................., ELECTION"; and

(6) An authorized agent authorization form, as follows:
"AGENT AUTHORIZATION FORM

If applicable, fill out and sign this form and place it in the Return Envelope

I hereby authorize .................(insert his or her name) as my authorized agent, to deliver this ballot as I am medically unable to vote on election day. An affidavit verifying my medical status as unable to deliver the application or to vote on the day of the election is attached or has been provided with my application.

........................

signature of voter

........................

printed name of voter

........................

address of voter

........................

date of birth of voter"

(c) (1) Except for absentee ballots mailed to an address outside the county in which the applicant is registered, an absentee ballot shall be mailed to the address that appears on the applicant's registration record or absentee ballot application if the voter is temporarily at a different address.

(2) The county clerk shall not mail more than two (2) absentee ballots to the same address unless:

(A) The address is outside the territorial limits of the United States;

(B) The address is for a licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care, long-term care or residential care facility licensed by the state; or

(C) There are more than two (2) persons lawfully registered at the same address,

(d) The county clerk shall not deliver an absentee ballot to any person other than the absentee
voter unless the person picking up the ballot provides current and valid photographic identification to the county clerk that he or she is:

(1) The voter's:

(A) Designated bearer; or

(B) Authorized agent; or

(2) The administrator of a licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care long-term care or residential care facility licensed by the state in which the voter resides.

7-5-411. Methods of voting absentee.

(a) Absentee voting may be accomplished in one (1) of the following methods and in no other manner:

(1) (A) By delivery of the ballot by mail that must be received in the office of the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day.

(B) (i) However, except as provided in subdivision (a)(1)(B)(ii) of this section, by ballots applied for not later than thirty (30) days before the election by qualified electors outside the United States on election day that are signed, dated, postmarked, and mailed by the voters no later than the day of the election and received by the county clerk no later than 5:00 p.m. ten (10) calendar days after the date of the election.

(ii) The absentee ballots of armed services personnel serving in active status shall be counted if received by the county clerk no later than 5:00 p.m. ten (10) calendar days after the date of the election and if the absentee ballots were executed no later than the date of the election.

(C) Each absentee ballot shall be mailed separately by the voter and shall not be included with any other absentee ballot in a bulk mailing, except that an administrator of a licensed hospital, licensed nursing home, licensed residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care long-term care or residential care facility licensed by the state of Arkansas or hospital may mail the absentee ballots of the residents and patients by bulk mail. Absentee ballots in any bulk mailing not otherwise permitted in this subsection shall not be counted;

(2) By delivery of the ballot to the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day by the designated bearer, administrator, or the authorized agent of
the absentee voter who is medically unable to vote at the regular polling site, upon proper verification of the signature of the voter by the county clerk and validation of the identity of the authorized agent; or

(3) The voter may deliver the ballot to the county clerk of the county of his or her residence not later than the close of regular business hours on the day before the election.

(b) Any person to whom an absentee ballot is delivered according to the precinct voter registration list but who elects 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.

7-5-412. Marking and return of absentee ballots -- Delivery of mailed absentee ballots.

(a) Upon receiving the blank absentee ballot, statement, and envelopes, whether in the office of the county clerk or elsewhere, the voter shall mark the absentee ballot and place the absentee ballot in the provided envelope. He or she shall then seal the envelope containing the absentee ballot and place it in the other provided outer envelope with the following:

(1) The executed voter statement; and

(2) (A) A copy of a document or card showing proof of identity a current and valid photographic 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 first time voter, for first-time voters who registered by mail. However, this requirement does not apply if:

(A) The voter registered to vote by mail and provided the identification at that time; or

(B) For a voter who resides in a licensed nursing home, residential care facility, licensed assisted living facility or any licensed facility that provides long-term medical or personal care, an affidavit from the administrator of the facility attesting to the person’s residence in the facility. The first-time voter registered to vote by mail and submitted his or her driver’s license number or at least the last four (4) digits of his or her social security number at the time and this information matches the information in an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(b) A absentee ballot of a voter who desires to cast an absentee ballot but who does not meet the identification requirements of subdivision (a)(2) of this section may cast his or her absentee ballot by mail, and the absentee ballot shall be considered as a provisional ballot not be counted.

(c) Absentee ballots received by mail on election day before the polls close shall be delivered
promptly by the county clerk to the election officials designated to canvass and count absentee ballots.

(2) The provision of subdivision (d)(1) of this section does not include:

(A) Persons whose applications are transmitted by State or Federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act;

(D) Persons who are entitled to vote otherwise than in person under any other Federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (d)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver's license number or at least the last four (4) digits of the individual's social security number and with respect to whom a State or local election official matches the license number or social security number with an existing State identification record bearing the same number, name, and date of birth as provided in the registration.
Stricken language would be deleted from and underlined language would be added to present law.
Act 595 of the Regular Session

State of Arkansas

As Engrossed: 82/18/13 H3/7/13

A Bill

SENATE BILL 2

By: Senators B. King, Bledsoe, Caldwell, A. Clark, J. English, Hester, Hickey, Holland, Irvin, Rapert, G. Stubblefield, E. Williams, J. Woods


For An Act To Be Entitled
AN ACT TO REQUIRE THAT A VOTER PROVIDE PROOF OF
IDENTITY WHEN VOTING; TO PROVIDE FOR THE ISSUANCE OF
A VOTER IDENTIFICATION CARD; AND FOR OTHER PURPOSES.

Subtitle
AN ACT TO REQUIRE THAT A VOTER PROVIDE
PROOF OF IDENTITY WHEN VOTING AND TO
PROVIDE FOR THE ISSUANCE OF A VOTER
IDENTIFICATION CARD.

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

SECTION 1. Arkansas Code § 7-1-101, concerning definitions applicable
to election law, is amended to add a new subdivision to read as follows:

(25)(A) "Proof of identity" means:

(i) A voter identification card under § 7-5-322; or
(ii) A document or identification card that:

(a) Shows the name of the person to whom the

document was issued;

(b) Shows a photograph of the person to whom

the document was issued;

(c) Is issued by the United States, the State
of Arkansas, or an accredited postsecondary educational institution in the
State of Arkansas; and

(d) If displaying an expiration date:
   (1) Is not expired; or
   (2) Expired no more than four (4) years
before the date of the election in which the person seeks to vote;

(E) A "proof of identity" that complies with the
requirements under (25)(A) of this section may include without limitation:
   (i) A driver's license;
   (ii) A photo identification card;
   (iii) A concealed handgun carry license;
   (iv) A United States passport;
   (v) An employee badge or identification document;
   (vi) A United States military identification document;
   (vii) A student identification card issued by an
   accredited postsecondary educational institution in the State of Arkansas;
   (viii) A public assistance identification card; and
   (ix) A voter identification card under §7-5-322.

SECTION 2. Arkansas Code §7-5-201, concerning voter qualification, is
amended to add a new subsection to read as follows:

(d)(1) Except as provided in subdivision (d)(2) and subsection
(e) of this section, any person desiring to vote in this state shall:
   (A) Present proof of identity to the election official
when appearing to vote in person either early or at the polls on election
day; or
   (B) When voting by absentee ballot, submit with the ballot
a copy of a 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 unless the voter is:
   (i) A member of the uniformed services on active
duty who is absent from the county on election day because of active duty;
   (ii) A member of the merchant marine who is absent
from the county on election day because of his or her service in the merchant
marine; or
   (iii) The spouse or dependent of a member identified
in (d)(1)(B)(i) or (d)(1)(B)(ii) who is absent from the county on election
day because of the active duty or service of the member.

(2)(A) A person who is a resident of a long-term care or
residential care facility licensed by the state is not required to provide
proof of identity before voting.

(B) A person not required to provide proof of identity
under subdivision (d)(2)(A) of this section shall provide documentation from
the administrator of the facility attesting that the person is a resident of
the facility.

SECTION 3. Arkansas Code § 7-5-201(d), concerning voter qualification,
is amended to read as follows:

(d)(4)(e)(1) Any person registering to vote by mail and who has not
previously voted in a federal election in this state shall:

(A) Present to the election official a 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 when appearing to vote in person
either early or at the polls on election day; or

(B) When voting by mail, submit with the ballot a copy of
a 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.

(2) The provision of subdivision (d)(4)(e)(1) of this section
does not include:

(A) Persons whose applications are transmitted by state or
federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas
Citizens Absentee Voting Act, 42 U.S.C § 1973ff-1 et seq.;

(C) Persons covered by the Voting Accessibility for the
Elderly and Handicapped Act, 42 U.S.C § 1973ee et seq.;

(D) Persons who are entitled to vote otherwise than in
person under any other federal law;

(E) Persons who register to vote by mail and submit as
part of the registration any of the identification documents listed in
subdivision (d)(4)(e)(1) of this section; or
(F) Persons who register to vote by mail and submit with the registration either a driver’s license number or at least the last four digits of the individual’s social security number and with respect to whom a state or local election official matches the license number or social security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

SECTION 4. Arkansas Code § 7-5-305(a)(8), concerning requests for identification when voting, is amended to read as follows:

(8)(A)(i) Request Except as provided in subdivision (a)(8)(A)(ii) and (a)(8)(B)(ii) of this section, request the voter for purposes of identification to provide a 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 proof of identity.

(ii)(a) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(b) A person not required to provide proof of identity under subdivision (a)(8)(A)(ii)(a) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(B)(i) If a voter is unable to provide this identification proof of identity, the poll worker shall:

(a) Indicate on the precinct voter registration list that the voter did not provide identification proof of identity; and

(b) Permit the voter to cast a provisional ballot.

(ii) When a voter is unable to provide proof of identity, the voter and the election official shall follow the procedure under § 7-5-321.

(1)(i) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of subdivision (a)(8)(A) of this section § 7-5-201(e) may cast a provisional ballot.
Following each election, the county board
of election commissioners may review the precinct voter registration lists
and may provide the information of the voters not providing identification
proof of identity at the polls to the prosecuting attorney.

The prosecuting attorney may investigate
possible voter fraud;

SECTION 5. Arkansas Code Title 7, Chapter 5, Subchapter 3 is amended
to add two new sections to read as follows:

7-5-321. Procedure when voter fails to provide proof of identity.
(a) If the voter is listed on the precinct voter registration list but
fails to provide proof of identity, the election official shall:
(1) Indicate on the precinct voter registration list that the
voter did not provide proof of identity; and
(2) Permit the voter to cast a provisional ballot.
(b)(1) A person who is a resident of a long-term care or residential
care facility licensed by the state is not required to provide proof of
identity before voting.
(2) A person not required to provide proof of identity under
subdivision (b)(1) of this section shall provide documentation from the
administrator of the facility attesting that the person is a resident of the
facility.
(c) A provisional ballot cast by a voter who did not provide proof of
identity shall be counted if:
(1) The voter returns to the county board of election
commissioners or the county clerk by 12:00 p.m. on the Monday following the
election and:
(A) Provides proof of identity; or
(B) Provides an affidavit stating that the voter cannot
provide proof of identity because the voter:
(i) Is indigent; or
(ii) Has a religious objection to being
photographed; and
(2) The voter has not been challenged or required to vote a
provisional ballot for any other reason.
7-5-322. Voter identification card.

(a)(1)(A) The Secretary of State shall provide by rule for the issuance of a voter identification card that may be requested by an individual to be used as proof of identity when appearing to vote in person.

(B) The rules shall include, without limitation:

(i) A requirement that the voter identification card include a photograph of the voter;

(ii) Specification of the information to be included on the voter identification card;

(iii) Provisions concerning the expiration of a voter identification card; and

(iv) Provisions for the proof of identity to be provided by the county clerk of the county in which the voter is registered to vote.

(2) Providing for the issuance of a voter identification card under subdivision (a)(1)(A) of this section may include, without limitation the purchase by the Secretary of State of cameras and other equipment necessary to generate a voter identification card in the office of the county clerk.

(b) A voter identification card shall be issued without the payment of a fee or charge to an individual who:

(1) Does not have another valid form of proof of identity; and

(2)(A) Is registered to vote; or

(B) Will be at least eighteen (18) years of age at the next election and has submitted a voter registration application.

(c)(1) The Secretary of State or the county clerk shall not require or accept payment for a voter identification card issued for the sole purpose of voter identification.

(2)(A) A person requesting a voter identification for the sole purpose of voter identification card shall sign an oath that he or she does not possess proof of identity under § 7-1-101(25).

(B) The oath shall include the definition of proof of identity under § 7-1-101(25).

SECTION 6. Arkansas Code § 7-5-418(c) and (d), concerning early voting
procedures, is amended to read as follows:

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

(2) Request the voter to present proof of identity to the county clerk or election official;

(3) If the voter’s name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(4) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form; and

(5) Enter the voter's precinct number on the early voting roster or early voting request form.

(d)(1) If the voter is not listed in the county voter registration record files and the county clerk is unable to verify the voter’s registration and if the voter contends that he or she is eligible to vote, then the voter may vote a provisional ballot that shall be counted only upon verification of the voter’s registration status.

(2)(A) If the voter fails to provide proof of identity, the election official shall follow the procedure in § 7-5-321.

(B)(1) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(ii) A person not required to provide proof of identity under subdivision (d)(2)(B)(i) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

SECTION 7. NOT TO BE CODIFIED. This act shall become effective upon the later of the following:

(1) January 1, 2014; or

(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under
Section 5 of this act,

/s/B. King

Disapproved by Governor on 3-25-13,

Overridden by Senate and House on 3-27-13 & 4-1-13.
ARKANSAS SENATE
89th General Assembly - Regular Session, 2013
Amendment Form

Subtitle of Senate Bill No. 2
AN ACT TO REQUIRE THAT A VOTER PROVIDE PROOF OF IDENTITY WHEN VOTING AND TO PROVIDE FOR THE ISSUANCE OF A VOTER IDENTIFICATION CARD.

Amendment No. 1 to Senate Bill No. 2

Amend Senate Bill No. 2 as originally introduced:


AND

Add Senators Bledsoe, Caldwell, A. Clark, J. English, Hester, Hickey, Holland, Irvin, Rapert, G. Stubblefield, E. Williams, J. Woods as cosponsors of the bill

AND

Page 1, delete lines 24 through 35 and substitute the following:

"(25)(A) "Proof of identity" means a document or identification card that:

(i) Shows the name of the person to whom the document was issued;
(ii) Shows a photograph of the person to whom the document was issued;
(iii) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
(iv) If the document contains an expiration date, the date of the election in which the person seeks to vote;

(A) A "proof of identity" that complies with the requirements under (25)(A) of this section may include without limitation:
(i) A driver's license;
(ii) A photo identification card;
(iii) A concealed handgun carry license;
(iv) A United States passport;
(v) An employee badge or identification document;
(vi) A United States military identification
document;
(vii) A student identification card issued by an
accredited postsecondary educational institution in the State of Arkansas;
(viii) A public assistance identification card; and
(ix) A voter identification card under § 7-5-322."

AND

Page 2, line 8 delete "by mail," and substitute "by absentee ballot."

AND

Page 2, delete lines 12 through 15 and substitute the following:
"(2)(A) A person who is a resident of a long-term care or
residential care facility licensed by the state is not required to provide
proof of identity before voting."

AND

Page 2, delete lines 23 and 24 and substitute the following:
"(4)(e)(l) Any person registering to vote by mail and"

AND

Page 3, delete lines 27 through 30 and substitute the following:
"(ii)(a) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting."

AND

Page 4, delete lines 28 through 31 and substitute the following:
"(b)(l) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting."

AND

Page 5, delete line 3 and substitute the following:
"commissioners or the county clerk by 12:00 p.m. on the Monday following the election and:

AND

Page 5, line 5, delete "Executes" and substitute "Provides"
AND

Page 5, delete lines 22 through 24 and substitute the following:
"on the voter identification card;

(iii) Provisions concerning the expiration of a voter identification card; and

(iv) Provisions for the proof of identity to be provided by the county clerk of the county in which the voter is registered to vote."

AND

Page 5, delete lines 30 through 34 and substitute the following:
"(b) A voter identification card shall be issued without the payment of a fee or charge to an individual who:

(1) Does not have another valid form of proof of identity; and

(2)(A) Is registered to vote; or

(B) Will be at least eighteen (18) years of age at the next election and has submitted a voter registration application.

(c)(1) The Secretary of State or the county clerk shall not require or accept payment for a voter identification card issued for the sole purpose of voter identification.

(2)(A) A person requesting a voter identification card shall sign an oath that he or she does not possess proof of identity under § 7-1-101(25).

(B) The oath shall include the definition of proof of identity under § 7-1-101(25)."

AND

Page 6, delete lines 24 through 27 and substitute the following:
"(B)(4) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting."

The Amendment was read the first time, rules suspended and read the second time and ________________

By: Senator B. King
JAW/JAW - 02-13-2013 16:56:08
JAW089

Secretary
Hall of the House of Representatives
89th General Assembly - Regular Session, 2013
Amendment Form

Subtitle of Senate Bill No. 2
AN ACT TO REQUIRE THAT A VOTER PROVIDE PROOF OF IDENTITY WHEN VOTING AND TO PROVIDE FOR THE ISSUANCE OF A VOTER IDENTIFICATION CARD.

Amendment No. 1 to Senate Bill No. 2

Amend Senate Bill No. 2 as engrossed, S2/18/13 (version: 02/18/2013 3:02:24 PM)

Page 1, delete lines 29 through 35 and substitute the following:
"(25)(A) "Proof of identity" means:

(i) A voter identification card under § 7-5-322; or
(ii) A document or identification card that:

(a) Shows the name of the person to whom the document was issued;

(b) Shows a photograph of the person to whom the document was issued;

(c) Is issued by the United States, the State of"

AND

Page 2, delete lines 2 through 5 and substitute the following:
"(d) If displaying an expiration date:

(1) Is not expired; or

(2) Expired no more than four (4) years before"

AND

Page 2, delete line 30 and substitute the following:
"document that shows the name and address of the voter unless the voter is:

(i) A member of the uniformed services on active duty who is absent from the county on election day because of active duty;

(ii) A member of the merchant marine who is absent from the county on election day because of his or her service in the merchant marine; or

(iii) The spouse or dependent of a member identified in (d)(1)(B)(i) or (d)(1)(B)(ii) who is absent from the county on election day because of the active duty or service of the member."
The Amendment was read
By: Representative S. Meeks
JAW/JAW - 02-26-2013 18:07:38
JAW126

Chief Clerk
AN ACT TO REQUIRE THAT A VOTER PROVIDE PROOF OF IDENTITY WHEN VOTING AND TO PROVIDE FOR THE ISSUANCE OF A VOTER IDENTIFICATION CARD.

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

SECTION 1. Arkansas Code § 7-1-101, concerning definitions applicable to election law, is amended to add a new subdivision to read as follows:

(25)(A) “Proof of identity” means:

(i) A voter identification card under § 7-5-322; or

(ii) A document or identification card that:

(a) Shows the name of the person to whom the document was issued;
(b) Shows a photograph of the person to whom the document was issued;

(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and

(d) If displaying an expiration date:

(1) Is not expired; or

(2) Expired no more than four (4) years before the date of the election in which the person seeks to vote;

(B) A “proof of identity” that complies with the requirements under (25)(A) of this section may include without limitation:

(i) A driver’s license;

(ii) A photo identification card;

(iii) A concealed handgun carry license;

(iv) A United States passport;

(v) An employee badge or identification document;

(vi) A United States military identification document;

(vii) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;

(viii) A public assistance identification card; and

(ix) A voter identification card under § 7–5–322.

SECTION 2. Arkansas Code § 7–5–201, concerning voter qualification, is amended to add a new subsection to read as follows:
(d)(1) Except as provided in subdivision (d)(2) and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present proof of identity to the election official when appearing to vote in person either early or at the polls on election day; or

(B) When voting by absentee ballot, submit with the ballot a copy of a 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 unless the voter is:

(i) A member of the uniformed services on active duty who is absent from the county on election day because of active duty;

(ii) A member of the merchant marine who is absent from the county on election day because of his or her service in the merchant marine; or

(iii) The spouse or dependent of a member identified in (d)(1)(B)(i) or (d)(1)(B)(ii) who is absent from the county on election day because of the active duty or service of the member.

(2)(A) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(B) A person not required to provide proof of identity under subdivision (d)(2)(A) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

SECTION 3. Arkansas Code § 7–5–201(d), concerning voter qualification, is amended to read as follows:

<< AR ST § 7–5–201 >>

(4)(4) (e)(1) Any person registering to vote by mail and who has not previously voted in a federal election in this state shall:

(A) Present to the election official a 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 when appearing to vote in person either early or at the polls on election day; or

(B) When voting by mail, submit with the ballot a copy of a 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.

(2) The provision of subdivision (d)(1) (e)(1) of this section does not include:

(A) Persons whose applications are transmitted by state or federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff-1 et seq.;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. § 1973ee et seq.;

(D) Persons who are entitled to vote otherwise than in person under any other federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (d)(1) (e)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver’s license number or at least the last four (4) digits of the individual’s social security number and with respect to whom a state or local election official matches the license number or social security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

SECTION 4. Arkansas Code § 7-5-305(a)(8), concerning requests for identification when voting, is amended to read as follows:

<< AR ST § 7-5-305 >>

(8)(A) (i) Request Except as provided in subdivision (a)(8)(A)(ii) and (a)(8)(B)(ii) of this section, request the voter for purposes of identification to provide a 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 proof of identity.

(ii)(a) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(b) A person not required to provide proof of identity under subdivision (a)(8)(A)(ii)(a) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(B)(i) If a voter is unable to provide this identification proof of identity, the poll worker shall:
(a) indicate on the precinct voter registration list that the voter did not provide identification proof of identity; and

(b) Permit the voter to cast a provisional ballot.

(i) When a voter is unable to provide proof of identity, the voter and the election official shall follow the procedure under § 7-5-321.

(ii) (iii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of subdivision (ii)(A) of this section § 7-5-201(e) may cast a provisional ballot.

(iii) (iv) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification proof of identity at the polls to the prosecuting attorney.

(iv) (v) The prosecuting attorney may investigate possible voter fraud;

SECTION 5. Arkansas Code Title 7, Chapter 5, Subchapter 3 is amended to add two new sections to read as follows:

<< AR ST § 7–5–321 >>

7–5–321. Procedure when voter fails to provide proof of identity.

(a) If the voter is listed on the precinct voter registration list but fails to provide proof of identity, the election official shall:

(1) Indicate on the precinct voter registration list that the voter did not provide proof of identity; and

(2) Permit the voter to cast a provisional ballot.

(b)(1) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(2) A person not required to provide proof of identity under subdivision (b)(1) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.
(c) A provisional ballot cast by a voter who did not provide proof of identity shall be counted if:

(1) The voter returns to the county board of election commissioners or the county clerk by 12:00 p.m. on the Monday following the election and:

(A) Provides proof of identity; or

(B) Provides an affidavit stating that the voter cannot provide proof of identity because the voter:

(i) Is indigent; or

(ii) Has a religious objection to being photographed; and

(2) The voter has not been challenged or required to vote a provisional ballot for any other reason.

<<AR ST § 7–5–322>>

7–5–322. Voter identification card.

(a)(1)(A) The Secretary of State shall provide by rule for the issuance of a voter identification card that may be requested by an individual to be used as proof of identity when appearing to vote in person.

(B) The rules shall include, without limitation:

(i) A requirement that the voter identification card include a photograph of the voter;

(ii) Specification of the information to be included on the voter identification card;

(iii) Provisions concerning the expiration of a voter identification card; and

(iv) Provisions for the proof of identity to be provided by the county clerk of the county in which the voter is registered to vote.

(2) Providing for the issuance of a voter identification card under subdivision (a)(1)(A) of this section may include, without limitation the purchase by the Secretary of State of cameras and other equipment necessary to generate a voter identification card in the office of the county clerk.
(b) A voter identification card shall be issued without the payment of a fee or charge to an individual who:

(1) Does not have another valid form of proof of identity; and

(2)(A) Is registered to vote; or

(B) Will be at least eighteen (18) years of age at the next election and has submitted a voter registration application.

(c)(1) The Secretary of State or the county clerk shall not require or accept payment for a voter identification card issued for the sole purpose of voter identification.

(2)(A) A person requesting a voter identification for the sole purpose of voter identification card shall sign an oath that he or she does not possess proof of identity under § 7-1-101(25).

(B) The oath shall include the definition of proof of identity under § 7-1-101(25).

SECTION 6. Arkansas Code § 7-5-418(c) and (d), concerning early voting procedures, is amended to read as follows:

<< AR ST § 7-5-418 >>

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

(2) Request the voter to present proof of identity to the county clerk or election official;

(3) If the voter's name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(4) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form; and

(5) Enter the voter's precinct number on the early voting roster or early voting request form.
(d) (1) If the voter is not listed in the county voter registration record files and the county clerk is unable to verify the voter's registration and if the voter contends that he or she is eligible to vote, then the voter may vote a provisional ballot that shall be counted only upon verification of the voter's registration status.

(2)(A) If the voter fails to provide proof of identity, the election official shall follow the procedure in § 7-5-321.

(B)(i) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(ii) A person not required to provide proof of identity under subdivision (d)(2)(B)(i) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

SECTION 7. NOT TO BE CODIFIED. This act shall become effective upon the later of the following:

(1) January 1, 2014; or

(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.

/s/B. King


AR LEGIS 595 (2013)

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

MINUTES OF JUNE 19, 2013

I. Roll Call

Acting Chairman Barbara McBryde called the meeting to order at 1:00 p.m.

Members Present: Others Present:
Rhonda Cole Justin Clay, SBEC Director
Chad Pekron Karan Skarda, SBEC Deputy Director
Stuart Soffer Tim Humphries, SBEC Legal Counsel
C.S. Walker Bernetta Levy, SBEC Election Coordinator
Barbara McBryde Martha Adcock, Secretary of State, Legal Counsel
J. Harmon Smith Justin Tate, Secretary of State, Elections
Members Absent: Evelyn Gomez, Secretary of State, Legal Department
Carolyln Salsman, Garland County Election Commissioner
Chairman Mark Martin Susan Inman
Bryan Poe, Pulaski County Election Commission
Shana Woodard, Pulaski County, County Clerk’s Office
Andrew DeMillo, Associated Press
Jacob Kauffman, KUAR
Jason Pederson, KATV
Chuck Wilson, KATV
Mike Wickline, AR Democrat-Gazette
Josh Morgan, KARK
Drew Petrimouilx, KARK

II. Approval of the Minutes of March 8, 2013

Commissioner Cole moved to approve the minutes of March 8, 2013. Commissioner Walker seconded the motion. The motion passed unanimously.

III. Rules for Nonpartisan Office Filing Fees

Director Justin Clay reported that proposed changes include:
1) Striking the term “judicial”;

ADD. 255
2) Establishing filing fees for the office of prosecuting attorney;
3) Addressing a legislative change regarding filing fees; and
4) Setting forth requirements for distributing funds into the Trial Court Administrative Assistant Fund.

An additional change to the definition of filing fee to include the office of district judge was recommended by Commissioner Pekron. After discussion, Commissioner Cole moved to approve for public comment the proposed changes to the Rules on Nonpartisan Office Filing Fees. Commissioner Soffer seconded the motion. The motion passed unanimously.

IV. Rules for Poll Worker Training

Director Clay reported that proposed changes include:
   1) Establishing an advanced training program for experienced poll worker trainers;
   2) Addressing a legislative change requiring that all poll workers be trained prior to serving as a poll worker during regularly scheduled elections; and
   3) Changes in language for clarity.

After discussion, Commissioner Soffer moved to approve for public comment the proposed changes to the Rules on Poll Worker Training. Commissioner Pekron seconded the motion. The motion passed unanimously.

V. Rules for Reimbursement of Expenses for State Funded Elections

Director Clay reported that proposed changes include:
   1) Removing the auxiliary funding category;
   2) Striking language providing contingencies in the event state funding is insufficient to cover reimbursable expenses; and
   3) Striking language providing that new funding categories would not be paid if funds are insufficient to cover expenses under current rules.

Commissioner Walker moved to approve for public comment the proposed changes to the Rules on Reimbursement of Expenses for State Funded Elections. Commissioner Pekron seconded the motion. The motion passed unanimously.

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

Tim Humphries, Legal Counsel, reported that proposed changes include:
   1) Adding definitions for identification documents;
   2) Redefining “provisional ballot”;
   3) Setting forth requirements for proof of identity and other identification requirements;
   4) Amending procedures for voting a provisional ballot;
   5) Amending the “At the Poll” notice requirement;
6) Amending the notice sent to voters;
7) Providing procedures for the consideration of provisional ballots cast by voters who failed to present proof of identification at the polls; and
8) Setting forth changes to the provisional ballot forms.

After discussion, Commissioner Cole moved to approve for public comment the proposed changes to the Rules on Poll Watchers, Vote Challenges, and Provisional Voting. Commissioner Smith seconded the motion. The motion passed unanimously.

VII. Rules for Voter Identification

Tim Humphries, Legal Counsel, reported that proposed changes include:
1) Adding definitions for identification documents;
2) Setting forth requirements to show “proof of identity”;
3) Providing procedures for accessing the validity of proof of identity;
4) Setting forth requirements for certain first time voters to provide additional identification documents;
5) Setting forth requirements for voters who do not submit proof of identity or certain first time voters who do not present required additional ID;
6) Setting forth procedures for a voter who failed to present proof of identity at the polls;
7) Setting forth procedures for the county clerk or county board of election commissioners to provide a receipt to a person who presents proof of identity or an affidavit post-election;
8) Requiring the county clerk to provide a copy of the voter’s proof of identity or the original affidavit to the county board of election commissioners;
9) Providing that absentee voters must present a copy of certain forms of ID when casting a ballot and for notice of the ID requirement to be printed on the absentee ballot application and the absentee voter statement; and
10) Setting an effective date for the rules of January 1, 2014.

After discussion, Commissioner Soffer moved to approve for public comment the proposed Rules on Voter Identification. Commissioner Cole seconded the motion. The motion passed unanimously.

VIII. Rules for Appointment of Certified Election Monitors

Tim Humphries, Legal Counsel, reported that proposed changes include:
1) Setting forth requirements for persons requesting that the State Board of Election Commissioners send election monitors to a county;
2) Providing for the Director to determine if the request meets requirements and for the State Board of Election Commissioners to determine whether to send monitors;
3) Setting out qualifications of monitors;
4) Providing that monitors be trained and certified;
5) Setting forth monitors’ duties; and
6) Providing for reimbursement of expenses and compensation.
Commissioner Soffer moved to send a letter to the Chairman of the Democratic and Republican Parties of Arkansas soliciting the names of two potential election monitors from each Congressional District. Commissioners Pekron seconded the motion. The motion passed unanimously.

After discussion, Commissioner Soffer moved to approve for public comment the proposed Rules on Appointment of Certified Election Monitors. Commissioner Cole seconded the motion. The motion passed unanimously.

IX. Director Comments

Director Clay advised that a training session for newly elected Commissioners is scheduled for July 30. He informed that the agency has two vacant positions. The Administrative Analyst position has been posted to the state jobs website and a Hiring Freeze Exemption has been submitted for the position of Educational Services Manager. Director Clay also discussed the Rule Making process and its impact on the schedule for updating publications and training materials.

X. Approval of AASIS Reports for January 2013, February 2013, March 2013, and April 2013

Commissioner Cole moved to approve AASIS Reports for January 2013, February 2013, March 2013, and April 2013. Commissioner Soffer seconded the motion. The motion passed unanimously.

XI. Board Member Comments

No board member comments were forthcoming at this time.

XII. Public Comments

No public comments were forthcoming at this time.

XIII. Confirmation of Next Scheduled Meeting of the Board

The next meeting of the State Board of Election Commissioners was tentatively scheduled for Wednesday, August 21, 2013 at 1:00 p.m.

XIV. Adjournment

The meeting was adjourned at 3:15 p.m.
RULES
ON
POLL WATCHERS,
VOTE CHALLENGES,
AND
PROVISIONAL
VOTING
(Effective April 22, 2006; Revised-September-16, 2011)

STATE BOARD OF ELECTION COMMISSIONERS
501 Woodlane, Suite 401N
Little Rock, Arkansas 72201
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Scope of Rules

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

§ 900 Definitions

(a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners in the courthouse where election clerks for absentee ballots meet on election day for the purpose of processing absentee ballots.

(b) Additional Identification Requirement – documentary identification in addition to proof of identity that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include a copy of a 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.

(c) Administrator - the administrative head of a long-term care or residential care facility licensed by the state.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) Documentation from the Administrator – a letter, memorandum, or notation on facility letterhead, signed by the administrator of the facility and dated no earlier than one day before the date early

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1. A.C.A. §§ 7-5-414(a); 7-5-416(a)(1)
2. A.C.A. § 7-5-201(c) as amended by Act 595 of 2013
3. A.C.A. § 7-1-101
4. A.C.A. § 7-4-102(a), as amended by Act 1056 of 2011

Page 4 of 20
voting begins, that specifically identifies one or more residents of the facility by the full name of each resident and attesting that each person named therein is a resident of the facility. Such documentation of the administrator may be used by any resident named in the document at the polls in lieu of proof of identity a letter on facility letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter and is valid for one year after the date it is signed and issued. The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot. 5

(g)(j) 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 ballots 6 under the supervision of the county board.

(g)(j) Election Official – a person who is a member of the county board of election commissioners or a person who is a poll worker designated by the county board of election commissioners to be an election clerk, election judge, or election sheriff. 7

(h)(k) Eligibility Affirmation – a written affirmation executed 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”). 8

(i)(l) First-time Voter Registered by Mail – any registered voter, except those exempted by Arkansas Code Annotated § 7-5-201 (d)(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. 9 “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.

(j)(n) Polling Site – a location selected by the county board of election commissioners where votes are cast. 10

(k)(n) 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

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5 A.C.A. § 7-5-201 (d)(2) as amended by Act 595 of 2013 and §16.0 of the Arkansas Secretary of State’s Rules on Voter Identification
6 A.C.A. § 7-5-414
7 A.C.A. § 7-1-101
8 A.C.A. § 7-5-308(a)(2)
9 A.C.A. §§ 7-1-101; 7-5-201(d)
10 A.C.A. § 7-1-101
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.\footnote{11}

\[(i)\text{(o)}\] 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”).\footnote{12}

\[(m)(p)\] 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.

\[(n)(q)\] Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.\footnote{13}

\[(o)(r)\] 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.\footnote{14} 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.\footnote{15}

\[(s)\] Proof of Identity:

1. A voter identification card issued by the county clerk pursuant to Act 595 of 2013 OR
2. A document or identification card that meets all of the following conditions:
   (a) Shows the name of the person to whom the document was issued;
   (b) Shows a photograph of the person to whom the document was issued;
   (c) Is issued by the Untitled States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
   (d) If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.

\footnote{11}{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)}
\footnote{12}{A.C.A. § 7-5-312(d)(c)}
\footnote{13}{A.C.A. § 7-1-101}
\footnote{14}{A.C.A. § 7-5-107}
\footnote{15}{A.C.A. § 7-5-110}
(3) Documents or Identification cards that comply with the above requirements for proof of identity may include, without limitation, the following:
(a) A driver's license;
(b) A photo identification card;
(c) A concealed handgun carry license;
(d) A United States passport;
(e) An employee badge or identification document;
(f) A United States Military identification document;
(g) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;
(h) A public assistance identification card; and
(i) A voter identification card as provided under Act 595 of 2013 and rules promulgated by the Secretary of State.16

(p)(t) 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 statutory requirements. Provisional ballots are counted upon verification of a voter’s eligibility or compliance with those statutory requirements, a ballot cast by special procedures to record a vote when there is some question concerning a voter’s eligibility and counted contingent upon the verification of the voter’s eligibility.17

(e)(u) 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, the county clerk’s certification of the provisional voter’s registration status, and 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”.

16 A.C.A. § 7-1-101 as amended by Act 595 of 2013
17 A.C.A. §§ 7-1-101; 7-5-304(c); 7-5-305(a)(8)(B)(ii); 7-5-306(b); 7-5-308; 7-5-312(h); 7-5-412(b); 7-5-416(b)(1)(F)(ii); 7-5-417(a); 7-5-418(d); 7-5-321(c) as provided in Act 595 of 2013
§ 901 Documentary Voter Identification—Proof of Identity

A. Forms

Poll workers must ask all voters 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.  

B. Failure to Provide

B. Failure to Provide

Only first-time voters who registered by mail and did not provide proper identification when registering (see definition of “first-time voter registered by mail”) are required to provide identification when voting.  

If a first-time voter who registered by mail did not provide identification when registering, the voter must provide identification (as indicated on the precinct voter registration list) at the polls when voting or he or she must vote a Provisional ballot.

All first-time voters who registered by mail and did not provide identification when registering are required to provide identification when voting absentee or the ballot cast by mail must be considered Provisional.

For all other voters, 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. Proof of Identity

A person voting at the polls during early voting or on election day who did not present proof of identity, or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide either proof of identity or documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.

B. Additional Identification Requirement

Unless statutorily exempt, a first-time voter voting at the polls during early voting or on election day who registered by mail and who was flagged on the Precinct Voter Registration List for...
compliance with the additional identification requirement for such first-time voters shall be offered a provisional ballot.\textsuperscript{24}

C. Absentee Voters

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.\textsuperscript{25}

\textsuperscript{24} A.C.A. § 7-5-201(c) as amended by act 595 of 2013
\textsuperscript{25} A.C.A. § 7-5-201(c) as amended by act 595 of 2013
§ 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), 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), or
4) Send the voter to his or her correct polling site where the voter may cast a REGULAR ballot (if the county clerk informs the poll worker that the voter is listed as a registered voter at a different precinct in the county), or
5) Allow the voter to cast a PROVISIONAL ballot at the disputed polling site (if the county clerk informs the poll worker that the voter is listed as a registered voter at a different precinct in the county, but the voter insists that he or she is at the correct polling site), or
6) Allow the voter to cast a PROVISIONAL ballot (if the county clerk is unable to verify the voter’s registration, but the voter contends that he or she is both registered in the precinct in which he or she desires to vote and is eligible to vote).

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.

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26 A.C.A. § 7-5-306(a)
27 Amend. 51, §10 of the Arkansas Constitution
28 A.C.A. §§ 7-5-306(b); 7-5-418(d)
29 A.C.A. § 7-5-409(g)
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.\textsuperscript{30}

§ 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.\textsuperscript{31}

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.\textsuperscript{32}

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.\textsuperscript{33} A candidate who is present in person at an early voting location for the purpose of observing may not speak to voters or disrupt the orderly conduct of the election. A candidate who is a public official and who is present in person at an early voting location for the purpose of observing shall not wear on his or her person any uniform, badge, or other apparel or equipment that identifies the candidate as a public official.

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.\textsuperscript{34}

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.\textsuperscript{35}

\textsuperscript{30} A.C.A. §§ 7-5-201(e); 7-5-305(a)(11); 7-5-411(b)

\textsuperscript{31} A.C.A. § 7-5-312(d)

\textsuperscript{32} A.C.A. § 7-5-312(a)(1), (e)

\textsuperscript{33} A.C.A. § 7-5-413(d)

\textsuperscript{34} A.C.A. § 7-5-312(b), (c)

\textsuperscript{35} A.C.A. § 7-5-312(c), (e)
Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.\textsuperscript{36}

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”).\textsuperscript{37}

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.\textsuperscript{38}

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.\textsuperscript{39}

\textbf{§ 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 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.\textsuperscript{40}

\textbf{§ 905 Voting a Provisional Ballot}

Provisional ballots cast at the polls during early voting or on election day 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 challenged.\textsuperscript{41}

2) If as a result of failure to meet an identification requirement, a poll worker must inform the voter of the reason the voter is not allowed to cast a regular ballot, a poll watcher challenge, a poll worker must inform the voter that his or her ballot is being challenged.\textsuperscript{42}

3) The provisional voter must execute a written eligibility affidavit 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.\textsuperscript{43}

\textsuperscript{36} A.C.A. § 7-5-312(f)
\textsuperscript{37} A.C.A. § 7-5-312(e),(g),(h)
\textsuperscript{38} A.C.A. § 7-5-312(g)
\textsuperscript{39} A.C.A. §§ 7-5-414; 7-5-417(a)
\textsuperscript{40} A.C.A. § 7-5-304(c)
\textsuperscript{41} A.C.A. §§ 7-5-308(a)(1), 7-5-312(e),(h)
\textsuperscript{42} A.C.A. § 7-5-308(a)(4); 7-5-312(h)
\textsuperscript{43} A.C.A. § 7-5-308(a)(2)
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.  
5) The provisional voter shall mark his or her ballot.  
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).  
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.  
8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906 (a) written information instructing him or her on how to determine whether his or her vote was counted, and if not, the reason the vote was not counted.  
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").  
10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots 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 completion of the certification portion of the envelope.  
12) Upon completion of the certification portion of the envelope, 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.  

For absentee ballots which are considered as provisional ballots, the absentee ballot clerk shall place the absentee ballot materials in a provisional voter envelope and state the reason for making the absentee ballot provisional on the form provided on the provisional ballot envelope (Attachment "A").

§ 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 written information stating a copy of a notice that includes the following information:
- That the provisional voter may ascertain whether his or her vote was counted and the reason if not counted by accessing a free-access system established by the Secretary of State first class mail.
- That a provisional voter who cast a provisional ballot for failure to present proof of identity may present proof of identity or an affidavit of indigence or religious objection to the county clerk or

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43 A.C.A. § 7-5-308(a)(3)  
44 A.C.A. § 7-5-308(a)(4)  
45 A.C.A. § 7-5-308(a)(5)  
46 A.C.A. § 7-5-308(a)(6)  
47 A.C.A. § 7-5-308(a)(7)  
48 A.C.A. § 7-5-308(a)(8)  
49 A.C.A. § 7-5-308(b)  
50 A.C.A. §§ 7-5-308(d)(1); 7-5-417(e)  
51 A.C.A. § 7-5-308(c)
the county board of election commissioners by noon of the first Monday following the election in order for the provisional ballot to be counted;
- The name, address, telephone number, and regular office hours of the county clerk;
- The dates of any meetings of the county board of election commissioners scheduled before noon of the next Monday following the election;
- An explanation of the provisional voting process; and
- 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 involves written notice mailed first class to the provisional voter by the county board of election commissioners stating that the provisional ballot was or was not counted. If the provisional vote was not counted, the notice shall indicate the reason the vote was not counted. 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.

(c) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.\(^{33}\)

§ 907 Preliminary Review of Provisional Ballots

The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.\(^{34}\)

The county board shall examine the sealed outer “provisional voter envelope” (see Attachment “A”), including the challenged ballot portion, if any, the eligibility affirmation of the provisional voter, and the county clerk’s certification of the provisional voter’s registration status without unsealing the outer “provisional voter envelope” or removing or opening the inner ballot secrecy envelopes marked “PROVISIONAL BALLOT” containing the provisional voter’s voted ballot.

Based upon the examination of the sealed outer “provisional voter envelope” and any additional information available, the county board shall make a preliminary determination of whether the provisional ballot was cast by a registered 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.\(^{35}\)

The county board must complete the disposition portion of the “provisional voter envelope” and notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted.

\(^{33}\) A.C.A. § 7-5-308(c)(3)
\(^{34}\) A.C.A. § 7-5-308(d)(1)
\(^{35}\) A.C.A. § 7-5-308(d)(2)
If the county board makes a preliminary 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.  

When the information on the outer “provisional voter envelope” indicates that the voter cast a provisional ballot for both failure to present proof of identity and another reason, the county board shall first determine whether the voter is eligible to vote in the precinct. If it is determined that the voter who cast a provisional ballot for failure to provide proof of identity and for another reason is eligible to vote, or if the provisional ballot was cast only for the reason that the voter failed to present proof of identity, then the county board shall count the ballot if proof of identity or an affidavit of indigence or religious objection has been provided to the county board or the county clerk by noon of the first Monday following the election.

When reviewing the provisional ballot of a first-time voter who registered by mail and did not provide-meet the additional identification requirement when registering or voting, the county board should not base its preliminary determination of whether not to count the ballot solely on the provisional voter’s failure to provide-meet the additional identification requirement. The provisional ballot should be rejected only if the voter failed to provide proof of identity and there is a determination an-indication, independent of the failure to show-meet the additional identification requirement, that the person who voted is not eligible to vote in the precinct the person who registered. The county board must notify the provisional voter of his or her right to a hearing before a final determination is made.

When reviewing the provisional ballot of any person who was delivered an absentee ballot according to the precinct voter registration list, but then chose to cast a provisional ballot at an early voting or election day polling site, the county board shall:

1) Count the voter’s absentee ballot rather than the provisional ballot cast at the polling site, if the absentee ballot was returned and processed for counting on election day before the time of counting provisional ballots, or

2) Count the voter’s provisional ballot cast at the polling site, if the voter’s absentee ballot was not returned or was not processed for counting on election day by the time of counting provisional ballots.

§ 908 Hearing

Having notified each provisional voter by first class mail of its preliminary determination and of a right to a hearing, the county board shall, as expeditiously as possible by telephone, if necessary to provide sufficient notice, notify the provisional voters whose ballots were preliminarily rejected of the date, time, and place for a hearing to be held before a final determination is made.

These provisional voters shall be allowed to provide identification or other evidence of their registration status to the county board, county board staff, or the county clerk at any time prior to the scheduled hearing.

56 Dotson v. Richey, 211 Ark. 789 (1947)
These provisional voters must be allowed to appear before the county board to contest the county board's preliminary decision to disqualify their vote ballots and allowed to present evidence that they were registered to vote and voted the correct ballot for the precinct of their residence or, if applicable, that they presented proof of identity during early voting, on election day or by noon of the first Monday after the election.

If these provisional voters do not appear for a hearing or otherwise provide satisfactory evidence of their registration status or proof of identity, then the ballot shall not be counted.

The commission then completes the election commission's portion of the list of provisional voters form (see Attachment "B"), and all records are preserved in accordance with the laws governing preservation of ballots and election materials.

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

§ 909 Counting Provisional Ballots

Unless enjoined by a court of competent jurisdiction, a provisional ballot shall be counted if:

1) It is cast by a registered voter and is the correct ballot for the precinct of the voter's residence according to the precinct listed on the voter's eligibility affirmation;

2) It is cast by a registered voter who failed to present proof of identity at a polling place during early voting or on election day but who presents proof of identity or an affidavit of indigence or religious objection to having his or her photograph made to the county clerk or the county board no later than the first Monday following the election; or

3) It is an absentee ballot and the county board determines that the voter is eligible to vote in the precinct. 57

In counting provisional ballots, the county board must ensure the secrecy of the ballot pursuant to Amendment 81 of the Arkansas Constitution.

Provisional ballots are counted as follows:

1) the commission completes the election commission's portion of the list of provisional voters form (see Attachment "B"),

2) an election official opens the outer "provisional voter envelope" (see Attachment "A") for those on the list marked to be counted (see Attachment "B"),

3) the election official removes the sealed inner ballot secrecy envelope marked "PROVISIONAL BALLOT" containing the provisional voter's voted ballot,

4) the election official places the sealed inner ballot secrecy envelope marked "PROVISIONAL BALLOT" containing the provisional voter's voted ballot in a ballot box provided for that purpose,

5) when all the outer "provisional voter envelopes" have been opened and all the sealed inner ballot secrecy envelopes placed in the ballot box, the election official shakes the ballot box thoroughly to mix the sealed envelopes containing the provisional ballots,

6) the ballot box is then opened, the secrecy envelopes containing the voted provisional ballot opened, and the provisional ballots canvassed and counted,

57 A.C.A. § 7-5-308(d)(2); 7-5-312(c) as provided in Act 595 of 2013
7) all records are preserved in accordance with the laws governing preservation of ballots and election materials.

§ 910 Prosecuting Attorney

Following each election, the county board of election commissioners may review the precinct voter registration lists for voters not providing identification at the polls and forward the information to the prosecuting attorney for investigation of possible voter fraud.58

If, upon examination of any provisional ballot, the county board suspects that a violation of election laws has occurred, the county board may refer the matter to the prosecuting attorney for that county.53

§ 911 Preliminary and Unofficial Results

The processing and counting of provisional ballots, including hearings, shall not delay the declaration of preliminary and unofficial results required by Arkansas Code Annotated § 7-5-701. When reporting preliminary and unofficial results, the county board of election commissioners should also report the number of uncounted provisional ballots pending review and the number of outstanding overseas absentee ballots.

§ 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.

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58 A.C.A. § 7-5-305(a)(8)(B)(iii), (iv)
53 A.C.A. § 7-5-308(e)
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)

Voter's Name: __________ Prior Name: __________
Current Street Address: __________ Prior Street Address: __________
City, State, Zip: __________ Prior City, State, Zip: __________
Phone Number(s): __________
Date of Birth: __________ Provided Identification: Yes [ ] No [ ]

[ ] hereby affirm 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 or, if applicable, presentation of proof of identity or an affidavit of indigence or religious objection. My signature on this form is my request for notification as to whether or not my vote was counted. I understand that the County Board of Election Commissioners will notify me by first-class mail.

Witnessed by: __________

Signature of Provisional Voter

Reason for Voting Provisional
(To be completed by a poll worker)

[ ] Poll Watcher Challenge
[ ] No Proof of Identity Provided
[ ] Not on Precinct Voter Registration List
[ ] First-time Voter Flagged to Show Additional ID (No-ID/No Additional ID Provided)
[ ] Previously Sent Absentee Ballot
[ ] Court-ordered Voting Extension
[ ] Other

ADD. 276

Ballot Style
(To be completed by a poll worker)

Ballot Style ____ given to the provisional voter based upon the voter’s affirmation of eligibility for this jurisdiction.

Signature of Poll Worker

ADD. 276
**CERTIFICATION**
(To be completed by the County Clerk's Office)

County: __________________________

<table>
<thead>
<tr>
<th>Match</th>
<th>No Match</th>
<th>Name: __________________________</th>
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<tr>
<td></td>
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<td>Prior Name: ____________________</td>
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<td>Current Address: _______________</td>
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<td>Prior Address: ________________</td>
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<td>Date of Birth: _________________</td>
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I, __________________________, hereby certify that a data search was performed 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 ________ (Name of County) ________ (Precinct Number).

Signature of County Clerk or Deputy

I, __________________________, hereby certify that a data search was performed 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)

<table>
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Provisional Ballot Counted, if not, Reason Not Counted: __________________________

Provisional Voter Notified by First Class Mail Date: ________________

County Election Commissioner County Election Commissioner County Election Commissioner
(At least one Election Commissioner must sign.)
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: ____________________________
Precinct #(s): ________________________

<table>
<thead>
<tr>
<th>No.</th>
<th>Voter's Name</th>
<th>Voter's Address</th>
<th>Precinct Number</th>
<th>Vote counted</th>
<th>If not counted, reason</th>
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Commissioner Signature

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ADD. 278
POLL WATCHER AUTHORIZATION FORM

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, 7-5-413, 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, 7-5-413, 7-5-416, 7-5-527, and 7-5-615.

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

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ADD. 279
POLL WATCHER RIGHTS AND RESPONSIBILITIES

A poll watcher may be:

1. A candidate in person, but only during the counting and tabulation of ballots and the processing of
   absentee ballots;
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.
Comments & Responses:
Rules on Poll Watchers, Vote Challenges, and Provisional Voting

1. Comment (Watson, Brown Garland Co. CBEC at public hearing) §900(a) Expressed concern about the definition of the site for absentee ballot processing stating that the processing will occur at the courthouse when, in fact, many counties process at other locations.

Staff response: The definition in the rule is the same as in the code; legislation would be required to make this change.

2. Comment (Washington Co. CBEC) §900(b), the definition related to the additional identification requirement for flagged first-time voters, add “proof of insurance” as an acceptable form of ID if it meets certain conditions.

Staff response: The types of documents allowed in the definition are the same as set out in Act 595, and they would not include proof of insurance; legislation would be required to make this change.

3. Comment (RPA) §900(g), the definition of “Documentation from the administrator”, the commenter suggests that it is inconsistent with SOS rules on the issuance by the county clerk of voter ID cards, and that it is beyond the scope of “7-5-201(g)” [I couldn’t find 7-5-201(g)]. The reference is probably to 7-5-201(d) TH).

Staff response: Staff recommends adoption of the SOS rule regarding administrator documentation, assuming the SOS rule is approved by BLR and the legislative committee. The SOS has submitted its rules for legislative review, which is scheduled to occur on August 20.

Act 595, section 5, A.C.A. §7-5-322(a)(1) provides the SOS with the authority to make rules regarding the issuance of Voter ID cards by the county clerk. The latest version of the SOS Rules on Voter Identification deals with administrator documentation in Rule 16, as follows:

16.01 A resident of a long-term or residential care facility licensed by the State of Arkansas is not required to provide Proof of Identity before voting. In lieu of the Proof of Identity, a resident is required to provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

16.02 A letter on letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter is sufficient to meet the documentation requirement. The letter is valid for one year after the date it is signed and issued.

16.03 The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.

The current differences between the SBEC proposed rule and SOS’s version include the following:
The SBEC rule requires a "letter memorandum or notation" instead of just a "letter" under the SOS rule;
- The SBEC proposal requires the letter be executed no earlier than a day before early voting begins (to avoid the possible consequences of stale documentation) whereas the SOS rule allows the letter to be in effect for a year. The longer effective duration would aid voters and is consistent with recommendations of the AARP.
- The SBEC rule allows the letter to contain the names of multiple voters (for the convenience of the administrator and because of the short duration of the effectiveness of the letter) while the SOS rule requires that only one name appear on the letter. SBEC adoption of the SOS rule is also consistent with the recommendations of the AARP.
- The SBEC rule does not address how the documentation may be used by the voter, whereas the SOS rule states that it may be used either at the polls or for absentee voting. Staff is unclear as to whether or not this is specifically allowed in Act 595, but believes, along with SOS, that voters should receive the benefit of any doubt on issues concerning voter ID.

4. Comment (Watson, Brown Garland Co. CBEC at public hearing) §900(r) Expressed concern that all forms of POI listed in the definition should include a reference to a photo, and that not all concealed carry permits have a photo – wants to prevent arguments at the polls.

**Staff response:** Act 595 and the proposed rule clearly require POI to contain both a photo and the name of the voter.

5. Comment (Washington Co. CBEC) §905, last sentence, requiring absentee clerks to put each absentee ballot considered as provisional into a provisional ballot envelope with the reason for rejection being listed on the envelope. This requirement would make an already long day longer, commenter asserts. Washington Co. currently keeps the ballots separated from other ballots with a tally sheet for the reason the ballots were not counted.

**Staff response:** As long as absentee ballot clerks are able to associate the reasons for rejection with each individual rejected ballot, there may be no need to require the use of the additional provisional envelopes.

6. Comment (Watson, Brown Garland Co. CBEC at public hearing) §906 Expressed concern about the amount of information to be included on the slip of paper to be handed to provisional voters as a result of the rule requiring additional information on the notice provided the voter at the polls.

**Staff response:** Staff will consider this observation when developing sample notice forms.

7. Comment (Watson, Garland Co. CBEC) §906(a) next to last sentence. P. 14 Notice to Provisional Voters – requirement of rule that the notice to provisional voters explain the provisional voting process should be struck because such an explanation “will be lengthy and only serves to confuse the” voters.
Staff response: Staff has received numerous reports that many voters do not understand what they are being asked to do when they cast a provisional ballot. Staff believes a brief explanation of the process will clarify rather than cause confusion. Staff will consider this observation when developing sample notice forms.

8. Comment (Soffer) § 906(a) line 4 change to read words to the effect, "That the provisional voter will be notified if his or her vote was not counted and the reason why by first class mail. If a provisional voter DOES NOT receive a notice, their vote was counted."

Staff response: The proposed rule as currently written is required to comply with state and federal requirements that the voter be notified whether the provisional ballot was counted.

9. Comment (Washington Co. CBEC) §906, notice to voters at the polls – this notice should not contain the name of the clerk, because the clerk can change and any pre-printed forms could not be used if that happens. Washington County is planning to have tear-off sheets printed, so a more generic form is better.

Staff response: Staff recommends removing the requirement to list the name of the clerk.

10. Comment (Washington Co. CBEC) §906, notice to voters at the polls – the date time and address of the hearing should not be included on the notice at the polls because this information may not be known on election day and would require new forms to be printed every election.

Staff response: Staff believes that with proper planning cbec’s will be able to meet this requirement. The purpose of the proposed rule is to provide for voters to receive notice without reliance on the mail.

11. Comment (Watson, Brown Garland Co. CBEC at public hearing) §907 Expressed concern about holding POI provisional until Monday; provisional ballots are usually counted soon after the election.

Staff response: This is required by Act 595.

12. Comment (Soffer) Attachment “A” Provisional envelope voter statement above the signature line be removed and information incorporated into the voter notice addressed in § 906. If HAVA precludes this, then insert a block requiring the voter to initial to request being notified in both accounts. The way this statement is currently worded leaves a voter no option to opt-out of being notified because they are required to sign the envelope regardless of their preference thereby triggering notification by mail. Notification by mail for disallowed provisional ballots and affording the voter a hearing opportunity is already a mandatory action covered elsewhere.

Staff response: These changes were incorporated into the proposed rules approved by the board at its June 19, 2013 meeting.
13. Comment (Watson, Garland Co. CBEC) Attachment “B” List of Provisional Voters, commenter asks that the form include precincts as a separate column. Garland County apparently has numerous precincts vote in each polling site and it would be clearer to list the precinct with each voter’s name than at the top of the page.

Staff response: Garland is the only county making this suggestion, though a revision in the form might be helpful to other counties as well. Perhaps this form should be removed from these rules and included with training materials as a suggested form that can be modified by the county as needed. Note that Staff does not view the form as it appears in these rules to be mandatory, but it could be seen as such.

Changes proposed by Staff

§900 add the definition of “Administrator” to wit:

Administrator - means the administrative head of a long-term care or residential care facility licensed by the state.

§901 The heading of subsection B. Failure to Provide was inadvertently struck. That heading should be “un-struck” and the subsections renumbered. The purpose of Section 901 is to deal with ballots made provisional for failure to provide ID.

§901, under B. Additional Identification Requirement, strike “Unless statutorily exempt” because it is redundant (these first-time voters are not flagged if they are statutorily exempt and this section refers to flagged voters)
MINUTES OF AUGUST 21, 2013

I. Roll Call

Acting Chairman A.J. Kelly called the meeting to order at 1:00 p.m.

Members Present: Others Present:
Rhonda Cole Justin Clay, SBEC Director
Chad Pekron Karan Skarda, SBEC Deputy Director
Stuart Soffer Tim Humphries, SBEC Legal Counsel
C.S. Walker Bernetta Levy, SBEC Election Coordinator
Barbara McBryde Debra Wehagen, SBEC Administrative Analyst
J. Harmon Smith Martha Adcock, Secretary of State, Legal Counsel

Members Absent:
Chairman Mark Martin Rob Hammons, Secretary of State, Director of Elections

Alex Reed, Secretary of State, Press Secretary
Susan Inman
Bryan Poe, Pulaski County Election Commission
Shawn Camp, Pulaski County Election Commission
Jacob Kauffman, KUAR
David Goins, KARK
Andrew DeMillo, Associated Press
Ruth Bell, League of Women Voters
Tricia Weidling, League of Women Voters
Jamie Collins
Margaret Eckart
Belinda Harris Ritter, Ritter Law Firm
Warren Readnour, Office of Attorney General

II. Approval of the Minutes of June 19, 2013

Commissioner McBryde moved to approve the minutes of June 19, 2013. Commissioner Pekron seconded the motion. The motion passed unanimously.

III. Rules for Nonpartisan Office Filing Fees
Director Clay reported that no public comments were received and no changes were recommended by staff on the Rules for Nonpartisan Office Filing Fees.

Commissioner Walker moved to approve the Rules for Nonpartisan Office Filing Fees as submitted by staff. Commissioner Pekron seconded the motion. The motion passed unanimously.

IV. Rules for Poll Worker Training

Clay reported that four public comments were received on the Rules for Poll Worker Training. Clay presented a summary of the public comments received, staff’s responses to comments, and staff’s proposed changes.

A public comment was heard from Martha Adcock, Secretary of State, Legal Counsel.

Commissioner Walker moved to approve the Rules for Poll Worker Training as submitted by staff and as amended in that meeting. Commissioner Cole seconded the motion. The motion passed unanimously.

V. Rules for Reimbursement of Expenses for State Funded Elections

Clay reported that one public comment was received on the Rules for Reimbursement of Expenses for State Funded Elections. Clay presented a summary of the public comment received, staff’s response to comment, and staff’s proposed changes as a result of the comment.

Commissioner Pekron moved to approve the Rules for Reimbursement of Expenses for State Funded Elections as submitted by staff and as amended in that meeting. Commissioner Smith seconded the motion. The motion passed unanimously.

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

Clay reported that thirteen public comments were received on the Rules on Poll Watchers, Vote Challenges, and Provisional Voting. Clay presented a summary of the public comments received, staff’s responses to comments, and staff’s proposed changes as a result of the comments.

Public comments were heard from Belinda Harris Ritter, Ritter Law Firm, and Martha Adcock, Secretary of State, Legal Counsel.

Commissioner Soffer moved to remove the language concerning absentee ballots being placed in provisional envelopes referenced in Comment #5 on the summary of comments and responses to the Rules on Poll Watchers, Vote Challenges, and Provisional Voting. After clarification and further discussion, Commissioner Soffer withdrew the motion.
Commissioner Soffer then moved to retain language highlighted in yellow and crossed out in red and to change the words “are considered as” to “become a” at the end of Section 905 in the proposed Rules on Poll Watchers, Vote Challenges, and Provisional Voting. Commissioner Smith seconded the motion. The motion passed unanimously.

Commissioner Pekron moved to approve the Rules on Poll Watchers, Vote Challenges, and Provisional Voting as submitted by staff and as amended in that meeting. Commissioner Walker seconded the motion. The motion passed unanimously.

VII. Rules for Appointment of Certified Election Monitors

At the request of the acting Chairman and without objection, the agenda was changed to hear Item VIII. Rules for Appointment of Certified Election Monitors before taking up agenda item VII. Rules for Voter Identification.

Clay reported that three public comments were received but staff recommended no changes on the Rules for Appointment of Certified Election Monitors based on these comments.

Commissioner McBryde moved to approve the Rules for Appointment of Certified Election Monitors as submitted by staff. Commissioner Walker seconded the motion. The motion passed unanimously.

VIII. Comments Not germane to Proposed Rules

At the request of the acting Chairman and without objection, comments not germane to proposed rules were added to the agenda and taken up before agenda item VII. Rules for Voter Identification.

Clay advised that six public comments, not germane to the proposed rules, were received. Staff recommended no changes to any rules based on these comments.

IX. Rules for Voter Identification

Clay reported that twenty-five public comments were received on the Rules for Voter Identification. Clay presented a summary of the public comments received, staff’s responses to comments, and staff’s proposed changes as a result of the comments.

Commissioner Soffer moved to strike Item 802-7 in the proposed Rules for Voter Identification on the basis the State Board does not have statutory authority to make a rule on this issue. Commissioner Pekron seconded the motion. The motion was passed with the acting chairman voting in favor of the motion.
Public Comment was heard by Susan Inman, Belinda Harris Ritter, Ritter Law Firm, and Martha Adcock, Secretary of State, Legal Counsel.

After much discussion, Commissioner Soffer moved to strike the language in the last two paragraphs in Section 810 on page 8 of 8 from the proposed rule and to send a letter to the Secretary of State expressing concern and asking the Secretary of State to consider issuing a standard form to be made available to the County Clerks to send as an addendum with the applications for absentee ballots. Commissioner McBryde seconded the motion. The motion passed unanimously.

Commissioner Soffer then moved to approve the Rules for Voter Identification as submitted by staff except for the changes adopted by motion. Commissioner Walker seconded the motion. The motion passed unanimously.

X. Director Comments

Clay discussed the next steps in the process of the adoption of rules and also discussed moving forward with the preparation of a partial Running for Public Office Handbook.

XI. Approval of AASIS Reports for May 2013, June 2013 and July 2013

Commissioner Cole moved to include AASIS reports for July 2013 following a request by Commissioner Pekron to amend the agenda to include July’s reports. Commissioner McBryde seconded the motion. The motion passed unanimously.

Commissioner Soffer moved to receive AASIS reports electronically instead of receiving a hard copy. Commissioner Pekron seconded the motion. Commissioner Walker advised that a hard copy remains his preference. The motion passed unanimously.

Commissioner Pekron moved to approve AASIS Reports for May 2013, June 2013, and July 2013. Commissioner McBryde seconded the motion. The motion passed unanimously.

XII. Board Member Comments

Commissioner Soffer commended staff for work on rules; raised a question to Secretary of State staff regarding font size on poll books and was informed that Secretary of State staff will follow-up on the issue; and reminded Board members of the upcoming ACECA continuing education training.

XIII. Public Comments

No further public comments were forthcoming.
XIV. Confirmation of Next Scheduled Meeting of the Board

The next meeting of the State Board of Election Commissioners was tentatively scheduled for Wednesday, September 25, 2013, at 1:00 p.m.

XV. Adjournment

Commissioner Pekron moved to adjourn. Commissioner Walker seconded the motion. The motion passed unanimously. The meeting was adjourned at 2:38 p.m.

Signed by: __________________________
Mark Martin, Chairman

Date Approved: October 23, 2013
PROPOSED RULES FOR VOTER IDENTIFICATION

State Board of Election Commissioners
501 Woodlane, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec

ATTACHMENT J
ADD. 290
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Scope of Rules

These rules will set forth the procedures for processing and administering voter identification requirements. These rules are in addition to and not a substitute for the laws of the State of Arkansas and rules promulgated by the Secretary of State.

§800 Definitions

(a) Additional Identification Requirement – documentary identification in addition to proof of identity that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include 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.¹

(a)(b) Administrator - the administrative head of a long-term care or residential care facility licensed by the state.

(b)(c) Proof of Identity:

(1) A voter identification card issued by the county clerk pursuant to Act 595 of 2013; OR
(2) A document or identification card that meets all of the following conditions:
   (a) Shows the name of the person to whom the document was issued;
   (b) Shows a photograph of the person to whom the document was issued;
   (c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
   (d) If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.

(3) Documents or Identification cards that comply with the above requirements for proof of identity may include, without limitation, the following:
   (a) A driver’s license;
   (b) A photo identification card;
   (c) A concealed handgun carry license;
   (d) A United States passport;
   (e) An employee badge or identification document;
   (f) A United States Military identification document;
   (g) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;
   (h) A public assistance identification card; and

¹ A.C.A. § 7-5-201(e) as amended by Act 595 of 2013
(i) A voter identification card as provided under Act 595 of 2013 and rules propounded by the Secretary of State.2

(c) Documentation from the Administrator—a letter, memorandum or notation on facility letterhead, signed by the administrator of the facility and dated no earlier than one day before the date early voting begins, that specifically identifies one or more residents of the facility by the full name of each resident and attesting that each person named therein is a resident of the facility. Such documentation of the administrator may be used by any resident named in the document at the polls in lieu of proof of identity; a letter on facility letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter and is valid for one year after the date it is signed and issued. The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.3 4

§ 801 Proof of Identity Required When Voting at the Polls

All voters except those who reside in a long-term care or residential care facility licensed by the state must present “proof of identity” to cast a regular ballot at the polls during early voting and on election day.

A person who resides in a long-term care or residential care facility licensed by the state may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility in lieu of the requirement to present proof of identity before voting.5

§ 802 Poll Worker Assessment of Validity of Proof of Identity

The proof of identity shall be used only to verify the name and appearance of the voter, except that when a voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013, the card shall also be used to verify the voter’s identification number. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter’s address in the list to the address stated by the voter.

The poll worker to whom proof of identity is presented shall:

1. Verify that the name on the proof of identity is consistent with the name in the Precinct Voter registration list, allowing for abbreviations and nicknames;
2. If the voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013 and rules propounded by the Secretary of State, verify that the registrant...

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2 A.C.A. § 7-1-101 as amended by Act 595 of 2013
3 A.C.A. § 7-5-201(d)(2) as amended by Act 595 of 2013 and §16.0 of the Arkansas Secretary of State’s Rules on Voter Identification
4 A.C.A. § 7-5-201(d) as amended by Act 595 of 2013
5 A.C.A. § 7-5-201(d) as amended by Act 595 of 2013
identification number on the card is the same as the registrant identification number on the Precinct Voter Registration List.

(3) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics;

(4) If the poll worker is satisfied that the voter is the person depicted in the photograph and the name is consistent with the name in the Precinct Voter Registration List, then issue the voter a regular ballot;

(5) If the voter’s name is different from the name in the Precinct Voter Registration List or the name as stated by the voter but the poll worker is satisfied that the voter is the person depicted in the photograph, issue the person a regular ballot if after the voter completes a voter registration application form for the purpose of updating the voter’s information;

(6) If the poll worker determines that the proof of identity does not depict the voter, then the poll worker shall offer the voter a provisional ballot; and

(7) If there is a dispute regarding the voter’s identity, the election judge shall decide whether a regular ballot or provisional ballot shall be issued to the voter.6

§ 803 Additional Identification Requirement for Certain First-Time Voters

Certain first-time voters who register by mail and who, when registering to vote do not provide statutorily required identification documentation, will be flagged on the Precinct Voter Registration List for possible additional identification documentation when voting at the polls during early voting or on election day or by absentee ballot. These first-time voters, like all other voters, are required to present proof of identity in order to vote at the polls during early voting or on election day. A flagged voter who presents a valid proof of identity that is also current (not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid proof of identity that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter must also must also show a 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.7

§ 804 Failure to Present Proof of Identity or Other Required Documentation at the Polls

A person voting at the polls during early voting or on election day who did not present proof of identity, or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide either proof of identity or documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.8

6 A.C.A. §§ 7-5-305(a)(8); 7-5-321 as amended by Act 595 of 2013
7 A.C.A. § 7-5-201(e) as amended by Act 595 of 2013
8 A.C.A. § 7-5-321 as amended by Act 595 of 2013
A first-time voter who registered by mail who did not present the additional identification, if required under §803, shall be offered a provisional ballot.⁹

§ 805 Postelection Submission of Proof of Identity or Affidavit of Indigence or Religious Objection

A provisional ballot cast because a voter failed to present proof of identity when voting at the polls during early voting or on election day shall be counted and included in the certified results of the election if:

(1) The voter’s ballot is not successfully challenged for any other reason; and
(2) The voter provides to either the county clerk or the county board of election commissioners by noon on the Monday following the election either the voter’s proof of identity or an affidavit that the voter cannot provide proof of identity because of indigence or a religious objection to being photographed.

The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county board by presenting the proof of identity or the affidavit at any meeting of the county board held before noon on the Monday following the election.

The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county clerk by presenting the proof of identity or the affidavit to the county clerk before noon on the Monday following the election.

The voter shall present the proof of identity or deliver the affidavit of indigence or religious objection in person.¹⁰

§ 806 Assessment of Validity of Proof of Identity Submitted Postelection

The county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

The county clerk or the county board receiving a proof of identity shall make a photocopy of the proof of identity and retain the copy with the voter’s provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

(1) The name of the county clerk, or each county board member present at the meeting where the proof of identity was presented;
(2) The name of the voter who presented the proof of identity;

⁹ A.C.A. § 7-5-305(a)(8)(B)(iii)
¹⁰ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013

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3. The date and time the proof of identity was presented to the clerk or county board;

4. If it is determined that the photograph on the proof of identity depicts the voter, then a declaration of that finding;

5. If it is determined that the photograph on the proof of identity does not depict the voter, then a declaration of that finding including the reason for that finding; and

6. Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt. ¹¹

§ 807 Postelection Submission of Affidavit of Indigence or Religious Objection

The county clerk or county board receiving an affidavit of indigence or religious objection shall make a photocopy of the affidavit, provide the copy to the voter and retain the original affidavit with the voter’s provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

1. The name of the county clerk, or each county board member present at the meeting where the affidavit was delivered;

2. The name of the voter who delivered the affidavit;

3. The date and time the affidavit was delivered to the clerk or county board; and

4. Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt. ¹²

§ 808 County Clerk to Provide Voter’s Proof of Identity or Affidavit to Election Commission

The county clerk who receives proof of identity or an affidavit of indigence or religious objection shall provide the copy of the voter’s proof of identity or the original affidavit and a copy of the voter’s receipt to the county board. ¹³

§ 809 Vote Counted When Proof of Identity or Affidavit Properly Submitted

The county board shall count the vote and include it in the certified returns upon receipt of a copy of a voter’s valid and timely delivered proof of identity or affidavit of indigence or religious objection. ¹⁴

¹¹ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
¹² A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
¹³ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
¹⁴ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013
§810 Identification Required When Voting Absentee

In order for an absentee ballot to be counted, the absentee voter must submit with the 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.\(^{15}\)

Military and merchant marine voters and their spouses and dependents who are away from the county because of the active duty status of a military or merchant marine member are exempt from the identification requirement for absentee ballots.\(^{16}\)

A resident of a long-term or residential care facility licensed by the State of Arkansas is not required to provide Proof of Identity before voting. In lieu of the Proof of Identity, a resident is required to provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.\(^{17}\)

The Secretary of State shall include on the prescribed absentee ballot application form under A.C.A. §7-5-405 an absentee ballot application form shall include instructions regarding the absentee voter identification requirement, including the type of identification required and the exceptions to the requirement, and a statement that the voter's absentee ballot will not be counted if a copy of a proper voter identification document is not included when the voter returns the absentee ballot.\(^{18}\)

The voter statement under A.C.A. §7-5-409 shall include instructions regarding the absentee voter identification requirement, including the type of identification required and the exceptions to the requirement, and a statement that the voter's absentee ballot will not be counted if a copy of a proper voter identification document is not included when the voter returns the absentee ballot.\(^{19}\)

§811 Effective Date

These Rules are effective beginning January 1, 2014.\(^{20}\)

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\(^{15}\) A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013
\(^{16}\) A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013
\(^{17}\) Arkansas Secretary of State's Rules on Voter Identification §16.0
\(^{18}\) A.C.A. § 7-5-405(a)
\(^{19}\) A.C.A. § 7-5-409(b)(4)
\(^{20}\) A.C.A. § Act 595 of 2013, Section 7
Comments & Responses:
Rules on Voter Identification

1. Comment (AARP): Overall, commenter is concerned that the proposed rules will create more voter and poll worker confusion and delays and that the rules don’t address how voters and poll workers will learn about new ID requirements.

Staff response: The board will be asked to approve poll worker training materials at a later date.

2. Comment (AARP): §800(c) regarding the requirement that the documentation from the administrator (an exception to the POI requirement for long-term care resident voters) be issued no earlier than 1 day before the start of early voting. The commenter asks for a “much more flexible regime for issuance of [administrator] documentation ... perhaps as much as a week to ten days in advance.”

Staff response: Staff recommends, following a recommendation by the Secretary of State, that the documentation from the administrator be good for one year.

3. Comment (AARP): §800(c) also regarding the administrator documentation, commenter suggests a rule requiring all facility operators to produce and timely provide the documentation that may be used at the polls in lieu of POI and requiring state licensing authorities to notify operators of these duties at least 2 months before early voting starts.

Staff response: Staff believes that regulation of administrators and long term care facilities lies with the Office of Long-term Care (DHS), and the board may not have the authority to pass such a rule pursuant to Act 595 per A.C.A. §7-4-101(f)(5).

4. Comment (AARP): §800 definitions commenter suggests adding a broad definition of “public assistance” to clarify that the “public assistance identification card” (an acceptable form of POI) encompasses “any cash or non-cash ...assistance provided to individuals by a federal or state entity or by an agent for such entity...”

Staff Response: Act 595 states that acceptable POI must be issued by the United States, the State of Arkansas or an accredited post-secondary educational institution in the State of Arkansas. Act 595 does not provide for ID issued by a private entity that could be construed to be an “agent” of a governmental entity to be acceptable POI.

5. Comment (unidentified poll worker): §800 Definitions, requested that rules state that concealed carry permits are acceptable ID at polls

Staff Response: The proposed rule (and Act 595) already provide for a concealed carry permit issued by the state and bearing a photo of the voter to be proper POI.

6. Comment (Sofer): §800 Definitions in (b): Proof of Identity, (1) and (3)(i) are duplicates and (i) should be deleted.
Staff Response: The rule as currently written reflects the language in Act 595, and does reference voter ID's issued by the county clerk twice. Adopting the proposed change would probably have no effect. However, staff is slightly concerned about unintended and unforeseen consequences that may result from varying from the text of the statute in this case.

7. Comment (Soffer): §800(b)(1) add a semi-colon after 2013. (Note that this change will be made to (c)(1) if the recommendation to add the definition of administrator is adopted, JC)

Staff Response: Staff recommends adoption of Commissioner Soffer's suggestion.

8. Comment (Soffer): §800(b)(2)(c) has "the Untitled (sic) States rather than the federal government. That is the language in Act 595. (Note that this change will be made to (c)(2) if the recommendation to add the definition of administrator is adopted, JC)

Staff Response: Staff recommends fixing the typographical error referenced in Commissioner Soffer's comment.

9. Comment (Soffer): §800(b)(2)(c) Insert the caveat (federal government) after "States." (Note that this change will be made to (c)(2) if the recommendation to add the definition of administrator is adopted, JC)

Staff Response: The rule as currently written reflects the language in Act 595. Adopting the proposed change would probably have no effect. However, staff is slightly concerned about unintended and unforeseen consequences that may result from varying from the text of the statute in this case.

10. Comment (Soffer): § 800, Definitions, insert "all of" in the first line between "the" and "above" and "(i.e. (2) (a), (b), (c) and (d))" after above so the sentence reads, so it reads "all of the above (i.e. (2) (a), (b), (c) and (d))"

Staff Response: The rule as currently written reflects the language in Act 595. Adopting the proposed change would probably have no effect. However, staff is slightly concerned about unintended and unforeseen consequences that may result from varying from the text of the statute in this case. If adopted, staff recommends amending the language to (c)(3) as follows "Documents or Identification cards that comply with all of the requirements of (c)(2) for proof of identity may include, without limitation, the following:"

11. Comment (Watson Garland Co. CBEC): §800 Definitions, commenter wants each type of allowable POI listed in the definition to individually state "with current name" and "with photograph" to assure that voters understand the requirement that acceptable POI must have the voter's name and photograph on it.

Staff Response: Act 595 and the proposed rule clearly require POI to contain both a photo and the name of the voter.
12. **Comment (RPA, SOS):** §800(c), definition of “documentation from the Administrator” is inconsistent with SOS rules on the issuance of voter ID cards by the clerks.

*Staff Response:* Staff recommends adoption of the SOS rule regarding administrator documentation, assuming the SOS rule is approved by BLR and the legislative committee. The SOS has submitted its rules for legislative review, which is scheduled to occur on August 20.

Act 595, section 5, A.C.A. §7-5-322(a)(1) provides the SOS with the authority to make rules regarding the issuance of Voter ID cards by the county clerk. The latest version of the SOS Rules on Voter Identification deals with administrator documentation in Rule 16, as follows:

16.01 A resident of a long-term or residential care facility licensed by the State of Arkansas is not required to provide Proof of Identity before voting. In lieu of the Proof of Identity, a resident is required to provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

16.02 A letter on letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter is sufficient to meet the documentation requirement. The letter is valid for one year after the date it is signed and issued.

16.03 The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.

The current differences between the SBEC proposed rule and SOS’s version include the following:

- The SBEC rule requires a “letter memorandum or notation” instead of just a “letter” under the SOS rule;
- The SBEC proposal requires the letter be executed no earlier than a day before early voting begins (to avoid the possible consequences of stale documentation) whereas the SOS rule allows the letter to be in effect for a year. The longer effective duration would aid voters and is consistent with recommendations of the AARP.
- The SBEC rule allows the letter to contain the names of multiple voters (for the convenience of the administrator and because of the short duration of the effectiveness of the letter) while the SOS rule requires that only one name appear on the letter. SBEC adoption of the SOS rule is also consistent with the recommendations of the AARP.
- The SBEC rule does not address how the documentation may be used by the voter, whereas the SOS rule states that it may be used either at the polls or for absentee voting. Staff is unclear as to whether or not this is specifically allowed in Act 595, but believes, along with SOS, that voters should receive the benefit of any doubt on issues concerning voter ID.

13. **Comment (RPA):** §801 regarding the requirement to present POI at the polls: “There needs to be a section addressing absentee voting for voters who live in long-term or residential care facilities. They may be voting absentee instead of early or on election day. They could be visiting