

Stricken language would be deleted from and underlined language would be added to present law.
Act 444 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H2/28/23 H3/9/23
A Bill

HOUSE BILL 1457

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

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

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH THE ARKANSAS POLL WATCHERS BILL OF RIGHTS ACT OF 2023; TO AMEND THE LAW CONCERNING POLL WATCHERS; AND TO AMEND THE LAW CONCERNING ELECTION PROCEDURES.

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

SECTION 1. DO NOT CODIFY. Title.

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

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



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

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

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

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

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

(a) Poll watchers shall include any:

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

(2) Authorized representative of a candidate;

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

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

(b) A poll watcher shall:

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

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

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

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

(A) Courthouse;

(B) Early voting site;

(C) Vote center; or

(D) Polling location.

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

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

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

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

(1) Certification and testing of election technologies;

(2) In-person absentee voting;

(3) Return of absentee ballots by designated bearers;

(4) Canvassing of absentee ballots;

(5) Casting of ballots;

(6) Spoiling of ballots;

(7) Remaking of ballots;

(8) Vote tabulation;

(9) Voter registration at a polling location;

(10) Audits; and

(11) Recounts.

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

(f) A poll watcher shall not:

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

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

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

(g) A poll watcher may:

(1) Bring in voter lists to observe;

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

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

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

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

election official.

(i) A person who uses force, intimidation, harassment, or coercion to interfere with a registered voter's ability to vote, an election official's duties, or a poll watcher's duties, is guilty upon conviction of a Class A misdemeanor.

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

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

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

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

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

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

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

“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-
5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615. I further state that
..... as my designated and authorized representative meets all of the
requirements under Arkansas Code § 7-5-312.

Representative of a Group

I,, state that I represent the
..... group that 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.
I further state that I meet all of the requirements under Arkansas Code § 7-
5-312.

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. I further state that
..... as a designated and authorized representative meets all of the requirements under Arkansas Code § 7-5-312.

.....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, the requirements under Arkansas Code § 7-5-312 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".

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

"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 or seeking the passage or defeat of a measure 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 or area within a polling site, early voting site, vote center, or alternative 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 or area 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; and

(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 or designees;
- (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';

(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, duplication, 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.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. DO NOT CODIFY. Rules.

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

(1) Develop all training materials for poll watchers;

(2) Develop rules that establish:

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

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

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

/s/Furman

APPROVED: 4/4/23