

Memorandum

October 18, 2018

From D. Hogue, County Attorney

Provisional Ballots

The purpose of this memorandum is to clearly state the procedure regarding provisional ballots, to avoid any misunderstandings or confusion at the Faulkner County Vote Centers.

In 2017, the Arkansas Legislature passed Act 633, which “requires Arkansas voters to provide verification of voter registration in the form of a document or identification card that shows the person’s name and photograph, is issued by the federal or state government or an accredited postsecondary educational institution in Arkansas, and if displaying an expiration date, is no more than four years expired.”¹

The constitutionality of Act 633 was challenged and upheld by the Arkansas Supreme Court in October of 2018 in the case of *Martin v. Haas*.

This means that currently, Arkansas law requires each voter to provide a photo I.D. in order to cast a regular ballot at the vote centers. When people sign in to vote, the I.D. will be requested by the poll worker and if a compliant I.D.² is provided, they will be directed to a voting booth.

If no compliant I.D. is provided, the voter will be provided with a provisional ballot to fill out, as provided by Arkansas Code §7-5-308:

If a voter is required by law to cast a provisional ballot because the voter is unable to verify his or her registration by providing a document or identification card that meets the requirements of Arkansas Constitution, Amendment 51, § 13, the provisional ballot shall be cast pursuant to the following procedures:

- (1) The poll worker shall indicate on the precinct voter registration list that the voter did not present a required document or identification card;
- (2) The poll worker shall notify the voter that the voter may cast a provisional ballot in that election;
- (3) The voter shall execute a written eligibility affirmation under penalty of perjury 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;
- (4)
- (A) The poll worker shall inform the voter that the voter may complete a sworn statement stating that the voter is registered to vote in this state and that he or she is the person who is registered to vote.

¹ Act of March 24, 2017, No. 633, 2017 Ark. Acts 3068; *Martin v. Haas*, 2018 Ark. 283

² “Examples of compliant identification include a driver’s license, a photo identification card, a concealed handgun carry license, a United States passport, an employee badge or identification document issued by an accredited postsecondary educational institution in the State of Arkansas, a U.S. military identification document, a public assistance identification card (with photo), and a voter verification card under section 7-5-324.” *Martin v. Haas*, 2018 Ark. 283

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- (B) A sworn statement completed under subdivision (b)(4)(A) of this section is not required to be notarized, but the voter shall execute the sworn statement under penalty of perjury.
- (C) The sworn statement under subdivision (b)(4)(A) of this section shall be delivered to the county board of election commissioners so that the provisional ballot may be counted under subsection (f) of this section;
- (5) The poll worker shall initial the back of the provisional ballot, remove the provisional ballot stub from the provisional ballot, and place the stub in the stub box provided;
- (6) The voter shall mark his or her provisional ballot;
- (7) The voter shall place the voted provisional ballot in a provisional ballot secrecy envelope marked "provisional ballot" and seal the envelope;
- (8) 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;
- (9) 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
- (10) The poll worker shall make a separate list of the names and addresses of all persons voting a provisional ballot under this subsection, and each person voting a provisional ballot shall sign his or her name to this list.

Please note that the Notice mentioned in #9 above (and attached to this memo) is the only document that will be provided upon receipt of the provisional ballot.

This Memo is provided in response to the circulation of some social media messages suggesting that a "receipt" will be given for a provisional ballot. A "receipt" was required by the previous statute, A.C.A. 7-5-321, but that was repealed and replaced by Act 633 of 2017, which established the new rules, and which the Supreme Court recently upheld.


David Hogue, County Attorney

NOTICE TO PROVISIONAL VOTERS



REASON 1: No Verification of Voter Registration Provided and Failed to Sign the Optional Verification of Identity Affirmation

If you cast a Provisional Ballot for failure to present Verification of Voter Registration and you possess ID, but chose not to sign the **OPTIONAL VERIFICATION OF IDENTITY AFFIRMATION**, you may present proof of identity to the **County Clerk** or the County Election Commission by noon of the first Monday following the election for the provisional ballot to be counted.

801 Locust Street
Faulkner County Courthouse
Conway, AR 72032

Hours: 8:00 AM to 4:30 PM
Phone: 501-450-4909

"Verification of Voter Registration" is a document or photo ID card that is issued by the State, the federal government or an accredited postsecondary educational institution in Arkansas. The ID must show the name and photograph of the person to whom it was issued, and, if it has an expiration date, must not be expired more than 4 years before Election Day. Examples of acceptable proof of identity include but are not limited to:

- An Arkansas driver's license;
- An Arkansas State ID (for example issued by the Revenue Office)
- A U.S. passport;
- A concealed carry handgun license issued by the State of Arkansas;
- An employee badge or ID document issued by the State of Arkansas or the federal government;
- A U.S. military ID document (Active or Retired);
- A student or employee ID card issued by a postsecondary educational institution located in Arkansas;
- A public assistance ID card issued by the State of Arkansas or federal government;
- A voter ID card issued by the county clerk.



REASON 2: Signed Optional Verification of Identity Affirmation for No Verification of Voter Registration

If the only reason you are required to vote provisionally is that you did not verify your voter registration with a photo ID and you executed the optional **Verification of Identity Affirmation** your ballot will be counted when it is reviewed by the County Board of Election Commissioners. However, if the Board determines that your provisional ballot is invalid and should not be counted on other grounds, you will be notified and may attend an administrative hearing referenced below to bring evidence of the validity of your ballot. **The meeting date is listed below.**



REASON 3: Provisional Ballots Unrelated to Verification of Registration

If you were required to vote provisionally for any reason unrelated to the verification of your voter registration, the County Election Commission will set an administrative hearing to determine if your ballot will be counted for this election. You will be notified by mail concerning your provisional ballot. If your ballot did not count you are invited to attend this hearing to bring evidence and defend the validity of your ballot. If your ballot is counted, then you will be notified as such.

Hearing Date for Provisional Ballots that are rejected will be held:

DATE & TIME: November 15, 2018 at 2:00 PM

LOCATION: Faulkner County Courthouse (Early Voting Room)

For more information, contact: Faulkner County Election Commission

PHONE: 501-450-4909 **EMAIL:** teresa.horton@faulknercounty.org

You will be notified by first class mail whether your vote was counted, and if not, the reason why.