

# STATE BOARD OF ELECTION COMMISSIONERS

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July 15, 2024

Chairman John Thurston  
Arkansas State Board of Election Commissioners  
501 Woodlane Street, Ste. 122S  
Little Rock, Arkansas, 72201

## **Re: Public Comments – Rule Regarding Voter Registration**

Secretary Thurston,

The State Board proposed the Rule titled, *Rule Regarding Voter Registration*, which was initially adopted as an emergency rule with an effective date of May 4, 2024. Following the emergency rule adoption, the State Board proceeded with adopting the Rule for permanent promulgation. That process includes a thirty-day comment period which closed at 11:59 p.m. on Sunday, July 14, 2024. The State Board Staff also presided over a public comment hearing on July 11, 2024. This memorandum is to provide information to the Board regarding the comments submitted by Arkansans.

As of the cut-off time for submission of comments, SBEC Staff has received over two hundred (200) written comments through email. At the public comment hearing, approximately 16 speakers presented comments on the proposed Rule.

This memorandum will address the commentators, for Board review, by categorizing the emails into group topics.

Those topics include:

1. Commentators in favor of the proposed Rule; and

## 2. Commentators opposed to the proposed Rule.

The commentators opposed to the proposed Rule are sub-divided into five categories:

- a. In favor of Online-Voter Registration systems
- b. Wet-signature is outdated
- c. E-signature is allowed by law
- d. Low Voter registration and Turn-out rates
- e. Other
  - i. Disabled Voters' Access to Voter Registration
  - ii. Access to printing facilities or postal services
  - iii. Confusion for Officials
  - iv. The Rule is Disenfranchising voters

### **I. Commentators in favor of the proposed rule.**

This category of commentators generally stated that wet signatures provide greater security in the election process and help to prevent fraudulent voting practices. These commentators supported adoption of the Rule.

### **II. Commentators opposed to the proposed rule.**

#### **A. In favor of Online-Voter Registration systems**

These commentators generally reference the fact that forty-two (42) other states permit online registration, and that Arkansas is one of the only few states that does not permit online registration.

#### **Response to "In favor of Online-Voter Registration systems"**

Staff researched other states that permit online registration and noted several factors relevant to the Board's consideration. First, the states that Staff sampled had express legislation permitting or directing a State Officer, such as the State Board of Elections or the Secretary of

the respective state, to build, operate, and maintain an online voter registration system.<sup>1</sup>

Of the surrounding and contiguous states to Arkansas that have online VR, they are all operated by that State's Secretary of State or State Election Board. Neither Texas nor Mississippi has online voter registration. See [https://ballotpedia.org/Online\\_voter\\_registration](https://ballotpedia.org/Online_voter_registration) (last viewed July 14, 2024).

1. Louisiana's online VR system is operated by the Secretary of State, the web address is:
  - a. <https://www.sos.la.gov/ElectionsAndVoting/Pages/OnlineVoterRegistration.aspx>
2. Tennessee's Secretary of State operates its online VR system, the web address is:
  - a. <https://ovr.govote.tn.gov/>
3. Missouri's Secretary of State operates its online VR system, the web address is:
  - a. <https://www.sos.mo.gov/elections/goVoteMissouri/register.aspx>
4. Oklahoma's State Election Board's operates its online VR system, the web address is:
  - a. <https://okvoterportal.okelections.us/>

Secondly, Staff was unable to locate any state that utilized an online VR system where the registration system was built, maintained, and operated by a third-party registration organization.<sup>2</sup>

Thirdly, the SBEC became aware of discrepancies and differences in how county clerks were accepting voter registration applications. It was reported that, in some counties, the clerk was accepting electronically signed voter registration applications whereas other county clerks were not accepting electronically signed applications. This

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<sup>1</sup> One Commentator at the Public Comment Hearing specifically referenced North Dakota as switching to online voter registration; however, upon research, North Dakota does not require voter registration to vote, only the voter must have one of a limited form of identification that lists the voter as a resident of North Dakota.

<sup>2</sup> Arizona utilizes a system operated by "ServiceArizona" which is "an authorized service website for the Arizona Department of Transportation." See <https://servicearizona.com/applicationFAQ/voter#3466> (last viewed July 14, 2024).

created an unfair and non-uniform application process for applicants. Whether the applicant could apply using an electronic signature was dependent on the county to which the applicant resided. The SBEC is specifically directed to adopt such rules as necessary to provide uniformity across the state in the administration of voter registration processes.

## **B. Wet Signature is outdated**

Many commentators utilized chain emails which each stated nearly identical comments. Of these chain emails, the allegation is that wet signatures are an outdated process in 2024. These commentators generally reference the availability of electronic signatures on financial records and other legally enforceable transactions. Similarly, the chain email that uses the first sentence “I oppose outdated ‘wet signature’ policy for Arkansas Voter Registration Applications” also references that verifiable e-signatures are essential for Arkansas because we rank so low in voter participation, and that “eliminating online access to registration suppresses access to the democratic process.”

### **Response to “Wet Signature is outdated”**

Staff categorizes these comments regarding wet signature as outdated because the commentators appear to believe that the Rule is a change from the historical status quo which has required wet signatures, except from Constitutionally recognized agencies such as the DMV registration process. Coupled with this response is the lack of specific legislative or constitutional authority to build, operate, and maintain an online voter registration process.

Further responding to this category of commentary is the fact that the Arkansas Secretary of State sought Attorney General Opinion 2020-014. In that opinion, the Secretary of State asked whether it would be permissible under Amendment 51, for the Secretary to “establish an online voter registration system?” Op. Ark. Att’y Gen. No. 014 at 1 (2020). The Opinion responded that the Secretary does not have authority under the parameters of Amendment 51 to create an online voter registration system. The Opinion also asked that, if the Secretary was without the authority to create an online system, could Amendment 51 be amended

by the legislature to “permit an online voter registration system.” *Id.* at 3. The AG opined that the Legislature could, by a 2/3rds vote, approve an amendment to Amendment 51 and authorize a system of online voter registration.

An online voter registration bill was proposed during the 2023 session. House Bill 1537 proposed amending Amendment 51 directing the Secretary of State to “prepare and administer electronic voter registration application forms.” H.B. 1537, 94<sup>th</sup> General Assem., Reg. Sess. (Ark 2023). The Bill did not get out of committee. House Bill 1517 of 2021 also proposed amending Amendment 51 to direct the Secretary of State to “prepare and administer electronic voter registration forms.” H.B. 1517, 93<sup>rd</sup> General Assem., Reg. Sess. (Ark 2021). The 2021 bill did not pass the Senate.

Commentators have also pointed to Attorney General Opinion 2024-049. That opinion addresses a slightly different question. The 049 opinion directs that a third-party organization must utilize the “mail voter registration application form.” *Op. Ark. Att’y Gen. No. 049, at 2 (2024).* The opinion states that Amendment 51 “does not define a signature or mark, nor does it specify how a signature or mark may be made.” *Id.* The opinion continues, “[c]onsequently, given the historical acceptance of signatures produced through a variety of means, the widespread acceptance of electronic signatures, and the fact that Amendment 51 does not contain any restrictions on how a ‘signature or mark’ may be made, I believe that an electronic signature satisfies Amendment 51’s ‘signature or mark’ requirement.” *Id.* at 3. The opinion then goes on to discuss the third-party’s creation of its own “electronic voter registration application.” The opinion then states that a “third-party non-governmental agency cannot create and use a different form of its own to register voters.” *Id.* at 4.

SBEC is specifically directed to “prescribe, adopt, publish and distribute: (1) such Rules and Regulations supplementary to this amendment and consistent with this amendment and other laws of Arkansas as are necessary to secure uniform and efficient procedures in the administration of this amendment throughout the State.” Ark. Const. Amend. 51 § 5(e)(1). Under this explicit Constitutional authority, the SBEC proposes the Rule in question.

Given the historical processes of voter registration in Arkansas, coupled with the inability of the Secretary of State to create an online voter registration system, (Op. Ark. Att’y Gen. No. 014 (2020)), coupled with the absence of express authorization in Amendment 51 permitting online voter registration systems, (HB1537 of 2023 and HB 1517 of 2021) and the requirement that the SBEC adopt such rules to “secure the uniform and efficient procedures in the administration of [Amendment 51] throughout the State” the proposed Rule maintains the current voter registration process and is compliant with the requirements of Amendment 51. Maintaining the current voter registration processes across the State serves the interests of “uniform and efficient procedures” because the Rule does not change the current and historical means of registration in the State.

### **C. E-Signature is allowed by law**

Commentators under this category generally state that electronic signatures are permissible under Arkansas Law, and they often reference the Federal E-sign act of 2000. The comments generally reference that electronic signatures are enforceable for taxes, contracts, house purchases, and a wide array of commercial and legal transactions. The commentators generally argue that, if electronic signatures are permissible on such important individual transactions, then they should be permissible for registering to vote.

### **Response to “E-Signature is allowed by law”**

SBEC would direct commentators to the information provided in the previous section wherein the Secretary of State does not have the authority to create an online voter registration system. During the 2021 and 2023 sessions, bills were proposed to expressly authorize and direct the Secretary of State to create an online voter registration system. Both of those bills failed in the legislature.

SBEC would also direct commentators to the limitations placed within the electronic signature law adopted in Arkansas. Arkansas law regarding electronic records and signatures can be found at Section 25-32-105 et. seq. However, commentators fail to identify the limitations placed within those sections. Particularly, the provision that states,

“This chapter does not require a record or signature be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.” Ark. Code Ann. § 25-32-105(a). That section continues, “[t]his chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.” *Id.* at (b). Further, that section provides, “[w]hether an electronic record or electronic signature has legal consequences is determined by this chapter and **other applicable law.**” *Id.* at (e) (emphasis added). Finally, Arkansas law provides, that “each governmental agency of this state **shall determine whether and the extent to which it will send and accept** electronic records and **electronic signatures to and from other persons** and otherwise create, generate, communicate, store, process, use, and rely on electronic records and electronic signatures.” Ark. Code Ann. § 25-32-118(a)(1) (emphasis added). That section concludes with, “this chapter does not require a governmental agency of this State to use or permit the use of electronic records or electronic signatures.” *Id.* at (c).

Consequently, the law permits the use of electronic signatures for governmental transactions; however, it does not require the governmental unit accept electronic signatures nor does it mandate the use of electronic signatures. Given the history of voter registration in Arkansas, the history of failed attempts to amend Arkansas Constitution Amendment 51 to expressly permit online voter registration, and the unambiguous limitations on governmental acceptance of electronic signatures in Arkansas law, the proposed Rule complies with applicable history and legal authority.

#### **D. Low Voter registration and Low Voter turnout**

Commentators reference, in varying forms, that Arkansas ranks lowest in voter turnout in the nation, or that Arkansas has the lowest voter participation rates in the country. Alternatively, Commentators state that Arkansas has one of the lowest percentages of citizens participating in civic duties.

## **Response to “Low Voter registration<sup>3</sup> and Low Voter turnout”**

The proposed Rule, as stated above, seeks to maintain the current registration process and does not take new action. The SBEC states that, without express legislative authority, the creation of an online voter registration process is not permitted. As stated above, states that have online voter registration processes have express legislation directing a state agency, usually the Secretary of State or Election’s Board, to build, operate, and maintain the online system of voter registration.

As for voter participation, the proposed Rule has no bearing on whether registered voters exercise their right to vote. The Rule supports the current and historical methods of registration and does not exceed legislative authority granted to the SBEC by Amendment 51 §5(e).

### **E. Other**

Commentators included other statements that do not fall within the four categories above. The more specific comments will be addressed below.

#### **i. Disabled Voters’ Access to Voter Registration**

Numerous commentators speak regarding access and availability of voter registration for disabled or transportation-challenged voters. Disability Rights of Arkansas provided a comment opposing the proposed Rule. The commentator stated that the wet signature requirement negatively impacts mobility impaired applicants or those with

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<sup>3</sup> It appears that Commentators are relying on a survey study titled, “2023 Arkansas Civic Health Index” to support this allegation. That survey appears to rely only on registration rates for Little Rock and North Little Rock, according to the end note cited for the report. Also, SBEC would note that Census data states that as of July 2022, Arkansas had 2,348,518 residents over 18, and according to a June 2022 report, Arkansas had 1,765,681 registered voters. Those number compute to a 75.2% registered voter rate per eligible population. Also, for the 2020 election, Arkansas had 1.4 million registered voters, and 1.2 million of them voted. See <https://www.arkansasonline.com/news/2021/sep/05/arkansas-statistics-on-voting-reported/>. Arkansas Secretary of State reports for the November 2020 election showed a 66.9% voter turnout. See <https://results.enr.clarityelections.com/AR/106124/web.274956/#/summary>.



degenerative disabilities, such as those without arms or ability to move their limbs or those with vision impairment. The commentator states that technology through online voter registration could lessen these impediments to registering.

### **Response to “Disabled Voters’ Access to Voter Registration”**

Arkansas law permits a disabled voter to register to vote and they may do so by requesting the county clerk mail a voter registration form to the voter. The voter may also utilize the assistance and support of disability rights groups, such as DRA, to assist in completing the registration form. Amendment 51 directs agencies who assist the disabled to make voter registration a part of their programming and requires that the agencies’ employees and officers assist voters in the registration process. The form includes the opportunity for disabled voters to make their mark that is witnessed by another. That mark acts as their signature for purposes of registering to vote. The proposed Rule does not alter or change the methods and manners used to register voters with physical impairments.

#### **ii. Access to printing facilities or postal services**

Numerous Commentators discuss the inability of applicants to have access to a printer or postal services, and they reference the “young people, the elderly, people with disabilities, and those living in rural areas.”

### **Response to “Access to printing facilities or postal services”**

Applicants may contact their representative county clerk and request a voter registration form be mailed to them to complete. Similarly, the form is readily available at local governmental offices, including the DMV and other offices that have regular contact with citizens of the State. An applicant could also contact the Secretary of State and request the form be mailed to him or her to complete. Most all citizens of the state have access to a pen, but not all have access to a tablet or computer device to register online. As for postal services, all residents of Arkansas have access to local postal facilities, their county clerk’s office, or other governmental offices to register to vote.

Without express legislation, the current law does not permit the Secretary of State to operate an online voter registration system. If the Secretary cannot operate such a system, it does not seem logical that a third-party organization that is not specifically identified in Amendment 51 could circumvent the restriction on the Secretary and create its own online voter registration system.

### **iii. Confusion for Officials**

One Commentator at the public comment hearing stated that he was concerned that county clerks would not be able to determine if an application is submitted with a wet signature or not, and that this Rule creates confusion for officials in clerks' offices who are charged with processing voter registration forms.

#### **Response "Confusion for Officials"**

The proposed Rule does not alter the process of voter registration that has been occurring under Amendment 51. The proposed Rule follows the traditional process by which voter registration applications are received and processed by county clerks across the state. Arkansas Amendment 51 governs what a Clerk must do when a deficient application is submitted. It provides, "[i]f an applicant for voter registration fails to provide any of the information required by this section, the permanent register shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for its completion before the next election for federal office." Ark. Const. Amend. 51 § 6(a)(8). When the clerk receives an application, they are to "notify applicants whether their applications are accepted or rejected or are incomplete." *Id.* at § 9(d). That section continues, "[i]f the information required by the permanent registrar is missing from the voter registration application, the permanent registrar shall contact the applicant to obtain the missing information." *Id.*

Thus, current law governs the process by which a clerk is to resolve a defective application. If an applicant submits an application that is not signed by wet ink signature, then the clerk has a duty to contact the applicant to remedy the deficiency. Much like if the applicant failed to

put his or her date of birth on the application, then the clerk has a duty to contact the applicant to remedy the deficiency as well.

#### **iv. The Rule is Disenfranchising voters**

Many commentators argue that adoption of the Rule disenfranchises voters, and because of the low voter participation rate, this Rule should not be adopted.

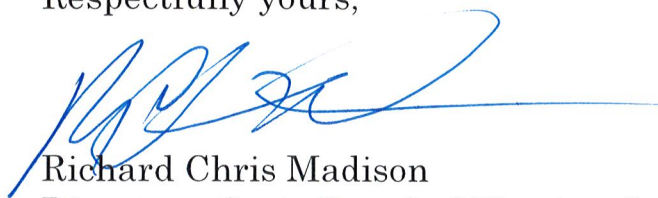
#### **Response to “The Rule is Disenfranchising voters”**

As stated above, the proposed Rule is to maintain the current processes for voter registration. As stated above, if the Secretary of State is not lawfully eligible to create an online voter registration process, then a third-party organization operating outside the governmental system cannot circumvent the law to create its own online voter registration system. As stated above, the Arkansas legislature has had two separate bills before it, both in 2021 and 2023, which would expressly authorize online voter registration processes. Neither of those two proposals were adopted. Applicants have several means available to register to vote. They may register at many government offices, they may register at their county clerk’s office, they may register by requesting the form be mailed to them at their residence, and they may go to a voter registration drive and complete the form for submission.

### **III. Conclusion**

The State Board has responded to each of the comments proposed by commentators regarding the rule titled Rule Regarding Voter Registration. For any comment not specifically addressed herein, they have each been reviewed and were not applicable to the proposed Rule, or were considered and no modification or change to the Rule is recommended. For all other comments, which are within the above categories, each comment has been reviewed and no modifications or changes to the Rule is recommended.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'R. C. Madison', with a long horizontal flourish extending to the right.

Richard Chris Madison

Director – State Board of Election Commissioners