



August 2020

Supreme Court Removes Issue 4, Issue 5 Wording Over Background Checks At Odds

Sponsors using the word "acquired" when submitting information about canvasser background checks to the state led to tens of thousands of voter signatures being tossed and Issue 4 and Issue 5 being struck from the ballot.

The [Arkansas Supreme Court](#) ruled Thursday in a 6-1 decision that [Issue 4](#) and [Issue 5](#) did not qualify for the ballot because sponsors failed to certify paid canvassers passed required background checks.

Proposed constitutional amendments require 89,151 voter signatures to qualify for the ballot. Arkansas Voters First did not have enough signatures to qualify the two issues for the ballot after the court's decision.

Issue 4 would have changed who redistricts Arkansas after a federal census. Issue 5 would have put statewide and federal offices on a single primary ballot, leading to the top four winners being on a general election ballot for ranked choice voting and instant runoffs.

Only the legislature's three proposed amendments remain on the 2020 ballot and [Issue 6](#), a referendum on Act 579. A similar court challenge lingers for Issue 6, whose sponsors used the same language as the two citizen initiatives when submitting their background check information last year to the Secretary of State. [Issue 2](#) and [Issue 3](#) are also being challenged in court over their ballot title.

Find out more about the remaining issues at our website, www.uaex.edu/ballot.

Historical Context of Changes to Citizen Initiative Process

The Arkansas Constitution lays out the basic process for citizen groups to refer constitutional amendments, state laws and referendums to voters. But in the hundred years since Arkansas established the citizen initiative process, laws passed by the legislature have added layers of complexity over time.

The court decision Thursday finds its roots in many of those changes. In 2013, legislators passed an overhaul of state law regarding the voter signature collection process. [Act 1413](#) of that year's legislative session added a section to state law governing paid canvassers, 7-9-601.

The changes followed a contentious 2012 ballot issue cycle. Several citizen groups that year used paid canvassers to gather signatures and qualified for a cure period, or additional time to collect more voter signatures to ensure they meet the signature threshold to qualify for the ballot. But many of the original signatures submitted were later discounted. Opponents said the groups should never have qualified for a cure period and that they violated the spirit of the law.

That contentious 2012 ballot cycle also led to the proposal and passing of Amendment 93 in 2014, which limits cure periods to groups whose petitions contain valid voter signatures equal to at least 75% of the number of statewide signatures required and 75% of the required number of signatures from at least 15 counties.

Still On The 2020 Ballot

- Issue 1**
- Issue 2***
- Issue 3***
- Issue 6***

*challenged in court

Note: **Issue 3** on the ballot this year would eliminate the cure period all together, and increase the number of counties where signatures must be collected, from 15 to 45 counties.

Arkansas Code 7-9-601 was amended in 2017 in [Act 1104](#) to say that the canvasser's "criminal record search shall be obtained within 30 days before the date that the paid canvasser begins collecting signatures."

Acquired Versus Passed - What the Law and Judges Said

In July, shortly after Arkansas Voters First submitted their petitions, Secretary of State John Thurston notified them he would not be counting their signatures because of the wording about background checks. His response followed a special judge's opinion that acquired versus passed did not mean the same thing in a review of a challenge to the Act 579 referendum.

Arkansas Code 7-9-601 was at the crux of court arguments.

What Arkansas Code 7-9-601(b)(3) says:

"Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor's employ has passed a criminal background check in accordance with this section."

What the campaigns wrote to the Secretary of State's Office regarding Issue 4 and Issue 5:

"In compliance with Arkansas Code Annotated § 7-9-601, please find the list of paid canvassers that will be gathering signatures on the [Popular Name of Proposal]. On behalf of the sponsors, Arkansas Voters First, this statement and submission of names serves as certification that a statewide Arkansas State Police background check, as well as, 50-state criminal background check have been timely acquired in the 30 days before the first day the Paid canvasser begins to collect signatures as required by Act 1104 of 2017."

Arkansas Voters First appealed to the Arkansas Supreme Court. The court allowed the signatures to be counted while they reviewed the case. Issue 4 ultimately had 90,493 signatures, which would qualify it for the ballot. Issue 5 had 88,623 signatures, falling short. But the number of signatures was moot based on the "passed" versus "acquired" issue, state attorneys and opponents argued in court.

The Arkansas Supreme Court agreed that Arkansas Voters First did not comply with Arkansas Code 7-9-601. The case is CV-20-454 - BONNIE MILLER V JOHN THURSTON SOS

In a majority opinion, Justice Robin Wynne wrote:

"Petitioners did not certify that their paid canvassers had passed any background check — state or federal. Nor are "magic words" the issue. Petitioners could have conveyed in their certification that each paid canvasser had passed a background check without using the word "passed." The issue is whether petitioners have complied with the statutory requirements."

But the interpretation of state law and the meaning of "acquired" versus "passed" resonated with one judge, who said she thought Code 7-9-601(b)(3) was unconstitutional.

In a lone dissenting opinion, Justice Josephine Linker Hart wrote:

"In the first place, the concept of "passing" a background check is not firmly rooted in fact. A State Police background check merely shares the content of one or more databases. The State Police do not "pass" or "fail" the subject of a background check. Accordingly, certifying that a paid canvasser has "passed" a background check leaves the sponsor with the Hobson's choice of not quite truthfully claiming that a canvasser "passed" a background check, which exposes him or her to potential criminal penalties under section 7-9-601(b)(4), or the more similarly unpalatable prospect of having all the petition parts rejected. Secondly, appearing on a database as having a criminal conviction is not conclusive of the question of whether a paid canvasser committed or did not commit a criminal offense."

The court's decision came a week after the Secretary of State sent the official statewide ballot to counties. Due to this timing, it's possible Issue 4 and Issue 5 may appear on some ballots. If that occurs, votes cast for or against the issues will not be counted.

Ballot Websites and Voter Guide

The Public Policy Center launched its ballot issue websites this week. Type in [uaex.edu](#) followed by the ballot issue number, i.e. [www.uaex.edu/issue1](#) and to see our summary of the issue.

A digital voter guide will be available in the next few weeks, providing a look at the ballot titles, what supporters and opponents say, and answers to general questions about the remaining proposals. Find it at [www.uaex.edu/ballot](#).

In the Courts: Ballot Issue Lawsuit Updates

Issue 2 & Issue 3 - A lawsuit filed June 29 seeks to remove Issue 2 and Issue 3 from the November ballot. The complaint says the ballot titles for both measures do not summarize all the changes included

for voters to be able to make a decision. The lawsuit, filed by Tom Steele, also says Issue 3 includes multiple unrelated changes to the constitution that in the past have resulted in the Arkansas Supreme Court striking measures from the ballot. Issue 2 involves term limits for state legislators. Issue 3 involves the process ballot issue groups and legislators follow to refer proposed amendments and state laws to voters. [Follow the case online](#)

Act 579 Referendum - A special judge appointed by the Arkansas Supreme Court recently said voter signatures collected for this referendum on a [2019 state law](#) should not be counted. The judge said paperwork submitted along with the signatures said criminal background checks for paid canvassers were acquired rather than the canvassers had passed the checks. The final decision is up to the Arkansas Supreme Court. Opponents of the [referendum](#) filed the lawsuit with the Arkansas Supreme Court in February. [Follow the case online](#)

On the November 2020 Ballot:

Arkansas senators and representatives put three constitutional amendments on the November 2020 ballot for voters to decide. A fourth issue is a referendum proposed through the citizen initiative process.

Issue 1 - Continuing Sales Tax for Road Construction

An Amendment to the Arkansas Constitution Continuing a One-Half Percent (0.5%) Sales and Use Tax for State Highways and Bridges; County Roads, Bridges and Other Surface Transportation; and City Streets, Bridges, and Other Surface Transportation After the Retirement of the Bonds Authorized in Arkansas Constitution, Amendment 91.

[Read the full text of the proposal](#)

Issue 2 - Changing Legislative Term Limits

A Constitutional Amendment to Amend the Term Limits Applicable to Members of the General Assembly, to be Known as the "Arkansas Term Limits Amendment"

[Read the full text of the proposal](#)

Issue 3 - Changing the Citizen-Initiated and Legislative Ballot Issue Process

A Constitutional Amendment To Amend The Process For The Submission, Challenge, And Approval Of Proposed Initiated Acts, Constitutional Amendments, And Referenda

[Read the full text of the proposal](#)

Issue 6 - Referendum on Act 579, expanding definition of Optometry

Voters are being asked whether to keep Act 579 or repeal it. The 2019 state law expands the number of procedures optometrists may perform in Arkansas.

[Read Act 579](#)

Looking Forward: Proposals Filed for 2022

Submitted to the Secretary of State

Act 376 of 2019 requires ballot issue groups to submit a copy of their ballot title with the [Arkansas Secretary of State](#) before collecting signatures.

Ballot titles that have been filed for the 2022 ballot include:

May 22, 2020 - [The Arkansas Recreational Marijuana Amendment of 2022](#) - A proposal to legalize adult marijuana use and to allow certain marijuana convictions to be expunged was submitted by Arkansas True Grass.

Interested in Absentee Voting?


Arkansans who want to vote using an absentee ballot can request their application for the absentee ballot right now from their county clerk's office. [Download an application](#) or find contact information for your county clerk [here](#).

Arkansas law allows people to vote by absentee ballot if they are disabled, living outside the United States, a military member or part of a military family stationed outside Arkansas, or if they will be unavoidably absent.

Gov. Asa Hutchinson signed an [executive order](#) Aug. 7 allowing Arkansans to vote using an absentee ballot if they are concerned about COVID-19. Voters would check "unavoidably absent" when filling out an absentee ballot request form. Hutchinson and Thurston had previously said voters concerned about their health could vote absentee, but the executive order removes any doubt.

The executive order came shortly after the dismissal of [alawsuit](#) that had sought the ability for voters to use absentee ballots for any reason this November.

Reminder: Voters approved Amendment 99 in 2018 requiring Arkansans show photo ID when voting in person or by absentee ballot. When completing your absentee ballot to cast your vote, enclose a copy of your photo ID. Voters without a copy of valid identification can still vote. They would sign the voter's statement swearing they are the voter. Read more about identification and absentee voting [here](#).



HOW DO I VOTE ABSENTEE?

State officials say Arkansans concerned about COVID-19 and voting this fall can use the absentee voting process to cast their votes.

1. Request an absentee ballot application from your county clerk or download it online and print off copy.
2. Return your application by Oct. 27 to your county clerk.
3. Fill out your absentee ballot when it arrives in the mail.
4. Mail back or drop off your completed absentee ballot so it's received by 7:30 p.m. on Election Day (Nov. 3, 2020)

Download an application at <https://tinyurl.com/arabsenteeinfo>

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Our goals are to:

- Increase citizen knowledge, awareness and understanding of public issues;
- Enhance public participation in decisions regarding public issues, and
- Help citizens craft, evaluate and implement alternative solutions to public issues.

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