



## ISSUE NUMBER 1

(Referred to the people by the Arkansas General Assembly)

# Terms, election and eligibility of elected officials

**POPULAR NAME:** Proposing an amendment to the Arkansas Constitution concerning the terms, election and eligibility of elected officials.

**BALLOT TITLE:** Proposing an amendment to the Arkansas Constitution concerning elected officials; providing for terms of office for certain county officials for four (4) years; providing that certain county officers shall not be appointed or elected to a civil office during their elected term; allowing a candidate for an office to be certified as elected without appearing on the ballot when he or she is the only candidate for the office at the election; and defining the term “infamous crime” for the purpose of determining the eligibility of elected officials to hold office.

### What is being proposed?

This amendment asks voters to approve multiple changes to the Arkansas Constitution. If approved by voters, this amendment would:

1. Allow four-year terms for elected county officials.
2. Prevent certain elected county officials from also being appointed or elected to a civil office.
3. Allow unopposed candidates to be elected without their name appearing on the ballot; and
4. Define what “infamous crime” means in regards to who is not allowed to hold an elected position.

### QUICK LOOK: What does your vote mean?

**FOR:** A FOR vote means you are in favor of changing the Arkansas Constitution regarding all four components proposed, including four-year terms for elected county officials, prohibitions on county officials also holding civil office, creating a process for unopposed candidates to be elected without their name appearing on the ballot and defining “infamous crime.”

**AGAINST:** An AGAINST vote means you are not in favor of changing the Arkansas Constitution regarding one or more of the components proposed, including four-year terms for elected county officials, prohibitions on county officials also holding civil office, creating a process for unopposed candidates to be elected without their name appearing on the ballot and defining “infamous crime.”

The following statements are examples of what supporters and opponents have made public either in media statements, campaign literature, on websites or in interviews with Public Policy Center staff. The University of Arkansas System Division of Agriculture does not endorse or validate these statements.

## What do supporters say?

- If county officials had four-year terms, they could initiate some of their own ideas and see them through, especially when it comes to technology.
- It would provide much needed ethics reforms by preventing county-level office holders from being appointed or elected to any civil office. This prevents those charged with the public trust from having a divided focus.
- It would save money on the printing of ballots to leave off unopposed candidates.
- The amendment takes all the gray area out of the definition of the phrase “infamous crime” and gives the courts and prosecutors more guidance so that crimes not fitting the definition are not prosecuted.

## What do opponents say?

There has been no organized or publicized opposition to this amendment.

- In general, people may think there is more accountability for county officials if you make them run every two years.
- In other states, critics have said eliminating the name of an unopposed candidate from the ballot discourages awareness of government officials and could create a perception that unopposed candidates aren't doing their jobs or are indifferent public officials.
- Omitting a candidate from the ballot deprives voters of their right to vote for the candidate of their choice.
- There should be an overall review of the crime on an individual basis instead of an immediate bar to office. Due to the strict nature of the law, an Arkansas county sheriff was removed from office on the basis of theft of chickens at a very young age regardless that there was substantial evidence of rehabilitation and that he was elected by more than 80 percent of voters.

## How did this issue get on the ballot?

Arkansas legislators voted to put House Joint Resolution 1027, or Issue 1, on the 2016 general election ballot. If approved by a majority of the House and Senate, the state legislature has the right to include up to three constitutional amendments on the general election ballot. Constitutional amendments require the approval of a majority of voters in a statewide election.

## Who were the main sponsors of this amendment?

Reps. Jack Ladyman of Jonesboro and David Branscum of Marshall

The following sections describe each of the four proposed changes included in this amendment.

## Section 1: Providing for four-year terms for elected county officials

### What would this section do?

It would change the constitution to allow the following list of elected county officials to serve four years in office, instead of the current two-year terms.

- County judge
- Sheriff
- Circuit clerk
- County clerk
- Assessor
- Coroner
- Treasurer
- County surveyor
- Tax collector

These officials can currently run for re-election and there are no limits on the number of terms they can serve.



## **Aren't there more elected county officials than what's listed?**

Yes, there are. This amendment would not apply to justices of the peace who represent different districts of a county on governing boards known as Quorum Courts. They would continue to serve two-year terms.

You can read more about what each elected county position does in the introduction of the Arkansas County Judge's Procedural Manual published by the Association of Arkansas Counties. The manual can be found online at: [www.arcounties.org/public/userfiles/files/Publications/Judges2016Manual.pdf](http://www.arcounties.org/public/userfiles/files/Publications/Judges2016Manual.pdf).

## **If approved, when would the county officials listed previously start serving four-year terms?**

County officials elected in 2016 would continue to serve two-year terms. Four-year terms would start for people elected in the 2018 general election.

## **Section 2 – Preventing elected county officials from holding civil office**

### **What would this section do?**

It would add to the constitution a section that says a person elected or appointed to the following county offices could not be appointed or elected to any other civil office in Arkansas at the same time.

- County judge
- Justice of the peace (also known as quorum court members)
- Sheriff
- Circuit clerk
- County clerk
- Assessor
- Coroner
- Treasurer
- County surveyor
- Tax collector

### **What does this amendment mean by “civil office?”**

The amendment does not define “civil office.” The Arkansas Constitution already says senators and representatives can't be appointed or elected to any civil office, but the constitution's writers did not explain what they meant by the phrase.

The court system has helped define the phrase's meaning over the years in rulings that found “civil office” to include:

- Positions that have the authority of the state to act
- An office created by law within one of the three branches of government (legislative, executive and judicial)



- Any officer who holds an appointment under the government
- An office created by law, with tenure, compensation and duties fixed by law
- A position that includes the taking an oath of office, the receipt of a formal commission and the giving of a bond.

Examples of state and local positions that courts determined to be a civil office include:

- Board of Workforce Education
- Board of Commissioners of a drainage improvement district
- State Board of Pardons
- School director
- Mayor
- Alderman
- Municipal judge
- City attorney
- County parks and recreation commissioner
- Deputy prosecuting attorney
- County Election Commission

Other positions may be considered a “civil office” by the courts in the future as questions or disputes arise.

## **Section 3: Allowing unopposed candidates to be elected without their names appearing on the ballot**

### **What would this section do?**

It would add to the constitution a section that sets up rules for what to do when only one person is running for a local or state position in a primary, general or special election.

The amendment would allow legislators to pass laws that say unopposed candidates can be elected without the

necessity of the candidate's name appearing on the ballot or, in some cases, even holding an election if there are no other offices or issues on the ballot.

For example, there wouldn't have to be an election if only one person is running in a special election for state senator and that's the only race to be decided. That person would be considered the elected senator without voters going to polling places and choosing that person.

In both situations, the candidate must be eligible to hold the office and meet the deadline to file for office.



### **What does Arkansas law say now about unopposed candidates?**

The constitution doesn't specifically address unopposed candidates.

Article 5 of the constitution requires state senators and representatives to be chosen by "qualified electors" In addition, several state election laws require ballots to include the name of every eligible candidate.

However, one state law (A.C.A. § 7-5-207) allows most unopposed candidates for city office to be excluded from the ballot.

## **Section 4 – Defining “infamous crime” for determining eligibility to hold office**

### **What would this section of the proposed constitutional amendment do?**

It would define “infamous crime” in the section of the Arkansas Constitution that says who cannot serve in the

state legislature or hold any other public office in the state. Under the proposed amendment, an “infamous crime” would include:

- A felony offense
- Abuse of office as defined under Arkansas law
- Tampering as defined under Arkansas law
- A misdemeanor offense involving an act of deceit, fraud or false statement, including misdemeanor offenses related to the election process

### **What does the constitution currently say about who can't hold office?**

The Arkansas Constitution currently reads:

*No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.*

### **How has “infamous crime” been defined over the years?**

Because the Arkansas Constitution doesn't define “infamous crime,” the court system has defined the phrase's meaning to include crimes involving deceit and dishonesty. Recent legal interpretations included theft or crimes that harmed the integrity of office and impact a person's ability to serve as an elected official.

Recent uses of the “infamous crime” label include a mayor who was convicted of misdemeanor theft of property after stealing campaign signs and a sheriff who was removed from office because he was convicted of stealing chickens three decades before he ran for office.

In 2013, Arkansas legislators attempted to better define the term without a constitutional amendment. They passed Act 724, which defined “infamous crimes” as:

- A felony offense
- A misdemeanor theft of property offense
- Abuse of office
- Tampering
- A misdemeanor offense in which the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud or false statement.

The proposed amendment uses very similar language to this state law.

### **Why is a constitutional amendment needed if there is a state law defining “infamous crime”?**

According to the sponsor, even with the definition under current state law, the phrase “infamous crime”

is open to interpretation. Clarifying the meaning in the constitution would provide prosecutors and the court with more guidance.

**Where can I find more information?**

The complete wording of this amendment can be found at [www.arkleg.state.ar.us/assembly/2015/2015R/Bills/HJR1027.pdf](http://www.arkleg.state.ar.us/assembly/2015/2015R/Bills/HJR1027.pdf).

**If passed, when would the legislation take effect?**

Changes would go into effect January 1, 2017.

The following is the proposed constitutional amendment name and title as they will appear on the state's November General Election ballot.

---

Issue No. 1

(Popular Name)

PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE TERMS, ELECTION, AND ELIGIBILITY OF ELECTED OFFICIALS

(Ballot Title)

PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING ELECTED OFFICIALS; PROVIDING FOR TERMS OF OFFICE FOR CERTAIN COUNTY OFFICIALS FOR FOUR (4) YEARS; PROVIDING THAT CERTAIN COUNTY OFFICERS SHALL NOT BE APPOINTED OR ELECTED TO A CIVIL OFFICE DURING THEIR ELECTED TERM; ALLOWING A CANDIDATE FOR AN OFFICE TO BE CERTIFIED AS ELECTED WITHOUT APPEARING ON THE BALLOT WHEN HE OR SHE IS THE ONLY CANDIDATE FOR THE OFFICE AT THE ELECTION; AND DEFINING THE TERM "INFAMOUS CRIME" FOR THE PURPOSE OF DETERMINING THE ELIGIBILITY OF ELECTED OFFICIALS TO HOLD OFFICE.

FOR

AGAINST