



**ARKANSAS**

2018 Voter Guide

# Arkansas Ballot Issues

General Election | Nov. 6, 2018

**UofA** **DIVISION OF AGRICULTURE**  
**RESEARCH & EXTENSION**  
*University of Arkansas System*

**PUBLIC POLICY CENTER**

This neutral, research-based guide to the 2018 Arkansas Ballot Issues was produced by the Public Policy Center at the University of Arkansas System Division of Agriculture. For the latest ballot information visit [www.uaex.edu/ballot](http://www.uaex.edu/ballot).





# 2018 Voter Guide Arkansas Ballot Issues

On Election Day, you decide more than your community leaders. Legislators and citizen groups have proposed changes to Arkansas’ constitution and to state laws. You vote whether to approve or reject these measures. The Public Policy Center provides research-based information on the issues to help voters better understand what is being asked of them.

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## How does an issue get on the ballot?

In Arkansas, there are two ways for an issue to appear on the statewide ballot:

- **Legislators vote to put issue on the ballot.**
- **Citizens collect enough signatures from registered voters across the state.**

Putting a proposed constitutional amendment or act on the ballot is not an easy task. Legislators whittle down dozens of proposals in committee meetings to arrive at the three issues they're allowed to refer to voters. They don't always refer three issues. This year, the legislature put two proposed constitutional amendments on the ballot for voters to decide.



Citizens must collect thousands of signatures from registered voters in at least 15 counties. For an amendment, citizen groups need signatures from 84,859 registered voters. This is equal to 10 percent of the number of people who voted in the last governor's election. For initiated acts that seek to change state law, citizen groups need signatures from 67,887 registered voters. This represents 8 percent of the number of people who voted in the last governor's race. (How many people vote for governor this year will determine the number of signatures needed for the 2020 ballot).

When this voter guide went to print, four ballot issues faced legal challenges. The ballot you see on Election Day may look different because of this.

**Go to [www.uaex.edu/ballot](http://www.uaex.edu/ballot) for up-to-date information about the legal status of Arkansas' 2018 ballot issues.**

**Conflict of Interest:** *The University of Arkansas System Division of Agriculture, including the Cooperative Extension Service and Public Policy Center, is funded in part by state and local government appropriations. Any legislation affecting general revenues of state and local governments has the potential to influence our financial well-being. We are obligated to divulge potential conflicts of interest and to recognize their influence on the educational programs and material we produce. We are committed to full disclosure and open recognition of our potential for bias. We strive to present Arkansas citizens with a fair and balanced representation of the issues brought to the ballot and welcome any constructive criticism of that effort.*

**Did you read the voter guide? Tell us how we did in this short survey:**

**<https://tinyurl.com/2018ballotsurvey>**

# Arkansas State Ballot Issues Worksheet

The Public Policy Center seeks to help Arkansans better understand the financial, social or policy implications of a proposed law by publishing neutral, research-based information. Read through the fact sheets in this voter guide to find out what supporters and opponents are saying and get answers to questions about terminology or the implications of proposed amendments. Once you have all the facts, determine for yourself which vote to cast. Use the worksheet below to keep track of your decisions.

I plan to vote...	
<input type="radio"/> FOR <input type="radio"/> AGAINST	<p><b>ISSUE NUMBER 1</b></p> <p>An Amendment Concerning Civil Lawsuits and the Powers of the General Assembly and Supreme Court to Adopt Court Rules.</p> <p>Notes: _____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;"><b>REMOVED FROM BALLOT</b></p>
<input type="radio"/> FOR <input type="radio"/> AGAINST	<p><b>ISSUE NUMBER 2</b></p> <p>A Constitutional Amendment Adding as a Qualification to Vote that a Voter Present Certain Valid Photographic Identification When Casting a Ballot in Person or Casting an Absentee Ballot.</p> <p>Notes: _____</p> <p>_____</p> <p>_____</p>
<input type="radio"/> FOR <input type="radio"/> AGAINST	<p><b>ISSUE NUMBER 3</b></p> <p>Arkansas Term Limits Amendment.</p> <p>Notes: _____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;"><b>REMOVED FROM BALLOT</b></p>

(continued on back side)



<b>I plan to vote...</b>	
<input type="radio"/> FOR <input type="radio"/> AGAINST	<p><b>ISSUE NUMBER 4</b></p> <p>An Amendment to Require Four Licenses to be Issued for Casino Gaming at Casinos, One Each in Crittenden (to Southland Racing Corporation), Garland (to Oaklawn Jockey Club, Inc.), Pope, and Jefferson Counties.</p> <p>Notes: _____</p> <p>_____</p> <p>_____</p>
<input type="radio"/> FOR <input type="radio"/> AGAINST	<p><b>ISSUE NUMBER 5</b></p> <p>An Act to Increase the Arkansas Minimum Wage.</p> <p>Notes: _____</p> <p>_____</p> <p>_____</p>

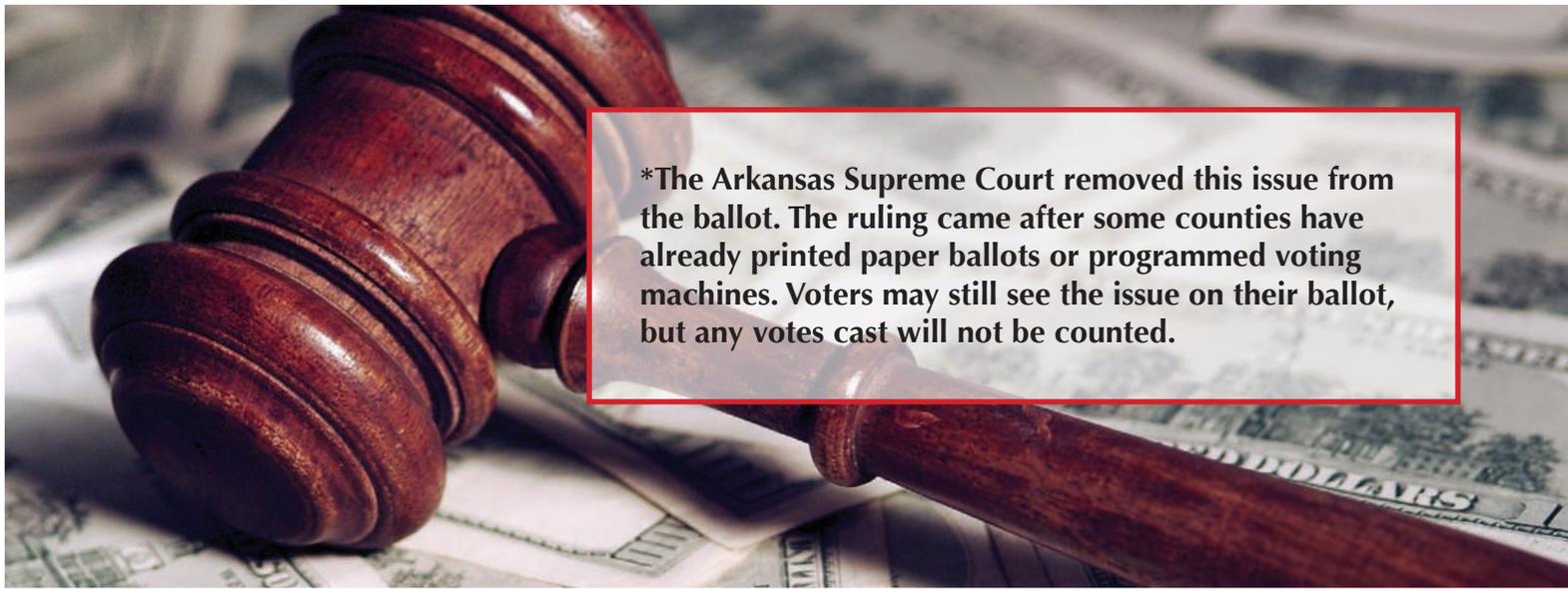
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**\*The Arkansas Supreme Court removed this issue from the ballot. The ruling came after some counties have already printed paper ballots or programmed voting machines. Voters may still see the issue on their ballot, but any votes cast will not be counted.**

## ISSUE NUMBER 1 **\*being challenged in court**

(Referred to the people by the Arkansas General Assembly)

# Contingency Fees, Lawsuit Damages and Rules of Court

**POPULAR NAME:** An Amendment Concerning Civil Lawsuits and the Powers of the General Assembly and Supreme Court to Adopt Court Rules.

**BALLOT TITLE:** A proposed amendment to the Arkansas Constitution providing that a contingency fee for an attorney in a civil lawsuit shall not exceed forty-three and one-third percent (43 1/3%) of the net recovery; defining "contingency fee" as an attorney's fee that is paid only if the claimant recovers money; providing that the General Assembly may amend the foregoing percentage by a two-thirds (2/3) vote of each house; limiting punitive damages awards for each claimant in lawsuits for personal injury, property damage, or wrongful death to the greater of (i) five hundred thousand dollars (\$500,000), or (ii) three (3) times the amount of compensatory damages awarded; defining "punitive damages" as damages assessed to punish and deter wrongful conduct; providing that the General Assembly may not decrease the foregoing limitations on punitive damages but may increase the limitations by a two-thirds (2/3) vote of each house; providing that the limitations on punitive damages do not apply if the factfinder determines by clear and convincing

(continued on page 6)

## QUICK LOOK: What does your vote mean?

**FOR:** A FOR vote means you are in favor of changing the Arkansas Constitution regarding all of the components proposed. This includes prohibiting attorneys from charging clients more than 1/3 of the amount of money received in a lawsuit; establishing a maximum dollar amount people can receive in lawsuits for non-economic damages and punitive damages; allowing legislators to change the limits to contingency fees, non-economic and punitive damages at a future date without another vote of the people; giving state legislators the authority to set court rules and practices; and lowering the number of legislators required to approve changes to rules established by the Arkansas Supreme Court.

**AGAINST:** An AGAINST vote means you are not in favor of changing the Arkansas Constitution regarding one or more of all of the components proposed. This includes prohibiting attorneys from charging clients more than 1/3 of the amount of money received in a lawsuit; establishing a maximum dollar amount people can receive in lawsuits for non-economic damages and punitive damages; allowing legislators to change the limits to contingency fees, non-economic and punitive damages at a future date without another vote of the people; giving state legislators the authority to set court rules and practices; and lowering the number of legislators required to approve changes to rules established by the Arkansas Supreme Court.

**REMOVED FROM BALLOT\***



(continued from page 5)

evidence that the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage to the claimant and that such intentional conduct harmed the claimant; limiting awards of non-economic damages in lawsuits for personal injury, property damage, or wrongful death to (i) five hundred

thousand dollars (\$500,000) for each claimant, or (ii) five hundred thousand dollars (\$500,000) for all beneficiaries of an individual deceased person in the aggregate in a lawsuit for wrongful death; defining “non-economic damages” as damages that cannot be measured in money, including pain and suffering, mental and emotional distress, loss of life or companionship, or visible result of injury; providing that the General Assembly may not decrease the foregoing limitations on non-economic damages but may increase the limitations by a two-thirds (2/3) vote of each house; providing that the General Assembly shall adopt a procedure to adjust the dollar limitations on punitive damages and non-economic damages in future years to account for inflation or deflation; providing that the Supreme Court’s power to prescribe rules of pleading, practice, and procedure for courts is subject to the provisions of this amendment; providing that the General Assembly, by a three-fifths vote of each house, may amend or repeal a rule prescribed by the Supreme Court and may adopt other rules of pleading, practice, or procedure on its own initiative; providing that rules of pleading, practice, and procedure in effect on January 1, 2019, shall continue in effect until amended, superseded, or repealed under the provisions of this amendment; providing that a rule of pleading, practice, or procedure enacted by the General Assembly shall supersede a conflicting rule of pleading, practice, or procedure prescribed by the Supreme Court; providing that certain other rules promulgated by the Supreme Court may be annulled or amended by a three-fifths (3/5) vote of each house of the General Assembly instead of a two-thirds (2/3) vote as presently stated in the Arkansas Constitution; and providing that this amendment becomes effective on January 1, 2019.

### **What is being proposed?**

This amendment asks voters to approve changes to four parts of the Arkansas Constitution.

First, it proposes to add a section regarding contingency fees to Article 7 (Judicial Department). This section would:

- Prohibit attorneys from collecting a contingency fee that is more than 1/3 of the net amount of money a client receives in a civil lawsuit.
- Require the state legislature in 2019 to pass laws implementing the section, which would also include establishing penalties for collecting fees higher than allowed and defining terms such as “net amount of recovery.”

Second, the amendment would make changes to Section 32 (Workmen’s Compensation Laws – Actions for Personal Injuries). This section would:

- Define the terms “non-economic damages” and “punitive damages.”
- Establish a maximum amount of money a person receives as punitive damages in a lawsuit related to injuries resulting in death, or injuries to person or property. The maximum would be the greater of \$500,000 or three times the compensatory damages awarded.
- Establish a \$500,000 maximum limit that an injured person or his/her beneficiaries combined can receive as non-economic damages in a lawsuit related to injuries resulting in death, or injuries to person or property.
- Give legislators the authority to increase maximum amounts for non-economic and punitive damages in the future with a 2/3 vote of each house.
- Require the state legislature in 2019 to pass laws creating a procedure to adjust the punitive and non-economic limits in future years for inflation or deflation.

Third, the proposal would change Section 3 (Rules of Pleading, Practice, and Procedure) of Amendment 80 (Qualifications of Justice and Judges). This section would:

- Allow the state legislature to amend or repeal a rule of pleading, practice, or procedure established by the Supreme Court with a vote of 3/5 of each house.
- Allow the state legislature to create a rule of pleading, practice or procedure with a vote of 3/5 of each house.

Finally, the proposal would change Section 9 (Annulment of Amendment of Rules) of Amendment 80 (Qualifications of Justice and Judges). Specifically, it would:

- Lower the number of votes needed by state legislators from 2/3 to 3/5 to abolish or change rules established by the Supreme Court related to Court of Appeals, Circuit Courts, District Courts and “referees, masters and magistrates.”

### **How did this issue get on the ballot?**

The Arkansas Senate and House of Representatives voted to

place Issue 1 on the 2018 General Election Ballot. 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?**

Sen. Missy Irvin of Mountain View and Rep. Bob Ballinger of Berryville.

### **How have voters, legislators and the judicial branch addressed contingency fees and injury damages in the past?**

Voters approved amending Section 32 of Article 5 of the state constitution in 1938 by a vote of 77,028 (63%) in favor to 45,966 (37%) against. This changed the state workmen's compensation law to give legislators the power to establish the amount of compensation to be paid by employers for death or injuries to employees.

In 2003, a jury awarded a family \$15 million in compensatory damages and \$63 million in punitive damages in a lawsuit against a nursing home over an elderly woman's death. Shortly afterward, state lawmakers passed the Civil Justice Reform Act or Act 649 to change procedures related to civil

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?**

- Issue 1 will protect everyday Arkansans by limiting how much of their settlement can be taken by their lawyers as a contingency fee and provides for fair judgments and the ability to limit frivolous lawsuits that harm small businesses.
- Arkansas is currently targeted by out-of-state attorneys seeking frivolously large rulings against our companies because we have softer tort reform laws than most of our neighboring states.
- Issue 1 will remove one more obstacle and help level the playing field with our neighbors as we work to grow jobs and recruit and retain physicians for our communities throughout Arkansas.
- Issue 1 helps Arkansas recruit doctors to care for loved ones. Arkansas ranks 48th in infant deaths, 44th in maternal deaths and 50th in environment for emergency care; The American College of Emergency Physicians has said to help combat its workforce shortages and improve overall access to emergency care, Arkansas should enact medical liability reforms such as a medical liability cap on non-economic damages.
- This authority is nothing new. Lawmakers have the authority to approve and/or adopt court rules in the federal system court system and in 16 other states.
- It's the legislative branch's job and responsibility to set policy and this restores that power back to the legislative branch of government.

### **What do opponents say?**

- Issue 1 makes it more difficult for the poor to obtain justice in court.
- Issue 1 shields bad nursing homes, irresponsible trucking companies, corporate polluters, and other big businesses from lawsuits when they kill or injure someone.
- Issue 1's cap on non-economic damages devalues the lives of people who do not earn an income, such as stay-at-home moms, the elderly, children, and the disabled.
- Issue 1 shifts court-rulemaking authority into the legislature and thereby allows special interests and politics to directly interfere with due process, access to justice, and the fair and impartial administration of justice.
- As compared to other states, Issue 1 is an outlier in terms of the breadth of court rulemaking authority given to the legislature. It allows the General Assembly to adopt, on its own initiative, a rule of pleading, practice, or procedure. The U.S. Congress does not initiate its own court rules, and only a handful of states permit legislatures to initiate and adopt court rules that can supersede rules promulgated by the courts.
- The legislative branch has been scandalized recently by corruption, bribes, self-dealing, and collusion with special interest. This amendment will increase the power of insiders who can afford to lobby the legislators because court rulemaking will be moved from the judicial branch and its deliberate non-partisan process to the legislature where special interests wield too much power. It will be much easier for big money to set the rules up against every day citizens.

lawsuits. (Although Act 649 did not apply to the earlier lawsuit, the Arkansas Supreme Court eventually reduced the family's compensatory damages to \$4 million and punitive damages to \$21 million.)

Act 649 placed limits on when punitive damages could be awarded in lawsuits involving injuries or damages, established a \$1 million limit on punitive damage awards, established the locations where a lawsuit could be filed and the burden of proof required in a medical injury lawsuit, among other things. Supporters refer to these types of laws as "tort reform." The word "tort" refers to a wrongful act that causes harm or injury to another person. "Tort reform" refers to changes made in the civil justice system that affect a person or company's financial liability for harm or injury. These laws often involve a limit on how much a wronged individual can collect in a lawsuit.

The \$1 million limit was found unconstitutional in 2011 during a lawsuit involving rice farmers who successfully sued for losses they suffered after unapproved seeds showed up in American rice crops. The Arkansas Supreme Court also overturned other parts of the law over the years, leaving the constitutional amendment process as the only way to enact limits on damage awards.

In 2016, Health Care Access for Arkansans collected signatures from voters to put an amendment on the ballot that sought to limit attorney contingency fees and non-economic damages in medical lawsuits. The proposal was known as Issue 4.

The Arkansas Supreme Court struck Issue 4 from the ballot ahead of Election Day, saying the proposed amendment did not define "non-economic damages" for the voter and therefore the voter did not have enough information to make an informed decision on the measure.

### **What is Amendment 80 and when was it passed?**

Voters approved Amendment 80 to the Arkansas Constitution in 2000 by a vote of 431,137 (57%) in favor to 323,647 (43%) against. This amendment repealed several sections of Article 7 (Judicial Department) of the constitution and revised the court system in a number of ways, including giving the Arkansas Supreme Court the power to establish court practices and procedures.

The following sections describe the proposed changes included in this amendment organized by the parts of the constitution that would be affected.



## **Section 1: Amend Article 7 of the Constitution, known as the Judicial Department, to create Section 53 - Contingency Fees**

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

Attorneys would be prohibited from being paid a "contingency fee" that is more than 1/3 of the net amount of money a client receives in a lawsuit. This prohibition would apply to lawsuits that are resolved without going to court, such as a settlement or arbitration, and to cases determined by a judge or jury. State legislators would be able to change the contingency fee limit in the future without voters approving another constitutional amendment. This would require a 2/3 vote of each house, or approval from 23 senators and 67 representatives.

Legislators would be required to enact laws to implement this section beginning with their next session in 2019. This includes establishing penalties for attorneys who do not abide by the 1/3 limit. It also includes defining terms such as "net amount of the recovery," which is not defined in the proposed amendment.

### **What is a contingency fee?**

Attorneys receive payments from clients to cover expenses associated with their case.

A contingency fee is the amount of money an attorney receives for payment only if a lawsuit is won, unlike a fixed fee that a client owes regardless of the case's outcome. According to the American Bar Association, under a contingency fee arrangement, a lawyer agrees to accept a fixed percentage of the final amount paid to a client.

If a client wins, the lawyer's fee comes out of the money awarded and paid to the client. If a client loses, the attorney

doesn't receive any payment for his or her legal services, although a client may still be responsible for paying certain costs such as filing fees.

Lawyers and clients use this arrangement most often in cases involving injuries and workers' compensation. A client might agree to a contingency fee because he or she doesn't have enough money to hire a lawyer. The fee typically depends on the complexity of the lawsuit, required resources and how much money the attorney would likely spend while pursuing the lawsuit.

### **Is there currently a maximum amount that attorneys can charge clients in Arkansas for representing them in a lawsuit?**

The amount people pay for legal representation in Arkansas depends on the contract agreed to by the attorney and client. There is no maximum contingency fee established by Arkansas law. However, Arkansas Code § 11-9-715 limits attorney's fees in workers compensation cases to 25 percent.

If approved, this amendment would create in the state constitution a maximum of 33 1/3 percent of the "net amount recovered," a phrase that would be defined in the 2019 legislative session. It also would give legislators the authority to raise or lower the limit in the future without another constitutional amendment.

### **What happens in other states?**

Most courts have professional conduct rules that require a lawyer's fee to be "reasonable." The rule typically provides several factors to consider when determining the reasonableness of a fee, such as the time and labor required, the experience of the lawyer, and the likelihood that the case would prevent the attorney from working on other cases.

Arkansas' court rule on lawyer fees can be read online at <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-15-fees-0>.

Some states go further and have passed laws that establish a limit on contingency fee rates. Some laws apply only to medical malpractice lawsuits, while others also apply to other types of cases. Tennessee caps attorney contingency fees in medical malpractice cases at 33 1/3 percent. Oklahoma caps contingency fees in lawsuits at 50 percent. There are states with no limits, states with laws that allow caps to be waived under certain circumstances, and states with a sliding scale for fees.

## **Section 2 – Amend Section 32 of Article 5 of the Constitution, known as the Workmen's Compensation Laws – Actions for Personal Injuries**

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

This section would establish a maximum dollar amount a person could receive in punitive damages and non-economic damages in a lawsuit against another party for injuries resulting in death, or injuries to person or property, including medical injuries.

State legislators would be able to change the maximum dollar amounts in the future without voters approving another constitutional amendment in two ways:

- Legislators could vote to increase punitive and non-economic damage caps. Increasing the cap would require approval from 2/3 of legislators in each house, or approval from 24 senators and 67 representatives.
- Legislators could adjust punitive and non-economic damage caps due to inflation or deflation. This section requires legislators to pass laws in 2019 to specify the process to adjust for inflation or deflation. The initial legislation would require a simple majority to pass (51 of the 100 members in the House of Representatives and 18 of the 35 members in the Senate). Any changes to that process in future years would require a vote of 2/3 of each house.

### **What are "non-economic damages"?**

The amendment defines non-economic damages as "damages that cannot be measured in money, including pain and suffering, mental and emotional distress, loss of life or companionship, or visible result of injury."

These losses are separate from a person's lost income or medical care expenses, both past and future, that are often referred to as "economic damages." Examples of economic



damages include medical bills, lost pay, cost of repairs, or value of property damaged.

### **How much money could a person collect in non-economic damages under this proposal?**

The answer depends on how many people are suing for non-economic damages. Non-economic damages could not exceed \$500,000 for an individual who is suing for injury. In situations where a person has died as a result of injuries, and the person has multiple relatives or beneficiaries who are seeking compensation for the person's death, the heirs would be limited to receiving a combined \$500,000 in non-economic damages. The heirs would share that amount instead of receiving individual damages.

### **What are "punitive damages"?**

The amendment defines "punitive damages" as "damages to punish and deter wrongful conduct." Generally, this money is awarded to punish the wrongdoer and deter similar behavior in the future.



### **How much money could a person collect in punitive damages under this proposal?**

Punitive damages could not exceed the greater of:

- \$500,000 or
- Three times the amount of money a person receives as compensatory damages. The proposal doesn't define "compensatory damages," but the term typically includes both non-economic and economic damages.

For example, if a person's compensatory damages were \$25,000, the most they could receive is \$500,000 in punitive damages. Whereas if a person received \$300,000 in compensatory damages, they could receive up to \$900,000 in punitive damages.

The proposed limits on punitive damages would not apply in situations where the defendant intentionally caused the injury or damage.

### **What does the Constitution say now?**

Section 32 of Article 5 of the Arkansas Constitution currently says:

*The General Assembly shall have power to enact laws prescribing the amount of compensation to be paid by employers for injuries to or death of employees, and to whom said payment shall be made. It shall have power to provide the means, methods, and forum for adjudicating claims arising under said laws, and for securing payments of the same. Provided, that otherwise, no law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property; and in case of death from such injuries the right of action shall survive, and the General Assembly shall prescribe for whose benefit such action shall be prosecuted.*

The proposed change would create an exception, allowing limits to be set on the amount of money people could receive in punitive and non-economic damages for injuries resulting in death or for injuries to people or property.

### **What happens in other states?**

Laws regarding punitive and non-economic damages vary from state to state. Some states, like Arkansas, have no limits. Other states may have a limit on one type of award but not on another. The amounts also vary from state to state, with some having a sliding scale of what can be awarded and others having a limit on the overall amount a person can receive in an injury lawsuit. Some states have limits only in lawsuits involving injuries suffered in a medical setting while others cover non-medical situations.

Missouri, for example, has a \$400,000 limit on non-economic damages in medical malpractice lawsuits and a \$700,000 limit for catastrophic injury or death. But its cap on punitive damages was found unconstitutional by the state court. In Tennessee, punitive damages are limited to \$500,000 and non-economic damages range from \$750,000 to \$1 million.

Louisiana doesn't allow punitive damages except in cases involving drunk driving, sexual abuse of a child or domestic violence. The state limits economic and non-economic damages in medical malpractice cases to a combined total of \$500,000. Other states, like Arkansas, Arizona and Kentucky, have state constitutions that prohibit such limits.

## **Section 3: Amend Section 3 of Amendment 80, known as the Rules of Pleading, Practice, and Procedure**

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

This section would give the General Assembly authority to create court rules and to change or eliminate court rules established by the Arkansas Supreme Court.

State senators and representatives would have the power to pass laws amending or repealing a rule of pleading, practice, or procedure established by the Arkansas Supreme Court with a vote of 3/5 of each house (or approval from 21 senators and 60 representatives).

The amendment also would give legislators the authority to pass laws creating a rule of pleading, practice or procedure with approval of 3/5 of each house.

Rules passed by the state legislature would take precedence over those established by the Arkansas Supreme Court when there is a conflict between the two sets of rules.

Any rules set by the Supreme Court and already in effect as of Jan. 1, 2019 would remain in effect until changed by legislators.

### **What does “rule of pleading, practice, or procedure” mean?**

The proposed amendment does not define this phrase but generally it refers to the rules and operating procedures that judges and attorneys follow in court. These rules touch on all aspects of law, from criminal to civil to family courts.

Some examples of what these rules govern include what types of evidence can be presented, who can testify as an expert, whether a losing party must pay the winner’s attorney’s fees, whether lawsuits must be filed where the plaintiff lives or where the defendant lives, what juries must consider, and whether a lawsuit is worthy to proceed.

### **What does the constitution say now?**

Section 3 of Amendment 80 to the Arkansas Constitution currently says:

*The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.*

The proposed change would create an exception in the amendment and give legislators the authority to pass laws establishing, changing and eliminating court rules.

### **How are rules of pleading, practice and procedure currently made in Arkansas?**

The Arkansas Supreme Court has the constitutional authority to create the rules of pleading, practice and procedure. Historically, the Supreme Court has used a committee process to review proposed rule changes.

Committees tend to consist of attorneys, judges and others interested in the subject matter. A committee may be asked by the court or by the public to review a proposed rule or change, followed by a discussion and public comment



period. The Supreme Court would then decide whether to enact a rule.

### **What happens in other states?**

Authority over court rules has varied throughout the history of the United States. When some states were created, early leaders gave rulemaking authority to courts. In other states, such as Arkansas, legislatures initially had greater control over procedural rules and a shift to the courts took place over time.

The relationship between the legislature and the court system varies from state to state. In some states, the legislature can change court rules. Some can veto court rules. Some can create rules as long as they don’t conflict with state law. In others, the court has the final say.

## **Section 4 – Amend Section 9 of Amendment 80, known as the Annulment or Amendment of Rules**

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

This section would lower the number of state legislators required to abolish or amend rules established by the Supreme Court related to the Court of Appeals, Circuit Courts, District Courts and “referees, masters and magistrates.”

The amendment would lower the number required to approve legislation from 2/3 of each house (24 senators, 67 representatives) to 3/5 of each house (21 senators, 60 representatives).

### **What does the constitution say now?**

Section 9 of Amendment 80 to the Arkansas Constitution currently says:

*Any rules promulgated by the Supreme Court pursuant to Sections 5, 6(B), 7(B), 7(D), or 8 of this Amendment may be annulled or amended, in whole or in part, by a two-thirds (2/3) vote of the membership of each house of the General Assembly.*

**If passed, when would the changes in Issue 1 take effect?**

All parts of the amendment would go into effect Jan. 1, 2019. The amendment would apply to lawsuits filed starting Jan. 1, 2019 and to contracts signed with attorneys for contingency fees on and after Jan. 1, 2019.

**Where can I find more information?**

The complete wording of this amendment can be found at [www.uaex.edu/issue1](http://www.uaex.edu/issue1)

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)

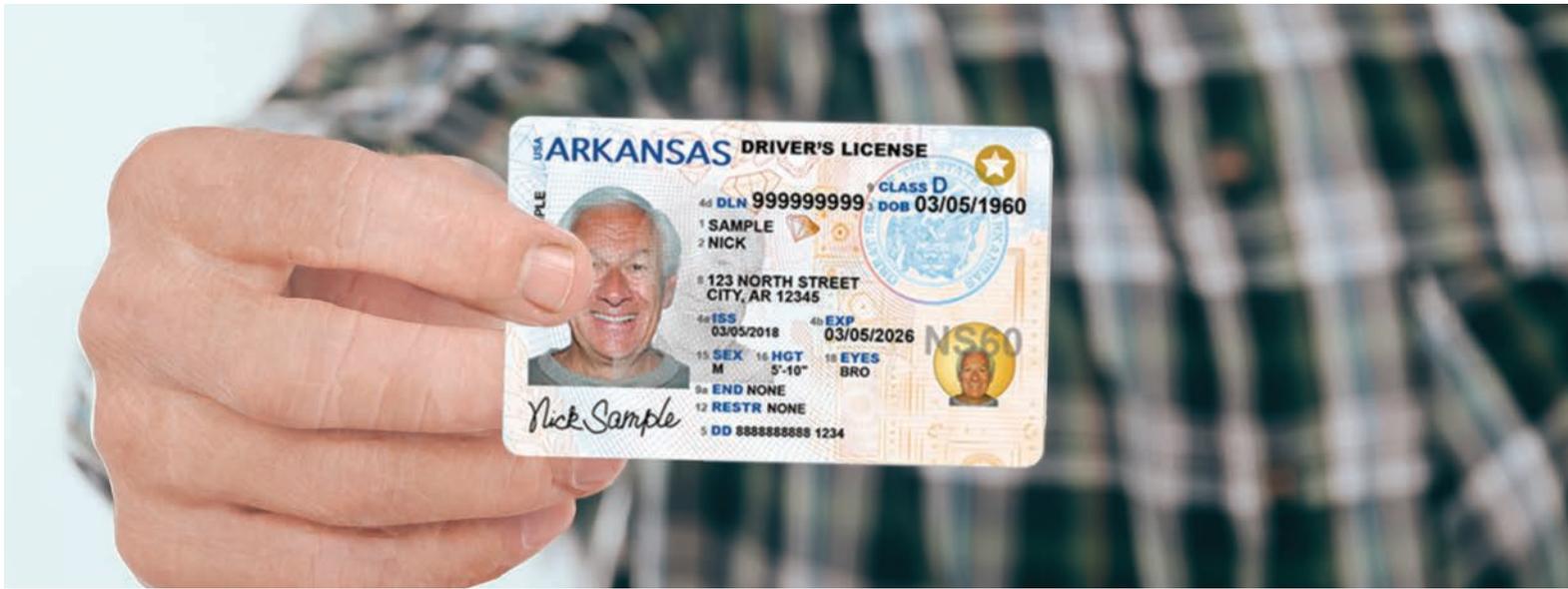
An Amendment Concerning Civil Lawsuits and the Powers of the General Assembly and Supreme Court to Adopt Court Rules

(Ballot Title)

A proposed amendment to the Arkansas Constitution providing that a contingency fee for an attorney in a civil lawsuit shall not exceed thirty-three and one-third percent (33 1/3 %) of the net recovery; defining "contingency fee" as an attorney's fee that is paid only if the claimant recovers money; providing that the General Assembly may amend the foregoing percentage by a two-thirds (2/3) vote of each house; limiting punitive damages awards for each claimant in lawsuits for personal injury, property damage, or wrongful death to the greater of (i) five hundred thousand dollars (\$500,000), or (ii) three (3) times the amount of compensatory damages awarded; defining "punitive damages" as damages assessed to punish and deter wrongful conduct; providing that the General Assembly may not decrease the foregoing limitations on punitive damages but may increase the limitations by a two-thirds (2/3) vote of each house; providing that the limitations on punitive damages do not apply if the factfinder determines by clear and convincing evidence that the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage to the claimant and that such intentional conduct harmed the claimant; limiting awards of non-economic damages in lawsuits for personal injury, property damage, or wrongful death to (i) five hundred thousand dollars (\$500,000) for each claimant, or (ii) five hundred thousand dollars (\$500,000) for all beneficiaries of an individual deceased person in the aggregate in a lawsuit for wrongful death; defining "non-economic damages" as damages that cannot be measured in money, including pain and suffering, mental and emotional distress, loss of life or companionship, or visible result of injury; providing that the General Assembly may not decrease the foregoing limitations on non-economic damages but may increase the limitations by a two-thirds (2/3) vote of each house; providing that the General Assembly shall adopt a procedure to adjust the dollar limitations on punitive damages and non-economic damages in future years to account for inflation or deflation; providing that the Supreme Court's power to prescribe rules of pleading, practice, and procedure for courts is subject to the provisions of this amendment; providing that the General Assembly, by a three-fifths vote of each house, may amend or repeal a rule prescribed by the Supreme Court and may adopt other rules of pleading, practice, or procedure on its own initiative; providing that rules of pleading, practice, and procedure in effect on January 1, 2019, shall continue in effect until amended, superseded, or repealed under the provisions of this amendment; providing that a rule of pleading, practice, or procedure enacted by the General Assembly shall supersede a conflicting rule of pleading, practice, or procedure prescribed by the Supreme Court; providing that certain other rules promulgated by the Supreme Court may be annulled or amended by a three-fifths (3/5) vote of each house of the General Assembly instead of a two-thirds (2/3) vote as presently stated in the Arkansas Constitution; and providing that this amendment becomes effective on January 1, 2019.

FOR

AGAINST



## ISSUE NUMBER 2

(Referred to the people by the Arkansas General Assembly)

# Requiring Photo ID to Vote

**POPULAR NAME:** A Constitutional Amendment Adding as a Qualification to Vote that a Voter Present Certain Valid Photographic Identification When Casting a Ballot in Person or Casting an Absentee Ballot.

**BALLOT TITLE:** An amendment to the Arkansas Constitution concerning the presentation of valid photographic identification when voting; requiring that a voter present valid photographic identification when voting in person or when casting an absentee ballot; and providing that the State of Arkansas issue photographic identification at no charge to eligible voters lacking photographic identification.

### What is being proposed?

This proposed amendment asks voters to change Article 3 of the Arkansas Constitution to amend the qualifications residents must meet in order to vote in an election in this state. If approved by voters, this amendment would:

1. Require legislators to pass a law establishing that voters must present photo identification before receiving a ballot to vote in person. Residents voting by way of an absentee ballot would be required to enclose a copy of a valid photo identification with their ballot.
2. Require legislators to establish what photographic identification voters may use.
3. Require the state to issue photo identification at no charge to a voter who does not have identification that meets the requirements established by legislators.
4. Allow a voter without valid photo identification to vote using a provisional ballot, with the ballot counting only if the voter follows the steps required by state law to certify the ballot.
5. Allow legislators to create exceptions to the requirement that voters show valid photo identification when voting in person or through absentee ballot.

(continued on page 14)

## QUICK LOOK: What does your vote mean?

**FOR:** A FOR vote means you are in favor of changing the Arkansas Constitution to include the presentation of photo identification as a qualification to vote in Arkansas, and that the state provide voters with qualifying photographic identification at no charge if they do not have one that meets the requirements.

**AGAINST:** An AGAINST vote means you are not in favor of changing the Arkansas Constitution to include the presentation of photo identification as a qualification to vote in Arkansas, and that the state provide voters with qualifying photographic identification at no charge if they do not have one that meets the requirements.

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?

- The proposed amendment would stop instances of fraud in which a person impersonates a voter.
- Voters need to know that when their vote is cast, it counts. This amendment will assure the voters that we are doing everything from the point where that voter comes in to vote to the time they walk out their door to ensure validity of votes cast.
- The amendment is necessary because the Arkansas Supreme Court has struck down previous laws requiring voters to present photographic identification as unconstitutional.
- The amendment is needed to ensure confidence in the state's voting system.

## What do opponents say?

- There are only a handful of documented instances nationally of in-person voter fraud, and so this is a costly solution in search of an almost non-existent problem. Across this country, we are seeing more and more photo ID laws. Too much of the effect has been to disenfranchise large numbers of minorities, especially senior citizens.
- Given the great difficulty of someone successfully impersonating another voter and the unlikelihood of ever changing the outcome of an election, there is no incentive for voter impersonation.
- Election fraud is already a crime punishable by a jail sentence and a fine.

(continued from page 13)

6. Require voters to comply with all additional laws regulating elections necessary for their vote to be counted.

### How did this issue get on the ballot?

Arkansas legislators voted to put Issue 2 on the 2018 general election ballot for voters to decide. 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?

The lead sponsor of this amendment was Rep. Robin Lundstrum of Elm Springs.

### How have voting requirements in Arkansas changed over time?

Article 3 of the Arkansas Constitution specifies qualifications of voters and other election-related laws. When Arkansas' Constitution was passed in 1874, Article 3 originally allowed voting only by men who were U.S. citizens or planning to become citizens and had lived in the state for at least a year.

In 1920, voters approved an amendment to Article 3 (the vote tally is not available). Amendment 8, as it is known, gave women the right to vote and also required voters to pay a poll tax before they could vote.

In 1948, Arkansas voters passed Amendment 39, which gave legislators the power to enact voter registration laws. The measure passed by a vote of 135,151 (65%) in favor to 71,934 (35%) against.

In 1964, Arkansas voters approved Amendment 51 by a vote of 277,087 (56%) to 218,681 (44%). This amendment did away with the requirement that Arkansas voters pay a poll tax to vote and instead created a permanent voter registration process that is still used today.

In 2008, voters approved a ballot measure, which became Amendment 85, by a vote of 714,128 (73%) to 267,326 (27%). Amendment 85 updated Article 3 to include existing requirements



to vote in Arkansas, to recognize regulations already in place and to delete old references to poll taxes and the need to be 21 to vote. Those requirements had not been in effect since the approval of Arkansas' Amendment 51, which eliminated the poll tax in 1964, and the passage of the 26th Amendment to the U.S. Constitution in 1971, which lowered the voting age to 18.

In 2017, the state legislature altered Amendment 51, which created the state's voter registration system. They passed legislation requiring voters to present photo identification as a way of verifying their voter registration. The 2017 law is currently being contested in state court.

### **What does the Constitution say now?**

Article 3, Section 1, establishes qualifications for voting in an election in Arkansas. The section states that in order to vote in an election, a person must be:

- A citizen of the United States
- A resident of the State of Arkansas
- At least 18 years of age
- Lawfully registered to vote in the election

The constitution does not currently require voters to show photo identification when voting in person or through absentee ballot. However, photo identification is required by state law when a person initially registers to vote.

### **If the Constitution doesn't require voters to show photo ID when voting, why am I already asked to present photo identification when I vote?**

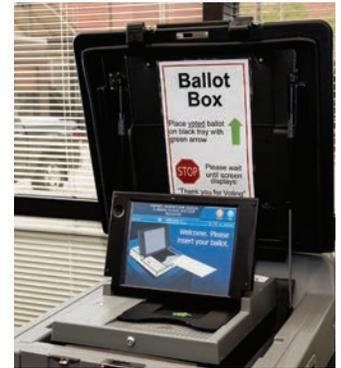
In recent years, Arkansas has gone back and forth on requiring photo identification. For many years, state law required election workers to ask voters for identification on Election Day. However, state law did not require voters to actually present identification in order to receive a ballot and vote.

In 2013, legislators passed Act 595, a law requiring voters to present identification as proof of identity before they could receive a ballot. This requirement was challenged in court and found unconstitutional by the state's Supreme Court in 2014 because it would add an additional qualification to vote that was not in the state constitution. The qualifications for voting in Arkansas could only be changed by a constitutional amendment approved by voters.

In 2017, legislators again passed a voter identification law, though this time the law stated photographic identification was required to verify a person's voter registration before they could receive a ballot. This law, Act 633 of 2017, altered Amendment 51 through the legislative process. Act 633 allows voters without identification to sign additional forms

saying they are who they say they are. Or they have the option of returning to election officials at a later time with their identification.

Issue 2 is seen as a way to overcome or avoid legal challenges to Act 633 because the constitution would be changed by voters to add proof of identity as a qualification for voting. The proposed constitutional amendment could still be subject to a federal constitutional challenge.



### **If this amendment passes, what type of photo identification must I present before I can vote?**

This proposed amendment does not define "valid photographic identification." If approved, state senators and representatives would write a new law at a later date establishing what identification voters must provide.

Currently, identification required under Act 633 of 2017 to verify voter registration includes a driver's license, a photo identification card, a concealed handgun carry license, a U.S. passport, an employee badge or identification document issued by an Arkansas post-secondary educational institution, a U.S. military identification document, a public assistance identification card that includes a photograph, or a voter verification card issued by the state.

### **If this amendment passes, what would happen if a person doesn't have photo identification?**

A person without photo identification would be able to vote using a "provisional ballot," or a special ballot used to record a vote when there are questions about a voter's eligibility. These ballots are kept separate from regular ballots.

The proposal says a provisional ballot would only be counted if the voter certifies it "in a manner provided by law."

Currently state law requires a person without identification to either sign a form confirming their identity or to return later and present identification in person before the county's Election Commission certifies the vote tallies as final.

When a person signs the form stating their identity, county election officials check the person's voter registration information in county records and then decide whether or not the vote counts.

Under the proposal, an absentee ballot submitted without a copy of the person's valid photographic identification would be treated as a provisional ballot.



State legislators would be able to pass laws creating exceptions to the requirements that voters show valid identification.

### **What else does the proposed amendment say?**

The proposal states that a voter shall also “comply with all additional laws regulating elections necessary for his or her vote to count.” This section is not further defined so its impact on voters can’t be described.

### **How many voters in Arkansas lack photo identification?**

There are no specific studies on how many Arkansas voters lack photo identification. A lawsuit filed in February 2018 over the state’s current photo identification practices said ballots from 1,064 Arkansas voters were not counted in the May 2014 primary because voters did not present required photo identification. That number represents .06 percent (six hundredths of 1%) of the state’s registered voters.

Nationally, a 2006 telephone survey by the Brennan Center for Justice at the New York School of Law found that 11 percent of U.S. citizens did not have current, unexpired government-issued photo identification. Based on 2000 Census calculations of the citizen voting-age population, the study’s author estimated 21 million American adult citizens did not possess valid government photo ID.

In 2014, a U.S. Government Accountability Office report to Congress summarized 10 studies estimating ownership of driver’s licenses or state-issued IDs. The report found that depending on the study, ownership rates among registered voters ranged from 84 to 95 percent.

Arkansas’ county clerks, who are responsible for issuing voter identification cards under the state’s current system, are tracking how many voter identification cards they issue this year. They will submit information to the Arkansas Secretary of State’s Office at the end of the year.

### **What documentation would be required to obtain valid photo identification and what would it cost the voter?**

The proposed amendment would require the state to issue photo identification at no charge. However, there could be costs associated with transportation and personal documents required to obtain the free identification from the state, such as a birth certificate.

The proposed amendment does not describe the process that would be used to issue free identification or what documents would be required to obtain one. Legislators would need to enact laws on what identification is required to vote and how to obtain it.

Currently, county clerks can issue a free “verification of voter registration card.” We do not know if the photo identification required for voters and the process for obtaining it will be similar, but we offer that process as an example of what documents are currently accepted.

Under existing state law, county clerks can issue the “verification of voter registration card” only after a person provides a photo or non-photo identity document that includes the applicant’s full legal name and date of birth, documentation showing the applicant’s name and residential address and evidence the applicant is registered to vote in the county. Acceptable identity documents that must include the voter’s full legal name and date of birth, such as:

- A birth certificate, copy of marriage license application, copy of state or federal tax return for the previous calendar year, paycheck or paycheck stub including the name of the applicant and the applicant’s employer, an original Medicare or Medicaid statement, an original annual social security statement from the past four years, a certified school record or transcript from the past year, naturalization documents, or a DD-214 form issued to military members.
- Examples of documentation showing the applicant’s name and residential address include a utility bill issued within the past 60 days, a bank statement issued within the past 60 days, a copy of a state or federal tax return for the previous year, a current rental contract or receipt of rental payment made within the past 60 days that includes a landlord’s name, a homeowners’ insurance policy from the past year, a personal property tax bill from the past year, a current automobile registration receipt or a W-2 issued by the applicant’s employer in the past year.
- The voter’s information must match the name, date of birth and residential address in voter registration records.

Ultimately, what's acceptable under Issue 2 would depend on what legislators would pass in the next legislative session.

### **How much would it cost the state to issue a voter identification card?**

A cost analysis was not included with the proposed constitutional amendment when it went through the legislature for a vote.

According to the Secretary of State's Office, the state has spent \$311,171 over the past few years to provide machines, software and supplies to all 75 counties to create photographic identification for voters required by current state law. It is anticipated these resources could be used for the new requirement if Issue 2 passes.

### **How many states require voters to present photo identification when voting?**

A total of 34 states have laws requesting or requiring voters to show some type of identification when voting, whereas voters in 16 states can vote without presenting any identification.

According to the National Conference of State Legislatures, seven states require voters to present photo identification to receive a regular ballot. Voters who don't have photo identification can receive a special ballot, called a provisional ballot, to cast their vote. These voters are then required to come back within a few days to present an acceptable identification to election workers for their votes to count.

Another 10 states, including Arkansas, require voters to show photo identification but allow voters without it to sign additional paperwork swearing they are telling the truth about their identity. These votes may be counted if accepted by local election officials.

Voter identification laws are often sorted into categories: Strict Photo ID, Strict Non-Photo ID, Photo ID Requested, ID Requested but photo not required, and no document required to vote. Arkansas is currently considered a Photo ID Requested state by the National Conference of State Legislatures.

### **If this proposal fails, would I still be required to present photo identification when voting?**

Legislators passed Act 633 in 2017, which requires voters present photo identification when voting as a way to verify their voter registration. A lawsuit has been filed over the law and whether it is constitutional. The outcome of this court case, *Haas v. Martin*, would determine whether voters would still have to present photo identification when voting.

### **Does voter impersonation occur in Arkansas?**

Like many states, Arkansas historically has had election outcomes illegally manipulated through stuffing of ballot boxes, changing of vote tallies, fraudulent absentee ballots, bribery, and poll taxes paid by people other than the voter. These historical cases are documented by The Encyclopedia of Arkansas History and Culture, and in former Arkansas Supreme Court Justice Tom Glaze's book, "Waiting for the Cemetery Vote: The Fight to Stop Election Fraud in Arkansas."

We could not find any studies that specifically discussed voter impersonation in Arkansas, which this proposed constitutional amendment would address.

In an anonymous online poll by the Public Policy Center in November 2017, Arkansas' 28 prosecutors were asked if they or anyone in their office had been asked to prosecute a case of voter impersonation. Of the 20 respondents, all but one person said no. The one respondent said they had been asked to look at whether someone voted twice, and that further investigation showed the person did not actually vote twice.

Nationally, studies have found voter fraud to be rare, and voter impersonation to be even rarer (2017, Brennan Center for Justice). A 2014 U.S. Government Accountability Office report to Congress summarized studies investigating voter impersonation. The report stated that it was difficult to estimate instances of voter impersonation because there was no single source for this information and variation existed among federal and state sources in the extent of information collected.

An election fraud database compiled by the News21 project at the Walter Cronkite School of Journalism and Mass Communication at Arizona State University did not show any cases of alleged voter impersonation reported in Arkansas between 2000 and 2012. There were three people associated with absentee ballot fraud listed. A similar database compiled by The Heritage Foundation listed two of the same allegations.



## If passed, when would the changes take effect?

If approved, the amendment would go into effect 30 days after the election.

## Where can I find more information?

The complete wording of this proposed constitutional amendment can be found at [www.uaex.edu/issue2](http://www.uaex.edu/issue2)

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U.S. Government Accountability Office. (2014). Elections: Issues Related to State Voter Identification Laws. (GAO-14-634). Retrieved from [www.gao.gov/assets/670/665966.pdf](http://www.gao.gov/assets/670/665966.pdf)

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

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Issue No. 2

(Popular name)

A Constitutional Amendment Adding as a Qualification to Vote that a Voter Present Certain Valid Photographic Identification When Casting a Ballot In Person or Casting an Absentee Ballot

(Ballot title)

AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE PRESENTATION OF VALID PHOTOGRAPHIC IDENTIFICATION WHEN VOTING; REQUIRING THAT A VOTER PRESENT VALID PHOTOGRAPHIC IDENTIFICATION WHEN VOTING IN PERSON OR WHEN CASTING AN ABSENTEE BALLOT; AND PROVIDING THAT THE STATE OF ARKANSAS ISSUE PHOTOGRAPHIC IDENTIFICATION AT NO CHARGE TO ELIGIBLE VOTERS LACKING PHOTOGRAPHIC IDENTIFICATION.

FOR

AGAINST



## ISSUE NUMBER 3

(Proposed by Petition of the People)

# Changing General Assembly Term Limits

**POPULAR NAME:** Arkansas Term Limits Amendment

**BALLOT TITLE:** A proposed amendment to the Arkansas Constitution concerning term limits for members of the Arkansas General Assembly; to provide that no person may be elected to more than three (3) two-year terms as a member of the House of Representatives, to more than two (2) four-year terms as a member of the Senate, or to any term that, if served, would cause the member to exceed a total of ten (10) years of service in the General Assembly; to repeal Section 2(c) of Amendment 73 that established a years-of-service limit on members of the General Assembly of sixteen (16) years; to provide that the ten-year service limit shall include all two (2) and four (4) year terms, along with full years of any partial term served as a result of a special election to fill a vacancy; to apply the limit to terms and service in the General Assembly on and after January 1, 1993; to provide that this amendment shall not cut short or invalidate a term to which a member of the General Assembly was elected prior to the effective date of this amendment; to provide that notwithstanding the General Assembly's constitutional authority to propose amendments to the Constitution, the General Assembly shall not have the authority to propose an amendment to the Constitution regarding term limits for the House of Representatives or Senate, and to continue reserving that power to the people under Article 5, Section I, as amended by Amendment 7; and to declare that if any provision of this amendment should be held invalid, the remainder shall stand.

### What is being proposed?

This amendment asks voters to change term limits for the General Assembly as described in Amendment 73 of the Arkansas Constitution, and to prohibit state legislators from further altering these term limits. If approved by the voters, this amendment would:

1. Repeal existing term limits of 16 years.

(continued on page 20)

## QUICK LOOK: What does your vote mean?

**FOR:** A FOR vote means you are in favor of shortening term limits to three two-year terms in the House of Representatives and two four-year terms in the Senate; prohibiting legislators from serving more than 10 years total; and prohibiting legislators from changing term limits for the General Assembly.

**AGAINST:** An AGAINST vote means you are not in favor of shortening term limits to three two-year terms in the House of Representatives and two four-year terms in the Senate; prohibiting legislators from serving more than 10 years total; and prohibiting legislators from changing term limits for the General Assembly.

**REMOVED FROM BALLOT**

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?

- In 2014, Arkansas legislators used a deceptive ballot title to trick voters into lengthening the amount of time they can stay in office by nearly triple. Voters thought they were voting for legislative ethics reform. Instead, politicians doubled their pay and gutted voter approved term limits. Voters deserve an honest ballot title.
- Term limits provide fresh faces with fresh ideas to elected office. They reduce lobbyist and special interest influence and make room for the citizen legislator.
- Traditional “outsider” candidates who are blocked by incumbents would be given an enhanced opportunity to serve.
- If eight years is good enough for the president of the United States, the leader of the free world with a \$4.4 trillion dollar budget, 10 years is probably okay for a legislator representing half of a county in Arkansas.

## What do opponents say?

- Term limits create legislatures filled with inexperienced lawmakers dominated by savvy lobbyists.
- The ballot box is the best form of term limits.
- There is value in having legislators with some continuity and understanding of the process, in particular when agency heads and others don't have that same time limitation in place.
- The impact of an immediate turnover in membership would be monstrous for the knowledge of public policy and on institutional memory in state government. From the state budget to education policy to public employee retirement programs, knowledge of the policy-making process and of the key questions that must be asked for good legislating would disappear in a flash.

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2. Limit terms in the Arkansas House of Representatives to three two-year terms for a total of six years.
3. Limit terms in the Arkansas Senate to two four-year terms for a total of eight years.
4. Prohibit legislators from serving more than 10 years in the General Assembly over their life-time.
5. Include all two-year terms, four-year terms, and full years of partial terms resulting from special elections in the overall 10-year limit that would be put into place under this amendment.
6. Apply the life-time limits to all terms served by legislators on or after Jan. 1, 1993, with the exception of allowing legislators to complete their current term even if it puts them over the 10-year limit.
7. Prohibit legislators from proposing constitutional amendments to change term limits for the General Assembly.

## How did this issue get on the ballot?

Sponsors collected signatures from at least 84,859 Arkansas voters, equal to 10 percent of the people who voted for governor in the last election, to put Issue 3 on the statewide General Election ballot.

## Who were the main sponsors of this amendment?

Arkansas Term Limits and U.S. Term Limits have both filed Ballot Question Committee paperwork with the Arkansas Ethics Commission to support this measure. Their statements of organization and financial filings are online at the Arkansas Ethics Commission website, [www.arkansasethics.com](http://www.arkansasethics.com).

## When was the last time Arkansas voted on this issue?

Term limits have been on the Arkansas ballot three times over the past 30 years.

In 1992, Arkansas voters approved Amendment 73 by a vote of 494,326 (60%) in favor to 330,836 (40%) against. This amendment set terms for constitutional officers such as the governor and commissioner of state lands as well as state legislators. The amendment limited members of the House of Representatives to three two-year terms (a total of six years) and state senators to two four-year terms (a total of eight years).

In 2004, voters rejected a proposal to allow up to six two-year terms (12 years) in the House and three four-year terms (12 years) in the Senate. The proposal was defeated by a vote of 299,338 (30%) in favor to 703,171 (70 %) against.

In 2014, Arkansas voters approved Amendment 94 by a vote of 428,206 (52%) in favor to 388,459 (48%) against to set the current terms for state legislators. The amendment increased the number of years a state legislator could be in office. The change allowed state legislators to serve a total of 16 years combined in the House or Senate instead of a chamber-specific limit as previously approved. The proposal was known to many people as the “ethics amendment” because of new ethics requirements it included for legislators.

### **How many years can a legislator serve now?**

Currently, members of the General Assembly can serve a total of 16 years. They can serve all 16 years in the Senate or House of Representatives or any combination of the two.

There are some exceptions to the limits:

- A member who completes his or her 16th year of service during a term in which he or she has already been elected may serve until the completion of that term. This can create a scenario where someone serves 18 to 20 years.
- Years for which a member who is serving a partial legislative term as the result of a special election called by the Governor to fill a vacancy are not included in the calculation of total years.
- A two-year term served as a result of apportionment of the Senate is not included in the calculation of total years. Apportionment is the process of redrawing the boundaries of an area that is represented by a state representative and senator to ensure that each legislator represents roughly the same number of people. This process occurs after a federal Census.

### **How many years is a single term?**

Senators are elected to four-year terms. Representatives are elected to two-year terms. The length of a single term would not change under this proposal.

There are 100 members of the House of Representatives and 35 senators. The General Assembly, as they are collectively called, meets for at least 60 days in odd years. They also hold a fiscal session every even year to discuss the state budget and other financial matters.

### **How would this proposal affect people in office now?**

The 10-year limit would apply to all legislators currently in office, making some ineligible for additional terms or limiting them on which chamber they can be elected to in the future based on past years of service and the timing of when their current term ends.



The limit would include two-year terms senators serve after re-apportionment. Those terms are not counted under the state’s existing term-limit law.

Senators up for re-election this November would be able to complete their new term, even if it puts them over the 10-year limit, because they would be elected before the Jan. 1, 2019 effective date.

Eleven of Arkansas’ current 34 senators would participate in their last regular legislative session in January 2019 if the proposal passes, according to information provided by Senate staff. Another 15 senators would participate in their last regular legislative session in 2021.

Six current senators would be eligible to run for office again after this election, though the length of their term may be affected by apportionment. If the proposed amendment fails, 21 senators would be eligible for re-election under existing term limits.

In the House, 44 of the 100 current representatives will have served six or more years when their current term expires at the end of this year. These legislators served between three and four terms, according to the 2018 House of Representative’s Seniority List.

All House seats are up for election this year. Any of the representatives with six or more years of service could be re-elected this year and serve out their new term under the proposed amendment because they would have been elected before the effective date. However, they would not be eligible for re-election thereafter.

Another 35 members are in their second term. If re-elected this fall, the term would be their last. The remaining members are in their first term, making them eligible to run for more terms.

### **How would this affect legislators who previously served?**

The proposed amendment would apply the term limits to legislators who served as far back as Jan. 1, 1993. Terms from 1993 to now would be included in the 10-year life-time limit. In instances where people served partial terms, only full years of a partial term would be counted.

### How does Arkansas compare to other states?

According to the National Conference of State Legislators, 15 states have term-limits in place for state legislators. Term limits range from six to 12 years in other states. Arkansas has a 16-year limit. Like Arkansas, most of the 14 other states adopted term limits in the 1990s.

Nine of the 15 states allow legislators to run again for office after a break in time. They can then serve the full term limit again. Those states are Arizona, Colorado, Florida, Louisiana, Maine, Montana, Nebraska, Ohio and South Dakota. Arkansas, California, Michigan, Missouri, Nevada and Oklahoma have lifetime limits that don't allow the clock to reset after a break.

Idaho and Utah previously had term limits but their state legislatures later repealed the laws.

### Based on this proposal, how could term limits for the General Assembly be changed in the future?

The proposed amendment would prohibit state lawmakers from referring future constitutional amendments to voters

that would change how many years in office state senators and representatives could serve. Changes to term limits would be allowed only through the ballot initiative process, which currently requires:

- A ballot issue group to form and submit the text of the proposed ballot title and amendment to the Attorney General.
- The Attorney General to approve the ballot title.
- The supporter group to collect signatures from voters representing 10 percent of the number of people who voted for governor. As of today, that would require 84,859 signatures.
- The Secretary of State to certify the signatures and place the constitutional amendment on the ballot.
- Voter approval.

### If passed, when would Issue 3 take effect?

All parts of the amendment would go into effect Jan. 1, 2019.

### Where can I find more information?

The complete wording of this amendment can be found at [www.uaex.edu/issue3](http://www.uaex.edu/issue3)

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

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Issue No. 3

(Popular Name)

Arkansas Term Limits Amendment

(Ballot Title)

A proposed amendment to the Arkansas Constitution concerning term limits for members of the Arkansas General Assembly; to provide that no person may be elected to more than three (3) two-year terms as a member of the House of Representatives, to more than two (2) four-year terms as a member of the Senate, or to any term that, if served, would cause the member to exceed a total of ten (10) years of service in the General Assembly; to repeal Section 2(c) of Amendment 73 that established a years-of-service limit on members of the General Assembly of sixteen (16) years; to provide that the ten-year service limit shall include all two (2) and four (4) year terms, along with full years of any partial term served as a result of a special election to fill a vacancy; to apply the limits to terms and service in the General Assembly on and after January 1, 1993; to provide that this amendment shall not cut short or invalidate a term to which a member of the General Assembly was elected prior to the effective date of this amendment; to provide that notwithstanding the General Assembly's constitutional authority to propose amendments to the Constitution, the General Assembly shall not have the authority to propose an amendment to the Constitution regarding term limits for the House of Representatives or Senate, and to continue reserving that power to the people under Article 5, Section I, as amended by Amendment 7; and to declare that if any provision of this amendment should be held invalid, the remainder shall stand.

FOR

AGAINST



## ISSUE NUMBER 4

(Proposed by Petition of the People)

# Arkansas Casino Gaming

**POPULAR NAME:** An Amendment to Require Four Licenses to be Issued for Casino Gaming at Casinos, One Each in Crittenden (to Southland Racing Corporation), Garland (to Oaklawn Jockey Club, Inc.), Pope, and Jefferson Counties.

**BALLOT TITLE:** An amendment to the Arkansas Constitution to require that the Arkansas Racing Commission issue licenses for casino gaming to be conducted at four casinos in Arkansas, being subject to laws enacted by the General Assembly in accord with this amendment and regulations issued by the Arkansas Racing Commission (“Commission”); defining “casino gaming” as dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value, as well as accepting wagers on sporting events; providing that individuals under 21 are prohibited from engaging in casino gaming; providing that the Commission shall issue four casino licenses, one to Southland Racing Corporation (“Southland”) for casino gaming at a casino to be located at or adjacent to Southland’s greyhound track and gaming facility in Crittenden County, one to Oaklawn Jockey Club, Inc. (“Oaklawn”) to require casino gaming at a casino to be located at or adjacent to Oaklawn’s horse track and gaming facility in Garland County, one to an applicant to require casino gaming at a casino to be located in Pope County within two miles of Russellville, and one to an applicant to require casino gaming at a casino to be located in Jefferson County within two miles of Pine Bluff; providing that upon receiving a casino license, licensees will be required to conduct casino gaming for as long as they have a casino license providing that Southland and Oaklawn do not have to apply for a license and will automatically receive a casino license upon the Commission adopting rules and regulations to govern casino gaming; providing that the Commission shall require all applicants for the two remaining casino licensees, one in Pope County and one in Jefferson County to pay an application fee, demonstrate experience in conducting casino gaming, and submit either a letter of support from the county judge or a resolution from

(continued on page 24)

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

**FOR:** A FOR vote means you are in favor of authorizing four casinos, one each in Jefferson and Pope counties, one at Oaklawn in Hot Springs, and one at Southland in West Memphis.

**AGAINST:** An AGAINST vote means you are not in favor of authorizing four casinos, one each in Jefferson and Pope counties, one at Oaklawn in Hot Springs, and one at Southland in West Memphis.

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?

- The proposal will create jobs and generate more than \$120 million in annual tax revenue that can be used to fund roads and cut taxes.
- This is a chance to bring Pine Bluff back to its old self.
- The amendment gives communities a real voice in the process and ensures a transparent, merit-based selection of casino operators. It also recognizes and protects two great Arkansas institutions, Oaklawn and Southland, that have created hundreds of jobs and millions of dollars in tax revenue for our state.
- No longer will Arkansas lose money to out-of-state casinos. The measure will keep our money right here in Arkansas.

## What do opponents say?

- The money set aside for gambling addiction treatment services is insignificant compared to the state's needs. The addition of casinos in Arkansas would increase the level of problem gambling more without any measures of protection.
- The amendment could give wealthy casino corporations from other states a monopoly on casino gambling in Arkansas, and it taxes them at a rate that is well below average.
- If they do build any roads, they will be paid for by fleecing the poor, and the best roads in town probably will be the ones leading to the casino.
- Casino gambling is linked to divorce, bankruptcy, and poverty. In Mississippi, counties with casinos have above-average levels of poverty. In Arkansas, counties with race tracks and "electronic games of skill" have high levels of poverty as well.

the county quorum court in the county where the casino would be located and, if the proposed casino is to be located within a city, a letter of support from the mayor of that city; providing that the Commission shall regulate all casino licensees; defining "net casino gaming receipts" as casino gaming receipts less amounts paid out or reserved as winnings to casino patrons; providing that for each fiscal year, a casino licensee's net casino gaming receipts are subject to a net casino gaming receipts tax of 13% on the first \$150,000,000 of net casino gaming receipts or any part thereof, and 20% on net casino gaming receipts exceeding \$150,000,001 or any part thereof; providing that no other tax, other than the net casino gaming receipts tax, may be imposed on gaming receipts or net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed 55% to the State of Arkansas General Revenue Fund, 17.5% to the Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used only for purses for live horse racing and greyhound racing by Oaklawn and Southland, as the case may be, 8% to the county in which the casino is located, and 19.5% to the city in which the casino is located, provided that if the casino is not located within a city, then the county in which the casino is located shall receive the 19.5%; permitting casino licensees to conduct casino gaming on any day for any portion or all of any day; permitting casino licensees to sell liquor or provide complimentary servings of liquor during all hours in which the casino licensees conduct casino gaming only for on-premises consumption at the casinos and permitting casino licensees to sell liquor or provide complimentary servings of liquor without allowing the residents of a dry county or city to vote to approve the sale of liquor; providing that casino licensees shall purchase liquor from a licensed Arkansas wholesaler; permitting shipments of gambling devices that are duly registered, recorded, and labeled in accordance with federal law into any county in which casino gaming is authorized; declaring that all constitutional provisions, statutes, and common law of the state that conflict with this amendment are not to be applied to this Amendment.



## What is being proposed?

This amendment asks voters to add a section to the Arkansas Constitution authorizing four casinos to operate in the state. If approved by voters, this amendment would:

1. Authorize four casinos to operate in the state, one in Jefferson County within two miles of Pine Bluff, one in Pope County within two miles of Russellville, one at or adjacent to Oaklawn Jockey Club in Garland County, and one at or adjacent to Southland Racing Corporation in Crittenden County.
2. Define what type of casino gaming may occur at the four casinos.
3. Prohibit people under 21 from gambling.
4. Assign the Arkansas Racing Commission to regulate licensing and operation of the casinos.
5. Require the legislature to enact laws and appropriate funds for use by the Arkansas Racing Commission.
6. Establish minimum requirements for who can receive casino licenses in Jefferson and Pope counties and require licensees to conduct casino gaming for as long as they have a license.
7. Require the Arkansas Racing Commission to fund and work with Department of Human Services to implement and administer compulsive gambling disorder educational programs.
8. Authorize the Arkansas Department of Human Services to make rules to administer compulsive gambling disorder educational programs.
9. Establish tax rates on casino gaming net receipts and how that revenue is distributed.
10. Require greyhound and horse racing operators to contribute to racing purses and awards and for Southland to set aside money for capital improvements to its racing facilities.
11. Allow the casinos to operate any day, all day.
12. Allow the casinos to serve alcohol during all hours in which gaming takes place, regardless of whether the casino is located in a dry city or county.
13. Require the casinos to purchase alcohol from a licensed Arkansas wholesaler.
14. Permit the shipment of gaming devices to the casinos.
15. Establish that the amendment would not affect current laws regarding greyhound and horse racing, other gambling, bingos and raffles, the state scholarship lottery, or electronic games of skill.

16. Declare any state laws in conflict with this amendment would not apply to this amendment.

## How did this issue get on the ballot?

Sponsors collected signatures from at least 84,859 Arkansas voters, equal to 10 percent of the people who voted for governor in the last election, to put Issue 4 on the statewide General Election ballot.

## Who were the main sponsors of this amendment?

Driving Arkansas Forward and Arkansas Jobs Coalition have filed Ballot Question Committee paperwork with the Arkansas Ethics Commission to support this measure. Their statements of organization and financial filings are online at the Arkansas Ethics Commission website, [www.arkansasethics.com](http://www.arkansasethics.com).

## When was the last time Arkansas voted on this issue?

The idea of legalizing casinos has been on the Arkansas ballot several times in the past 40 years.

Voters in 1984 rejected a proposed constitutional amendment to allow casino gambling in Garland County by a vote of 236,625 (30%) in favor to 561,825 (70%) against. Then in 1996, voters statewide rejected a proposed constitutional amendment that would have established a statewide lottery and allowed voters in Hot Springs to authorize casino gambling in their county by a vote of 333,297 (39%) in favor to 523,986 (61%) against.

Voters in 2000 rejected a proposed constitutional amendment to allow a corporation to own and operate six casino establishments in Sebastian, Pulaski, Garland, Miller, Crittenden and Boone counties. The proposal would also have established a state lottery and permitted charitable bingo games and raffles. Voters rejected the amendment by a vote of 309,482 (36%) in favor to 544,550 (64%) against.

In 2012, the Arkansas Supreme Court struck down a proposed casino ballot measure that would have authorized casinos in four counties after determining the ballot title didn't tell voters that the amendment could affect electronic games of skill at two Arkansas race tracks. The court also ruled that voter signatures gathered were invalid because the measure's backer changed the wording of the proposal after gathering the signatures.

In 2016, the Arkansas Supreme Court removed from the ballot a proposed constitutional amendment legalizing three casinos in the state ahead of Election Day. The court ruled that the ballot title was misleading because it mentioned sports betting, which was illegal under federal law at the time.

## **Aren't casinos already allowed in Arkansas?**

There are multiple state laws that, combined, prohibit casinos. Arkansas Code 5-66-103 makes keeping of a “gambling house” a felony. Arkansas Code 5-66-104 prohibits gaming devices and Arkansas Code 5-66-106 says betting on any machines prohibited under Arkansas Code 5-66-104 is illegal.

However, in 2005, Arkansas legislators passed a bill that allows race tracks to conduct wagering on “electronic games of skills.” The law, Arkansas Code 23-113-201, required the issue be put before the voters of the city, town or county where the race track is located. Voters in West Memphis and Hot Springs subsequently approved electronic games of skill at race tracks in their cities. According to the law, in order to constitute an electronic game of skill, the game must not be completely controlled by chance alone. Many gaming websites include these two locations in lists of casinos, but there are no traditional casinos in Arkansas.



## **What types of gambling would be allowed?**

The amendment defines “casino gaming” as “dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit or any representative value.” The proposal states that casino gaming also includes accepting wagers on sporting events.

## **If approved, where would the casinos be located?**

The proposed constitutional amendment states a casino would be located at or adjacent to Oaklawn in Hot Springs and at or adjacent to Southland in West Memphis. Oaklawn is the only horse race track in the state and Southland is the only greyhound race track in the state.

The proposal also allows one casino within two miles of Pine Bluff in Jefferson County and another casino within two miles of Russellville in Pope County.

A Quapaw Nation representative, who also is the chairman of the Driving Arkansas Forward casino campaign, indicated

in an article in the Pine Bluff Commercial that the Tribe would apply to locate a casino inside Pine Bluff city limits if it were to receive one of the licenses. They are not guaranteed to receive the casino license, and their interest does not mean other entities wouldn't apply for a license and be accepted. At the time this guide was printed, no other entities had publicly expressed an intent to apply for a license in Jefferson county. The Cherokee Nation, which also has donated to the campaign, has been mentioned in numerous news articles as having an interest in the Pope County license.

## **What happens if the majority of voters in Crittenden, Garland, Jefferson and Pope counties vote against this proposal?**

The outcome of the proposed amendment depends on if it receives a majority of votes statewide. Voters in Crittenden, Garland, Jefferson and Pope counties could reject the proposal, but if the issue passes statewide, the casinos would be allowed to operate under the provisions of the proposed amendment.

However, applicants seeking to operate a casino in Jefferson or Pope counties are required to submit a letter of support from the county judge or a resolution of support from the quorum court as part of the application process to receive a casino gaming license. If the casino expects to locate within city limits, a letter of support from the mayor also would be required.

In July, the Pope County Quorum Court approved a resolution encouraging the county judge to withhold a letter of support if the people of Pope County voted against the amendment.

Since then, a local ballot issue group has formed to collect signatures in Pope County to hold a local election. The local proposal seeks to prohibit the county judge and quorum court from issuing a letter of support for a casino applicant without approval from voters in a separate election. At the time this voter guide was printed, no similar efforts were taking place in Jefferson County.

## **If approved, who could apply for the casino licenses?**

Under the proposed amendment, Oaklawn and Southland would automatically receive licenses.

The two remaining licenses would be issued by the Arkansas Racing Commission.

The proposal requires applicants to demonstrate experience in conducting casino gaming. The interested party would also be required to pay an application fee of no more than \$250,000 and to submit a letter of support from the county

judge or quorum court. If the applicant proposes to be within the city limits of Pine Bluff or Russellville, the applicant would have to also submit a letter of support from the mayor.

The amendment would give the Arkansas Racing Commission the authority to adopt other rules necessary to carry out the amendment, including the application process.

The amendment would require the commission to accept applications no later than June 1, 2019.

### **What is the Arkansas Racing Commission?**

Created in 1935, the Arkansas Racing Commission is composed of five members appointed by the governor for terms of five years. The commission has jurisdiction over horse and greyhound dog racing and electronic games of skills authorized at the two race tracks. The commission is supported by the Arkansas Department of Finance and Administration's Division of Racing.

Under this proposal, the commission would oversee the casino licensing process and be responsible for issuing renewals every 10 years. The commission would be required to provide at least \$200,000 a year for compulsive gambling disorder treatment and compulsive gambling disorder education programs that could be overseen by the Department of Human Services. The Commission would also receive a portion of the tax money generated by casinos, and would be required to spend some of the revenue on racing prizes.

The proposal requires the legislature to enact laws and appropriate funds for use by the Arkansas Racing Commission.

### **What are the potential economic benefits and costs of casino gaming?**

Economic benefits include employment and income generated from spending at the casino and "nonlocal visitor spending" at local businesses, minus the "displacement effects" of local resident spending at the casinos.

"Nonlocal visitor spending" is money spent by people who come to the area for casino gaming, but also spend money at local businesses. The "displacement effect" is what happens when local residents spend money at casino gaming establishments that they would have otherwise spent on other goods or services in their community.

Social costs are the social behaviors that impose measurable costs on society, such as increased crime, bankruptcies and problem of pathological gambling.

Net Economic Benefits = Economic Benefits – Social Costs

### **How would the casinos be taxed?**

The proposal would create a "net casino gaming receipts tax." This means a tax would be applied to the money that remains after a casino has paid winners or reserved as winnings.

The tax rate on each casino would be:

- 13 percent on the first \$150 million of net casino gaming receipts, or money remaining after winnings.
- 20 percent on net casino gaming receipts over \$150 million.



Sponsors anticipate that the tax would replace an existing privilege fee paid by Oaklawn and Southland on proceeds from electronic games of skill as required by Arkansas Code 23-113-501. The proposed amendment does not specify that the privilege fee would end, but sponsors have said the tax structure would change once the race tracks convert their gaming to traditional casinos.

The privilege fee is based on net wagering revenues from the games, and is paid to the state, Arkansas Racing Commission, and the county and city where they are located.

The two companies currently pay privilege fees on their net wagering revenues in the amount of:

- 18 percent to the state general revenue fund
- 14 percent set aside for purse or prize money for live racing
- 1.5 percent to city where track is located
- 1 percent to Arkansas Racing Commission
- 0.5 percent to the county where track is located

### **How would the tax revenue be distributed?**

Under the proposed amendment, taxes collected on net casino gaming receipts would be distributed according to this formula:

- 55 percent to the state general revenue fund. How these tax dollars would be used would be up to the governor and legislature.
- 19.5 percent to the city or town in which the casino is located. If the casino is located outside city limits, the tax dollars would go to the county.
- 17.5 percent to the Arkansas Racing Commission. These tax dollars would be used for racing purses at Oaklawn and Southland, with the amount being split between the two facilities according to a formula. The term "purse" refers to the prize money distributed to winners of the race.
- 8 percent to the county in which the casino is located. If the casino is located outside of city limits, the county

would receive the share that would have gone to a city as well, for a total of 27.5 percent of the tax revenue.

### **What are the effects of casinos on public revenue?**

Public revenue from casinos would come from a new net casino gaming receipts tax, as well as other taxes typically applied to businesses, such as on the sale of food or drinks, event tickets, and merchandise.

The proposed amendment would tax net casino gaming receipts at a lower rate than the existing privilege fees collected from Oaklawn and Southland.

The Arkansas Department of Finance and Administration provided an analysis to legislators indicating the change in structure would result in the two companies paying less money to the state and more to the purse fund, counties and cities in fiscal years 2020-2022 (Arkansas Department of Finance and Administration, 2018). The analysis assumed electronic games of skill receipts collected by Oaklawn and Southland in 2018 would be the same in future years. It also assumed new casinos in Jefferson and Pope counties would begin operating in 2022 with receipts equaling 80 percent of those collected at Oaklawn and Southland.

The casinos would be exempt from paying any other taxes or fees on casino gaming receipts.

The casinos would be subject to the same income, property, sales, use, employment or other taxation or assessments as other for-profit businesses. The casino's income tax would be based on net income (gross receipts less winnings paid to patrons and less gaming receipts taxes paid).

Some of the public revenue generated by the casinos may be the result of revenue lost from less spending in other businesses. Therefore, the net new revenue could be calculated as:

Net New Public Revenue = Casino Tax Revenue – Revenue Lost From Other Sources



There are also public costs associated with casino gaming, including implementing and enforcing rules and regulations and expanding and maintaining public infrastructure and services to meet the demand created by casinos. This includes the cost of providing compulsive gambling treatment programs. Therefore, these

costs need to be considered when calculating the net public benefit from casinos.

The economic and social benefits and costs of casino gaming vary greatly among communities and between state and local governments, with local governments often bearing many of the costs. This is one reason that the National Gambling Impact Study Commission recommended in their 1999 report that “local government agencies should make careful and informed decisions about whether to permit gambling into their respective jurisdictions” (National Gambling Impact Study Commission, 1999).

In a report prepared for the Canadian Consortium for Gambling Research, the authors reviewed 492 studies analyzing the social and economic impacts of gambling (Williams, et. al, 2011). The study identifies the most consistent economic impacts across all forms of gambling, which tend to be:

- Increased government revenue
- Increased public services
- Increased regulatory costs (relatively minor expenses), and
- Either positive or negative impacts on non-gambling businesses

They also identified the most consistent social impacts across all forms of gambling, which tend to be:

- Increased problem gambling, with most of this increase occurring after initial introduction
- Increased crime (to a small extent)
- Increased socioeconomic inequality (to a small extent)
- More negative attitudes toward gambling

However, they also noted that the socio and economic impacts can vary greatly depending on:

- The size and type of gambling
- Existing competition
- Whether patrons and revenues are locally derived
- The strength of jurisdictional policies and educational programs to mitigate the negative effects of gambling, and
- How gambling revenue is distributed

### **How would this amendment address compulsive gambling?**

The proposal would require the Arkansas Racing Commission to provide at least \$200,000 each year for compulsive gambling disorder treatment and compulsive gambling disorder education programs.

The Commission would be required to work with the Department of Human Services to implement and administer the programs.

In 2015, a state law eliminated requirements for annual funding that was put into place after the passage of Arkansas' lottery in 2009. According to the 2016 Survey of Problem Gambling Services in the United States, Arkansas was one of six states in 2016 that did not dedicate funding for problem gambling services.

### **Who pays the casino gaming taxes?**

Many studies have been undertaken to determine who spends money at casinos and, therefore, indirectly pay the casino taxes. An analysis of the many studies, based on site specific data, found that casino tax incidence is regressive and borne disproportionately by lower income, less educated households (Mallach, 2010).

### **How would winnings received by gamblers be taxed?**

Gambling winnings are fully taxable and must be reported on state and federal income tax returns.

### **What requirements are in this proposal for Oaklawn and Southland?**

Oaklawn and Southland would be required to contribute a portion of the money they receive from casino gaming to racing prize money, similar to requirements for revenues from electronic games of skill they currently offer at their locations.

Oaklawn would be required to set aside an amount equal to 14 percent of the money they retain after casino winnings are paid to wagers for live horse racing purses. They would also be required to pay an amount equal to 1 percent of net casino gaming receipts to the Arkansas Racing Commission Purse and Awards Fund to be used for "purse supplements, breeders' awards, owners' awards, and stallion awards" in order to "promote and encourage thoroughbred horse breeding activities in Arkansas."

Southland would be required to set aside an amount equal to 14 percent of the money they retain after casino winnings are paid to wagers. Eighty percent of this money would be for live greyhound racing purses and 20 percent would be for facility improvements at Southland, matched with an equal amount of spending for capital improvements by Southland's racing operator.

Southland also would be required to pay an amount equal to 1 percent of net casino gaming receipts to the Arkansas Racing Commission Purse and Awards Fund to be used for "breeders awards" in order to "promote and encourage greyhound breeding activities in Arkansas." The track is one of six greyhound tracks operating in the United States.



### **If passed, would this amendment make Jefferson and Pope counties wet?**

Alcohol sales are legal in some parts of Jefferson County but are not allowed in Pope County.

The proposed amendment would allow liquor to be sold or given away in the casinos regardless of whether residents have voted to approve the sale of alcohol. The proposed amendment would not legalize the sale of liquor anywhere else in Jefferson or Pope counties.

### **If passed, when would the amendment take effect?**

Issue 4 would take effect Nov. 14, 2018. The proposal would require initial laws and appropriations enacted by the legislature to be in effect no later than June 30, 2019.

### **Where can I find more information?**

The complete wording of this amendment can be found at [www.uaex.edu/issue4](http://www.uaex.edu/issue4)

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

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Issue No. 4

(Popular Name)

An Amendment To Require Four Licenses To Be Issued For Casino Gaming At Casinos, One Each In Crittenden (To Southland Racing Corporation), Garland (To Oaklawn Jockey Club, Inc.), Pope, And Jefferson Counties

(Ballot Title)

An amendment to the Arkansas Constitution to require that the Arkansas Racing Commission issue licenses for casino gaming to be conducted at four casinos in Arkansas, being subject to laws enacted by the General Assembly in accord with this amendment and regulations issued by the Arkansas Racing Commission ("Commission"); defining "casino gaming" as dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value, as well as accepting wagers on sporting events; providing that individuals under 21 are prohibited from engaging in casino gaming; providing that the Commission shall issue four casino licenses, one to Southland Racing Corporation ("Southland") for casino gaming at a casino to be located at or adjacent to Southland's greyhound track and gaming facility in Crittenden County, one to Oaklawn Jockey Club, Inc. ("Oaklawn") to require casino gaming at a casino to be located at or adjacent to Oaklawn's horse track and gaming facility in Garland County, one to an applicant to require casino gaming at a casino to be located in Pope County within two miles of Russellville, and one to an applicant to require casino gaming at a casino to be located in Jefferson County within two miles of Pine Bluff; providing that upon receiving a casino license, licensees will be required to conduct casino gaming for as long as they have a casino license providing that Southland and Oaklawn do not have to apply for a license and will automatically receive a casino license upon the Commission adopting rules and regulations to govern casino gaming; providing that the Commission shall require all applicants for the two remaining casino licensees, one in Pope County and one in Jefferson County to pay an application fee, demonstrate experience in conducting casino gaming, and submit either a letter of support from the county judge or a resolution from the county quorum court in the county where the casino would be located and, if the proposed casino is to be located within a city, a letter of support from the mayor of that city; providing that the Commission shall regulate all casino licensees; defining "net casino gaming receipts" as casino gaming receipts less amounts paid out or reserved as winnings to casino patrons; providing that for each fiscal year, a casino licensee's net casino gaming receipts are subject to a net casino gaming receipts tax of 13% on the first \$150,000,000 of net casino gaming receipts or any part thereof, and 20% on net casino gaming receipts exceeding \$150,000,001 or any part thereof; providing that no other tax, other than the net casino gaming receipts tax, may be imposed on gaming receipts or net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed 55% to the State of Arkansas General Revenue Fund, 17.5% to the Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used only for purses for live horse racing and greyhound racing by Oaklawn and Southland, as the case may be, 8% to the county in which the casino is located, and 19.5% to the city in which the casino is located, provided that if the casino is not located within a city, then the county in which the casino is located shall receive the 19.5%; permitting casino licensees to conduct casino gaming on any day for any portion or all of any day; permitting casino licensees to sell liquor or provide complimentary servings of liquor during all hours in which the casino licensees conduct casino gaming only for on-premises consumption at the casinos and permitting casino licensees to sell liquor or provide complimentary servings of liquor without allowing the residents of a dry county or city to vote to approve the sale of liquor; providing that casino licensees shall purchase liquor from a licensed Arkansas wholesaler; permitting shipments of gambling devices that are duly registered, recorded, and labeled in accordance with federal law into any county in which casino gaming is authorized; declaring that all constitutional provisions, statutes, and common law of the state that conflict with this amendment are not to be applied to this Amendment.

FOR

AGAINST



## ISSUE NUMBER 5

(Proposed by Petition of the People)

# Increasing the Arkansas Minimum Wage

**POPULAR NAME:** An Act to Increase the Arkansas Minimum Wage

**BALLOT TITLE:** An act to amend the Arkansas Code concerning the state minimum wage; the Act would raise the current state minimum wage from eight dollars and fifty cents (\$8.50) per hour to nine dollars and twenty-five cents (\$9.25) per hour on January 1, 2019, to ten dollars (\$10.00) per hour on January 1, 2020, and to eleven dollars (\$11.00) per hour on January 1, 2021.

### What is being proposed?

This initiated act would increase the state minimum wage from \$8.50 to \$9.25 per hour on Jan. 1, 2019, then to \$10 per hour on Jan. 1, 2020, and finally to \$11 per hour on Jan. 1, 2021.

### How did this issue get on the ballot?

Sponsors collected signatures from at least 67,887 Arkansas voters – equal to eight percent of the people who voted for governor in the last election – to put Issue 5 on the statewide General Election ballot.

### Who are the main sponsors of this initiated act?

Arkansans for a Fair Wage has filed Ballot Question Committee paperwork with the Arkansas Ethics Commission to support this measure. Their statement of organization and financial filings are online at the Arkansas Ethics Commission website, [www.arkansasethics.com](http://www.arkansasethics.com).

### When was the last time Arkansas voted on this issue?

A proposal to increase the state's minimum wage was on the statewide ballot in 2014.

Arkansas voters approved the initiated act, or state law, by a vote of 548,789 (66%) to 283,524 (34%). The law increased the state's minimum wage by \$2.25 over three years.

## QUICK LOOK: What does your vote mean?

**FOR:** A FOR vote means you are in favor of increasing the Arkansas state minimum wage from \$8.50 per hour to \$9.25 on January 1, 2019, to \$10 per hour on January 1, 2020, and to \$11 per hour on January 1, 2021.

**AGAINST:** An AGAINST vote means you are not in favor of increasing the Arkansas state minimum wage from \$8.50 per hour to \$9.25 on January 1, 2019, to \$10 per hour on January 1, 2020, and to \$11 per hour on January 21, 2021.

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?

- Raising the minimum wage helps hard working families cover basic needs, and that money goes right back into local communities and Arkansas' economy. It's more customers for small businesses, which means more hiring and more jobs. When working families do well, Arkansas thrives.
- No one working full time should live in poverty. The cost of housing and groceries has been going up for years, but the minimum wage, just \$18,000 for a full-time worker, hasn't kept up. Gradually and responsibly raising the minimum wage will increase the incomes of low-wage workers who frequently rely on government programs, thus increasing their self-reliance and reducing the amount of taxpayer-funded assistance they use.
- Raising the minimum wage pays off in lower employee turnover, reduced hiring and training costs, lower error and accident rates, increased productivity and better customer service.

## What do opponents say?

- The free market should determine wages. Minimum wage laws typically have a negative impact on jobs for low-skilled workers and family businesses.
- Large corporations would take advantage of this and would further cut employee hours and further enhance automation therefore eliminating more jobs and exacerbating an already tenuous labor market in our state. The wage increase would not be paid by the employers but would be passed through in higher prices.
- A new report from the Bureau of Labor Statistics shows that teen unemployment is near a record low. But there's a dark side to this figure: Nearly 11 million teens have stopped looking for work or never started. Higher minimum wages at the state and local level are one factor eliminating workplace opportunities for teenagers and other job seekers with less experience.

Wages increased from \$6.25 per hour to \$7.50 per hour in 2015, then to \$8 per hour in 2016 and finally to \$8.50 per hour in 2017.

The 2014 law was the first time minimum wage was on the state ballot. Arkansas law established a minimum wage of \$1.25 a day for most experienced women workers in 1915, but it wasn't until 1969 that a minimum wage law of \$1 per hour took effect for the entire state. Since then, Arkansas' minimum wage has increased 25 times to the rate now paid today. All but the last three increases were adopted by the state legislature rather than by a citizen initiated law.

## What is the current state of Arkansas minimum wage, and how does it compare with the federal minimum wage?

The current state minimum wage is \$8.50 per hour, which is \$1.25 above the federal minimum wage of \$7.25 per hour.

## If voters pass Issue 5, how would the new state minimum wage rate affect businesses?

The answer depends on a number of factors discussed below.

### Businesses subject to the federal minimum wage:

If the state minimum wage is higher than the federal minimum wage, then the state law applies. Therefore, if voters approve Issue 5, businesses with four or more employees would be required to pay the proposed hourly wage unless they are already exempt by state law.

### Businesses not subject to federal minimum wage:

In Arkansas, the state minimum wage law applies to business with four or more employees. There are exceptions for some occupations and industries under state law. For example, some agricultural activities and newspapers with a small circulation are exempt from minimum wage rate requirements. Also, allowances are made for gratuities (tips) to be part of the hourly minimum wage rate for occupations in which gratuities are customary.

## If voters approve Issue 5, how would the new state minimum wage affect workers?

If Issue 5 passes, the state minimum wage will apply to employees who are not working in the exempted industries or occupations and currently earn less than the proposed minimum wage, which would be \$9.25 beginning Jan. 1, 2019.

## How does the current state minimum wage compare with historical levels?

The first Arkansas minimum wage of \$1 per hour took effect on Jan. 1, 1969. The rationale for minimum wages as established in Arkansas Code 11-4-202 was “to safeguard” workers’ “health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency, and well-being.”

The Arkansas minimum wage has been increased 25 times since the initial minimum wage of \$1 per hour in 1969. The current minimum wage of \$8.50 took effect Jan. 1, 2017. States have raised their minimum wage from time to time because, due to inflation, \$1 today cannot buy the same goods and services as in the past.

The thin line in Figure 1 illustrates growth of minimum wage in current dollars (not inflation-adjusted dollars), while the thicker line shows minimum wage in terms of inflation adjusted 2018 dollars. For example, it would take about \$10.36 in 2018 to buy the same goods and services that the minimum wage (\$2.70) in 1978 purchased.

## How does the current federal minimum wage compare with historical levels?

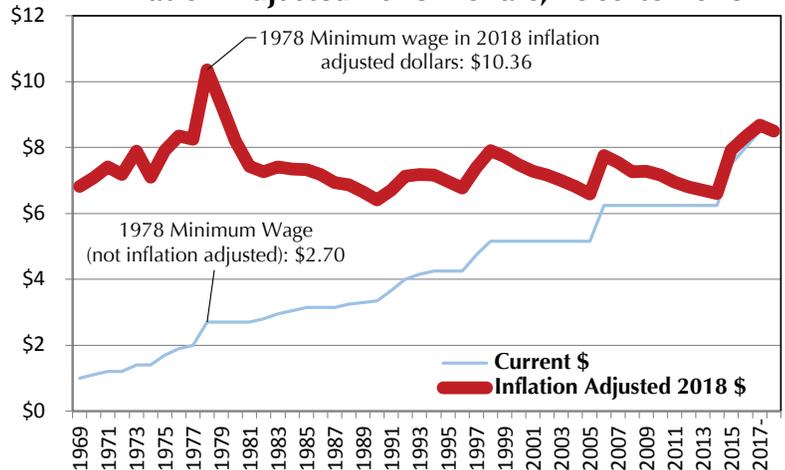
Because most workers are required to be paid at least the federal minimum wage (unless the state minimum wage is higher), it is useful to look at how the purchasing power of the federal minimum wage has changed over time. Purchasing power is the amount of goods and services that can be purchased from a unit of currency.

For example, \$2.50 may have purchased one gallon of milk in 1995, but today \$2.50 may only purchase 7/10 of a gallon of milk.

The first federal minimum wage was \$0.25 per hour, which was part of the Fair Labor Standards Act of 1938. The 1938 Act was applicable generally to employees engaged in interstate commerce, primarily in the production of goods for interstate commerce.

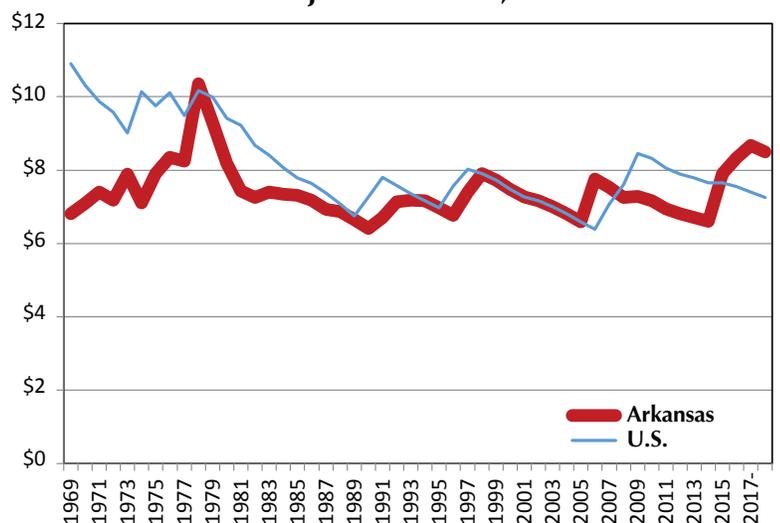
Today the federal minimum wage is \$7.25 per hour, which went into effect in 2009. The federal minimum wage has not kept up with inflation since 1969 (See Figure 2).

**Fig. 1: Arkansas Minimum Wage in Current and Inflation-Adjusted 2018 Dollars, 1969 to 2018**



Source: Computed from data provided by the Arkansas Department of Labor and the Price Index U Series from the U.S. Bureau of Labor Statistics.

**Figure 2. Arkansas and U.S. Minimum Wage in Inflation Adjusted Dollars, 1969 to 2018**

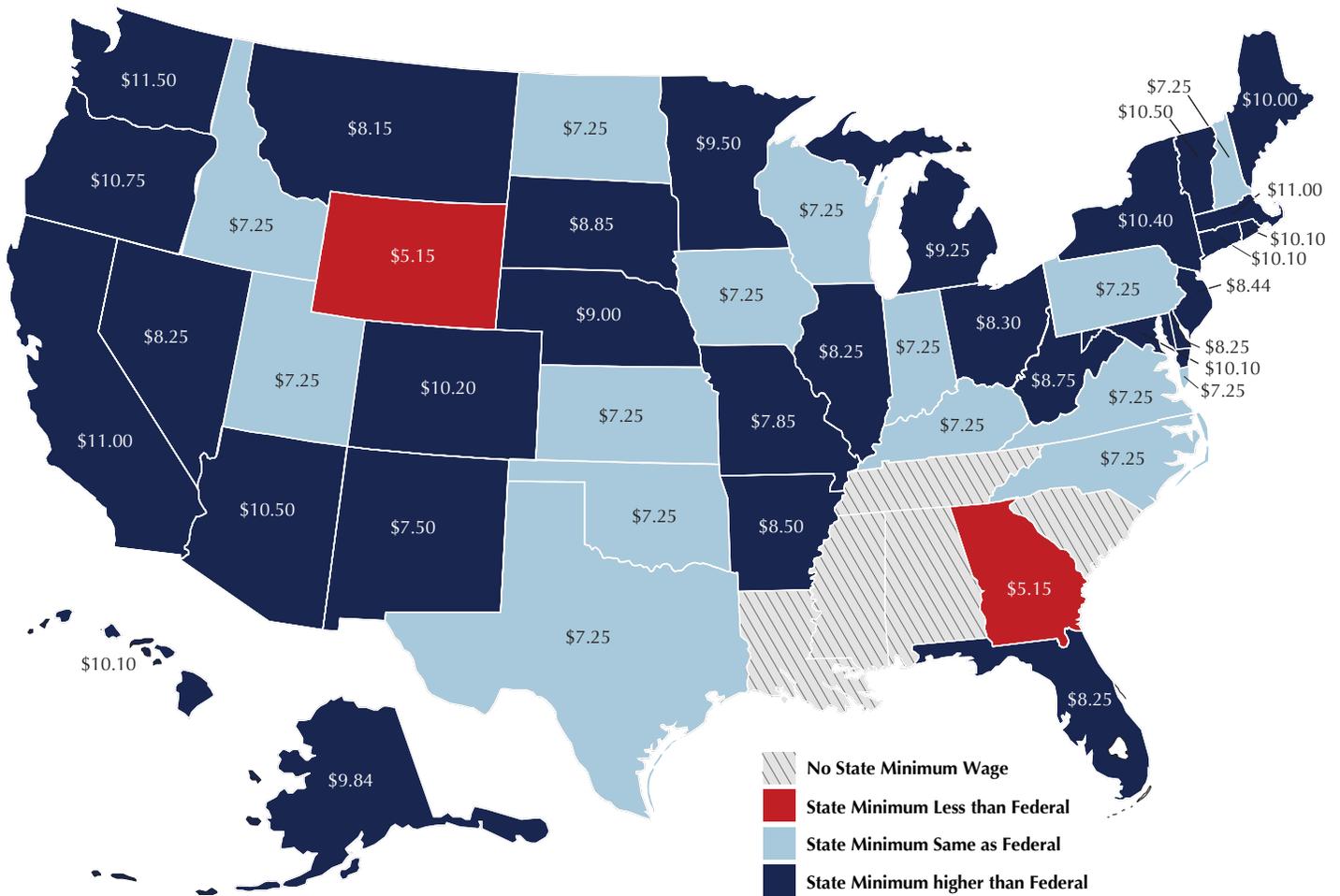


Source: U.S. Department of Labor and Arkansas Department of Labor adjusted for inflation using the CPI-U-RS from the Bureau of Labor Statistics.

The purchasing power of the federal minimum wage declined steadily from 1969 to 1989 and then remained relatively flat or average, with some yearly fluctuations. The purchasing power of the federal minimum wage has declined by approximately one-third (34%) since its peak in 1969. It would take a minimum wage of approximately \$10.90 today to be able to purchase the same goods and services as could be purchased by the minimum wage in 1969.

## How does Arkansas’ minimum wage compare with the federal minimum wage?

The state minimum wage somewhat followed the federal level between 1978 and 2005. Between 1984 and 2008, the state



minimum wage was 90 percent or higher of the federal level. From 2008 to 2014, the state minimum wage was approximately 86 percent of the federal minimum wage.

Arkansas' minimum wage has been higher than the federal minimum wage since 2016, so state minimum wage laws have applied to all nonexempt businesses with four or more employees.

### What is the minimum wage in other states and how has it changed over time?

The average state minimum wage in 2018 is \$8.66, ranging from \$5.15 in two states to \$13.25 in the District of Columbia.

According to the U.S. Department of Labor, Arkansas is one of 29 states where the state minimum wage is higher than the federal minimum wage. Of these:

- Seventeen states plus the District of Columbia have passed legislation to increase their minimum wage requirements annually based on an index – often using the Consumer Price Index (CPI).
- Sixteen states have minimum wage requirements higher than \$9.25 an hour. Of these, three have minimum

wages at or above \$11 an hour. Eleven states have legislation requiring increases to their minimum wage once or more over the next two years. Five states have set levels that are not required to be adjusted according to their current laws.

- Four states have minimum wage requirements above \$8.50 but less than \$9.25 per hour.
- Eight states have minimum wage requirements below \$8.50 per hour but above federal minimum wage levels.
- Missouri, which has a minimum wage requirement of \$7.85 per hour, has a ballot measure this November seeking to raise the state's minimum wage to \$12 by 2023.

There are 14 states with minimum wages equal to that of the federal level and two states with lower than federal minimum wages.

Surrounding states – Oklahoma, Texas, Louisiana, Mississippi and Tennessee – follow the federal minimum wage rate. Louisiana, Mississippi and Tennessee don't have minimum wage requirements along with South Carolina and Alabama.

## How does increasing the minimum wage affect employment and the economy?

There have been many studies and there are many viewpoints about the effect of increasing the minimum wage on overall employment and the economy.

From a review of past academic studies on the topic and new developments in the study of the effect of increases in the minimum wage on employment, seven Nobel Prize winners and more than 600 other economists state that the bulk of evidence shows that gradually raising the minimum wage does not necessarily mean lower employment (Aaron, H., 2014). The economists also point out that a wage increase could have a small stimulative effect on the economy as low-wage workers spend their additional earnings, raising demand and job growth.

## If passed, when would Issue 5 take effect?

If approved, the Arkansas state minimum wage would increase to \$9.25 on Jan. 1, 2019, to \$10 on Jan. 1, 2020 and to \$11 on Jan. 1, 2021.

## Where can I find more information?

The complete wording of this initiated act can be found at [www.uaex.edu/issue5](http://www.uaex.edu/issue5)

## References

- Aaron, H., et. al. (2014). Letter to Speaker Boehner, Majority Leader Reid, Congressman Cantor, Senator McConnell and Congresswoman Pelosi. Retrieved from [www.epi.org/minimum-wage-statement/](http://www.epi.org/minimum-wage-statement/)
- Belman, D. & Wolfson, P. (2016). 15 Years of Research on U.S. Employment and the Minimum Wage. Tuck School of Business Working Paper No. 2705499. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2705499](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2705499)
- Doucouliaagos, H. & Stanley, T. (2009). Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis. *British Journal of Industrial Relations*, Vol. 47 no. 2, pp. 406-428.

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

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Issue No. 5

(Popular Name)

An Act to Increase the Arkansas Minimum Wage

(Ballot Title)

An Act to amend the Arkansas Code concerning the State minimum wage; the act would raise the current State minimum wage from eight dollars and fifty cents (\$8.50) Per hour to nine dollars and twenty-five cents (\$9.25) per hour on January 1, 2019, to ten dollars (\$10.00) per hour on January 1, 2020, and to eleven dollars (\$11.00) per hour on January 1, 2021

FOR

AGAINST

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The Public Policy Center at the University of Arkansas System Division of Agriculture has published easy-to-read fact sheets on statewide ballot measures since 2004 so voters have a better understanding of what is being asked of them.

**The information contained in this publication goes through a vetting process to ensure its accuracy and neutrality that includes reviews by:**

- **University of Arkansas School of Law professors**
- **Subject experts**
- **Issue supporters**
- **Issue opponents**

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## Important Dates

**Oct. 9th** Voter registration deadline for the General Election

**Oct. 22nd** Early voting begins

**Nov. 6th** Election Day



## Your Voting Privilege

We live in a democratic society where voting is a privilege of citizenship. Democracy works best when informed citizens exercise their voting privilege.

**Be a part of Arkansas – Vote.**

## Election Information

**Voting locations are open on Election Day, Nov. 6, 2018, from 7:30 a.m. to 7:30 p.m.**

If you need help finding your voting location or aren't sure whether you are registered to vote, contact your local county clerk. **You can also contact the Arkansas Secretary of State's Office at 1-800-482-1127 or find more information at [www.sos.arkansas.gov](http://www.sos.arkansas.gov).**

Most counties participate in the Secretary of State's "Voter View" website, which means you can likely find an example online of what your ballot will look like. **Go to [www.voterview.ar-nova.org](http://www.voterview.ar-nova.org) and click on "registration information" for this sample ballot.** If your sample ballot does not appear, contact your county clerk.



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