



## 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.

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## 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.

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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?**

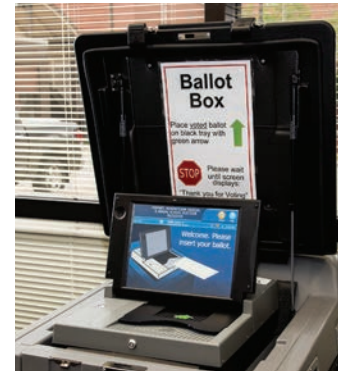
In recent years, Arkansas has gone back and forth on requiring photo identification. For many years, state law required election workers to ask voters for identification on Election Day. However, state law did not require voters to actually present identification in order to receive a ballot and vote.

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)

## References

Brennan Center for Justice. (2006). Citizens without Proof. Retrieved from [www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf)

Brennan Center for Justice. (2017). Debunking the Voter Fraud Myth. Retrieved from <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>

Glaze, T. & Dumas, E. (2011). Waiting for the Cemetery Vote: The Fight to Stop Election Fraud in Arkansas. Fayetteville: University of Arkansas Press.

National Conference of State Legislators. (2018). Voter Identification Requirements. Retrieved from [www.ncsl.org/research/elections-and-campaigns/voter-id.aspx](http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx)

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