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February 7, 2023

RE: EXECUTIVE SUMMARY MEMORANDUM

**PROPOSED BILL NO. 3
IMPROVE THE RECOUNT PROCESS**

Dear Sir or Madam:

Arkansas has a weak recount statute. This statute removes those defects and provides a meaningful recount.

Ark. Code Ann. § 7-5-319

(a)(1)(2)(3)

Requires that a petition for a recount be filed with the county clerk. It allows a recount to be brought by a petition of ten citizens (currently only candidates and election officials can request a recount).

The new bill requires that recounts be filed before the certification of the vote while mandating notice to all candidates or persons whose races could be affected by the recount.

(b)(1)(2)(A)(B)

Removes the requirement that electronic tabulators act as the official counts in a recount. Instead, it mandates that the recount be a hand recount. It requires the election commissioners to supervise the recount but permits the use of poll workers to count the ballots. Finally, this language requires that ballots not be counted if they were not initialed by a poll worker on the back of the ballot.

(c)

Places a prepayment burden on the person requesting the recount.

(d)

Sets payment of greater than minimum wage for poll workers conducting a recount. However, it prevents a county from attempting to profit from a recount and requires a refund to the person requesting the recount if all prepaid funds are not used in the recount process.

(e)(1)(2)(3)(4)(5)(6)(7)

The bill sets a fast timetable for the start of a recount and mandates twelve-hour work days during the recount to reduce the time for nefarious actors to cover up fraudulent conduct. It requires the use of a court reporter to transcribe the official record of the events of the recount, thereby memorializing fraudulent conduct.

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It also sets out when a ballot may be challenged during the recount and by whom (currently there is no method or mechanism to challenge a ballot during a recount). It requires the election commission to vote on the challenged ballot on the official record. Finally, it requires a recount before an election lawsuit can be brought and sets out the recount procedures subject to judicial review.

(h)

Sets a time limit for certification of the vote after a recount to prevent intentional delay to the ability to file a timely election lawsuit.

Sincerely,



/S/ CLINTON W. LANCASTER

Attorney at Law

A Bill

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

SENATE BILL _____

4
5 By: Representative
6 By Senator

For An Act to Be Entitled

7
8 AN ACT TO AMEND THE LAW CONCERNING ELECTIONS
9 AND TO RESTORE ELECTION INTEGRITY IN ARKANSAS
10 AND AMENDED ELECTION PROCEDURES
11

Subtitle

12
13 TO IMPROVE THE PROCESS OF RECOUNTING AN
14 ELECTION
15

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 **SECTION 1. Arkansas Code Title 7, Chapter 5, Subchapter 3, Section 319 is**
20 **amended as follows:**

21 (a)(1) Any candidate voted for who may be dissatisfied with the returns from any precinct
22 shall have a recount of the votes cast therein upon the candidate's presenting the county board of
23 election commissioners with a petition requesting the recount filed with the county clerk.

24 ~~(2) When the number of outstanding absentee ballots of overseas voters is not sufficient~~
25 ~~to change the results of the election, the candidate must present the petition no later than two (2)~~
26 ~~days after the county board of election commissioners declares preliminary and unofficial results~~
27 ~~of the election, including a statement of the number of outstanding absentee ballots of overseas~~
28 ~~voters. A recount may be brought by at least ten (10) citizens who voted in an election if all ten~~
29 ~~sign the petition for a recount. The ten citizens shall attest that they voted in the election and are~~
30 ~~petitioning for a recount. The petition with the signatures of each of the citizens shall be notarized.~~
31 A citizen recount shall be bound by the requirements to prepay for the recount.

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1 ~~(3) When the number of outstanding absentee ballots of overseas voters is sufficient to~~
2 ~~potentially change the results of the election, the candidate must present the petition at any time~~
3 ~~before the county board of election commissioners finally completes the canvass of the returns of~~
4 ~~the election and certifies the result. All petitions for a recount must be filed prior to the county~~
5 ~~board of election commissions certification of the vote.~~

6 (3) Within forty-eight hours after a petition for recount is filed, the county board of
7 election commissioners shall notify all candidates whose election could be affected by the
8 outcome of the recount.

9 ~~(b) At the time that the petition requesting the recount is presented, the county board of~~
10 ~~election commissioners shall provide to the candidate requesting the recount a copy of the test~~
11 ~~results on the voting machines and the electronic vote tabulating devices.~~

12 ~~(c)(b)(1) For any recount of an election in which ballots are cast using a direct recording~~
13 ~~electronic voting machine with a voter verified paper audit trail, the voter verified paper audit trail~~
14 ~~shall serve as the official ballot to be recounted. The certificates of election filled out in triplicate~~
15 ~~pursuant to Ark. Code Ann. § 7-5-603(4) shall serve as the official count of the votes to be~~
16 ~~recounted.~~

17 (2) The county board of election commissioners either may shall:

18 ~~(A) Manually sum the total votes for each candidate involved in the recount that is~~
19 ~~printed on the voter verified paper audit trail; or~~

20 (A) Count by hand the votes for each candidate involved in the recount as shown on
21 the voter verified paper audit trail. as shown on the certificates of election. The county board of
22 election commissioners may utilize sworn poll workers to conduct the count. However, the
23 commissioners shall be present and observe all aspects of the recount.

24 ~~(3) If the voter verified paper audit trail is damaged or for some other reason is~~
25 ~~incapable of being used for a recount, the paper record produced by the machine for manual~~
26 ~~audit shall be the official ballot to be recounted.~~

27 ~~(4) If the voting machine is exempt from the requirement to have a voter verified~~
28 ~~paper audit trail and does not have one, the paper record produced by the machine for~~
29 ~~manual audit shall be the official ballot to be recounted.~~

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1 (B) Check the back of the ballot to see if the ballot has been initialed by an election
2 official. If there are no initials of an election worker on the back of the ballot, then a presumption
3 of fraud exists, and the ballot shall not be counted.

4 ~~(d)(c)~~ For the recount of an election in which paper ballots are used, the county board of
5 election commissioners shall open the package containing the ballots and recount the ballots in the
6 manner prescribed by law for the count to be made by the election officials in the first instance, or
7 if there is a determination by the county board of election commissioners that the voting machine
8 or electronic vote tabulating device may be malfunctioning, it may recount the ballots by any
9 manner prescribed by law. A candidate's failure to petition, pay for, or conduct a recount shall
10 bar any election contest or other lawsuit related to the outcome of an election brought by a
11 candidate.

12 ~~(g)(1)(c)~~ The costs for any recount must be borne by the candidate petitioning for it. It
13 shall include the costs of payment to all poll workers or election officials participating in the
14 recount as well as the official court reporter making the record of the recount. and pPayment of
15 the costs must be made to the county board of election commissioners prior to the start of the
16 recount. in an amount determined by the county board of election commissioners.

17 ~~(h)(d)~~ The costs of any recount shall be based on the actual costs incurred to conduct the
18 recount, and the pay or salary for any person employed for the purposes of counting ballots or
19 working at the recount, as determined by the county board of election commissioners, shall be the
20 same as the normal pay for a poll worker, election commissioner, county clerk, or deputy clerk
21 during the election for which a recount is requested or twice the amount of minimum wage,
22 whichever is greater. but in no instance shall the amount charged to conduct a recount exceed the
23 rate of twenty five cents (25¢) per vote cast in the precincts where the recount is requested or a
24 total of two thousand five hundred dollars (\$2,500) for the entire county, whichever is less. No
25 county shall incur or attempt to incur a profit related to a recount. Any money paid by a candidate
26 who requested a recount that is more than the actual costs of the recount, regardless of the outcome
27 of the recount, shall be refunded to the candidate.

28 ~~(j)(e)(1)~~ All recounts shall begin within forty-eight hours after full prepayment has been
29 made and continue for up to twelve (12) hours each day until the recount is completed.

30 (2) The recount shall be transcribed by a certified court reporter whose record shall be
31 the official record of the recount. The costs of the court reporter and the official transcript for the

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1 county board of election commissioners shall be taxable to the person or persons who petitioned
2 for the recount as a prepaid cost.

3 (3) The candidate or person or persons requesting the recount, or his, her, or their
4 attorney (but not a poll watcher, though a poll watcher may assist a candidate, person requesting
5 the recount, or an attorney for the same) may challenge any ballot for cause when the following
6 facts exist related to a specific ballot:

7 (i) There is an overvote,

8 (ii) There is an undervote,

9 (iii) There is a good faith basis to believe that the elector was not qualified to cast
10 a vote or a ballot,

11 (iv) The back of the ballot is not initialed by a sworn election official or poll
12 worker,

13 (v) There is reason to interpret voter intent,

14 (vi) There is an articulable reason or basis to believe that an election law was not
15 followed or there is an election irregularity which presents a basis to not count the ballot or the
16 votes on the ballot, or

17 (vii) There is a reasonable basis that an irregularity or defect exists with the ballot
18 or ballot application materials and such defect should render that the ballot not be counted.

19 (4) All challenges to a ballot made pursuant to this section shall be resolved on the
20 record by the county board of election commissioners in a public vote after each candidate and
21 person challenging or defending a ballot or votes on a ballot have been heard by the commission,
22 with the decision related to the ballot decided by the majority vote of the commissioners.

23 (5) The record before the county board of election commissioners shall be the only
24 official record to be appealed in an election contest and any documents, arguments, or requests for
25 relief not made on the record to the election commission shall not be preserved for appeal in an
26 election contest.

27 (6) Only timely appeals of a recount shall form the basis of an election contest.

28 (7) The county board of election commissioners, by public vote, shall resolve all issues
29 or matters presented to it during a recount. The failure of a commission to vote on a matter shall
30 not preclude an appeal of the matter or issue if it was presented to the commission, a vote was
31 requested, but the commission failed to vote.

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1 (h) After the recount is complete, and the county board of election commissioners has
2 ruled on all ballots or other issues presented to it during a recount, the commission shall certify the
3 results of the recount within forty-eight (48) hours.

4 ~~(i) Within forty eight hours after a petition for recount is filed, the county board of~~
5 ~~election commissioners shall notify all candidates whose election could be affected by the outcome~~
6 ~~of the recount.~~