

Opinion No. 2012-002

January 25, 2012

Preston Dunn, Jr., Founder/President
Personhood Arkansas
Post Office Box 101
Blytheville, Arkansas 72316

Dear Mr. Dunn:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2000), of the popular name and ballot title for a proposed constitutional amendment. You have previously submitted a similar measure, which this office rejected due to ambiguities in the text of your proposed amendment. *See Op. Att’y Gen. No. 2011-163.* You have made changes in the text of your proposal since your last submission and have now submitted the following proposed popular name and ballot title for my certification:

Popular Name

THE RIGHT TO LIFE

Ballot Title

AN AMENDMENT TO THE ARKANSAS CONSTITUTION:
RECOGNIZING EACH INNOCENT HUMAN BEING, AT
EVERY STAGE OF DEVELOPMENT, AS A PERSON WITH
THE RIGHT TO LIFE; PROHIBITING ABORTION; ALLOWING
LIFE SAVING MEDICAL TREATMENT; ALLOWING BIRTH
CONTROL AND IN-VITRO FERTILIZATION THAT DOES NOT
CAUSE THE DEATH OF A PERSON; POSSIBLY
CHALLENGING THE U.S. SUPREME COURT RULING OF
ROE VS. WADE; RECOGNIZING AND AFFIRMING THAT

PROTECTING THE RIGHT TO LIFE OF EVERY INNOCENT
PERSON IN ARKANSAS IS THE RIGHT AND
RESPONSIBILITY OF THE PEOPLE OF ARKANSAS

The Attorney General is required, pursuant to A.C.A. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General may substitute and certify a more suitable and correct popular name and ballot title, if he can do so, or if the proposed popular name and ballot title are sufficiently misleading, may reject the entire petition. **Neither certification nor rejection of a popular name and ballot title reflects my view of the merits of the proposal. This Office has been given no authority to consider the merits of any measure.**

In this regard, A.C.A. § 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, following Arkansas Supreme Court precedent, this office will not address the constitutionality of proposed measures in the context of a ballot title review unless the measure is “clearly contrary to law.” *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 669 (2000); *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act. See *Arkansas Women's Political Caucus v. Riviere*, 282 Ark. 463, 466, 677 S.W.2d 846 (1984).

The popular name is primarily a useful legislative device. *Pafford v. Hall*, 217 Ark. 734, 233 S.W.2d 72 (1950). It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958). The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency. *Id.*

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented. *Hoban v. Hall*, 229 Ark. 416, 417, 316 S.W.2d 185 (1958); *Becker v. Riviere*, 270 Ark. 219, 223, 226, 604 S.W.2d 555 (1980). According to the court, if information omitted from the ballot title is an “essential fact which would give the voter serious ground for reflection, it must be disclosed.” *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938 (1994), citing *Finn v. McCuen*, 303 Ark. 418, 798 S.W.2d 34 (1990); *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988); *Hoban v. Hall*, *supra*; and *Walton v. McDonald*, 192 Ark. 1155, 97 S.W.2d 81 (1936). At the same time, however, a ballot title must be brief and concise (*see* A.C.A. § 7-9-107(b)); otherwise voters could run afoul of A.C.A. § 7-5-522’s five minute limit in voting booths when other voters are waiting in line. *Bailey v. McCuen*, *supra*. The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke. *Plugge v. McCuen*, *supra*. The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring. *Id.* A ballot title must convey an intelligible idea of the scope and significance of a proposed change in the law. *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994). It has been stated that the ballot title must be: 1) intelligible, 2) honest, and 3) impartial. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990), citing *Leigh v. Hall*, 232 Ark. 558, 339 S.W.2d 104 (1960).

Having analyzed your proposed amendment, as well as your proposed popular name and ballot title under the above precepts, it is my conclusion that I must reject your proposed popular name and ballot title due both to ambiguities in the *text* of your proposed measure and to the fact that the text remains misleading in certain respects addressed in my rejection of your previous submission. Various additions or changes to your ballot title are, in my view, necessary in order to enable me fully and correctly to summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the referenced problems. I am therefore unable to substitute and certify a more suitable and correct popular name and ballot title pursuant to A.C.A. § 7-9-107(b).

I refer to the following ambiguities and misleading statements, addressed sequentially as they appear in your measure:

The popular name

In response to my rejection of your previous submission, you have changed the popular name of your measure from “The Paramount Right to Life” to “The Right to Life.” In the brief you have appended to your latest submission, you indicate that you have made this change “to avoid any inference of unfair coloring.” Apparently in support of the claim that this popular name is not partisan in its inferences, you suggest that this name is “firmly established in the law and more importantly in the public’s understanding.”

I consider your revised popular name unacceptable because it remains partisan and hence misleading. The phrase “The Right to Life,” whether or not prefaced by the description “Paramount,” consists of what the Arkansas Supreme Court in *Riviere* condemned as “inviting catch words,” designed to “[give] the voters only the impression the proponents of the amendment want them to have.”¹

It is immaterial that these words might be, as you suggest in your commentary, “firmly established in the law” or etched “in the public’s understanding.” To the extent these characterizations are correct, it is only insofar as the phrase “The Right to Life” is commonly used in legal and public parlance as identifying a particular partisan source (as, for that matter, is the catchword “pro-choice”). To use such a phrase is to promote by implication, not to summarize, a proposal. Indeed, read in isolation, without recourse to the partisan overtones associated with the term as used in a particular debate, the phrase does not even contain a proposal; it merely names a right that most people would acknowledge and embrace in the abstract.

¹ *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 468, 677 S.W.2d 846 (1984). I will here incorporate without repeating my previous analysis of how the principles set forth in *Riviere* apply in reviewing a proposed popular name.

It is unavailing as a remedy to suggest, as you do, that the voter will surely know to what the code phrase actually refers. The operative inquiry in reviewing a popular name is not whether the name is “ambiguous to the voters.” Rather, it is whether the name is impermissibly designed to convey a partisan message, which is precisely what your proposed popular name attempts to do. Again in the words of the court in *Riviere*, this phrase “conveys a biased view of the merits of the proposal,” rendering it “plainly our duty to declare it misleading.”²

Section 1: Purpose and effect.

Paragraph 1: The opening paragraph of this section of your measure provides as follows:

No innocent person shall be denied the right to life. With respect to the right to life, the word “person” shall apply to all human beings at every stage of their development.

This paragraph tracks verbatim Section 1 of your previous submission, with the exception that following the phrase “all human beings,” it omits the phrase “including the unborn.”

With respect to the remaining text, I will here incorporate without reproducing all of my previous remarks. However, I will note and briefly comment on various points you have made in the brief accompanying your resubmitted proposal.

You maintain that there is no ambiguity in your declaration that “no innocent person shall be denied the right to life.” I will not here repeat my position that the terms “innocent” and “person” are both ambiguous within the context of your measure. You maintain for the first time in your supporting brief, but indicate nowhere in your measure or proposed ballot title, that “innocent” clearly means “not

² *Id.* at 469. *Accord, Chaney, supra, and Moore, supra.*

guilty of a crime.” Ironically, you attempt to illustrate the supposed self-evidence of this meaning by reciting the following provision of A.C.A. § 16-90-301: “The General Assembly recognizes that many innocent persons suffer injury, death, property damage, and resultant financial hardship because of crimes committed in this state. . . .” However, as used in this statute, the term “innocent” clearly does not mean “not guilty of a crime.” Rather, read in context, it means only “not guilty” of the crime that caused the victim’s “injury, death, property damage, and resultant financial hardship.” The “innocent persons” – i.e., victims – mentioned in this statute might fit this label and yet be legally guilty of a variety of unrelated crimes, ranging from jaywalking to treason. Your measure provides no comparable contextual clue as to what you mean by the term “innocent.”

Moreover, even reading the term “innocent” in the manner you propose in your supporting brief, you have provided no indication of how this provision would mark any change from existing law outside the context of abortion. Indeed, the argument made in your brief actually establishes that your measure would have no effect on any laws not related to abortion. You maintain that “[t]he right to life of non-innocent persons is and will continue to be protected by the Due Process clause of Declaration of Rights, Section 8.” Your reference in this passage is clearly to Ark. Const. art. 2, § 8, which provides that “[n]o person shall be . . . deprived of life, liberty or property, without due process of law.” If the global constitutional reference to “no person” indeed assures “[t]he right to life of non-innocent persons,”³ as you rightly suggest, it surely does the same for “innocent” persons, whom I trust you will concede enjoy identical due-process protections. The right to due process in defending against a challenge to “the right to life” thus already exists under the Arkansas constitutional provision you have invoked in support of your measure. The question arises, then, what addition to the law you intend your measure to achieve with respect to any

³ Given the existence in Arkansas of the death penalty, I question your blanket suggestion that “the right to life of non-innocent persons” is “protected” by Article 2, § 8. This constitutional provision affords a “non-innocent person” only a “right” to due process in proceedings that might eventually result in his execution.

postnatal “person” as defined in Article 2, § 8. You purport to intend *some* sort of modification of current law outside the context of killing unborn “persons.” In your supporting brief’s defense of your popular name -- which, like your measure itself, fails even to mention abortion or any other pre-birth procedure – you declare that your measure “extends beyond” what you term, perhaps inadvertently, “mere abortion.” But if your measure would effect no change in the law applicable to the already born, who, irrespective of guilt or innocence, already enjoy due process protections, it is unclear how the measure would “extend beyond . . . mere abortion.” Without clarification on this point, I am unable to summarize your proposal in a ballot title.

The opening paragraph of this section is further ambiguous and confusing regarding the enforceability of your amendment if adopted. Your silence regarding abortion deflects attention from the fact that adopting the proposed amendment would declare as the law a measure that directly flouts United States Supreme Court precedent on this subject.⁴ At no point in your measure do you even hint at the existence of preemptive federal law that would preclude enforcing precisely the ban you propose. Your only reference to Supreme Court precedent at odds with your proposal is in your ballot title, in which you misleadingly characterize your measure as only “[p]ossibly challenging the U.S. Supreme Court ruling of *Roe v. Wade*.” (Emphasis added.) The confusion generated by this tentativeness is in no sense mitigated by the assertion in your brief, echoed nowhere in your measure, ballot title or popular name, that your proposed ban on abortion is merely one aspect of a “foundational” right that the states may presumably assert independent of federal interference.

Even assuming your entitlement to invite voters to assert such a “foundational” state right as overarching in its reach, trumping even contrary federal constitutional law – an assumption I will call into

⁴ See the discussion in my previous rejection.

question in my discussion below – the fact is that you have extended no such invitation. On the contrary, you imply that your proposed ban would comply with federal law, declaring in Section 2 of your measure that your proposal is “in accordance with the 10th Amendment of the United States constitution.” The text of your measure consequently appears to deny the conflict with federal law that you tentatively acknowledge in your ballot title, which at least hints at the unconstitutionality of your measure under federal law. Without a consistent statement in the text of your measure regarding the interrelationship of your proposal and what the Court has characterized as preemptive federal law, I cannot summarize your measure in a ballot title.

I will further respond in passing to the argument in your brief maintaining that I previously erred in finding ambiguous your reference to the word “person” as applying “to all human beings at every stage of their development.” You maintain that there is nothing whatsoever ambiguous in the phrase “at every stage of their development.” You support this contention by citing the definition in the federal Unborn Victims of Violence Act of an “unborn child” as “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”⁵ However, the quoted passage differs from your usage in a way that actually illustrates the ambiguity I criticized in your previous submission. In the federal statute, the phrase “at any stage of development” is crucially qualified by the attendant phrase “carried in the womb.” Unlike your measure, the federal law thus clearly defines the term during which a “member of the human species” will fall within the parameters of the law – namely, the period between the time the “member of the species” takes up residence “in the womb,” thus becoming an “unborn child” for purposes of the law, and the time he or she is born. The Arkansas Code also uses the phrase “at any stage of development” in its homicide statute with reference to “an unborn child in utero” who might become a victim of the crime.⁶

⁵ 18 U.S.C. § 1841(d).

Like the federal statute, this statute qualifies the reference to “any stage of development” by specifying that an “unborn child,” for purposes of the statute, is one located “in utero.” Moreover, the Code further restricts the phrase by defining the term “unborn child” to mean “a living fetus of twelve (12) weeks or greater gestation.”⁷ Your measure contains no such delimitation, leaving unresolved the crucial question of when a “person” comes into being, thus marking his or her first “stage of development.” Consequently, left unaddressed is the permissibility of a range of prenatal procedures discussed in my response to your initial submission. As I have previously noted, it is crucial both that you resolve this ambiguity by defining the point at which “personhood” begins and that you apprise the voters of what practical consequences would ensue from endorsing the measure.

Paragraph 2: The second paragraph of this section of your measure provides as follows:

This Amendment shall have no effect on contraceptives or other methods of birth control that do not cause the death of a person. This Amendment shall have no effect on in vitro fertilization or other methods of assisted reproduction that do not cause the death of a person. This Amendment shall have no effect on medical treatment for life threatening physical conditions intended to preserve life.

This paragraph is a verbatim repetition of a section of your previous submission captioned “Exclusions.” Having reportedly concurred in my limited concerns about this caption, you have dispensed with it altogether in your current submission. However, you have failed to make any changes in responses to my additional criticisms, which I will consequently here renew without repeating.

⁶ A.C.A. § 5-1-102(13)(B)(i)(a) (Supp. 2011).

⁷ A.C.A. § 5-1-102(13)(B)(i)(b).

Given that you have addressed the issue in your supporting brief, I will briefly elaborate on my previous response to the closing sentence of paragraph 2, which you have labeled the “Preserve Life clause.” I questioned in my previous opinion your failure directly to acknowledge what I speculated to be your primary intention through this clause to ban abortion except to save the life of the mother – a formulation expressly declared unconstitutional in *Roe v. Wade*.⁸ In your supporting brief, you declare this somewhat broader intention: “The Preserve Life clause is designed to handle not only the situation where a pregnant mother’s life is in danger but also rare situations, such as the case of twin-to-twin transfusion syndrome, where an unborn child’s life is in danger.”

The more general problem you purport to resolve through the Preserve Life clause is thus one that arises whenever a physician might need to sacrifice one “person” in order to save another. The ambiguity generated by the Preserve Life clause is that it does not directly address this situation. Rather, it merely affirms, without any contextual elaboration regarding what the affirmation would mean, the continued availability of any “medical treatment for life threatening physical conditions intended to preserve life.” In your ballot title, this provision is condensed into the phrase “[a]llowing life saving medical treatment” – a coinage so unexceptionable in its statement of principle that virtually any voter could be expected to approve it. Indeed, a voter might easily conclude that this clause, with its emphasis on the saving of lives, is in all respects *consistent* with the other provisions of your amendment – an impression only reinforced in your text by the fact that you have dispensed altogether with the caption “Exclusions,” which acknowledged at least obliquely that the procedures approved diverged from the “right to life” principle expounded elsewhere in your amendment. Totally missing in both your text and your ballot title is any hint that this provision would exclude application of your amendment in any situation in which the “life saving medical treatment” of one

⁸ See my discussion of this issue in Opinion No. 2001-163.

“person” would involve killing another “person” as you have defined that term.⁹ Confronted only with the text itself, then, it is unclear if you consider the Preserve Life clause as marking an exception to the “right to life” principle expressed in the remainder of your submission. Without clarification on this point, I am unable to summarize its substance and effects in a ballot title.

Sections 2: Repeal of conflicting laws.¹⁰

This section provides as follows:

All sections of this Amendment shall be deemed sovereign to the people of the state of Arkansas in accordance with the 10th Amendment of the United States constitution; therefore, Section 2 of Amendment 68 shall be repealed.

This section repeats verbatim one sentence of an identically captioned portion of your previous submission. I have addressed this section in my previous opinion and will not repeat my analysis here.

I will briefly elaborate, however, by noting that this section is ambiguous and confusing regarding whether it is meant to espouse a position founded on state prerogatives *despite* the existence of contrary federal law or whether it is espousing a position in supposed *accordance with* federal law. This ambiguity is reflected in the text of your measure in the declaration, on the one hand, that

⁹ Although I am necessarily focused in the text of my discussion on ambiguities in the text of your measure, I will note that your ballot title, which without qualification announces your measure as “[p]rohibiting abortion,” appears inconsistent with the proposition you acknowledge as accurate in your brief – namely, that abortion would be permitted if performed in the course of a “medical treatment for life threatening physical conditions.”

¹⁰ Although I am not basing my rejection of your current submission on this point, I will note that your text as abridged since your previous submission expressly repeals only Ark. Const. amend. 8, § 2, rendering confusing the plural reference in your caption.

your proposal is “in accordance with the 10th Amendment of the United States constitution” and your concomitant repeal of Ark. Const. amend. 68, § 2, which acknowledges the priority of federal law in matters related to abortion. The apparent confusion in your measure regarding the relationship between federal law and your proposal is reflected in your ballot title, which describes your measure as “[p]ossibly challenging the U.S. Supreme Court ruling of *Roe v. Wade*.”¹¹ (Emphasis added.)

The confusion generated by this tentativeness is in no sense mitigated by the assertion in your brief, echoed nowhere in your measure, ballot title or popular name, that you proposed ban on abortion is merely one aspect of a “foundational” right that the states may presumably assert independent of federal interference. Even assuming your entitlement to invite voters to assert such a “foundational” state right as overarching in its reach, trumping even contrary federal constitutional law – an assumption I will call into question in my discussion immediately below – the fact is that your measure itself is unclear regarding whether or not it means to flout the Supreme Court’s interpretation of federal law. Indeed, it invokes federal law in the very course of asserting that the “right” detailed in your proposed amendment is “sovereign to the people of the state of Arkansas.” The text of your measure consequently appears simultaneously to deny and to embrace federal constitutional law, rendering it impossible for me to summarize what you are asking the voters to approve.

You suggest in your supporting brief that no need exists to detail the effects on existing law of your proposed amendment because it is one “dealing with foundational principles.” With respect to the concept of such principles, you have offered the following:

¹¹ I have established in my previous opinion that any measure purporting to ban abortion except to save the life of the mother would flatly contradict what the Supreme Court in *Roe v. Wade* declared to be preemptive federal law.

We regard our amendment as one dealing with foundational rights, such as those included in Arkansas' bill of rights or Declaration of Rights. The people have the right to amend their Declaration of Rights in the state of Arkansas. Rights such as "Freedom and Independence," "Equality before the law," Liberty of the press and of speech," etc. are all foundational rights which affect numerous existing laws. Nothing in the constitution or laws of Arkansas prohibits the people from using the initiative process to amend existing foundational amendments or to propose new ones. In other words, the people are not precluded from being able to rule themselves on the foundational issues of our time.

This passage invites several responses. First, I am not in the least inclined to foreclose your legitimate access to the voters in an effort to "amend existing foundational amendments or to propose new ones." *I am nevertheless obligated to point out ambiguities in your measure and to ensure that the ballot title, however it eventually reads, accurately summarizes a measure that is sufficiently clear to allow of summation.* With respect to this obligation, I can and will substitute language in the ballot title in order to provide an accurate summary of your measure's provisions. I cannot, however, substitute language in the text itself in an effort to clarify what the text may or may not be intended to convey.

Secondly, as I noted in my previous opinion, I am not undertaking, at least at this point in the process of reviewing your measure, to reject your proposal based upon a conclusion that it violates the federal constitution.¹² For the moment, I am concerned only with the textual ambiguities I have previously and currently pointed out,

¹² As I noted in my previous opinion, the Secretary of State, at a later stage of the approval process, may indeed seek my advice in determining whether to reject your proposal because it is unconstitutional. *See* Opinion No. 2011-163, at n.16. Moreover, despite your suggestion that a state's voters might without restriction enact a constitutional amendment asserting their "foundational rights," the Arkansas Supreme Court might decline to submit such a measure to the voters based solely upon its conclusion that allowing such a submission would offend the federal constitution. *See, e.g., Kurrus, supra* at 449 (declining to submit to the voters, as an unconstitutional impairment of contract, a proposed amendment that would abolish state and local sales and use tax on used goods.)

as well as upon your continued failure to acknowledge to the voters that your measure flatly contradicts the United States Supreme Court's ruling in *Roe v. Wade*.¹³

Moreover, I must disagree with your suggestion that the mere characterization of a measure as involving what you term "foundational rights" relieves the measure's sponsor of the obligation to apprise the electorate of the crucial effects the measure might have. As the court noted in *Kurrrus*: "The voter should not have to be well versed in legal interpretation in order to decipher what is meant in a proposed constitutional amendment."¹⁴ This principle applies all the more strongly when not even legal interpretation would clarify a measure's practical meaning. The current version of your measure is simply too abstract to allow me to summarize for the voter what effects its adoption would have in regard to such matters as access to abortion, contraception, assisted reproduction techniques and stem cell research. Regardless of whether you characterize your measure as merely stating "foundational rights," it appears designed, as you concede in your brief, to have some sort of practical implications for the matters just itemized. The unanswered question is *what* practical consequences your measure would have. You fail to state such consequences in a way that would allow me to summarize them and the voter to understand them.

Section 3: Provisions self-executing.

This section provides as follows:

All provisions of this Amendment are self-executing and severable.

¹³ See my discussion in Opinion No. 2011-163.

¹⁴ 342 Ark. at 444.

This sentence is identical to the one contained in your previous submission. Accordingly, I will not here repeat my former comments.

You maintain in your brief that your proposed constitutional amendment is indeed self-executing for the following reason:

The right to life of born persons is currently protected by the criminal code. The criminal code does not vary penalties based on the stage of development of the victim. Absent any legislative action, the criminal code would protect unborn victims as well.

I must respectfully disagree with this summation of existing law. The primary protection of the “right to life” of “unborn victims” under current law is set forth at A.C.A. § 5-1-102(13)(B)(i).¹⁵ As previously noted, that protection begins at a point 12 weeks into gestation. Although it is unclear under your proposed amendment precisely when “personhood” and the “right to life” commence, that point is presumably earlier than 12 weeks into gestation. Implementing legislation, including the imposition of penalties, is consequently required to cover at least this earlier period, meaning your measure could not be self-executing.

My office, in the certification of ballot titles and popular names, does not concern itself with the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in A.C.A. § 7-9-107 and my duty is to the electorate. I am not your counsel in this matter and cannot advise you as to the substance of your proposal.

At the same time, however, the Arkansas Supreme Court, through its decisions, has placed a practical duty on the Attorney General, in exercising his statutory duty, to include language in a ballot title about the effects of a proposed measure

¹⁵ See discussion in note 7, *supra*.

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on current law. *See, e.g., Finn v. McCuen, supra.* Furthermore, the Court has recently confirmed that a proposed amendment cannot be approved if “[t]he text of the proposed amendment itself contribute[s] to the confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.” *Roberts v. Priest*, 341 Ark. 813, 20 S.W.3d 376 (2000). The Court concluded: “[I]nternal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.” *Id.* Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without clarification of the ambiguities.

My statutory duty, under these circumstances, is to reject your proposed ballot title, stating my reasons therefor, and to instruct you to “redesign” the proposed measure and ballot title. *See* A.C.A. § 7-9-107(c). You may, after clarification of the matters discussed above, resubmit your proposed amendment, along with a proposed popular name and ballot title, at your convenience. I anticipate, as noted above, that some changes or additions to your submitted popular name and ballot title may be necessary. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures

(Popular Name)
The Right to Life

(Ballot Title)

An Amendment to the Arkansas constitution:

Recognizing each innocent human being, at every stage of development, as a person with the right to life;

Prohibiting abortion;

Allowing life saving medical treatment;

Allowing birth control and in-vitro fertilization that does not cause the death of a person;

Possibly challenging the U. S. Supreme Court ruling of Roe vs Wade;

Recognizing and affirming that protecting the right to life of every innocent person in Arkansas is the right and responsibility of the people of Arkansas.

Be it enacted by the People of the State of Arkansas

The constitution of the State of Arkansas is amended BY THE ADDITION OF A NEW AMENDMENT, Amendment 88, to read:

The Right to Life

Section:

1. Purpose and effect.
2. Repeal of Section 2 of Amendment 68.
3. Provisions self-executing.

1. Purpose and effect.

No innocent person shall be denied the right to life. With respect to the right to life, the word "person" shall apply to all human beings at every stage of their development.

This Amendment shall have no effect on contraceptives or other methods of birth control that do not cause the death of a person. This Amendment shall have no effect on in vitro fertilization or other methods of assisted reproduction that do not cause the death of a person. This Amendment shall have no effect on medical treatment for life threatening physical conditions intended to preserve life.

2. Repeal of conflicting laws.

All sections of this Amendment shall be deemed sovereign to the people of the state of Arkansas in accordance with the 10th Amendment of the United States constitution; therefore, Section 2 of Amendment 68 shall be repealed.

3. Provisions self-executing.

All provisions of this Amendment are self-executing and severable.