

Opinion No. 2012-045

April 11, 2012

Preston Dunn, Jr., 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. 2011), of the popular name and ballot title for a proposed constitutional amendment. You have previously submitted similar measures, which this office rejected due to ambiguities in the texts of your proposed amendments. *See* Ops. Att’y Gen. Nos. 2012-002 and 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

AMENDING THE ARKANSAS CONSTITUTION TO RECOGNIZE THAT ALL HUMAN BEINGS, AT EVERY STAGE OF DEVELOPMENT, SHARE THE SAME INHERENT AND INALIENABLE RIGHTS

Ballot Title

THIS AMENDMENT SHALL RECOGNIZE THAT ALL HUMAN BEINGS, AT EVERY STAGE OF DEVELOPMENT, ARE PERSONS WITH INHERENT AND INALIENABLE RIGHTS.

THIS AMENDMENT SHALL BAN ABORTION. THIS AMENDMENT SHALL ALLOW LIFE-SAVING MEDICAL TREATMENT. THIS AMENDMENT SHALL ALLOW IN VITRO

FERTILIZATION AND THE USE OF CONTRACEPTIVES AND OTHER FORMS OF BIRTH CONTROL UNLESS THEY ARE SHOWN TO VIOLATE INHERENT AND INALIENABLE RIGHTS OF A PERSON.

THIS AMENDMENT SHALL RECOGNIZE AND AFFIRM THAT PROTECTING INHERENT AND INALIENABLE RIGHTS IN ARKANSAS IS THE SOVEREIGN RIGHT AND RESPONSIBILITY OF THE PEOPLE OF ARKANSAS. THIS AMENDMENT CONTRADICTS AND SUPERSEDES THE U.S. SUPREME COURT RULING OF ROE VS. WADE BASED ON THE 10TH AMENDMENT, POWERS OF THE STATES AND PEOPLE, OF THE UNITED STATES CONSTITUTION.

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). Consequently, this review has been limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the proposed popular name and ballot title accurately and impartially summarize the provisions of your proposed amendment.

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*, 283 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 to ambiguities in the *text* of your proposed measure. A number of additions or changes to your ballot title are, in my view, necessary in order to more fully and correctly 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 ambiguities. 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:

1. Your measure proposes to amend Ark. Const. art. 2, § 2.¹ Section 1 of your amendment, captioned “Freedom and independence,” provides in its opening paragraph as follows:

All men human beings [sic], at every stage of biological development, are persons created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men deriving their just powers from the consent of the governed.

This provision is ambiguous in several respects. First, because you have presented this measure not in its final form, as required,² but rather marked to show insertions into (but, unaccountably, not deletions from) the current version, it is grammatically erroneous.

¹ I should note that it is inappropriate to preface your statement of intent to amend Article 2, § 2 with the enactment clause “Be it enacted by the People of the State of Arkansas.” An enactment clause should not precede the text of a proposed constitutional amendment.

² See Ark. Op. Att’y Gen. No. 2011-160 (noting the requirement under A.C.A. § 7-9-107(a) that the sponsors of a proposed constitutional amendment “submit the *original draft* to the Attorney General, with a proposed . . . ballot title and popular name” (emphasis added)).

As presented, the construction “men human beings” read literally would restrict the constitutional protections you propose to males. Without clarification, I cannot summarize this provision in a ballot title.

Secondly, you have again included in your resubmission the coinage “at every stage of . . . development” in defining the “persons” to whom the rights set forth in your measure attach.³ I have twice rejected your submissions based upon your inclusion of this phrase – most recently in Opinion No. 2012-002, in which I noted that it “leav[es] unresolved the crucial question of when a ‘person’ comes into being, thus marking his or her first ‘stage of development.’” Nothing in your current supporting brief, which can only charitably be described as “strained” on this point, persuades me to adopt a contrary position. In its current form, your submission suffers from the same ambiguity I identified in your first submission, which sought to ensure “the right to life” of “every innocent person . . . including the unborn, at every stage of development.” Your current formulation, like your former, “begs the question of when human life begins – or, stated differently, the question of what event marks a ‘person’s’ first ‘stage of development.’” This marks the third and last occasion on which I will make this point. This office cannot devote its resources to addressing repeated resubmissions of provisions it has already declared ambiguous.

The ambiguity in your measure regarding when human development begins further leads inexorably to the unanswered question of what effect your measure would have on abortion rights. Unaccountably, the term “abortion” appears nowhere in your measure, being referenced directly only in your ballot title, which bluntly declares that “[t]his amendment shall ban abortion.”⁴ This straightforward

³ The inclusion in your current submission of the adjective “biological” preceding “development” is immaterial to my following remarks.

⁴ The only reference to abortion in your measure is indirect, taking the form of an oblique declaration in Section 2 that the United States Supreme Court’s ruling in *Roe v. Wade* “cannot override the sovereign will of the people of Arkansas.” A ballot title is designed to *summarize* a measure, not to set forth for the first

declaration – which, by the way, apparently belies the exception you maintain applies when an abortion is necessary to save the mother’s life – cannot serve to resolve the ambiguity on this score generated by your failure to specify when a constitutionally protected “person” comes into being. Without resolution of this textual ambiguity, I cannot summarize your measure in a ballot title.

2. Section 1 of your proposed amendment provides in its second paragraph as follows:

This Amendment shall have no effect on contraceptives or other methods of birth control unless they are shown to violate the inherent and inalienable rights of a person. This Amendment shall have no effect on in vitro fertilization or other methods of assisted reproduction unless they are shown to violate the rights of a person. This Amendment shall have no effect on medical treatment for life threatening physical conditions intended to preserve life.

The first and second sentences of this passage are ambiguous, and hence incapable of summation in a ballot title, for the same reason set forth in my response to your first proposed amendment, which declared itself as having “no effect” on either (1) “contraceptives or on other methods of birth control that do not cause the death of a person” or (2) “*in vitro* fertilization or other methods of assisted reproduction that do not cause the death of a person.” I responded that “[g]iven the uncertainty regarding what precisely the term ‘person’ betokens,” it would be unclear what effect the amendment’s enactment would have on laws relating to contraception or procedures performed either *in vitro* or *in utero*. These concerns apply equally to your current submission, which is similarly vague about the meaning of the term “person.”

You attempt to avoid this conclusion in your supporting brief by remarking that “only procedures that ‘are shown to violate the inherent and inalienable rights of a person’ will be proscribed.” You argue that this provision is unobjectionable because on “[t]he day this amendment takes effect, no in vitro or contraceptive procedures would be banned because none has been shown to violate the rights of a person.” You suggest that the failure adequately to define the crucial term “person” is unobjectionable because “[t]he burden of proof is laid upon those who claim a particular procedure violates the amendment.” However, regardless of who bears the burden of proof, without a meaningful definition of what constitutes a “person,” the question remains of what needs to be proven in order to establish a violation of the amendment. As drafted, your measure fails to set forth what conduct would be permitted and what would not – information that is obviously crucial for the voter to consider in determining whether to support your proposal. Without clarification, I am unable to summarize this proposal in a ballot title.

The final sentence of Section 1 declares that your measure will have “no effect on medical treatment for life threatening physical conditions intended to preserve life.” Your amendment at no point addresses how this provision might bear on abortion, thus leaving it unclear whether it would be permissible through abortion to deprive a fetus of the right “of enjoying . . . life” – a right your amendment characterizes as “inherent and inalienable” for all “human beings” – i.e., “persons.” As reflected in your suggestion that your measure would ban abortions, you are apparently including fetuses within the category of “persons,” thus generally precluding abortions under the right just referenced. Nevertheless, you report in your brief an intent to allow violations of what would otherwise be the “inherent and inalienable” rights of certain “persons,” namely fetuses, when necessary to conduct “medical treatment for life threatening physical conditions intended to preserve [the] life” of other “persons,” namely expectant mothers with life-threatening pregnancies.

You attempt in your brief to avoid the conclusion that this limited right to abortion would contradict the substance of your measure,

merely asserting as if self-evident that aborting an unborn “person” in the course of the mother’s medical treatment would not violate “the unborn’s right to life.” However, this counterintuitive declaration is contained nowhere in your measure, which fails even to acknowledge directly that the “medical treatment” provision is apparently primarily meant to authorize abortions in the circumstance just described. Even if the issue of medically “necessary” abortion were directly joined in your submission, which it is not, the provision permitting the procedure would appear to contradict the substance of your measure in a way that would render it impossible for me to summarize your proposal in a ballot title. Your measure’s silence regarding abortion only complicates my difficulties in this regard.

3. Section 2 of your amendment, captioned “Assertion of state authority,” 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. Federal court rulings in violation of the 10th Amendment of the United States Constitution, including but not limited to Roe vs. Wade, cannot override the sovereign will of the people of Arkansas.

In both rejections of your previous submissions, I addressed in detail the ambiguity inherent in your assertion that the United States Constitution through the Tenth Amendment supports your proposed ban on abortion. In Opinion No. 2012-002, I remarked:

[Y]ou imply that your proposed ban would comply with federal law, declaring . . . 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.

In your current submission, you directly concede that your proposal conflicts with federal law as set forth in *Roe v. Wade* and other unspecified federal court rulings. You nevertheless appear intent on somehow reconciling your proposal with federal law. In your efforts to do so, you create a conflict that renders it impossible for me to summarize your proposal in a ballot title.

As I have previously pointed out, the Supreme Court has declared as a matter of federal law that a state may not impose an outright abortion ban of the sort that you have proposed in each of your submissions. As I explained at some length in Opinion No. 2011-163, given the very nature of federalism, which recognizes the supremacy of the United States Supreme Court in interpreting the meaning of the Constitution, it will not do simply to declare that the Court is wrong in its declaration of what federal constitutional law entails. Simply put, federal constitutional law *is* what the Supreme Court says it is. As I noted in my previous opinion:

The Supreme Court has declared as a matter of federal constitutional law that abortions cannot be restricted to instances in which the mother's life is in jeopardy – a declaration that necessarily would preclude a state from maintaining that the right to impose such a restriction is reserved to the states under the Tenth Amendment. Stated in terms of the Tenth Amendment, pursuant to the Supreme Court's express declarations, the Fourteenth Amendment has 'delegated to the United States' the powers to vindicate a woman's constitutional privacy interest in seeking an abortion in limited circumstances even if her life is not in danger. Accordingly, again in terms of the Tenth Amendment, the power to restrict that privacy interest cannot be described as 'reserved to the States respectively.'

It is logically inconsistent, then, to maintain, as you do, that you are basing your opposition to the Supreme Court's reading of the Constitution upon the Constitution itself. Any claimed right at the state level to ban abortion cannot be deemed to reside in the Tenth Amendment if the Supreme Court, either directly or by inference, has declared otherwise. It is thus inconsistent to maintain, as you do in invoking the Tenth Amendment in support of your position, that the federal constitution has reserved to the states the right to impose a ban of the sort you propose. This inconsistency creates an ambiguity that renders it impossible for me to summarize your proposal in a ballot title.

As a corollary matter, your measure is further ambiguous in that it is unclear what would be the interrelationship between your measure and Ark. amend. 68, § 2, which provides that "[t]he policy of Arkansas is to protect the life of every unborn child from conception until birth, *to the extent permitted by the Federal Constitution.*" (Emphasis added.) In both of your previous submissions, you have proposed repealing this provision, apparently in recognition of the fact that the federal constitution bars any ban on abortion except to save the life of the mother. Your current measure, however, not only fails to acknowledge in any way the existence of Amendment 68, § 2, it further fails to contain even a general boilerplate repeal of any conflicting laws.

It is unclear what you mean to imply by your current silence regarding the application of Amendment 68, § 2. If you are implying that the United States Constitution through the Tenth Amendment has reserved to the states the right to ban abortion except to save the mother's life, thus locating your measure within the scope of the highlighted terms set forth in Amendment 68, § 2, you are mistaken in this assumption. The Supreme Court has expressly declared unconstitutional any effort to restrict abortion in this fashion. Again, you cannot reject federal constitutional law while at the same time purporting to embrace it as support for your measure. Without clarification, I am unable to summarize your proposal in a ballot title.

4. Section 4 of your measure, captioned “Private right of action,” provides as follows:

The Attorney General or any person may maintain an action in the circuit court having jurisdiction where an alleged violation of a person’s right to enjoying and defending life occurred or is likely to occur for injunctive, declaratory or equitable relief against any person for the protection of another person’s right to enjoying and defending life.

It is unclear in your measure whether you intend the recited remedies to be exclusive – foreclosing, for instance, the legislature from imposing criminal sanctions for, say, committing a constitutionally banned abortion. Without clarification on this point, I am unable to summarize your proposal in a ballot title.

I cannot begin to certify a ballot title for your proposed amendment in the face of the ambiguities noted above. You must remedy these confusing and ambiguous points before I can perform my statutory duty.

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 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

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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

Enclosure

(Popular Name)

Amending the Arkansas Constitution to recognize that all human beings, at every stage of development, share the same inherent and inalienable rights.

(Ballot Title)

This amendment shall recognize that all human beings, at every stage of development, are persons with inherent and inalienable rights.

This amendment shall ban abortion. This amendment shall allow life-saving medical treatment. This amendment shall allow in vitro fertilization and the use of contraceptives and other forms of birth control unless they are shown to violate inherent and inalienable rights of a person.

This amendment shall recognize and affirm that protecting inherent and inalienable rights in Arkansas is the sovereign right and responsibility of the people of Arkansas. This Amendment contradicts and supersedes the U. S. Supreme Court ruling of Roe vs. Wade based on the 10th Amendment, Powers of the States and People, of the United States Constitution.

Be it enacted by the People of the State of Arkansas

The constitution of the State of Arkansas is amended BY THE AMENDING OF Article 2., Declaration of Rights., Section: 2, Freedom and Independence

Section:

1. Freedom and independence.
2. Assertion of state authority.
3. Provisions severable.
4. Private right of action.

1. Freedom and independence.

All men human beings, at every stage of biological development, are persons created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men deriving their just powers from the consent of the governed.

This Amendment shall have no effect on contraceptives or other methods of birth control unless they are shown to violate the inherent and inalienable rights of a person. This Amendment shall have no effect on in vitro fertilization or other methods of assisted reproduction unless they are shown to violate the rights of a person. This Amendment shall have no effect on medical treatment for life threatening physical conditions intended to preserve life.

2. Assertion of state authority.

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. Federal court rulings in violation of the 10th Amendment of the United States Constitution, including but not limited to Roe vs. Wade, cannot override the sovereign will of the people of Arkansas.

3. Provisions severable.

All provisions of this Amendment are severable.

4. Private right of action.

The Attorney General or any person may maintain an action in the circuit court having jurisdiction where an alleged violation of a person's right to enjoying and defending life occurred or is likely to occur for injunctive, declaratory or equitable relief against any person for the protection of another person's right to enjoying and defending life.

Opinion 2012-002 Response

The Right to Life

The proposed popular name in our previous submission, "The Right to Life" is not a partisan phrase but a valid statement of a recognized legal right. The Attorney General seems to be confusing "The Right to Life" with the popular catch-phrase "pro-life". He makes his confusion evident when he compares "The Right to Life" to the catch-phrase "pro-choice". It is certainly true that those who call themselves "pro-life" work for the right to life of prenatal human beings but that doesn't invalidate the phrase any more than the "right to bear arms" becomes invalid because it's an objective of the National Rifle Association.

The use of the phrase "The Right to Life" follows well-founded constitutional

precedent. The concept of “the right to life” is referenced in state constitutions throughout the United States. Section 2 of the Declaration of Rights in the Arkansas constitution calls “enjoying and defending life” an inalienable right. Similar declarations are made in the state constitutions of California, Colorado, Delaware, Florida, Hawaii, Idaho, Iowa, Kentucky, Maine, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, South Dakota, Utah, Vermont, Virginia, and West Virginia.

The Alabama state constitution protects “... certain inalienable rights; that among these are life” Life is similarly called an inalienable or inherent right in the state constitutions of Illinois, Indiana, Kansas, Nebraska, North Carolina and Wisconsin. The Declaration of Independence also recognizes the right to life in the same terms.

The Alaska state constitution says “... that all persons have a natural right to life...” The exact phrase “right to life” is also used in the state constitutions of Louisiana, Missouri, Oklahoma and Wyoming.

We have decided to no longer use the phrase “right to life” in our proposal but we stand behind the fact that the phrase is completely legitimate considering its place in state constitutional law.

Our proposal vs. Court interpretation

The Attorney General requested that we include 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”. In light of this request, we have added the following phrase to Section 2: Federal court rulings in violation of the 10th Amendment of the United States Constitution, including but not limited to Roe vs. Wade, cannot override the sovereign will of the people of Arkansas.

At any stage of development

The Attorney General states that the Unborn Victims of Violence Act’s (UVVA) language “at any stage of development” is not ambiguous in regard to the beginning stage of development because it specifies the location (“carried in the womb”) of the human being who is protected by the act. However when the

UVVA specifies that it will only protect human beings in the womb, it is not specifying when human life begins or what stage of development is the first stage. “Where” is not the same thing as “when.” If we had medical incubators that could raise children through all nine months of gestation, those unborn children would not be protected by UVVA because of their location outside the womb. In such a situation, under the Attorney General’s interpretation of the UVVA, a week old embryo in the womb would have already started his first stage of development because he’s entered the womb, while a baby in his ninth month about to be taken from the incubator would have not yet begun his first stage of development.

Obviously, a human being’s stage of development is in no way related to his or her location. The phrase “at any stage of development” is not ambiguous and is in no way perfected by specifying a location.

The Attorney General wrongly relies on A.C.A. § 5-1-102 to make his case.

A.C.A. § 5-1-102 A.C.A. § 5-1-102(13)(B)(i)(a-b) states:

(B) (i) (a) As used in §§ 5-10-101 -- 5-10-105, "person" also includes an unborn child in utero at any stage of development.

(b) "Unborn child" means a living fetus of twelve (12) weeks or greater gestation.

The Attorney General falsely conflates these two definitions. The legislature did not qualify “any stage of development” by specifying when the first stage of development begins. It only qualified the definition of unborn child with a beginning time. At best, the Attorney General could only make the claim that “unborn child” needs a time designation. Even then this claim would be rather weak because the existence of a time designation doesn’t logically conclude the need for a time designation.

Contrary to the Attorney General’s contention, the Arkansas Code only supports our position. Our use of the phrase “every stage of development” in our amendment is consistent with both the federal UVVA and Arkansas code.

Both the UVVA and A.C.A. § 5-1-102 specified protection only for children in the womb but, of course, human rights aren’t dependent on someone’s location. We are interested in protecting all human beings. Therefore our proposal is more

expansive, with regard to location, than either UVVA or A.C.A. § 5-1-102.

Birth control and in-vitro methods

The Attorney General, in his first opinion (2011-163), stated that he couldn't summarize the ballot title because "it is unclear precisely what [assisted reproduction and birth control] procedures would be allowed and under what circumstances." We have changed the language so that only procedures that "are shown to violate the inherent and inalienable rights of a person" will be proscribed. The day this amendment takes effect, no in vitro or contraceptive procedures would be banned because none have been shown to violate the rights of a person. The burden of proof is laid upon those who claim a particular procedure violates the amendment.

Preserve Life Clause

The Preserve Life Clause does not conflict with the right to life we are attempting to protect. If someone attempts to use lethal force against you, you may act with appropriate force, even lethal force as the circumstance may require, to preserve your own life. Such an act of appropriate lethal force isn't a violation of the attacker's right to life. Likewise, though an unborn child is in no way an attacker, a mother's attempt to save her own life is not a violation of the unborn's right to life. A reasonable interpretation of the amendment would be that one must always use the minimum force necessary, which would mean preserving the child's life, if possible.

Self-executing

We have replaced the self-executing clause with a section granting a private right of action.