Opinion No. 2012-062

April 27, 2012

Mr. Robert L. Reed, Spokesperson
Arkansans for Liberty
295 Elan Trail
Dennard, Arkansas 72629

Dear Mr. Reed:

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 initiated measure. Your proposed popular name is as follows:

Popular Name

AMEND ARTICLE 19, SECTION 20 OATH OF OFFICE, BY THE ADDITION OF THE WORDS "DEFEND" AND "UPHOLD" TO THE EXISTING LANGUAGE

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 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.[1] The popular name is primarily a useful legislative device.[2] 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.[3] The ballot title must include an impartial summary of the proposed

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[1] *See Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

[2] *Pafford v. Hall*, 217 Ark. 734, 233 S.W.2d 72 (1950).

[3] *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

amendment or act that will give the voter a fair understanding of the issues presented and the scope and significance of a proposed change in the law.[4] The ballot title must be: 1) intelligible, 2) honest, and 3) impartial.[5]

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.

Please be advised, however, that a procedural irregularity prevents me from certifying a popular name and ballot title for your proposed constitutional amendment at this time. Although you have submitted a proposed popular name along with the text of the measure, you have failed to submit a proposed "ballot title" for my review. Section 7-9-107(a) of the Arkansas Code is very clear in requiring a sponsor of a measure to submit the measure for my review with both a proposed popular name and ballot title.[6] As a consequence, I cannot at this time certify a popular name and ballot title for your proposed measure. I must instead return your submission and instruct you to submit the language of your proposed amendment together with a proposed popular name and ballot title. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

DUSTIN MCDANIEL
Attorney General

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[4] *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); *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994).

[5] *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).

[6] *See also* Op. Att'y Gen. Nos. 2009-117, 2007-172 and 2006-072.

INITIATIVE PETITION

To the Honorable Mark Martin
Secretary of State of the State of Arkansas,
We, the undersigned legal voters of the State of Arkansas, respectfully propose the following amendment to the Constitution of the State, to wit:

Amend Article 19, section 20 Oath of office, by the addition of the words "defend" and "uphold" to the existing language.

Article 19.

20. Oath of office.

Senators and Representatives, and all judicial and executive, State and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices, shall take and subscribe to the following oath of affirmation:

"I, _____, do solemnly swear (or affirm) that I will support, **defend, and uphold** the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of _____, upon which I am now about to enter."

and by this, our petition, order that the same be submitted to the people of said state, to the end that the same may be adopted, enacted, or rejected by vote of legal voters of said state at the regular general election to be held in said state on the 6th day of November, 2012, and each of us for himself or herself says:

I have personally signed this petition; I am a legal voter of the State of Arkansas, and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature."