

Opinion No. 2012-129

November 5, 2012

David Couch, Co-Chair
Regnat Populus 2012 Ballot Question Committee
Post Office Box 1087
Little Rock, Arkansas 72203-1087

Dear Mr. Couch:

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 initiated act. You have previously submitted various similar measures, two of which I rejected due to unresolved ambiguities in the texts of your proposed measures (see Op. Att’y Gen. Nos. 2012-124 and 2012-028). Later, my office revised and certified popular names and ballot titles for two similar measures (see Op. Att’y Gen. Nos. 2012-049 and 2012-040). Since those two certified measures, you have submitted an expanded version, which I rejected in Opinion No. 2012-124 due to several ambiguities caused by the expanded scope. You have now attempted to cure those ambiguities and submit the following proposed popular name and ballot title for my certification:

Popular Name

THE CAMPAIGN FINANCE AND LOBBYING ACT OF 2014

Ballot Title

AN ACT AMENDING ARKANSAS LAW, WHICH CURRENTLY ALLOWS INDIVIDUALS, CORPORATIONS, PROPRIETORSHIPS, FIRMS, PARTNERSHIPS, JOINT VENTURES, SYNDICATES, LABOR UNIONS, BUSINESS TRUSTS, COMPANIES, ASSOCIATIONS, POLITICAL

PARTIES AND COMMITTEES TO MAKE CAMPAIGN CONTRIBUTIONS TO CANDIDATES AND TO AUTHORIZED POLITICAL ACTION COMMITTEES; TO PROVIDE THAT, WHILE THE FOREGOING MAY CONTINUE TO MAKE CAMPAIGN CONTRIBUTIONS TO AUTHORIZED POLITICAL ACTION COMMITTEES, ONLY INDIVIDUALS, POLITICAL PARTIES, COUNTY POLITICAL PARTY COMMITTEES, LEGISLATIVE CAUCUS COMMITTEES, AND AUTHORIZED POLITICAL ACTION COMMITTEES MAY MAKE CAMPAIGN CONTRIBUTIONS DIRECTLY TO CANDIDATES FOR PUBLIC OFFICE; AMENDING CURRENT ARKANSAS LAW, WHICH PROHIBITS MEMBERS OF THE GENERAL ASSEMBLY FROM ACTING AS REGISTERED LOBBYISTS FOR ONE YEAR AFTER THE EXPIRATION OF THEIR TERM IN OFFICE AND APPLICABLE ONLY TO MEMBERS ELECTED ON OR AFTER JULY 27, 2011; TO EXPAND THE PROHIBITION TO TWO YEARS AND MAKE THE PROHIBITION APPLICABLE TO ALL MEMBERS ELECTED OR RE-ELECTED ON OR AFTER NOVEMBER 4, 2012; AND AMENDING ARKANSAS LAW TO PROHIBIT THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, TREASURER OF STATE, AUDITOR OF STATE, ATTORNEY GENERAL, COMMISSIONER OF STATE LANDS AND MEMBERS OF THE GENERAL ASSEMBLY, FROM SOLICITING OR ACCEPTING GIFTS FROM A LOBBYIST, OR ANYONE ACTING ON BEHALF OF A LOBBYIST, OR ANYONE EMPLOYING A LOBBYIST, WITH GIFT DEFINED TO INCLUDE ANY PAYMENT, ENTERTAINMENT, ADVANCE, SERVICES, OR ANYTHING OF VALUE, UNLESS CONSIDERATION OF EQUAL OR GREATER VALUE HAS BEEN GIVEN THEREFOR, BUT DEFINED NOT TO INCLUDE: (1) INFORMATIONAL MATERIAL SUCH AS BOOKS, REPORTS, PAMPHLETS, CALENDARS, OR PERIODICALS INFORMING THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, TREASURER OF STATE, AUDITOR OF STATE, ATTORNEY GENERAL, COMMISSIONER OF STATE LANDS

OR MEMBER OF THE GENERAL ASSEMBLY REGARDING HIS OR HER OFFICIAL DUTIES, BUT SUCH INFORMATIONAL MATERIAL SHALL NOT INCLUDE PAYMENTS FOR TRAVEL REIMBURSEMENT FOR ANY EXPENSES; (2) GIFTS WHICH ARE NOT USED AND WHICH, WITHIN THIRTY (30) DAYS AFTER RECEIPT, ARE RETURNED, (3) GIFTS FROM THE GOVERNOR'S, LIEUTENANT GOVERNOR'S, SECRETARY OF STATE'S, TREASURER OF STATE'S, AUDITOR OF STATE'S, ATTORNEY GENERAL'S COMMISSIONER OF STATE LANDS' OR MEMBER OF THE GENERAL ASSEMBLY'S FAMILY; (4) LAWFUL CAMPAIGN CONTRIBUTIONS, AND (5) ANY DEVISE OR INHERITANCE.

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."¹ 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

¹ *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996).

name and ballot title accurately and impartially summarize the provisions of your proposed amendment or act.

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.²

The popular name is primarily a useful legislative device.³ 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.⁴ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁵

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.⁶ 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."⁷ 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.⁸ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate

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

³ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁴ *E.g., Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976). ; *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

⁵ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁶ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

⁷ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

⁸ *Id.* at 288, 884 S.W.2d at 944.

every possible legal argument the proposed measure might evoke.⁹ The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.¹⁰ A ballot title must convey an intelligible idea of the scope and significance of a proposed change in the law.¹¹ The ballot title must be intelligible, honest, and impartial.¹²

Applying all the foregoing to your current submission, I conclude that your proposed popular name and ballot title must be rejected due to an ambiguity in the text of your measure. This ambiguity arose as an attempt to address an ambiguity I noted in the most recent version of your proposal. This ambiguity, which is described below, prevents me from ensuring that your ballot title fully and fairly summarizes your measure. Therefore, I cannot substitute and certify a more suitable popular name and ballot title pursuant to A.C.A. § 7-9-107(b).

This ambiguity is found in the part of your measure marked “Section 3,” which prohibits members of the General Assembly and certain constitutional officers from soliciting or accepting any “gift” from a lobbyist. The section goes on to define “gift” and then provides five exceptions to that definition, one of which is for: “[g]ifts from the governor’s, lieutenant governor’s, secretary of state’s, treasurer of state’s, auditor of state’s, attorney general’s[,] commissioner of state lands’[,] or member of the general assembly’s spouse, child, parent, grandparent, grandchild, brother, sister, [etc.]...” On one reading of this provision, any person listed can only receive a “gift” from a member of that person’s *own* family. On another reading of this provision, any person listed can receive a gift from a family member of any other person listed. This ambiguity must be clarified before I can ensure that the ballot title fully and fairly summarizes the measure.

⁹ *Id.* 293, 884 S.W.2d at 946–47.

¹⁰ *Id.* at 284, 884 S.W.2d at 942.

¹¹ *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 245, 884 S.W.2d 605, 607 (1994) (internal quotations omitted).

¹² *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

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In addition, as I noted in Opinion No. 2012-124, you have altered some of the punctuation and wording of the version of your ballot title that I certified in Opinion Nos. 2012-040 and 2012-049. The places in your current ballot title that deviate from this earlier, certified version are still deficient.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosure

Stricken language would be deleted from and underlined language would be added to the law as it existed.

State of Arkansas
A PROPOSED INITIATED ACT

Popular Name

THE CAMPAIGN FINANCE AND LOBBYING ACT OF 2014

Ballot Title

AN ACT AMENDING ARKANSAS LAW, WHICH CURRENTLY ALLOWS INDIVIDUALS, CORPORATIONS, PROPRIETORSHIPS, FIRMS, PARTNERSHIPS, JOINT VENTURES, SYNDICATES, LABOR UNIONS, BUSINESS TRUSTS, COMPANIES, ASSOCIATIONS, POLITICAL PARTIES AND COMMITTEES TO MAKE CAMPAIGN CONTRIBUTIONS TO CANDIDATES AND TO AUTHORIZED POLITICAL ACTION COMMITTEES; TO PROVIDE THAT, WHILE THE FOREGOING MAY CONTINUE TO MAKE CAMPAIGN CONTRIBUTIONS TO AUTHORIZED POLITICAL ACTION COMMITTEES, ONLY INDIVIDUALS, POLITICAL PARTIES, COUNTY POLITICAL PARTY COMMITTEES, LEGISLATIVE CAUCUS COMMITTEES, AND AUTHORIZED POLITICAL ACTION COMMITTEES MAY MAKE CAMPAIGN CONTRIBUTIONS DIRECTLY TO CANDIDATES FOR PUBLIC OFFICE; AMENDING CURRENT ARKANSAS LAW, WHICH PROHIBITS MEMBERS OF THE GENERAL ASSEMBLY FROM ACTING AS REGISTERED LOBBYISTS FOR ONE YEAR AFTER THE EXPIRATION OF THEIR TERM IN OFFICE AND APPLICABLE ONLY TO MEMBERS ELECTED ON OR AFTER JULY 27, 2011; TO EXPAND THE PROHIBITION TO TWO YEARS AND MAKE THE PROHIBITION APPLICABLE TO ALL MEMBERS ELECTED OR RE-ELECTED ON OR AFTER NOVEMBER 4, 2014; AND AMENDING ARKANSAS LAW TO PROHIBIT THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, TREASURER OF STATE, AUDITOR OF STATE, ATTORNEY GENERAL, COMMISSIONER OF STATE LANDS AND MEMBERS OF THE GENERAL ASSEMBLY, FROM SOLICITING OR ACCEPTING GIFTS FROM A LOBBYIST, OR ANYONE ACTING ON BEHALF OF A LOBBYIST, OR ANYONE EMPLOYING A LOBBYIST, WITH GIFT DEFINED TO INCLUDE ANY PAYMENT,

ENTERTAINMENT, ADVANCE, SERVICES, OR ANYTHING OF VALUE, UNLESS CONSIDERATION OF EQUAL OR GREATER VALUE HAS BEEN GIVEN THEREFOR, BUT DEFINED NOT TO INCLUDE: (1) INFORMATIONAL MATERIAL SUCH AS BOOKS, REPORTS, PAMPHLETS, CALENDARS, OR PERIODICALS INFORMING THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, TREASURER OF STATE, AUDITOR OF STATE, ATTORNEY GENERAL, COMMISSIONER OF STATE LANDS OR MEMBER OF THE GENERAL ASSEMBLY REGARDING HIS OR HER OFFICIAL DUTIES, BUT SUCH INFORMATIONAL MATERIAL SHALL NOT INCLUDE PAYMENTS FOR TRAVEL REIMBURSEMENT FOR ANY EXPENSES; (2) GIFTS WHICH ARE NOT USED AND WHICH, WITHIN THIRTY (30) DAYS AFTER RECEIPT, ARE RETURNED, (3) GIFTS FROM THE GOVERNOR'S, LIEUTENANT GOVERNOR'S, SECRETARY OF STATE'S, TREASURER OF STATE'S, AUDITOR OF STATE'S, ATTORNEY GENERAL'S COMMISSIONER OF STATE LANDS' OR MEMBER OF THE GENERAL ASSEMBLY'S FAMILY; (4) LAWFUL CAMPAIGN CONTRIBUTIONS, AND (5) ANY DEVISE OR INHERITANCE.

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

Be it enacted by the People of the State of Arkansas as follows:

WHEREAS, the People of the State of Arkansas have found an increasing risk and appearance of corruption in contributions that are made to candidates for public office by or through proprietorships, firms, partnerships, joint ventures, syndicates, labor unions, business trusts, companies, corporations, associations, and committees, in which the ultimate source of the funds may be undisclosed and untraceable, lacking the transparency of contributions from individuals, from registered political parties, and from disclosed and regulated approved political action committees; and

WHEREAS, the People of the State of Arkansas have found that the risk and appearance of their representatives using public office to seek private benefit increases when former members of the General Assembly seek employment lobbying their former fellow members of the General Assembly; and

WHEREAS, the People of the State of Arkansas cherish the fundamental First Amendment right to

freely and equally petition our public officials, and have found the risk and appearance of conflicts of interest and corruption of the political process increases when lobbyists provide gifts to public officials,

NOW, THEREFORE, BE IT ENACTED:

SECTION 1. Arkansas Code Title 7, Chapter 6, Subchapter 2, Subsections 203(a) and 203(b) are amended as follows:

“(a)(1)(A) It shall be unlawful for any candidate for any public office, except the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf to accept campaign contributions other than from an individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of §7-7-205, county political party committee, legislative caucus committee, or approved political action committee, or in excess of two thousand dollars (\$2,000) per election from any ~~person~~individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205, county political party committee, legislative caucus committee, or approved political action committee. (B) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor for each election, whether opposed or unopposed.

(2)(A) It shall be unlawful for any candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf to accept campaign contributions other than from an individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205, county political party committee, legislative caucus committee, or approved political action committee, or in excess of two thousand dollars (\$2,000) per election from any ~~person~~individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205, county political party committee, legislative caucus committee, or approved political action committee. (B) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor for each election, whether opposed or unopposed.

(b)(1)(A) It shall be unlawful for any ~~person~~ individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of §7-7-205, county political party committee, legislative caucus committee, or approved political action committee to make a contribution to a candidate for any public office, except the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand dollars (\$2,000) per election.

(B) ~~A person~~ An individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205, county political party committee, legislative caucus committee, or approved political action committee may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(2)(A) It shall be unlawful for any ~~person~~ individual, political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of §7-7-205, county political party committee, legislative caucus committee, or approved political action committee to make a contribution to a candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand dollars (\$2,000) per election. (B) ~~A person~~ An individual, political, party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205, county political party committee, legislative caucus committee, or approved political action committee may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

SECTION 2. Arkansas Code Title 21, Chapter 1, Subchapter 4, Section 402(f) is amended as follows:

“(f)(1) A former member of the General Assembly shall not be eligible to be registered as a lobbyist under § 21-8-601 et seq. until ~~one (1) year~~ two (2) years after the expiration of the term of office for which he or she was elected. (2) Subdivision (f) (1) of this section applies to all persons elected or re-elected to the General Assembly on or after ~~July 27, 2011~~ November 4, 2014.”

SECTION 3. Arkansas Code Title 21, Chapter 8, Subchapter 3, shall include a new section 21-8-305 as follows:

“(a) The Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands and Members of the General Assembly shall not solicit or accept any gift from a lobbyist, as defined in Ark. Code Ann. § 21-8-402(11), a person acting on behalf of a lobbyist, or a person employing a lobbyist.

(b) For the purposes of this section, “gift” means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor, but does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals informing the Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands or a member of the General Assembly regarding his or her official duties, but such informational material shall not include payments for any travel or reimbursement for any expenses;

(2) Gifts which are not used, and within thirty (30) days after receipt, are returned to the donor;

(3) Gifts from the Governor’s, Lieutenant Governor’s, Secretary of State’s, Treasurer of State’s, Auditor of State’s, Attorney General’s, Commissioner of State Lands’ or a member General Assembly’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this subdivision;

(4) Lawful campaign contributions; and

(5) Any devise or inheritance.”

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. All provisions of this act are amendatory to the Arkansas Code of 1987

Annotated and the Arkansas Code Revision Commission shall incorporate the same into the Code.

SECTION 7. The provisions of this initiated act shall become effective on January 1, 2015.