

Opinion No. 2013-010

February 7, 2013

Mr. Kevin Pearson
3090 CR 3867
Lamar, Arkansas 72846

Dear Mr. Pearson:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2011), of the popular names and ballot titles for three proposed constitutional amendments, which you propose to name as follows:

Popular Name

AN AMENDMENT TO NAME PRESIDENTIAL ELECTORS ON THE BALLOT

Popular Name

AN AMENDMENT TO DETERMINE
APPROPRIATION OF ELECTORAL VOTES

Popular Name

AN AMENDMENT TO ABOLISH INDIVIDUAL INCOME TAXES AND
PHASE OUT CORPORATE TAXES IN THE STATE OF ARKANSAS

You have also submitted proposed ballot titles. However, several procedural irregularities prevent me from certifying popular names and ballot titles for your proposed amendments at this time. I will point out the irregularities, and I will also set out the guidelines for determining the sufficiency of a popular name and ballot title, in anticipation of you resubmitting these measures.

I am required, pursuant to A.C.A. § 7-9-107, to certify the popular name and ballot title of all statewide voter initiatives before the petitions are circulated for signature. However, *I have no role in drafting or approving the text of such initiative* measures. The content, draftsmanship, and detail of the text are matters for the sponsor. My review is limited to determining, under guidelines that have been set forth by the Arkansas Supreme Court, whether the proposed popular name and ballot title accurately and impartially summarize the provisions of the proposed amendment or act.

In accomplishing this task, however, I must be provided with the **complete text** of your proposed act or amendment. This is reflected in A.C.A. § 7-9-107(a), wherein it states that “the sponsors shall submit the *original draft* to the Attorney General, with a proposed . . . ballot title and popular name.” (Emphasis added.)

You have failed to submit the texts of the proposed constitutional amendments which you seek to have adopted. It is thus impossible for me to determine whether your proposed ballot titles are accurate and impartial summaries of your proposed measures. Section 7-9-107(a) of the Arkansas Code is very clear in requiring a sponsor of a measure to submit the **actual text of the measures** for the Attorney General’s review, with both a proposed ballot title and popular name for each proposal.

I must therefore return your submissions and instruct you to submit the actual language of your proposed constitutional amendments, together with proposed popular names and ballot titles. In this regard, please be aware that problems will likely arise if you intend for your proposed **ballot titles** to also serve as the **texts** of your proposed amendments. As explained in the following passage from Attorney General Opinion 2007-183, there is an important difference between the text of a measure and its ballot title:

The text of a proposed constitutional amendment, if adopted, becomes a part of the Arkansas Constitution. Ideally it consists of **clear, complete sentences that actively dictate the legal effects desired by the sponsors**. A ballot title, on the other hand, is an impartial, concise summary of the proposed amendment. As a consequence, it usually consists of a series of short descriptive phrases or clauses, which refer to, summarize and delineate the various important provisions of the amendment. The format and

wording of these summary phrases or clauses, however, do not ordinarily direct action or actively bring about changes in the law. As a consequence, this summary format, while entirely appropriate for a ballot title, causes interpretive difficulty when used as a template for the language of a constitutional amendment.

Consistent with the above, the ballot titles you have submitted refer to what “would” occur under the “proposed amendment,” or what the amendment “would allow” or “provide.” While this language is certainly appropriate in a ballot title, it will lead to ambiguities if used in the actual text of the proposed measure.

With regard to the text of your proposed constitutional amendments, you should also be aware that the language of each measure must be capable of fair summarization in a ballot title in order for me to perform my statutory duty in certifying a ballot title and popular name. I must be able to clearly understand the text and clearly understand how each proposal will change current law. The purpose of my review and certification is to ensure that the ballot titles and popular names (the tools for presenting your proposed amendment to the voters in the voting booth) honestly, intelligibly, and fairly summarize the purpose of each measure.¹ The ballot title must also convey an intelligible idea of the scope and significance of a proposed change in the law.² And it must be free from any misleading tendency, whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.³ These standards cannot be met, however, if the text of the measure is unclear or uncertainties remain.

As a consequence of this rigorous standard of review, I strongly encourage you to seek the guidance of private counsel or experts of your choosing to ensure that there are no ambiguities or problems of implementation. Amending the Arkansas Constitution is a matter of the utmost seriousness, and the Arkansas Supreme Court holds popular names and ballot titles of proposed amendments to a standard

¹ See *Arkansas Women’s Political Caucus v. Riviere*, 282 Ark. 463, 466, 677 S.W.2d 846 (1984); *Becker v. Riviere*, 270 Ark. 219, 223, 226, 604 S.W.2d 555 (1980); *Hoban v. Hall*, 229 Ark. 416, 417, 316 S.W.2d 185 (1958).

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

³ *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

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that is commensurate with this seriousness. The standard cannot be met, however, if the text of the proposed measure is unclear or uncertainties remain. That is why I suggest that you seek assistance in evaluating your text, bearing in mind that my ability to certify a popular name and ballot title depends upon the clarity of the language of the proposed amendment.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures