

Opinion No. 2013-093

August 16, 2013

Robert L. Reed, Chairman  
Arkansans for Medical Cannabis BQC  
Post Office Box 111  
Dennard, Arkansas 72629

Dear Mr. Reed:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2007), of the popular name of and ballot title for a proposed constitutional amendment. Your organization has previously submitted four similar measures, which this office rejected. *See* Ops. Att’y Gen. Nos. 2013-061, 2013-021, 2011-059 and 2011-031. You have made changes to your proposal since your last submission and have now submitted the following proposed popular name and ballot title for my certification:

Popular Name

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO END THE PROHIBITION  
AGAINST HEMP AND MARIJUANA

Ballot Title

Realizing that under the Code of Federal Regulations (CFR) it is illegal to manufacture, possess, distribute, transport or sell any plant or part of the genus cannabis (cannabis plant) within the legal boundaries of Arkansas without a permit issued by the United States federal government, and that the requirements for said permit constitute prohibition and that the genus cannabis (cannabis plant) is recognized by both the United States government and the state of Arkansas as a agricultural commodity, as listed on the United States Department of Agriculture Index, and where as dronabinol, the

active ingredient in Marinol® (dronabinol) capsules, is synthetic Delta-9-Tetrahydrocannabinol (Delta-9-THC). Delta-9-Tetrahydrocannabinol is also a naturally occurring component of Cannabis Sativa L. (marijuana) and is a Schedule III drug which is a contradiction in law; hence exercising our constitutional rights under the 10<sup>th</sup> Amendment of the United States Constitution hereby propose an amendment to the Arkansas Constitution which declares the genus cannabis (cannabis plant), commonly called hemp and marijuana, to be an agricultural commodity, with three (3) separate yet distinct uses, those being one (1) industrial, used in the manufacturing of, but not limited to food, fuel, fiber, and construction materials, two (2) a medicinal product and three (3) a intoxicant; and which ends prohibition against cultivation, possession, processing or sale of cannabis, but requires regulation and taxation of cannabis in its various forms, as is currently applied to other agricultural commodities such as rice or grapes, establishes fines and imprisonment for agents of the state and federal government who attempt to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this act.

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, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to

law,”<sup>1</sup> this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities. As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted 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.**<sup>2</sup>

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

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.<sup>6</sup> 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.”<sup>7</sup> At the

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<sup>1</sup> See *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); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

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

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

<sup>4</sup> 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).

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

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

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

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.<sup>8</sup> 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.<sup>9</sup> The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.<sup>10</sup> A ballot title must convey an intelligible idea of the scope and significance of a proposed change in the law.<sup>11</sup> The ballot title must be intelligible, honest, and impartial.<sup>12</sup>

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. Section 2 of your measure, captioned "Findings," asserts that the Commerce Clause of the United States Constitution<sup>13</sup> delegates

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<sup>8</sup> *Id.* at 288, 884 S.W.2d at 944.

<sup>9</sup> *Id.* 293, 884 S.W.2d at 946–47.

<sup>10</sup> *Id.* at 284, 884 S.W.2d at 942.

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

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

<sup>13</sup> U.S. Const. art. 1, § 8, cl. 3.

to the federal government absolutely no control over agriculture, including the cultivation of cannabis. Based upon this “finding,” you conclude that the states enjoy sole control over the agricultural production and exploitation of cannabis. You summarize this conclusion as follows:

The assumption of power that the Federal Government through its Drug Enforcement Administration has made by prohibiting the farming of the genus cannabis (cannabis plant) exceeds its Constitutional authority and interferes with the right of the People of the State of Arkansas to regulate agriculture as they see fit. . . .

Section 6(A) of your measure, captioned “Nullification of Federal Prohibitions,” further provides as follows:

The Arkansas General Assembly shall declare that the federal prohibitions of the genus cannabis (cannabis plant) are not authorized by the Constitution of the United States and violates its true meaning and intent as given by the Founders and Ratifiers, and are hereby declared to be invalid in this state, shall not be recognized by this state, are specifically rejected by this state, and shall be considered null and void and of no effect in this state.

This passage marks an effort at what is generally known as the “nullification” of federal law – i.e., a purported rejection at the state level of preemptive federal constitutional or legislative mandates.

Without belaboring the issue, I will note that both state and federal courts have universally rejected the proposition that a state may avoid the provisions of preemptive federal law merely by declaring that the federal government has exceeded its constitutional authority in enacting that law.<sup>14</sup> The United States

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<sup>14</sup> See Ryan Card, *Can States “Just Say No” to Federal Health Care Reform? – The Constitutional and Political Implications of State Attempts to Nullify Federal Law*, 2010 B.Y.U. L. Rev. 1795, 1808 (based on

Supreme Court has emphatically rejected, for instance, the Arkansas legislature's effort by state constitutional amendment to render unconstitutional a Supreme Court ruling that school desegregation was required by the Fourteenth Amendment to the United States Constitution.<sup>15</sup> Basing its conclusion on a venerated precedent that has guided this country's conception of judicial authority for centuries, the Court declared, and the states in the interests of federalism have consistently accepted, that "the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system."<sup>16</sup> In accordance with this principle, the Court concluded:

[T]he interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution [the Supremacy Clause] makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."<sup>17</sup>

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an extensive review of the historical and legal record, concluding that "states throughout U.S. history have attempted to use variations of the nullification to invalidate federal law. However, every attempt by states to nullify federal law was clearly rejected by not only the federal government, but also by other states.") See also John Dinan, *Contemporary Assertions of State Sovereignty and the Safeguards of American Federalism*, 74 Alb. L.R. 1637 (2011) (discussing means by which states have challenged federal law, including laws involving the cultivation and use of marijuana, without "engaging in the discredited practices of declaring a federal law null and void or defying a federal court decision directly upholding the legitimacy of a federal law or illegitimacy of a state act," *id.* at 1667).

<sup>15</sup> *Cooper v. Aaron*, 358 U.S. 1 (1958) (declaring that preemptive federal law obligates the states to observe the desegregation directives set forth in *Brown v. Board of Education*, 347 U.S. 483 (1954)).

<sup>16</sup> *Id.* at 18, citing *Marbury v. Madison*, 1 Cranch 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

<sup>17</sup> *Id.*

The Arkansas Supreme Court, in turn, has wholeheartedly endorsed this reading of the Supremacy Clause.<sup>18</sup>

Your proposed measure declares ineffective in Arkansas federal restrictions on cannabis cultivation and use whose propriety and binding effect under the Commerce Clause has been expressly declared by the Supreme Court.<sup>19</sup> Based only on a questionable reading of selected “Founders and Ratifiers,” whose interpretive ventures in the construction of constitutional language can in no way be read as trumping Supreme Court declarations, your measure concludes that the Commerce Clause does not mean what the Supreme Court says it means. As noted above, however, the Supreme Court is without question the ultimate interpreter of the federal constitution’s meaning – a fact that renders merely rhetorical, and hence incapable of meaningful summary, your proposed declaration of disagreement.

In light of the foregoing, a significant question exists whether your intention is not to reject federal laws that offend the

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<sup>18</sup> See, e.g., *Jacoby v. Arkansas Department of Education*, 331 Ark. 508, 514, 962 S.W.2d 773 (1998) (characterizing the Supremacy Clause as a “formidable hurdle” and acknowledging without question that preemptive federal law is “as much [the] law in the States as laws passed by the state legislature.” *Howlett v. Rose*, 496 U.S. 356, 367 . . . (1990).”

<sup>19</sup> See *Gonzales v. Raich*, 545 U.S. 1, 10-33 (expressly declaring that Congress has authority under the Commerce Clause, as exercised through the federal Controlled Substances Act, 21 U.S.C.A. §§ 801 *et seq.*, to prohibit local cultivation and use of cannabis authorized by state law). See also Kevin D. Caton, *Preemption of State Regulation of Controlled Substances by Federal Controlled Substances Act*, 60 A.L.R.6<sup>th</sup> 175 (2010) (reviewing state laws regulating marijuana in light of *Raich*).

I should note that Congress has qualified its cannabis prohibitions by enacting the following limited antipreemption provision set forth in the Controlled Substances Act:

No provision of [the Act] shall be construed as indicating an intention on the part of Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless, there is a positive conflict between that provision . . . and that State law so that the two cannot consistently stand together.

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*Id.* at § 903. This provision does not apply to the blanket rejection of federal law reflected in your submission.

Commerce Clause, but rather to reject the Commerce Clause itself, at least as it affects agriculture, in its currently accepted meaning, substituting therefor a vague notion of states' rights that cannot be effectively established as reserved to the states under the federal constitution.

Given that the authority of Congress to regulate cannabis under the Commerce Clause is beyond dispute, your reliance on the Ninth and Tenth Amendments as reserving such control to the states is misplaced. In self-contradictory fashion, you invoke these amendments as reserving certain rights to the states, with that reservation turning upon a rejection of another constitutional provision that has been conclusively deemed to delegate those rights to Congress. The logical conflict inherent in this argument suggests that you may actually intend, without directly saying so, to reject the commerce clause itself as inconsistent with some unarticulated concept of state sovereignty. I cannot reconcile this contradiction in a way that will allow me to summarize it for the voters.

I am further unable, given your bald assertion that the state can simply flout federal law, to summarize your measure in a way that adequately communicates its legal effects – or lack thereof. Stated differently, I cannot adequately “summarize” your measure’s effects on existing law when the measure itself wrongly claims it would have effects that it could not possibly achieve. Without a realistic, non-contradictory declaration within your measure itself of its effects on the enforcement of federal law, I cannot summarize the consequences of enactment that would doubtless be of serious concern to a voter weighing the merits of your measure.

2. Your measure is further confusing, and hence incapable of summation in a ballot title, in that it does not clearly define how you propose to achieve the ban the measure recites. To be sure, in the course of declaring federal cannabis law “null and void and of no effect in this state” – a declaration complicated by the

difficulties discussed above – Section 6(B) of your measure does contain the following supposedly practical directive:

It shall be the duty of the legislature of this State to adopt and enact any and all measures as may be necessary to prevent the enforcement of federal prohibitions on the genus cannabis (cannabis plant) within the limits of this State.

Your measure provides no guidance, however, regarding *how* the legislature might set about “prevent[ing] the enforcement of federal prohibitions on the genus cannabis.” To the extent that state law is in fact inconsistent with and anathema to preemptive federal law,<sup>20</sup> which your proposal clearly is, preventing the enforcement of federal law would appear to be impossible short of resorting to armed insurrection – an option you have not recited and do not appear to contemplate.

Your measure implies without elaboration that the legislature is capable of undertaking some action, presumably in addition to enacting the criminal sanctions discussed immediately below, that would indeed foreclose the federal government from enforcing its laws. Given the primacy of federal law on this matter, however, you have unsurprisingly failed to indicate what this action might possibly be. A reasonable voter would doubtless consider such information a matter for serious reflection in determining how to vote on your measure. Given your silence in this regard, I am unable to summarize your measure in a ballot title.

3. Section 6 of your measure further contains the following enforcement provisions:

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<sup>20</sup> See, e.g., *Boultinghouse v. Hall*, 583 F.Supp.2d 1145, 1157 (C.D. Cal. 2008) (noting that preemption of state marijuana laws applies if compliance with both state and federal law would be impossible or state law stands as an obstacle to congressional objectives).

C. Any official, agent, or employee of the United States government or any employee of a corporation providing services to the United States government or any employee of a corporation providing services to the United States government that enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this act [sic] shall be guilty of a felony and upon conviction must be punished by a fine not exceeding two thousand dollars (\$2,000.00), or a term of imprisonment not exceeding two (2) years, or both.

D. Any public officer or employee of the State of Arkansas that enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this amendment shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months or by a fine not exceeding Five Hundred Dollars (\$500.00) or both such fine and imprisonment.

Subsection 6(C) – which, to my knowledge, is unprecedented in any jurisdiction – purports to subject officers of the United States government to *felony liability, including imprisonment*, for performing their duties in enforcing federal cannabis laws that the United States Supreme Court itself has declared to be both constitutional and preemptively applicable to the states. Any such state criminal law would inevitably be declared unconstitutional on its face – a fact you fail to confront anywhere in either your measure or your ballot title.

Moreover, no Arkansas circuit judge, having sworn to uphold the United States Constitution,<sup>21</sup> would be situated to impose sentence for any such purported offense. Nor, for that matter, would a prosecutor, having taken the same oath, appear able

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<sup>21</sup> See Ark. Const. art. 19, § 20.

without breaking his oath to file a criminal action of the sort contemplated. Simply put, under your measure, both state officers would be obliged to violate the oaths they have taken pursuant to the Arkansas Constitution in the very act of performing the duties your measure would impose under that same constitution. Your measure fails altogether to acknowledge this tension, the disclosure of which would no doubt give a voter serious ground for reflection. Without clarification in your measure of how these problems will be avoided, I am unable to summarize your proposal in a ballot title.

Subsection 6(D) is problematic in a related, but not identical respect. Nothing precludes a state from declining to commit its resources to the enforcement of federal law, even if that law is preemptive of state law.<sup>22</sup> It may not be inherently objectionable, then, to criminalize a state official's action to enforce a federal law in the face of a state law forbidding him to do so. Section 6(D) leaves unclear, however, what might be considered prohibited state action in support of federal enforcement efforts. It is unclear, for instance, under your amendment whether a state official's refusal, in accordance with his constitutional oath, to prosecute or judge federal officers for enforcing federal law would in itself qualify as an attempt "to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this amendment." The answer to this question, whatever it might be, might well give a voter serious ground for reflection. Without clarification in the text of your measure, I am unable to provide the voter such guidance in a ballot title.

4. Section 3(B) of your measure declares that "[t]he genus cannabis (cannabis plant) shall be classified into two (2) distinct classes, with three (3) distinct uses." This subsection indeed recites the two referenced classes. It only recites two of the three referenced

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<sup>22</sup> See Card, *supra* at 1640-41 (discussing this option).

“distinct uses,” however. Without clarification, I am consequently unable to summarize this provision in a ballot title.

5. Section 4 of your proposed measure, captioned “Regulations to Plant, Grow, Harvest, Possess, Process, Sell, and Buy,” is unclear in that it provides for the “[r]egulation of the genus cannabis” by the General Assembly without providing any guidance regarding what form those regulations might take or how restrictive they might be. Purely by way of illustration, it is unclear, for instance, whether the legislature would have the authority to foreclose the recreational use of marijuana by minors or the operators of motor vehicles. The scope of the legislature’s regulatory authority would clearly be a matter of serious reflection to a voter. Without clarification on this score, I am unable adequately to summarize your proposal in a ballot title.
6. Section 4(A)(2) further provides as follows:

Medicinal Cannabis shall be regulated in the same manner and no greater than that of [sic] the agricultural commodity grapes, and taxed at a rate no greater than any other medicine containing Tetrahydrocannabinol (Delta 9 THC) whether natural or synthetic in origin. I.e., Dronabinol.

I am unable to interpret, and hence to summarize in a ballot title, the provision directing that medicinal cannabis will be regulated “in the same manner” as “the agricultural commodity grapes.” It strikes me as all but inevitable that the regulation of medicinal cannabis, like the regulation of any other variety of “medicine,” would involve different considerations than the regulation of a commercial food product like grapes. I am unable to interpret your passing reference to regulation in this passage as amounting to a radical proposal that cannabis as a medicinal product be treated in a manner entirely different from any other variety of medicinal product. My difficulty in interpreting this provision is only compounded by the fact that you fail altogether to address

(a) whether the medical community would be involved in any way in prescribing, providing and/or administering medical marijuana and, (b) if so, whether these activities would be subject to regulations inconsistent with those applicable to the regulation of “the agricultural commodity grapes.” Knowing the answer to these questions might well provide a voter with serious ground for reflection. Absent clarification, I will be unable to summarize for the voter the import of this provision in a ballot title.

The final phrase of this provision is further ambiguous in that it indicates both (a) that medical cannabis would be “taxed at a rate no greater than any other medicine containing” Delta 9 THC – a formulation that suggests that various medicines fall or may fall within this category – and (b) that it would be taxed at a rate no greater than the particular drug Dronabinol. Without clarification of whether you mean to peg the tax rate to a category of drugs or to a particular drug, I cannot summarize your proposal in a ballot title.

Finally, I must note that your measure contains various errors of grammar and syntax of a sort that have no place in a proposal to amend the Arkansas Constitution. Should you elect to resubmit your measure, please take care to ensure that your submission observes grammatical conventions.

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.

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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 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

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Enclosure

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**Cheryl Hall**

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**From:** R.L.Reed [a4mc@email.com]  
**Sent:** Friday, August 02, 2013 10:46 AM  
**To:** Cheryl Hall  
**Subject:** Resubmitalof amendment

**Importance:** High

AUG 02 2013

ATTORNEY GENERAL  
OF  
ARKANSAS

2013-093

Dear Ms Hall;

Please find enclosed the revised language for "AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO END THE PROHIBITION AGAINST HEMP AND MARIJUANA", based on the recent opinion from the Attorney Generals office.

Sincerely;

Robeert L Reed  
Chairman  
Arkansans For Medical Cannabis (BQC)  
P.O.Box 111  
Dennard, Arkansas 72629

(Popular Name)

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO END THE PROHIBITION AGAINST HEMP AND MARIJUANA

(Ballot Title)

**REALIZING THAT UNDER THE CODE OF FEDERAL REGULATIONS (CFR) IT IS ILLEGAL TO MANUFACTURE, POSSESS, DISTRIBUTE, TRANSPORT OR SELL ANY PLANT OR PART OF THE GENUS CANNABIS (CANNABIS PLANT) WITHIN THE LEGAL BOUNDARIES OF ARKANSAS WITHOUT A PERMIT ISSUED BY THE UNITED STATES FEDERAL GOVERNMENT, AND THAT THE REQUIREMENTS FOR SAID PERMIT CONSTITUTE PROHIBITION AND THAT THE GENUS CANNABIS (CANNABIS PLANT) IS RECOGNIZED BY BOTH THE UNITED STATES GOVERNMENT AND THE STATE OF ARKANSAS AS A AGRICULTURAL COMMODITY, AS LISTED ON THE UNITED STATES DEPARTMENT OF AGRICULTURE INDEX, AND WHERE AS DRONABINOL, THE ACTIVE INGREDIENT IN MARINOL® (DRONABINOL) CAPSULES, IS SYNTHETIC DELTA-9- TETRAHYDROCANNABINOL (DELTA-9-THC). DELTA-9-TETRAHYDROCANNABINOL IS ALSO A NATURALLY OCCURRING COMPONENT OF CANNABIS SATIVA L. (MARIJUANA) AND IS A SCHEDULE III DRUG WHICH IS A CONTRADICTION IN LAW; HENCE EXERCISING OUR CONSTITUTIONAL RIGHTS UNDER THE 10TH AMENDMENT OF THE UNITED STATES CONSTITUTION HEREBY PROPOSE AN AMENDMENT TO THE ARKANSAS CONSTITUTION WHICH DECLARES THE GENUS CANNABIS (CANNABIS PLANT), COMMONLY CALLED HEMP AND MARIJUANA, TO BE AN AGRICULTURAL COMMODITY, WITH THREE (3) SEPARATE YET DISTINCT USES, THOSE BEING ONE (1) INDUSTRIAL, USED IN THE MANUFACTURING OF, BUT NOT LIMITED TO FOOD, FUEL, FIBER, AND CONSTRUCTION MATERIALS, TWO (2) A MEDICINAL PRODUCT AND THREE (3) A INTOXICANT; AND WHICH ENDS PROHIBITION AGAINST CULTIVATION, POSSESSION, PROCESSING OR SALE OF CANNABIS, BUT REQUIRES REGULATION AND TAXATION OF CANNABIS IN ITS VARIOUS FORMS, AS IS CURRENTLY APPLIED TO OTHER AGRICULTURAL COMMODITIES SUCH AS RICE OR GRAPES. ESTABLISHES FINES AND IMPRISONMENT FOR AGENTS OF THE STATE AND FEDERAL GOVERNMENT WHO ATTEMPT TO ENFORCE AN ACT, ORDER, LAW, STATUTE, RULE OR REGULATION OF THE GOVERNMENT OF THE UNITED STATES IN VIOLATION OF THIS ACT.**

SECTION 1. Name

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO END THE PROHIBITION AGAINST HEMP AND MARIJUANA

SECTION 2. Findings

The people of the State of Arkansas find that:

The genus cannabis (cannabis plant) has three (3) distinct and separate uses;

(a) The genus cannabis (cannabis plant) can be utilized, but is not limited to the industrial production of food, hemp oil, wax, resin, rope, cloth, pulp, cordage, animal bedding, water and soil purification products, weed control products, and building materials.

(b) The genus cannabis (cannabis plant) can be utilized to treat the symptoms of various medical conditions.

(c) The genus cannabis (cannabis plant) can be an intoxicant. (d) Tetrahydrocannabinols (delta-9-THC) is a schedule I drug under Title 21 United States Code (USC) Section 812. Schedules of Controlled Substances.

(e) Marijuana, Tetrahydrocannabinols or its Synthetic equivalents, are listed under the Arkansas Uniform Controlled Substances Act 5-64-215. Substances in Schedule VI. (f) Dronabinol, is synthetic delta-9- tetrahydrocannabinol (delta-9-THC). Delta-9-tetrahydrocannabinol is also a naturally occurring component of Cannabis sativa L. (Marijuana), and is a schedule III drug (Title 21 United States Code (USC) Section 812. Schedules of Controlled Substances.) and is legal in the state of Arkansas.

(1) The Tenth Amendment to the Constitution of the United States codifies in law that the only powers which the Federal Government may exercise are those that have been delegated to it in the Constitution of the United States;

(2) The Ninth Amendment to the Constitution of the United States guarantees to the people rights not enumerated in the Constitution and reserves to the people of Arkansas those rights;

(3) The power to regulate interstate commerce was delegated to the federal government in Article I, Section 8, Clause 3 of the Constitution. As understood at the time of the founding, the regulation of commerce was meant to empower Congress to regulate the buying and selling of products made by others (and sometimes land), associated finance and financial instruments, and navigation and other carriage, across state jurisdictional lines. This interstate regulation of commerce did not include agriculture, manufacturing, mining, malum in se crime, or land use. Nor did it include activities that merely substantially affected commerce;

(4) The advocates of the Constitution, at the time of its ratification, assured the People of the Several States that the regulation of agriculture would be reserved to the States. This included Alexander Hamilton, who wrote in Federalist #17: The supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation can never be desirable cases of a general

jurisdiction. This was reinforced by many others, including Justice Sargeant of Massachusetts, who let it be known that only the states would have the power to regulate common fields and fisheries;

(5) The Constitutional Convention of 1787 considered a proposal to create, in the Constitution, a Secretary of Domestic Affairs, who was to have authority to regulate agriculture. That proposal was rejected;

(6) The assumption of power that the Federal Government through its Drug Enforcement Administration has made by prohibiting the farming of the genus cannabis (cannabis plant) exceeds its Constitutional authority and interferes with the right of the People of the State of Arkansas to regulate agriculture as they see fit, and makes a mockery of James Madison assurance in Federalist #45 that the powers delegated to the Federal Government are few and defined, while those of the States are numerous and indefinite.

(7) Federal agents have flouted the United States Constitution and foresworn their oath to support this Constitution by the farming of genus cannabis (cannabis plant) by the People of the State of Arkansas, and these actions violate the limits of authority placed upon the federal agents by the United States Constitution and are dangerous to the liberties of the people;

### SECTION 3: Purpose, Classification

#### (A): Purpose

(1) To end the prohibition of the genus cannabis (cannabis plant), commonly called hemp and marijuana within the state of Arkansas.

(2) Promote economic development within the state of Arkansas

(3) Reduce the tax burden on the citizens of Arkansas

(4) Add additional funds to the state budget for education, economic development, and reduce medical costs incurred by the sate.

#### (B): Classification

The genus cannabis (cannabis plant) shall be classified into two

(2) distinct and separate classes, with three (3) distinct uses;

(1) The genus cannabis (cannabis plant), or any part or derivatives of said plant, containing less than 1% Tetrahydrocannabinol (Delta 9 THC) by dry weight shall be classified as Hemp.

(2) Any genus cannabis (cannabis plant) or its derivatives containing one % Tetrahydrocannabinol (Delta 9 THC) or

greater, by dry weight, its use shall be classified as cannabis sativa, with two distinct uses;

(a) Medicinal Cannabis, the genus cannabis (cannabis plant) grown, processed, possessed, or used for the treatment of a medical condition or symptom.

(b) Recreational Cannabis, the genus cannabis (cannabis plant) grown, processed, possessed, to be used as an intoxicant.

#### SECTION 4. Regulations to Plant, Grow, Harvest, Possess, Process, Sell, and Buy

##### (A): Regulations

Regulation of the genus cannabis (cannabis plant) shall be as follows;

(1) Industrial Hemp, shall be regulated and taxed at a rate no greater than that imposed on the agriculture commodity rice.

(2) Medicinal Cannabis shall be regulated in the same manner and no greater than that of the agricultural commodity grapes, and taxed at a rate no greater than any other medicine containing Tetrahydrocannabinol (Delta 9 THC) whether natural or synthetic in origin. i.e. Dronabinol

(3) Recreational Cannabis, shall be regulated and taxed at a rate not to exceed that imposed on the intoxicant derived from the agricultural commodity grapes.

(B) The Arkansas General Assembly shall, within 180 calendar days of passage, establish such rules and regulations as needed.

#### SECTION 5: Revenue

Any and all revenue generated by regulation of the general assembly, to the state of Arkansas shall be distributed in the following manner;

(1) One quarter (25%), shall fund economic development to promote industrial hemp.

(2) One quarter (25%), shall be used for K-12 education within the state.

(3) One quarter (25%), shall be used to offset medical expenses incurred by the state.

(4) One quarter (25%), shall be placed in the general fund of the state.

#### SECTION 6. Nullification of Federal Prohibitions

A. The Arkansas General Assembly shall declare that the federal prohibitions on the genus cannabis (cannabis plant) are not authorized by the Constitution of the United States and violates its true meaning and intent as given by the Founders and Ratifiers, and are hereby declared to be invalid in this state, shall not be recognized by this state, are specifically rejected by this state, and shall be considered null and void and of no effect in this state.

B. It shall be the duty of the legislature of this State to adopt and enact any and all measures as may be necessary to prevent the enforcement of federal prohibitions on the genus cannabis (cannabis plant) within the limits of this State.

C. Any official, agent, or employee of the United States government or any employee of a corporation providing services to the United States government that enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this act shall be guilty of a felony and upon conviction must be punished by a fine not exceeding two thousand dollars (\$2,000.00), or a term of imprisonment not exceeding two (2) years, or both.

D. Any public officer or employee of the State of Arkansas that enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this amendment shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months or by a fine not exceeding Five Hundred Dollars (\$500.00) or both such fine and imprisonment.

SECTION 7: This amendment shall take effect 180 calendar days upon passage..