STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-079

August 5, 2014

Frederick W. Porter
102 Timber Street
Hot Springs, Arkansas 71913

Dear Mr. Porter:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2013), of the popular name and ballot title for a proposed constitutional amendment. Your submission is identical in all respects other than its proposed effective date to one I certified, after revising the proposed ballot title, in Op. Att'y Gen. 2014-056. Your proposed popular name and ballot read as follows:

Popular Name

THE ARKANSAS HEMP AND CANNABIS AMENDMENT

Ballot Title

> An amendment proposed by the people to the Arkansas Constitution to provide effective February 20, 2017, that the cultivation, manufacturing, distribution, sale, possession and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant (genus cannabis) is permitted in every geographic area of each and every county of this state; that for purposes of this amendment, "hemp["] is defined as any part of the cannabis plant (genus cannabis), living or not, containing one percent or less, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC); "cannabis" is defined as any part of the cannabis plant (genus cannabis), living or not, containing greater than one percent, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC). That the cannabis plant

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> (genus cannabis) may be regulated but not prohibited by the General Assembly; and, that all laws in conflict with this amendment are repealed to the extent they conflict with his [sic] amendment. Preemptive federal law will remain in effect unless altered by Congress.

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,"[1] 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.[2]

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[1] *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).

[2] *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.[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 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] The ballot title

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[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.

[9] *Id.* 293, 884 S.W.2d at 946–47.

[10] *Id.* at 284, 884 S.W.2d at 942.

must be honest and impartial,[11] and it must convey an intelligible idea of the scope and significance of a proposed change in the law.[12]

Furthermore, the Court has 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."[13] The Court concluded that "internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself."[14] 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.

Applying the above precepts, it is my conclusion that your proposed popular name is sufficient but that a more suitable, complete and correct popular name and ballot title should be substituted for that proposed. The following is hereby certified in order to ensure that the ballot title accurately sets forth the purpose of the proposed amendment:

Ballot Title

> An amendment proposed by the people to the Arkansas Constitution to provide, effective February 20, 2017, that the cultivation, manufacturing, distribution, sale, possession and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant (genus cannabis) are lawful in every geographic area of each and every county of this state; that, for purposes of this amendment, "hemp" is defined as any part of the cannabis plant (genus cannabis), living or not, containing one percent or less, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC); that, for purposes of this

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

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

[13] *Roberts v. Priest,* 341 Ark. 813, 825, 20 S.W.3d 376, 383 (2000).

[14] *Id.*

> amendment, "cannabis" is defined as any part of the cannabis plant (genus cannabis), living or not, containing greater than one percent, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC); that the listed activities relating to "cannabis" devoted to personal, industrial or commercial use may be regulated but not prohibited by the General Assembly; and that the listed activities relating to "hemp" devoted to personal, industrial or commercial use may be regulated but not prohibited, subject to the condition that the number of plants cultivated or the products derived from manufacturing shall not be limited or prohibited by the General Assembly. Preemptive federal law will remain in effect unless altered by Congress.

In my view, the purpose of your proposed measure is sufficiently stated in the above revised ballot title to satisfy this office's mandate under A.C.A. § 7-9-107.

Pursuant to A.C.A. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Constitution and of the penalties imposed for violations of this act. Enclosed herewith, over the signature of the Attorney General, are instructions that should be incorporated in your petition prior to circulation.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures

INSTRUCTIONS TO CANVASSERS AND SIGNERS

1. Amendment No. 7 to the Arkansas Constitution gives to the people of the State of Arkansas the power to propose legislation or constitutional amendments by initiative petition, and to order the referendum against any general act or any item of an appropriation bill, or measure passed by the General Assembly. The petition must be signed by eight percent (8%) of the legal voters in the case of proposed legislation, ten percent (10%) in the case of proposed constitutional amendments, and six percent (6%) in the case of a referendum. The proposed legislation or constitutional amendment must be submitted to the registered voters of the State at a regular election; referendum petitions may be referred to the people at special elections when fifteen percent (15%) of the registered voters petition for such special election. Any measure submitted to the people shall take effect and become a law when approved by a majority of the votes cast upon such measure.

2. Only registered voters may sign. Printed names, dates of birth, residences, cities or towns of residences, and date of signing must be given as an aid to verification. The petition should contain only the signatures of voters residing in a single county.

3. All signatures must be in the signers' own handwriting in the presence of the persons circulating the petition. If a petition signer requires assistance due to disability, another person may provide the signer's information and that person shall sign and print their name in the margin of the petition.

4. Do not attach additional sheets to this petition unless such sheets contain the full language of the petition. Place as many names as possible on each petition. No additional signatures may be obtained after a petition has been filed until the Secretary of State determines the sufficiency of the petition.

5. TO KNOWINGLY SIGN ANY NAME OTHER THAN YOUR OWN, TO KNOWINGLY SIGN YOUR NAME MORE THAN ONCE TO ANY PETITION, TO KNOWINGLY SIGN YOUR NAME WHEN YOU ARE NOT LEGALLY ENTITLED TO SIGN IT, TO KNOWINGLY PAY A PERSON ANY FORM OF COMPENSATION IN EXCHANGE FOR SIGNING A PETITION AS A PETITIONER, TO ACCEPT MONEY FOR OBTAINING SIGNATURES KNOWING THAT YOU ARE NOT INCLUDED ON THE SPONSOR'S LIST OF PAID CANVASSERS ON FILE WITH THE SECRETARY OF STATE, TO KNOWINGLY AND FALSELY MISREPRESENT THE PURPOSE AND EFFECT OF THIS PETITION FOR THE PURPOSE OF CAUSING ANYONE TO SIGN IT, OR TO KNOWINGLY MAKE A FALSE STATEMENT ON A PETITION VERIFICATION FORM SHALL CONSTITUTE A CLASS "A" MISDEMEANOR AND SUBJECT THE OFFENDER TO A FINE OF UP TO $1,000.00 AND IMPRISONMENT FOR UP TO ONE (1) YEAR.

The Attorney General is by law required to certify the sufficiency of the popular name and ballot title of all initiative or referendum petitions. This certification does not necessarily indicate the approval or disapproval of the contents thereof.

DUSTIN McDANIEL
Attorney General of the State of Arkansas

Popular Name
The Arkansas Hemp and Cannabis Amendment

Ballot Title

AN AMENDMENT PROPOSED BY THE PEOPLE TO THE ARKANSAS CONSTITUTION TO PROVIDE EFFECTIVE FEBRUARY 20, 2017, THAT THE CULTIVATION, MANUFACTURING, DISTRIBUTION, SALE, POSSESSION AND USE OF THE CANNABIS PLANT (GENUS CANNABIS) AND ALL PRODUCTS DERIVED FROM THE CANNABIS PLANT (GENUS CANNABIS) IS PERMITTED IN EVERY GEOGRAPHIC AREA OF EACH AND EVERY COUNTY OF THIS STATE; THAT FOR PURPOSES OF THIS AMENDMENT, "HEMP IS DEFINED AS ANY PART OF THE CANNABIS PLANT (GENUS CANNABIS), LIVING OR NOT, CONTAINING ONE PERCENT OR LESS, BY DRY WEIGHT, DELTA-9-TETRAHYDROCANNABINOL (Delta-9-THC); "CANNABIS" IS DEFINED AS ANY PART OF THE CANNABIS PLANT (GENUS CANNABIS), LIVING OR NOT, CONTAINING GREATER THAN ONE PERCENT, BY DRY WEIGHT, DELTA-9-TETRAHYDROCANNABINOL(Delta-9-THC). THAT THE CANNABIS PLANT (GENUS CANNABIS) MAY BE REGULATED BUT NOT PROHIBITED BY THE GENERAL ASSEMBLY; AND, THAT ALL LAWS IN CONFLICT WITH THIS AMENDMENT ARE REPEALED TO THE EXTENT THEY CONFLICT WITH HIS AMENDMENT. PREEMPTIVE FEDERAL LAW WILL REMAIN IN EFFECT UNLESS ALTERED BY CONGRESS.

Section 1. This is an Amendment to the Arkansas Constitution that shall be called "The Arkansas Hemp and Cannabis Amendment."

Section 2. Effective February 20,2017, the cultivation, manufacturing, distribution, selling, possessing and use of the cannabis plant (genus cannabis)and all products derived from the cannabis plant (genus cannabis) is lawful within the entire geographic area of each and every county of this State.

Section 3. "Hemp" is defined for purposes of this amendment as any part of the cannabis plant (genus cannabis), living or not, containing one percent or less, by dry weight, Delta-9-tetrahydrocannabinol(Delta-9-THC).

Section 4. "Cannabis" is defined for purposes of this amendment as any part of the cannabis plant (genus cannabis), living or not, containing greater than one percent, by dry weight, Delta-9-tetrahydrocannabinol(Delta-9-THC).

Section 5. The the cultivation, manufacturing, distribution, sale, possession and use of "Hemp" for personal, industrial, or commercial use may be regulated, but the number of plants cultivated or the products derived from manufacturing, shall not be limited or prohibited, by the General Assembly.

Section 6. The the cultivation, manufacturing, distribution, sale, possession and use of "Cannabis" for personal, industrial, or commercial use may be regulated, but not prohibited, by the General Assembly.
Section 7. All laws which conflict with this amendment are hereby repealed to the extent that they conflict with this amendment.

END