STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-119

November 3, 2014

Mary L. Berry, Sponsor
Post Office Box 511
Summit, Arkansas 72677

Dear Ms. Berry:

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. Two similar measures were rejected due to ambiguities in the text of the proposal. *See* Op. Att'y Gen. No. 2014-113 and 2014-105. You have made changes to the text of the measure and submitted your proposed popular name and ballot title, as follows:

Popular Name

THE ARKANSAS HEMP AND MARIJUANA AMENDMENT

Ballot Title

An amendment proposed by the people to the Arkansas Constitution to provide, effective April 20, 2017, that the cultivation, production, distribution, sale, purchase, 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 amendment "marijuana" is defined as any part of the cannabis plant (genus cannabis), living or not, containing greater than one percent,

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> by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC); that the listed activities relating to hemp devoted to personal, industrial, or commercial use may be regulated, but not prohibited, subject to the following condition; that the quantity and size of plants cultivated and the products produced shall not be limited or prohibited; that the listed activities relating to marijuana devoted to personal, industrial, or commercial use by any person twenty-one (21) years of age or older is lawful in this state and may be regulated, but not prohibited, subject to the following conditions; that the cost of a license that shall be required by the state to authorize and regulate the cultivation, production, distribution, and the sale of marijuana and products containing marijuana shall not exceed two-hundred and fifty dollars ($250.00) per license per year, and any person twenty-one (21) years of age and older shall qualify to obtain such license, and there shall be no limit to the number of license issued in this state; that the quantity of plants cultivated shall be limited to thirty-six growing plants per qualified person, but the size of plants cultivated or the products produced shall not be limited or prohibited; that the state excise tax imposed upon the sale of marijuana and products containing marijuana shall not exceed five percent; that the use of marijuana and products containing marijuana shall not be prohibited to any person under twenty-one (21) years of age whose physician has prescribed it. All laws which conflict with this amendment are hereby repealed to the extent that they conflict with this amendment.

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]

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

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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).

[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).

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 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 the popular name is sufficient as proposed and that a more suitable, complete, and correct ballot title should be substituted for that proposed. The following is hereby certified in order to ensure that, when construed together, the popular name and ballot title accurately set forth the purpose of the proposed amendment:

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[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.

[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.*

Popular Name

THE ARKANSAS HEMP AND MARIJUANA AMENDMENT

Ballot Title

An amendment proposed by the people to the Arkansas Constitution to provide, effective April 20, 2017, that the cultivation, production, distribution, sale, possession, and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant are lawful within the entire geographic area of every county of this State; that for purposes of the amendment "hemp" means any part of the cannabis plant, living or not, containing one percent or less, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC), and "marijuana" means any part of the cannabis plant, living or not, containing more than one percent, by dry weight, Delta-9-THC; that the listed activities with respect to hemp for personal, industrial, or commercial use may be regulated but not prohibited, provided that the quantity and size of plants cultivated and the products produced shall not be limited or prohibited; that the listed activities with respect to marijuana for personal, industrial, or commercial use by any person 21 years of age or older are lawful in this State and may be regulated but not prohibited, provided that (1)(a) the cost of a license that shall be required by the State to authorize and regulate the cultivation, production, distribution, and sale of marijuana and products containing marijuana shall not exceed $250.00 per year; (b) any person 21 years of age or older shall qualify to obtain such license; and (c) there shall be no limit to the number of licenses issued in this State; (2) the quantity of plants cultivated shall be limited to 36 growing plants per qualified person, but the size of plants cultivated and the products produced shall not be limited or prohibited; (3) the State excise tax imposed on the sale of marijuana and products containing marijuana shall not exceed five percent; and (4) the use of marijuana and products containing marijuana shall not be prohibited to any person under 21 years of age whose physician has prescribed it; and that all laws that conflict with the amendment are repealed to the extent that they conflict with the amendment.

> Voters should note that the listed activities with respect to the cannabis plant are unlawful under federal law and that the amendment can have no effect on federal law.

You submitted the proposal by email. The proposal was set forth in full in the body of the email itself, and again in an attachment to the email. I did not examine the proposal set forth in the attachment to determine if it is identical to the proposal set forth in the body of the email. **My certification accordingly is limited to the proposal as set forth in the body of the email, and may not be relied upon with respect to the proposal set forth in the attachment if the latter differs from the former in *any* respect.**

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

Please Find the Attached Popular Name and Ballot Title for certification by the Arkansas Attorney General

Mary Lou Berry; Sponsor
PO Box 511
Summit, AR
72677

Popular Name

THE ARKANSAS HEMP AND MARIJUANA AMENDMENT

Ballot Title

AN AMENDMENT PROPOSED BY THE PEOPLE TO THE ARKANSAS CONSTITUTION TO PROVIDE, EFFECTIVE APRIL 20, 2017, THAT THE CULTIVATION, PRODUCTION, DISTRIBUTION, SALE, PURCHASE, 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 AMENDMENT "MARIJUANA" 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 HEMP DEVOTED TO PERSONAL, INDUSTRIAL, OR COMMERCIAL USE MAY BE REGULATED, BUT NOT PROHIBITED, SUBJECT TO THE FOLLOWING CONDITION; THAT THE QUANTITY AND SIZE OF PLANTS CULTIVATED AND THE PRODUCTS PRODUCED SHALL NOT BE LIMITED OR PROHIBITED; THAT THE LISTED ACTIVITIES RELATING TO MARIJUANA DEVOTED TO PERSONAL, INDUSTRIAL, OR COMMERCIAL USE BY ANY PERSON TWENTY-ONE (21)YEARS OF AGE AND OLDER IS LAWFUL IN THIS STATE AND MAY BE REGULATED, BUT NOT PROHIBITED, SUBJECT TO THE FOLLOWING CONDITIONS; THAT THE COST OF A LICENSE THAT SHALL BE REQUIRED BY THE STATE TO AUTHORIZE AND REGULATE THE CULTIVATION, PRODUCTION, DISTRIBUTION, AND THE SALE OF MARIJUANA AND

PRODUCTS CONTAINING MARIJUANA SHALL NOT EXCEED TWO-HUNDRED AND FIFTY DOLLARS ($250.00) PER LICENSE PER YEAR, AND ANY PERSON TWENTY-ONE (21) YEARS OF AGE AND OLDER SHALL QUALIFY TO OBTAIN SUCH LICENSE, AND THERE SHALL BE NO LIMIT TO THE NUMBER OF LICENSE ISSUED IN THIS STATE; THAT THE QUANTITY OF PLANTS CULTIVATED SHALL BE LIMITED TO THIRTY-SIX GROWING PLANTS PER QUALIFIED PERSON, BUT THE SIZE OF PLANTS CULTIVATED OR THE PRODUCTS PRODUCED SHALL NOT BE LIMITED OR PROHIBITED; THAT THE STATE EXCISE TAX IMPOSED UPON THE SALE OF MARIJUANA AND PRODUCTS CONTAINING MARIJUANA SHALL NOT EXCEED FIVE PERCENT; THAT THE USE OF MARIJUANA AND PRODUCTS CONTAINING MARIJUANA SHALL NOT BE PROHIBITED TO ANY PERSON UNDER TWENTY-ONE (21) YEARS OF AGE WHOSE PHYSICIAN HAS PRESCRIBED IT. ALL LAWS WHICH CONFLICT WITH THIS AMENDMENT ARE HEREBY REPEALED TO THE EXTENT THAT THEY CONFLICT WITH THIS AMENDMENT.

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

Section 2. Effective April 20, 2017, the cultivation, production, distribution, sale, possession and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant (genus cannabis) shall be 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. "Marijuana" 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 cultivation, production, distribution, sale, possession and use of hemp for personal, industrial, or commercial use may be regulated, but not prohibited, subject to the following condition:

> **(a.)** The quantity and size of plants cultivated and the products produced shall not be limited or prohibited.

Section 6. The cultivation, production, distribution, sale, possession and use of marijuana for personal, industrial, or commercial use by any person twenty-one (21) years of age and older is lawful in this state and may be regulated, but not prohibited, subject to the following conditions:

(a.) The cost of a license that shall be required by the state to authorize and regulate the cultivation, production, distribution, and the sale of marijuana and products containing marijuana shall not exceed two-hundred and fifty dollars ($250.00) per license per year, and any person twenty-one (21) years of age and older shall qualify to obtain such license, and there shall be no limit to the number of license issued in this state.

(b.) The quantity of plants cultivated shall be limited to thirty-six (36) growing plants per qualified person, but the size of plants cultivated and the products produced shall not be limited or prohibited.

(c.) The State excise tax imposed upon the sale of marijuana and products containing marijuana shall not exceed five percent (5%).

(d.) The use of marijuana and products containing marijuana shall not be prohibited to any person under twenty-one (21) years of age whose physician has prescribed it.

Section 7. All laws which conflict with this amendment are hereby repealed to the extent that they conflict with this amendment.