



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-029

March 31, 2015

Jack Michael Weir III
721 South Booker Street
Little Rock, Arkansas 72205

Dear Mr. Weir:

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.

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2013), of the following popular name and ballot title for a proposed initiated act:

Popular Name

AN AMENDMENT TO THE ARKANSAS CIVIL RIGHTS ACT OF 1993

Ballot Title

A proposed act to amend Arkansas Code § 16-123-107(a) under the Arkansas Civil Rights Act of 1993 to include sexual orientation and gender identity to the groups protected from discrimination; to have the right to obtain and hold employment without discrimination; to have the right to full enjoyment [*sic*] of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accomodation [*sic*], assemblage, or amusement; to have the right to engage in property transactions without discrimination; to have the right to engage in credit and other contractual transactions without

discrimination; and the right to vote and participate fully in the political process.

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, if practicable, substitute and certify a more suitable and correct popular name and ballot title. Or, if the proposed popular name and ballot title are sufficiently misleading, the Attorney General may reject the entire petition.

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 measure.

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

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).

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 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

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.

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).

“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 a more suitable, complete, and correct popular name and ballot title should be substituted for those 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 measure:

Popular Name

An Act Amending the Arkansas Civil Rights Act of 1993

Ballot Title

This Act amends the Arkansas Civil Rights Act of 1993 to add a right to be free from discrimination on the basis of both sexual orientation and gender identity. The Arkansas Civil Rights Act currently gives people the right to be free from discrimination on the basis of race, religion, national origin, gender, or disability. The right to be free from discrimination includes (1) the right to obtain and hold employment without discrimination; (2) the right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement; (3) the right to engage in property transactions without discrimination; (4) the right to engage in credit and other contractual transactions without discrimination; and (5) the right to vote and participate fully in the political process.

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 Arkansas Constitution and the associated penalties for violations. Enclosed herewith, over

¹⁴ *Id.*

the signature of the Attorney General, are instructions that should be incorporated in your petition prior to circulation.

Sincerely,

A handwritten signature in blue ink, appearing to be 'LR', with a large, stylized flourish extending to the right.

LESLIE RUTLEDGE
Attorney General

LR/cyh

Enclosures

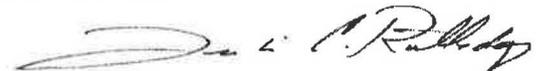
Instructions to Canvassers and Signers

1. The Arkansas Constitution gives Arkansas citizens the power to (a) initiate legislation by petition of 8% of the legal voters or constitutional amendments by petition of 10% of legal voters, or (b) order the referendum against any general act or any item of an appropriation bill or measure passed by the General Assembly by petition of 6% of legal voters. A proposed measure must be submitted at a regular election; referendum petitions may be referred at special elections on petition of 15% of the registered voters. Any measure submitted to the people becomes law when approved by a majority of the votes cast on the measure.
2. Only registered voters may sign. All signatures must be in the signer's own handwriting and in the presence of the person circulating the petition. The petition should contain only the signatures of voters residing in a single county.
3. Printed name, date of birth, residence, city or town of residence, and date of signing must be given as an aid to verification. If a petition signer needs assistance with this information due to disability, another person may print 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 they contain the full language of the petition. The signature section of the petition must be formatted as prescribed by the Secretary of State.
5. Pursuant to section 5-55-601(b) of the Arkansas Code, each of the following activities constitutes "petition fraud," which is a Class A misdemeanor and is punishable by a fine of up to \$1,000 and imprisonment for up to one year:

A person commits the offense of petition fraud:

- (1) If the person knowingly:
 - (A) Signs a name other than his or her name to a petition;
 - (B) Signs his or her name more than one (1) time to a petition; or
 - (C) Signs a petition when he or she is not legally entitled to sign the petition;
- (2) If the person acting as a canvasser, notary, sponsor as defined under § 7-9-101, or agent of a sponsor:
 - (A) Signs a name other than his or her own to a petition;
 - (B) Prints a name, address, or birth date other than his or her own to a petition unless the signor requires assistance due to disability and the person complies with § 7-9-103;
 - (C) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;
 - (D) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;
 - (E) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as a canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601; or
 - (F) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;
- (3) If the person acting as a canvasser knowingly makes a false statement on a petition verification form; [or]
* * *
- (5) If the person acting as a sponsor files a petition or a part of a petition with the official charged with verifying the signatures knowing that the petition or part of the petition contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

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.



LESLIE RUTLEDGE
Attorney General of the State of Arkansas

Popular Name

AMENDMENT TO THE ARKANSAS CIVIL RIGHTS ACT OF 1993

Ballot Title

A PROPOSED ACT TO AMEND ARKANSAS CODE § 16-123-107(A) UNDER THE ARKANSAS CIVIL RIGHTS ACT OF 1993 TO INCLUDE SEXUAL ORIENTATION AND GENDER IDENTITY TO THE GROUPS PROTECTED FROM DISCRIMINATION; TO HAVE THE RIGHT TO OBTAIN AND HOLD EMPLOYMENT WITHOUT DISCRIMINATION; TO HAVE THE RIGHT TO THE FULL ENJOYMENT OF ANY OF THE ACCOMMODATIONS, ADVANTAGES, FACILITIES, OR PRIVILEGES OF ANY PLACE OF PUBLIC RESORT, ACCOMODATION, ASSEMBLAGE, OR AMUSEMENT; TO HAVE THE RIGHT TO ENGAGE IN PROPERTY TRANSACTIONS WITHOUT DISCRIMINATION; TO HAVE THE RIGHT TO ENGAGE IN CREDIT AND OTHER CONTRACTUAL TRANSACTIONS WITHOUT DISCRIMINATION; AND THE RIGHT TO VOTE AND PARTICIPATE FULLY IN THE POLITICAL PROCESS.

Underlined language would be added to the law as it exists

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS:

Arkansas Code § 16-123-107(a), concerning discrimination offenses under the Arkansas Civil Rights Act of 1993, is amended to read as follows:

- (a) The right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender, sexual orientation, gender identity, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:
 - (1) The right to obtain and hold employment without discrimination;
 - (2) The right to full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;
 - (3) The right to engage in property transactions without discrimination;
 - (4) The right to engage in credit and other contractual transaction without discrimination;
and
 - (5) And the right to vote and participate fully in the political process.