



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-030

April 8, 2015

David A. Couch
Attorney at Law
1501 North University, Suite 228
Little Rock, Arkansas 72207

Dear Mr. Couch:

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 referendum measure:

Popular Name

A REFERENDUM TO REPEAL
THE ARKANSAS INTRASTATE COMMERCE IMPROVEMENT ACT

Ballot Title

A referendum to repeal the Arkansas Intrastate Commerce Improvement Act that prohibits a county, municipality, or other political subdivision of the state from adopting or enforcing an ordinance resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not in state law; and provides that such prohibition does not apply to a rule or policy that pertains only to employees of the county, municipality, or other political subdivision.

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.

Ark. Code Ann. § 7-9-107 neither requires nor authorizes the Attorney General 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 the Attorney General 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

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 the entire ballot title, popular name, and petition must be rejected. Contrary to your proposal’s structure, a statewide referendum is not an effort or question “to repeal” a measure; rather, it is simply a means of putting a legislative enactment (here, Act 137 of 2015) before the voters for approval or rejection.¹⁵ Your proposed ballot title – framing the question as one of Act 137’s repeal – therefore presents the issue “in such manner that a vote ‘FOR’ the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for,” and vice versa.¹⁶ It is likely, in other words, that under your formulation voters would believe themselves to be voting “for” repeal, when in fact they would be voting to approve Act 137, or to believe themselves to be voting “against” repeal, when in fact they would be voting to reject Act 137. The law permits the Attorney General in such circumstances to “reject the entire ballot title, popular name, and petition and state his or her reasons therefore and to instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.”¹⁷ I will be pleased to again consider your measure should you wish to redesign and resubmit it.

Sincerely,



LESLIE RUTLEDGE
Attorney General

LR/cyh

¹⁴ *Id.*

¹⁵ See Op. Att’y Gen. 2011-090, 91-044; see also Ark. Const. art. 5, § 1 (“the people . . . reserve the power . . . to approve or reject at the polls any entire act”), A.C.A. § 7-9-105(a) (Supp. 2013) (form of referendum petition: “We . . . respectfully order . . . that Act No. ____ . . . be referred to the people . . . to the end that the same may be approved or rejected by the . . . voters”).

¹⁶ A.C.A. § 7-9-107(c).

¹⁷ *Id.*

Popular Name

A REFERENDUM TO REPEAL THE ARKANSAS INTRASTATE COMMERCE
IMPROVEMENT ACT

Ballot Title

A REFERENDUM TO REPEAL THE ARKANSAS INTRASTATE COMMERCE
IMPROVEMENT ACT THAT PROHIBITS A COUNTY, MUNICIPIALITY, OR OTHER
POLITICAL SUBDIVISION OF THE STATE FROM ADOPTING OR ENFORCING AN
ORDINANCE RESOLUTION, RULE, OR POLICY THAT CREATES A PROTECTED
CLASSIFICATION OR PROHIBITS DISCRIMINATION ON A BASIS NOT IN STATE
LAW; AND PROVIDES THAT SUCH PROHIBITION DOES NOT APPLY TO A RULE OR
POLICY THAT PERTAINS ONLY TO EMPLOYEES OF THE COUNTY, MUNICIPALITY,
OR OTHER POLITICAL SUBDIVISION.

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 202

4
5 By: Senator Hester
6 By: Representative Ballinger

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING ORDINANCES OF
10 CITIES AND COUNTIES BY CREATING THE INTRASTATE
11 COMMERCE IMPROVEMENT ACT; TO DECLARE AN EMERGENCY;
12 AND FOR OTHER PURPOSES.

Subtitle

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14
15 TO AMEND THE LAW CONCERNING ORDINANCES OF
16 CITIES AND COUNTIES BY CREATING THE
17 INTRASTATE COMMERCE IMPROVEMENT ACT AND
18 TO DECLARE AN EMERGENCY.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Arkansas Code Title 14, Chapter 1, is amended to add an
25 additional subchapter to read as follows:

Subchapter 4 – Intrastate Commerce Improvement Act

14-1-401. Title.

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30 This subchapter shall be known and may be cited as the "Intrastate
31 Commerce Improvement Act".

14-1-402. Purpose – Finding.

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34 (a) The purpose of this subchapter is to improve intrastate commerce
35 by ensuring that businesses, organizations, and employers doing business in
36 the state are subject to uniform nondiscrimination laws and obligations,



1 regardless of the counties, municipalities, or other political subdivisions
2 in which the businesses, organizations, and employers are located or engage
3 in business or commercial activity.

4 (b) The General Assembly finds that uniformity of law benefits the
5 businesses, organizations, and employers seeking to do business in the state
6 and attracts new businesses, organizations, and employers to the state.

7
8 14-1-403. Prohibited conduct.

9 (a) A county, municipality, or other political subdivision of the
10 state shall not adopt or enforce an ordinance, resolution, rule, or policy
11 that creates a protected classification or prohibits discrimination on a
12 basis not contained in state law.

13 (b) This section does not apply to a rule or policy that pertains only
14 to the employees of a county, municipality, or other political subdivision.

15
16 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that there are seventy-five (75)
18 counties and five hundred (500) cities and towns in the state; that each
19 county, city, and town can create its own local system for dealing with
20 discrimination; and that this act is immediately necessary to create
21 uniformity regarding discrimination laws across the state. Therefore, an
22 emergency is declared to exist, and this act being immediately necessary for
23 the preservation of the public peace, health, and safety shall become
24 effective on:

25 (1) The date of its approval by the Governor;

26 (2) If the bill is neither approved nor vetoed by the Governor,
27 the expiration of the period of time during which the Governor may veto the
28 bill; or

29 (3) If the bill is vetoed by the Governor and the veto is
30 overridden, the date the last house overrides the veto.

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33 **APPROVED: BECAME LAW ON 02/23/2015 No signature from Governor**
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