



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-035

April 16, 2015

Jack M. 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. You have previously submitted a similar measure that my office revised and certified, as evidenced by Op. Att’y Gen. 2015-029. You have not indicated that this certified measure is to be withdrawn, but you have since made additional changes to the measure and submitted a revised ballot title for my certification. Your proposed popular name and ballot title state:

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 age, veteran or military status, 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, 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.

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 either the proposed popular name or the ballot title is sufficiently misleading, the Attorney General may reject the entire petition.

Section 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

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 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

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.

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).

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.

Having analyzed your proposed amendment, as well as your proposed popular name and ballot title under the above precepts, I conclude (1) that I must reject your proposed popular name because it is identical to one in a different measure I certified on March 31, 2015; and (2) that I must reject your proposed ballot title due to ambiguities in the *text* of your proposed measure. 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).

In Opinion No. 2015-029, I certified the popular name for your previous proposal, which seeks to amend the Arkansas Civil Rights Act to add a right to be free from discrimination on the basis of both “sexual orientation” and “gender identity.” The popular name for that certified proposal is “An Act Amending the Arkansas Civil Rights Act of 1993.” Your current proposal uses the same popular name to refer to a proposed measure that goes beyond adding “sexual orientation” and “gender identity” to also adding “age” and “veteran or military status.” Having two different proposed measures that share the same popular name will confuse voters and does not comply with the foregoing precepts governing a popular name. Accordingly, I am unable to certify the popular name as submitted.

In addition, I am unable to certify the ballot title as submitted because the phrase “veteran or military status” is ambiguous in two ways. First, it is not clear whether the terms are being used synonymously or cumulatively. In other words, it is not clear whether the phrase refers to a single class of people or two different classes of people. Second, it is not clear what is meant by “military status.” When read in one sense, every person has a military status—one has either served in the military, never served, or is currently serving. If the term “military status” were

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

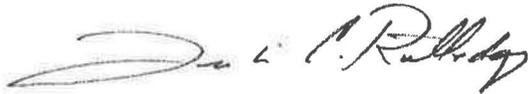
¹⁴ *Id.*

read in this broad sense, then the proposed measure would be saying that a person's military service (or lack thereof) cannot be the basis for discrimination. Yet the term "military status" can be read in a more narrow sense to only refer to persons who have served or are currently serving in the military. This ambiguity renders the provision's effect on current law unclear and prevents me from ensuring that the proposed ballot title accurately summarizes the measure.

My office in the certification of ballot titles and popular names does not address 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.

Based on what has been submitted, my statutory duty is to reject your proposed ballot title for the foregoing reasons and instruct you to redesign the proposed measure and ballot title.¹⁵ You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

Sincerely,



LESLIE RUTLEDGE
Attorney General

LR/cyh

Enclosure

¹⁵ A.C.A. § 7-9-107(c)

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 age, veteran or military status, 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.

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, age, veteran or military status, 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.