



**STATE OF ARKANSAS**  
**THE ATTORNEY GENERAL**  
**LESLIE RUTLEDGE**

Opinion No. 2015-036

April 23, 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 APPROVE OR REJECT  
THE ARKANSAS INTRASTATE COMMERCE IMPROVEMENT ACT

Ballot Title

A referendum to approve or reject 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.

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,”<sup>1</sup> 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.<sup>2</sup>**

The popular name is primarily a useful legislative device.<sup>3</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

<sup>3</sup> *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

proposal.<sup>4</sup> The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.<sup>5</sup>

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.<sup>6</sup> 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."<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.<sup>10</sup> The ballot title must be honest and impartial,<sup>11</sup> and it must convey an intelligible idea of the scope and significance of a proposed change in the law.<sup>12</sup>

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."<sup>13</sup> The Court concluded that

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<sup>4</sup> *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).

<sup>5</sup> *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

<sup>6</sup> *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

<sup>7</sup> *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

<sup>8</sup> *Id.* at 288, 884 S.W.2d at 944.

<sup>9</sup> *Id.* 293, 884 S.W.2d at 946–47.

<sup>10</sup> *Id.* at 284, 884 S.W.2d at 942.

<sup>11</sup> *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

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

<sup>13</sup> *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.”<sup>14</sup> 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 and it is therefore certified as submitted. In my judgment, however, a more suitable, complete, and correct ballot title should be substituted for that proposed. The following ballot title is hereby certified in order to ensure that, when construed together, the popular name and ballot title accurately set forth the purpose of the proposal:

Popular Name

A REFERENDUM TO APPROVE OR REJECT  
THE ARKANSAS INTRASTATE COMMERCE IMPROVEMENT ACT

Ballot Title

This referendum enables the people to vote for or against the Arkansas Intrastate Commerce Improvement Act, enacted by the 90th General Assembly as Act 137 of 2015 (the “Act”). A vote “FOR” will approve the Act; a vote “AGAINST” will reject the Act. The Act provides:

- (a) A county, municipality, or other political subdivision of the state shall not adopt or enforce an ordinance, resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law.
- (b) This section does not apply to a rule or policy that pertains only to the employees of a county, municipality, or other political subdivision.

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

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<sup>14</sup> *Id.*

Constitution and of the associated penalties for violations. Enclosed herewith, over 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 'L. Rutledge', is written over a faint, light blue watermark of the same signature.

LESLIE RUTLEDGE  
Attorney General

LR/cyh

Enclosures

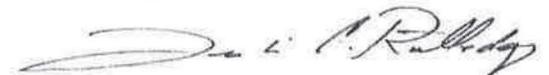
## Instructions to Canvassers and Signers

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

A REFERENDUM TO APPROVE OR REJECT THE ARKANSAS INTRASTATE  
COMMERCE IMPROVEMENT ACT

Ballot Title

A REFERENDUM TO APPROVE OR REJECT 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

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8  
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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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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