



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

Opinion No. 2015-071

July 2, 2015

Robert L. Reed  
P. O. Box 111  
Dennard, AR 72629

Dear Mr. Reed:

**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 Ark. Code Ann. § 7-9-107 (Repl. 2013), of the following popular name and ballot title for a proposed constitutional amendment. You have previously submitted several similar measures, the most recent of which I rejected in Opinion No. 2015-041. Having altered your proposal's ballot title and text, you have now submitted the following proposed popular name and ballot title for my certification:

Popular Name

THE ARKANSAS INDUSTRIAL HEMP AND MEDICAL CANNABIS AMENDMENT

Ballot Title

An amendment proposed by the people to the Arkansas Constitution to provide effective April 20, 2017, that the cultivation, manufacturing, distribution, sale, possession and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant (genus cannabis) is permitted in every geographic area of each and every county of this state; that for purposes of this amendment, "industrial hemp" is defined as any part of the cannabis plant (genus

cannabis), living or not, containing three tenths of one percent (.3%) or less, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC); “medical cannabis” is defined as any part of the cannabis plant (genus cannabis), living or not, containing greater than three tenths of one percent (.3%), by dry weight, Delta-9-Tetrahydrocannabinol(Delta-9-THC) [*sic*]; that the the [*sic*] cultivation, manufacturing, distribution, sale, possession and use of “industrial hemp” may be regulated, but the number of plants cultivated or the products derived from manufacturing, shall not be limited or prohibited, by the General Assembly; that the the [*sic*] cultivation, manufacturing, distribution, sale, possession and use of “medical cannabis” may be regulated, but not prohibited, by the General Assembly; and, that all laws in conflict with this amendment are repealed to the extent that they conflict with his [*sic*] amendment. Preemptive federal law may remain in effect unless altered by Congress

The Attorney General is required, pursuant to Ark. Code Ann. § 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,

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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).

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 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* Ark. Code Ann. § 7-9-107(b)); otherwise voters could run afoul of Ark. Code Ann. § 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>

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<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).

<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.

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 “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.

Having analyzed your proposed amendment, as well as your proposed popular name and ballot title under the above precepts, it is my conclusion that I must reject your proposed popular name and ballot title due to ambiguities in the *text* of your proposed measure. A number of additions or changes to your ballot title are, in my view, necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities. I am therefore unable to substitute and certify a more suitable and correct popular name and ballot title pursuant to Ark. Code Ann. § 7-9-107(b).

I refer to the following ambiguities:

-The proposal continues to refer to “industrial” hemp and “medical” cannabis without limiting those substances’ uses to industry and medicine. Those modifiers introduce ambiguity about how hemp and cannabis could be used under the proposal. They are also misleading in that they would cause voters to erroneously conclude that the

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<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).

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

proposal would limit the use of hemp to industry and the use of cannabis to medicine.

-The proposal authorizes the General Assembly to regulate the cultivation, etc., of “industrial” hemp and “medical” cannabis. The proposal’s use of the modifiers “industrial” and “medical” suggests, but leaves unclear, that the General Assembly’s power would or could be limited to regulation of hemp for industrial uses and of cannabis for medical uses, but the phrase “for personal, medical, industrial, or commercial use” suggests otherwise. It is impossible to clearly discern the proposal’s intent or effect in this regard.

-Amending the Arkansas Constitution is a serious matter that merits greater attention to detail than evidenced by the proposal, which still contains several errors of syntax that tend to obscure its meaning. I again urge you to review the proposal carefully to locate and correct such errors in the event you redesign and resubmit the proposal.

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 Ark. Code Ann. § 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.<sup>15</sup> You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to be 'LR', is written over the typed name 'LESLIE RUTLEDGE'.

LESLIE RUTLEDGE  
Attorney General

LR/cyh

Enclosure

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<sup>15</sup> Ark. Code Ann. § 7-9-107(c)

## Popular Name

The Arkansas Industrial Hemp and Medical Cannabis Amendment

## Ballot Title

AN AMENDMENT PROPOSED BY THE PEOPLE TO THE ARKANSAS CONSTITUTION TO PROVIDE EFFECTIVE APRIL 20, 2017, THAT THE CULTIVATION, MANUFACTURING, DISTRIBUTION, SALE, POSSESSION AND USE OF THE CANNABIS PLANT (GENUS CANNABIS) AND ALL PRODUCTS DERIVED FROM THE CANNABIS PLANT (GENUS CANNABIS) IS PERMITTED IN EVERY GEOGRAPHIC AREA OF EACH AND EVERY COUNTY OF THIS STATE; THAT FOR PURPOSES OF THIS AMENDMENT, “INDUSTRIAL HEMP” IS DEFINED AS ANY PART OF THE CANNABIS PLANT (GENUS CANNABIS), LIVING OR NOT, CONTAINING THREE TENTHS OF ONE PERCENT (.3%) OR LESS, BY DRY WEIGHT, DELTA-9-TETRAHYDROCANNABINOL (Delta-9-THC); “MEDICAL CANNABIS” IS DEFINED AS ANY PART OF THE CANNABIS PLANT (GENUS CANNABIS), LIVING OR NOT, CONTAINING GREATER THAN THREE TENTHS OF ONE PERCENT (.3%), BY DRY WEIGHT, DELTA-9-TETRAHYDROCANNABINOL(Delta-9-THC); THAT THE THE CULTIVATION, MANUFACTURING, DISTRIBUTION, SALE, POSSESSION AND USE OF “INDUSTRIAL HEMP” MAY BE REGULATED, BUT THE NUMBER OF PLANTS CULTIVATED OR THE PRODUCTS DERIVED FROM MANUFACTURING, SHALL NOT BE LIMITED OR PROHIBITED, BY THE GENERAL ASSEMBLY; THAT THE THE CULTIVATION, MANUFACTURING, DISTRIBUTION, SALE, POSSESSION AND USE OF “MEDICAL CANNABIS” MAY BE REGULATED, BUT NOT PROHIBITED, BY THE GENERAL ASSEMBLY; AND, THAT ALL LAWS IN CONFLICT WITH THIS AMENDMENT ARE REPEALED TO THE EXTENT THAT THEY CONFLICT WITH HIS AMENDMENT. PREEMPTIVE FEDERAL LAW MAY REMAIN IN EFFECT UNLESS ALTERED BY CONGRESS

Section 1. This Amendment to the Arkansas Constitution that shall be called “The Arkansas Industrial Hemp and Medical Cannabis Amendment.”

Section 2. Effective April 20, 2017, the cultivation, manufacturing, distribution, selling, possessing and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant (genus cannabis) for personal, medical, industrial, or commercial use is lawful within the entire geographic area of each and every county of this State.

Section 3. “Industrial Hemp” is defined for purposes of this amendment as any part of the cannabis plant (genus cannabis), living or not, containing three tenths of one percent (.3%) or less, by dry weight, Delta-9-tetrahydrocannabinol(Delta-9-THC).

Section 4. “Medical Cannabis” is defined for purposes of this amendment as any part of the cannabis plant (genus cannabis), living or not, containing greater than three tenths of one percent (.3%), by dry weight, Delta-9-tetrahydrocannabinol(Delta-9-THC).

Section 5. The the cultivation, manufacturing, distribution, sale, possession and use of “Industrial Hemp” may be regulated, but the number of plants cultivated or the products derived from manufacturing, shall not be limited or prohibited, by the General Assembly.

Section 6. The the cultivation, manufacturing, distribution, sale, possession and use of “Medical Cannabis” may be regulated, but not prohibited, by the General Assembly.

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