



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-039

April 25, 2016

Mary L. Berry, Sponsor  
Post Office Box 511  
Summit, AR 72677

Dear Ms. Berry:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2015), of the popular name and ballot title for a proposed initiated measure.

**At the outset, I wish to make clear to you that the decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not consider the merits of the measure when making my determination to certify or reject a popular name and ballot title.**

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 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,”<sup>1</sup> this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.<sup>2</sup> 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 proposal.

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>3</sup>

## REQUEST

**You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:**

### Popular Name

The Arkansas Cannabis Amendment

### Ballot Title

Shall there be an amendment to the Arkansas Constitution concerning the cannabis plant and, in connection therewith, providing for the regulation of marijuana and the regulation of industrial hemp; permitting a person 21 years of age or older to cultivate and produce limited amounts of marijuana or the recreational and medical use of our citizenry; requiring the General Assembly to enact an excise tax of 5% to be levied upon the sales of

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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> As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

<sup>3</sup> See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

recreational marijuana; permitting the use of medical marijuana to assure that patients may have access to medical marijuana to treat any disease, injury, or illness as recommended by a physician; requiring the release of all non-violent marijuana offenders in this State from incarceration, probation, and parole an expunging non-violent marijuana convictions from all criminal records in this State?

## RESPONSE

The popular name is primarily a useful legislative device.<sup>4</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>5</sup> The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.<sup>6</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>7</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>8</sup> At the same time, however, a ballot title must be brief and concise;<sup>9</sup> otherwise voters could run afoul of Ark. Code Ann. § 7-5-309's five-minute limit in voting booths when other voters are waiting in line.<sup>10</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>11</sup> The title, however, must be "free

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<sup>4</sup> *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

<sup>5</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). For a better understanding of the term "partisan coloring," see *infra* at note 12.

<sup>6</sup> *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

<sup>7</sup> *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

<sup>8</sup> *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

<sup>9</sup> See Ark. Code Ann. § 7-9-107(b).

<sup>10</sup> *Bailey* at 284, 884 S.W.2d at 944.

<sup>11</sup> *Id.* at 293, 844 S.W.2d at 946-47.

of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.”<sup>12</sup> The ballot title must be honest and impartial,<sup>13</sup> and it must convey an intelligible idea of the scope and significance of a proposed change in the law.<sup>14</sup>

Furthermore, the Court has confirmed that a proposed measure cannot be approved if the text of the proposal itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.<sup>15</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>16</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 (1) clarification or removal of the ambiguities in the proposal itself, and (2) conformance of the popular name and ballot title to the newly worded proposal.

Applying the above precepts, it is my conclusion that the popular name is adequate as proposed but that a more suitable, complete, and correct ballot title is necessary. While your ballot title covers many (not all) of the topics in your proposed amendment, it fails to order the topics in an appropriate manner reflective of their importance to voters attempting to understand the amendment. Accordingly, below is a reordered ballot title emphasizing and detailing the proposed amendment’s topics based on likely importance to a voter trying to fairly understand the amendment. The following are hereby certified in order to ensure

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<sup>12</sup> *Id.* at 284, 884 S.W.2d at 942. Language “tinged with partisan coloring” has been identified by the Arkansas Supreme Court as language that “creates a fatally misleading tendency” (*Crochet v. Priest*, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that “gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.” (*Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994)).

<sup>13</sup> *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

<sup>14</sup> *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

<sup>15</sup> *Cf. Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

<sup>16</sup> *Id.*

that, when construed together, the popular name and ballot title accurately set forth the purpose of the proposed measure:

Popular Name

The Arkansas Cannabis Amendment

Ballot Title

An amendment to the Arkansas Constitution concerning the cannabis plant, providing that the cultivation, production, distribution, sale, possession, and use of the cannabis plant and cannabis-related products produced therefrom for recreational and medical purposes may not be prohibited under state law but shall be regulated under state law; recognizing that such activities remain unlawful under federal law; providing for the release from incarceration, probation, or parole of all persons whose only conviction(s) were of state laws pertaining to the cultivation, production, distribution, sale, and possession of marijuana or possession of marijuana paraphernalia, and the expungement of records relating to such conviction(s); dividing cannabis into industrial hemp (containing 0.3% or less THC) and marijuana (containing more than 0.3% THC); authorizing both medical and recreational use of marijuana; providing that anyone 21 years of age or older may obtain a marijuana license permitting the person to cultivate, produce, distribute, and sell marijuana and products produced therefrom; providing that a licensed person may cultivate up to 36 cannabis plants in a location not subject to public view without optical aid; providing that sales of recreational marijuana will be subject to existing sales taxes and an additional 5% excise tax; providing that the state shall not impose any tax on the sale of medical marijuana to patients; permitting medical use of marijuana by a person of any age whose physician has recommended such use in writing; providing that the manufacture, possession, purchase, sale, and distribution of marijuana paraphernalia is lawful under state law; and providing that the amendment is not intended to (a) require employers to permit activities relating to marijuana in the workplace, (b) permit driving under the influence of marijuana, (c) permit the transfer of recreational marijuana to anyone under 21

years of age, or (d) permit anyone under 21 years of age to cultivate, produce, sell, possess, or use recreational marijuana.

Pursuant to Ark. Code Ann. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Arkansas Constitution and of the associated penalties for violations. Enclosed herewith are instructions that should be incorporated in your petition prior to circulation.

Sincerely,



LESLIE RUTLEDGE  
Attorney General

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:

**THE ARKANSAS CANNABIS AMENDMENT**

Ballot Title:

SHALL THERE BE AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE CANNABIS PLANT AND, IN CONNECTION THEREWITH, PROVIDING FOR THE REGULATION OF MARIJUANA AND THE REGULATION OF INDUSTRIAL HEMP; PERMITTING A PERSON 21 YEARS OF AGE OR OLDER TO PURCHASE AND POSSESS RECREATIONAL MARIJUANA, AND TO ALLOW FOR THE LICENSING OF PERSONS 21 OR OLDER TO CULTIVATE AND PRODUCE LIMITED AMOUNTS OF MARIJUANA FOR THE RECREATIONAL AND MEDICAL USE OF OUR CITIZENRY; REQUIRING THE GENERAL ASSEMBLY TO ENACT AN EXCISE TAX OF 5% TO BE LEVIED UPON THE SALES OF RECREATIONAL MARIJUANA; PERMITTING THE USE OF MEDICAL MARIJUANA TO ASSURE THAT PATIENTS MAY HAVE ACCESS TO MEDICAL MARIJUANA TO TREAT ANY DISEASE, INJURY, OR ILLNESS AS RECOMMENDED BY A PHYSICIAN; REQUIRING THE RELEASE OF ALL NON-VIOLENT MARIJUANA OFFENDERS IN THIS STATE FROM INCARCERATION, PROBATION, AND PAROLE AND EXPUNGING NON-VIOLENT MARIJUANA CONVICTIONS FROM ALL CRIMINAL RECORDS IN THIS STATE?

**Section 1.** This is an amendment to the Arkansas Constitution that shall be called "The Arkansas Cannabis Amendment."

**Section 2.** Effective January 20, 2017 the cultivation, production, distribution, sale, possession, and use of the cannabis plant (genus *Cannabis*) and products produced from the cannabis plant (genus *Cannabis*) shall be regulated pursuant to the provisions of this amendment, and made lawful under Arkansas law, but acknowledging that the listed activities with respect to the cannabis plant remain illegal under federal law and that the amendment shall have no effect on federal law.

**Section 3. Definitions:** The following terms are defined for the purposes of this amendment:

- (a) "Industrial hemp" means any part of the cannabis plant (genus *Cannabis*), living or not, containing three tenths of one percent (0.3%) or less, by dry weight, Delta-9-tetrahydrocannabinol (Delta-9-THC).
- (b) "Marijuana" means any part of the cannabis plant (genus *Cannabis*), living or not, containing greater than three tenths of one percent (0.3%), by dry weight, Delta-9-tetrahydrocannabinol (Delta-9-THC).
- (c) "Marijuana license" means a registration card issued by the state to any person twenty-one (21) years of age or older to lawfully cultivate, produce, distribute, and sell marijuana and products produced containing marijuana for recreational and medical purposes. Each license shall display a license account number, an expiration date, and the photo, name, date of birth, and current address of the holder.
- (d) "Marijuana paraphernalia" means any lawful equipment, utensils, products, and materials which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, containing or concealing medical or recreational marijuana, or for ingesting, inhaling or otherwise introducing medical or recreational marijuana into the human body.
- (e) "Marijuana plant tag" means a label issued by the state that the cultivator attaches to the base or branch of a growing marijuana plant, and is used for tracking the plants origin from cultivation to sale. Such a label may be bar-coded or be embedded with a radio frequency identification (RFID) smart chip. Each tag shall display the marijuana license account number and an expiration date that corresponds with the cultivators marijuana license.
- (f) "Medical marijuana" means marijuana and products produced containing marijuana that is used for the treatment of any disease, illness, or injury.
- (g) "Physician" means a doctor of medicine or doctor of osteopathic medicine who holds a valid, unrestricted, and existing license to practice in the state of Arkansas and has been issued a registration from the United States Drug Enforcement Administration to prescribe controlled substances.
- (h) "Products produced" means any lawful items and substances manufactured from the cannabis plant (genus *Cannabis*) that may contain Delta-9-tetrahydrocannabinol (Delta-9-THC), whereas marijuana products contain greater than three tenths of one percent (0.3%) Delta-9-tetrahydrocannabinol (Delta-9-THC) and industrial hemp products contain three tenths of one percent (0.3%) or less Delta-9-THC. Any item whose components may contain a variation in Delta-9-THC content that would span above the three tenths of one percent (0.3%) threshold is to be considered marijuana.
- (i) "Recreational marijuana" means marijuana and products produced containing marijuana that is used as an intoxicant.
- (j) "Written recommendation" means a document provided to a patient by a physician, authorizing the patient's use of medical marijuana. The document shall contain the patient's name, the physician's name, type of marijuana product to be used, dosage, a list of dates in which orders may be filled to supply the patient's monthly or weekly need, and an expiration date, and a name of an adult (18 years of age or older) who may procure the monthly or weekly order for the patient if needed.

**Section 4. The regulation of industrial hemp.**

The cultivation, production, distribution, sale, possession, and use of industrial hemp and products produced containing industrial hemp shall be made lawful under Arkansas law, and shall be regulated by the state.

### **Section 5. The regulation of marijuana.**

The cultivation, production, distribution, sale, possession and use of marijuana and products produced containing marijuana for recreational and medical purposes shall be made lawful under Arkansas law, and shall be regulated by the state, and such regulations are subject to the following conditions:

- (a) The cost of a marijuana license that shall be issued and required by the state to authorize any person twenty-one (21) years of age or older to cultivate, produce, distribute, and sell marijuana and products produced containing marijuana for recreational and medical purposes shall not exceed thirty dollars (\$30.00) per license per year, and any person twenty-one (21) years of age or older shall qualify to obtain such a license, and there shall be no limit to the number of licenses issued in this state.
- (b) The cost of a marijuana plant tag that shall be issued and required by the state to regulate the cultivation of marijuana plants produced in this state, shall not exceed six dollars (\$6.00) per tag, and any person with a marijuana license as defined in Section 3(c) shall qualify to obtain such tags, and there shall be a limit of thirty-six (36) tags allowed per year per licensed person. Each tag shall display the marijuana license account number and an expiration date that corresponds with the cultivators marijuana license. Marijuana plant tags may be purchased in any quantity, but not to exceed thirty-six (36) tags per licensed person per year.
- (c) The quantity of plants cultivated and displaying a state issued marijuana plant tag shall be limited to thirty-six (36) growing plants per person with a marijuana license, but the quantity of the products produced shall not be limited.
- (d) Any person issued a marijuana license and plant tag(s) may cultivate marijuana in a location where the plant(s) is (are) not subject to public view without the use of binoculars, aircraft, or other optical aids on property lawfully in possession of the person with the marijuana license or with the consent of the person(s) lawfully in possession of the property.
- (e) In addition to the regular sales tax imposed upon the sale of recreational marijuana the state shall also impose an excise tax of five percent (5%).
- (f) The state shall not impose any tax upon the sale of medical marijuana to patients.
- (g) Nothing in this section precludes the imposition of additional rules and regulations that the state may adopt and impose.

### **Section 6. Medical marijuana authorized.**

Notwithstanding any other provision of law, the following acts regarding the use of medical marijuana shall not be an offense under Arkansas law, or be a basis for seizure or forfeiture of assets under Arkansas law:

- (a) Any physician as defined in section 3(g) may authorize the use of medical marijuana by written recommendation to a patient for the purpose of treating an illness, injury, or disease.
- (b) Any parent or guardian may provide medical marijuana to their minor child providing that they have a written recommendation authorizing the child's use.
- (c) Any person eighteen (18) years of age or older may purchase medical marijuana providing that they have a written recommendation authorizing the use. This shall also include an adult (18 years of age or older) designated by the written recommendation to purchase on behalf of a patient.
- (d) Nothing in this section precludes the imposition of additional rules and regulations that the state may adopt and impose.

### **Section 7. Marijuana paraphernalia authorized.**

Notwithstanding any other provision of law, the following acts regarding marijuana paraphernalia shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law:

- (a) Any person twenty-one (21) years of age or older may manufacture, possess, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is twenty-one (21) years of age or older, providing that marijuana paraphernalia being sold or distributed is new and unused and does not contain marijuana, unless the seller of such paraphernalia has a marijuana license to sell and distribute marijuana.
- (b) Any person with a marijuana license may use marijuana paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, containing, or for concealing marijuana, or for ingesting, inhaling or otherwise introducing marijuana into the human body.
- (c) Any person twenty-one (21) years of age or older may use marijuana paraphernalia for the purpose of containing, or concealing recreational marijuana, or for ingesting, inhaling, or otherwise introducing recreational marijuana into the human body.
- (d) Any person with a written recommendation in their name may use marijuana paraphernalia for the purpose of containing, or concealing medical marijuana, or for ingesting, inhaling, or otherwise introducing medical marijuana into the human body.
- (e) Nothing in this section permits a person to use marijuana paraphernalia in conjunction with an illegal substance or item that is prohibited by the state.

### **Section 8. Employers, driving, and minors.**

- (a) Nothing in this amendment is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of recreational or medical marijuana by employees.
- (b) Nothing in this amendment is intended to allow driving under the influence of marijuana.
- (c) Nothing in this amendment is intended to permit the transfer of recreational marijuana, with or without

remuneration, to a person under the age of twenty-one (21).

(d) Nothing in this amendment is intended to permit a person under the age of twenty-one (21) to cultivate, produce, sell, possess, or use recreational marijuana.

**Section 9. Non-violent marijuana offenders and criminal record expungement.**

All persons who are serving incarceration, probation, or parole in this state whose only conviction(s) were due to violating state laws as they pertain to the cultivation, production, distribution, sale, and possession of marijuana and or possession of marijuana paraphernalia, and whose violation(s) occurred prior to the effective date of this amendment shall be released, and all criminal records in this state shall be expunged of such convictions that occurred prior to the effective date of this amendment.

**Section 10. Conflicting Laws.**

The provisions of this amendment are independent and severable, and, except where otherwise indicated in the text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions. If any provision of this amendment, or the application thereof to any person or circumstance, is found to be invalid or unconstitutional, the remainder of this amendment shall not be affected and shall be given effect to the fullest extent possible.