



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-105

October 28, 2016

Mr. Thomas E. Steele, Sponsor
9 Gravelle Drive
Little Rock, AR 72223

Dear Mr. Steele:

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,”¹ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.² 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.³

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

ARKANSAS TERM LIMITS AMENDMENT

Ballot Title

A proposed amendment to the Arkansas Constitution concerning term limits for members of the Arkansas General Assembly; to provide that no person may be elected to more than three (3) two-year terms as a member of the House of Representatives, to more than two (2) four-year terms as a member of the Senate, or to any term that, if served, would cause the member to exceed a total of ten (10) years of service in the General Assembly; to repeal Section 2(c) of Amendment 73 that established a years-of-service limit on

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

³ See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 848 (1984).

members of the General Assembly of sixteen (16) years; to provide that the ten-year service limit shall include all two (2) and four (4) year terms, along with full years of any partial term served as a result of a special election to fill a vacancy; to apply the limits to terms and service in the General Assembly on and after January 1, 1993; to provide that this amendment shall not cut short or invalidate a term to which a member of the General Assembly was elected prior to the effective date of this amendment; to provide that notwithstanding the General Assembly's constitutional authority to propose amendments to the Constitution, the General Assembly shall not have the authority to propose an amendment to the Constitution regarding term limits for the House of Representatives or Senate, and to continue reserving that power to the people under Article 5, Section 1, as amended by Amendment 7; and to declare that if any provision of this amendment should be held invalid, the remainder shall stand.

RESPONSE

The popular name is primarily a useful legislative device.⁴ 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.⁵ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁶

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.⁷ According to the Court, a ballot title will not be legally sufficient unless it "adequately inform[s]" the voters of the contents of a proposed amendment or act so that they can make a "reasoned decision in the voting booth."⁸ A ballot title's failure to

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

⁵ *See, 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 note 16 *infra*.

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

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

⁸ *Lange v. Martin*, 2016 Ark. 337, at n. 2, 2016 WL 5940309, at *7.

“honestly and accurately reflect what is contained in the proposed [act or] Amendment” may lead the Court to conclude that the “omission is significant.”⁹ The Court has also disapproved the use of terms that are “technical and not readily understood by voters.”¹⁰ Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹¹

Additionally, if information omitted from the ballot title is an “essential fact which would give the voter serious ground for reflection, it must be disclosed.”¹² At the same time, however, a ballot title must be brief and concise;¹³ 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.¹⁴ 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.¹⁵ The title, however, must be “free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.”¹⁶ The ballot title must be honest and impartial,¹⁷ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁸

⁹ *Id.* at 9, 2016 WL 5949398 at *4.

¹⁰ *Wilson v. Martin*, 2016 Ark. 334, at 9, 2016 WL 5939735, at *8.

¹¹ *Id.*

¹² *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹³ *See* Ark. Code Ann. § 7-9-107(b).

¹⁴ *Bailey* at 284, 884 S.W.2d at 944.

¹⁵ *Id.* at 293, 844 S.W.2d at 946-47.

¹⁶ *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)).

¹⁷ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

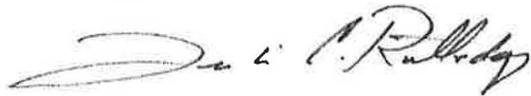
¹⁸ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

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.¹⁹ 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.”²⁰ 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 your proposed popular name and ballot title are sufficient and they are therefore certified as submitted.²¹

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

¹⁹ *Cf. Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²⁰ *Id.*

²¹ This popular name and ballot title are the same as those approved by this office in Attorney General Opinion 2016-080, for a virtually identical proposed term-limits amendment.

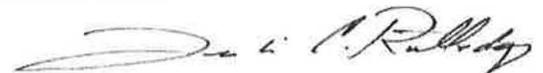
Instructions to Canvassers and Signers

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

ARKANSAS TERM LIMITS AMENDMENT

Ballot Title

A proposed amendment to the Arkansas Constitution concerning term limits for members of the Arkansas General Assembly; to provide that no person may be elected to more than three (3) two-year terms as a member of the House of Representatives, to more than two (2) four-year terms as a member of the Senate, or to any term that, if served, would cause the member to exceed a total of ten (10) years of service in the General Assembly; to repeal Section 2(c) of Amendment 73 that established a years-of-service limit on members of the General Assembly of sixteen (16) years; to provide that the ten-year service limit shall include all two (2) and four (4) year terms, along with full years of any partial term served as a result of a special election to fill a vacancy; to apply the limits to terms and service in the General Assembly on and after January 1, 1993; to provide that this amendment shall not cut short or invalidate a term to which a member of the General Assembly was elected prior to the effective date of this amendment; to provide that notwithstanding the General Assembly's constitutional authority to propose amendments to the Constitution, the General Assembly shall not have the authority to propose an amendment to the Constitution regarding term limits for the House of Representatives or Senate, and to continue reserving that power to the people under Article 5, Section I, as amended by Amendment 7; and to declare that if any provision of this amendment should be held invalid, the remainder shall stand.

SECTION 1. Term Limits.

(a) No person may be elected to:

(1) More than three (3) two-year terms as a member of the Arkansas House of Representatives;

(2) More than two (2) four-year terms as a member of the Arkansas Senate; or

(3) Any term which if served would exceed a total of ten (10) years in the General Assembly.

(b) In calculating the ten-year limit:

(1) Two-year House terms and two-year and four-year Senate terms shall be included; and

(2) A partial term served as a result of a special election under Article 5, § 6 shall not count toward the limit unless service in that term is longer than one (1) year in duration. Only full years of a partial term shall be counted.

(c) Members service in the General Assembly on and after January 1, 1993 shall be included in calculating allowable terms and service under this Amendment.

SECTION 2. Temporary application.

Notwithstanding the limits established in SECTION 1(a), this Amendment shall not cut short or invalidate a term for which a member of the House of Representatives or Senate was elected prior to the effective date of the Amendment.

SECTION 3. Section 2(c) of Amendment 73 of the Constitution, as added by Section 3 of Amendment 94, is repealed.

~~(c)(1) A member of the General Assembly shall serve no more than sixteen (16) years, whether consecutive or nonconsecutive.~~

~~(2) A member who completes his or her sixteenth year of service during a term of office for which he or she has been elected may serve until the completion of that term of office.~~

~~(3) The years of service in both the Senate and the House of Representatives shall be added together and included to determine the total number of years in office.~~

~~(4) A partial legislative term served as a result of a special election under Article 5 § 6, or a two-year term served as a result of apportionment of the Senate shall not be included in calculating the total number of years served by a member of the General Assembly.~~

SECTION 4. Amendment.

Notwithstanding the General Assembly's authority to propose amendments to the constitution under Article 19 § 22 of the Constitution, the General Assembly does not have authority to propose an amendment to the Constitution to amend or repeal term limits for the House of Representatives or Senate. The

power to propose an amendment to the Constitution to amend or repeal term limits for the House of Representatives or Senate is reserved to the people under Article 5, Section 1 of the Constitution, as amended by Amendment 7.

SECTION 5. Severability.

The provisions of this Amendment are severable, and if any provision should be held invalid, the remainder shall stand.

SECTION 6. Effective date.

This Amendment shall be effective on the first day of January immediately following passage by voters.

30