



WINSTON BRYANT
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL

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LITTLE ROCK, ARKANSAS 72201

(501) 682-2007

Opinion No. 91-109A

April 30, 1991

Mr. Mark Lowery
Christian Coalition
P.O. Box 4495
North Little Rock, AR 72116

Dear Mr. Lowery:

This certification, provided pursuant to A.C.A. § 7-9-107, substitutes for and replaces Opinion No. 91-109, issued by this office on April 29, 1991. You requested certification of the following popular name and ballot title:

(Popular Name)

THE RECALL OF ELECTED OFFICIALS AMENDMENT

(Ballot title)

AN AMENDMENT TO THE CONSTITUTION OF THE
STATE OF ARKANSAS TO ESTABLISH A
PROCEDURE FOR RECALL BY SPECIAL ELECTION
OF PERSONS ELECTED TO ANY PUBLIC OFFICE.

The Attorney General is required, pursuant to Section 7-9-107, to approve and certify the popular name and ballot title of all proposed initiative and referendum acts or constitutional amendments before the petitions are circulated for signature. The law provides that the Attorney General may 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 entire petition may be rejected.

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment or likelihood that it will accomplish its

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stated objective. Consequently, this review has been limited to determining whether the proposed popular name and ballot title accurately and impartially summarize the provisions of your proposed amendment.

The purpose of my review and certification is to insure that the popular name and ballot title honestly, intelligently, and fairly set forth the purpose of the proposed amendment. See Arkansas Women's Political Caucus v. Riviere, 282 Ark. 463, 466, 677 S.W.2d 846 (1984). The popular name is primarily a useful legislative device. Pafford v. Hall, 217 Ark. 734, 233 S.W.2d 72 (1950). It need not contain detailed information or include exceptions which might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal. Chaney v. Bryant, 259 Ark. 294, 532 S.W.2d 741 (1976); Moore v. Hall, 229 Ark. 411, 316 S.W.2d 207 (1958). The popular name is to be considered together with the ballot title in determining its sufficiency. Id.

A ballot title must include an impartial summary of the proposed amendment which will give the voter a fair understanding of the issues presented. Hoban v. Hall, 229 Ark. 416, 417, 316 S.W.2d 185 (1958); Becker v. Riviere, 270 Ark. 219, 223, 226, 604 S.W.2d 555 (1980). It has been stated that the ballot title must contain any information that would "give the elector 'serious ground for reflection.'" Finn v. McCuen, 303 Ark. 418, ___ S.W.2d ___ (1990), citing Gaines v. McCuen, 296 Ark. 513, 758 S.W.2d 403 (1988). It has been stated that the ballot title must be: 1) intelligible, 2) honest, and 3) impartial. Becker v. McCuen, 303 Ark. 482, ___ S.W.2d ___ (1990) citing Leigh v. Hall, 232 Ark. 558, 339 S.W.2d 104 (1960).

Applying these precepts, it is my conclusion that the popular name is sufficient as submitted. It is my opinion, however, that a more suitable, complete, and correct ballot title should be substituted for that proposed. The following is hereby certified in order to insure that, when construed together, the popular name and ballot title accurately set forth the purpose of the proposed amendment:

(Ballot Title)

AN AMENDMENT TO THE CONSTITUTION OF

ARKANSAS ESTABLISHING AN ELECTION PROCEDURE FOR DETERMINING WHETHER AN ELECTED OFFICIAL WILL BE ALLOWED TO REMAIN IN OFFICE, KNOWN AS A SPECIAL RECALL ELECTION; DEFINING ELECTED OFFICIAL AS ANY PERSON ELECTED TO ANY PUBLIC OFFICE; REQUIRING A VERIFIED PETITION SIGNED BY AT LEAST 15% OF THE QUALIFIED VOTERS OF THE STATE, FROM AT LEAST 15 COUNTIES WITH SIGNATURES OF AT LEAST 7% OF THE QUALIFIED VOTERS IN EACH COUNTY, BASED UPON THE TOTAL NUMBER OF VOTES CAST FOR THE OFFICE OF GOVERNOR IN THE LAST GENERAL ELECTION, FOR THE RECALL OF AN OFFICIAL ELECTED BY A STATEWIDE VOTE, AND FOR THE RECALL OF ANY OTHER ELECTED OFFICIAL, A PETITION SIGNED BY AT LEAST 20% OF THE QUALIFIED VOTERS OF THE POLITICAL SUBDIVISION, BASED UPON THE TOTAL NUMBER OF VOTES CAST FOR GOVERNOR IN THE LAST GENERAL ELECTION IN THE POLITICAL SUBDIVISION; ESTABLISHING THE FORM OF THE PETITION, PROCEDURES FOR FILING THE PETITION AND FOR DETERMINING ITS SUFFICIENCY, AND THE FORM OF THE BALLOT AT THE ELECTION; REQUIRING THAT THE RECALL ELECTION SHALL BE HELD NOT LESS THAN 100 NOR MORE THAN 120 DAYS AFTER AN ORDER FOR THE ELECTION IS FILED; DECLARING THE EXISTENCE OF AN IMMEDIATE VACANCY IN THE EVENT A MAJORITY OF VOTERS AT A SPECIAL RECALL ELECTION VOTE FOR RECALL OF THE ELECTED OFFICIAL, AND THAT THE VACANCY SHALL BE FILLED IN THE MANNER PRESCRIBED BY LAW UNTIL THE NEXT GENERAL ELECTION; STATING THAT THE OFFICIAL WILL SERVE THE REMAINDER OF THE TERM AND WILL NOT BE FORCED TO WITHSTAND ANOTHER RECALL ELECTION FOR AT LEAST 18 MONTHS IF A MAJORITY OF THE ELECTORS VOTE AGAINST RECALL OF THE OFFICIAL; REQUIRING CANDIDATES, AS A CONDITION OF FILING TO RUN FOR THE UNITED STATES CONGRESS, TO SIGN A PLEDGE TO RESIGN IF THEY ARE THE

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SUBJECT OF A SUCCESSFUL RECALL ELECTION;
REQUIRING THE PAYMENT OF ALL SPECIAL
RECALL ELECTION EXPENSES BY THE STATE OR
POLITICAL SUBDIVISION IN WHICH THE
OFFICIAL WAS ELECTED; AND PERMITTING THE
CONSOLIDATION OF PRECINCTS, FOLLOWING
PUBLIC NOTICE, IN A SPECIAL RECALL
ELECTION.

Pursuant to A.C.A. § 7-9-103, instructions to canvassers and signers are enclosed herewith.

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Elisabeth A. Walker.

Sincerely,

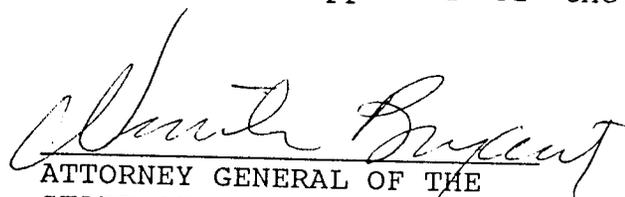

WINSTON BRYANT
Attorney General

WB:arb

INSTRUCTIONS TO CANVASSERS AND SIGNERS

1. Amendment No. 7 to the Arkansas Constitution gives to the people of the State of Arkansas the power to propose legislation or constitutional amendments by initiative petition, and to order the referendum against any general act or any item of an appropriation bill, or measure passed by the General Assembly. The petition must be signed by eight percent (8%) of the legal voters in the case of proposed legislation, ten percent (10%) in the case of proposed constitutional amendments, and six percent (6%) in the case of a referendum. The proposed legislation or constitutional amendment must be submitted to the legal voters of the State at a regular election; referendum petitions may be referred to the people at special elections when fifteen percent (15%) of the legal voters petition for such special election. Any measure submitted to the people shall take effect and become a law when approved by a majority of the votes cast upon such measure.
2. Only legal voters may sign. Printed names, residences, and cities or towns of residence must be given as an aid to verification. This petition should contain only the signatures of voters residing in a single county.
3. All signatures must be affixed by the signers in their own handwriting in the presence of the persons circulating the petition.
4. The signatures should be made with ink or indelible pencil.
5. Do not attach additional sheets to this petition unless such sheets contain the full language of the petition. Place as many names as possible on each petition.
6. To sign any name other than your own or to knowingly sign your name when you are not legally entitled to sign it, or to knowingly and falsely misrepresent the purpose and effect of this petition for the purpose of causing anyone to sign it shall constitute a misdemeanor and subject the offender to a fine of not less than \$50.00 nor more than \$1,000.00 for each violation.

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.


ATTORNEY GENERAL OF THE
STATE OF ARKANSAS