Opinion No. 2018-037

April 23, 2018

Robert L. Reed
295 Elan Trail
Dennard, AR 72629

Dear Mr. Reed:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2017), 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 a decision to certify or reject.

Arkansas Code Annotated 7-9-107 authorizes my office to 1) certify the popular name and ballot title of a proposed measure, 2) substitute and certify the popular name and ballot title, if practicable, or 3) reject the entire submission if “the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading” to voters.\(^1\) The purpose of my review under section 7-9-107 is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.\(^2\) In this way, voters will have a fair understanding of the issues presented by referenced to the ballot title alone.\(^3\)


\(^2\) See Arkansas Women’s Political Caucus v. Riviere, 283 Ark. 463, 466, 677 S.W.2d 846, 848 (1948).

\(^3\) Becker v. Riviere, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).
Importantly, crafting and accurately summarizing the measure are the sponsor's responsibilities prior to submission to this office. While I am authorized to substitute and certify a ballot title that is more suitable (in terms of affording voters a fair understanding of the issues presented), section 7-9-107 does not require that I modify the proposed measure itself, in order to then summarize its text in a suitable ballot title.

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 Hemp and Cannabis Amendment

Ballot Title

An Amendment proposed by the people to the Arkansas Constitution to provide effective January 1, 2019, 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, "hemp [sic] is defined as any part of the cannabis plant (genus cannabis), living or not, containing one percent or less, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC); "cannabis" is defined as any part of the cannabis plant (genus cannabis), living or not, containing greater than one percent, by dry weight, Delta-9-Tetrahydrocannabinol (Delta-9-THC). That the cannabis plant (genus cannabis) may be regulated but not prohibited by the General Assembly; and, that all laws in conflict with this Amendment are

---

4 Bailey v. McCuen, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994) (internal quotation omitted). The Arkansas Supreme Court has explained that ballot titles are legally insufficient unless they “adequately inform” voters and enable a “reasoned decision in the voting booth.” Lange v. Martin, 2016 Ark. 337, 500 S.W.3d 154, at n. 2. Likewise, a ballot title cannot be approved if the text of the proposal creates a disconnect between the ballot title and the content of the proposed measure. Roberts v. Priest, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000). This is because “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title, and to confusion in the ballot title itself.” Id.
repealed to the extent they conflict with his [sic] Amendment. Preemptive federal law will remain in effect unless altered by Congress.

RESPONSE

My statutory duty is to certify, substitute and certify, or reject the entire proposal submitted. Your proposed measure as submitted has a threshold shortcoming that requires me to reject the ballot title and popular name as drafted.

DISCUSSION

You previously submitted a popular name and ballot title for a proposed constitutional amendment that is virtually identical to the current proposal. I addressed that proposal in Attorney General Opinion 2016-110. The only differences between the previous submission and the current proposal are the amendment’s effective date and the deletion of one section.

In my previous opinion, I summarized the Arkansas Supreme Court’s guidelines for determining the sufficiency of a measure’s popular name and ballot; and I highlighted a number of ambiguities in the text of your proposed measure that prevented certification of a satisfactory popular name and ballot title. I explained that without resolution of these ambiguities, I could not perform my statutory duty to the satisfaction of the Court. I rejected your proposed ballot title, and I instructed you to redesign the proposed measure and ballot title.

For whatever reason, you have now submitted for my approval a popular name and ballot title for essentially the same proposal. It is insufficient, under section 7-9-107, to simply bring back language previously identified as problematic. Doing so results in a fundamentally flawed submission. At a minimum, the problems identified in Opinion 2016-110 must be addressed before this office will consider any further submissions. Any future submissions with similar defects will not be capable of summary in a ballot title giving voters a fair understanding of the issues presented.

Under these circumstances, I will not restate the Court’s guidelines or the problems identified in Opinion 2016-110, but instead refer you to that opinion for the analysis. The Arkansas Constitution does not charge my office with any role in drafting initiated constitutional amendments or acts. My duty in reviewing

---

5 This opinion is available on this office’s website at www.ArkansasAG.gov/opinions.
submissions under section 7-9-107 is to the electorate as a whole. I cannot advise or advocate for individual sponsors.⁶ Amending the Constitution is a serious matter that demands great attention to detail. Sponsors must make the necessary efforts to ensure that their proposed measures, popular names, and ballot titles have been thoroughly vetted for compliance with the high standards that have been established by the Court prior to their submission to my office.

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, should you choose to resubmit.⁷

Sincerely,

LESLEE RUTLEDGE
Attorney General

Enclosure

---


Popular Name
The Arkansas Hemp and Cannabis Amendment

Ballot Title
AN AMENDMENT PROPOSED BY THE PEOPLE TO THE ARKANSAS CONSTITUTION TO PROVIDE EFFECTIVE JANUARY 1, 2019, 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, “HEMP IS DEFINED AS ANY PART OF THE CANNABIS PLANT (GENUS CANNABIS), LIVING OR NOT, CONTAINING ONE PERCENT OR LESS, BY DRY WEIGHT, DELTA-9-TETRAHYDROCANNABINOL (Delta-9-THC); “CANNABIS” IS DEFINED AS ANY PART OF THE CANNABIS PLANT (GENUS CANNABIS), LIVING OR NOT, CONTAINING GREATER THAN ONE PERCENT, BY DRY WEIGHT, DELTA-9-TETRAHYDROCANNABINOL (Delta-9-THC). THAT THE CANNABIS PLANT (GENUS 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 THEY CONFLICT WITH HIS AMENDMENT. PREEMPTIVE FEDERAL LAW WILL REMAIN IN EFFECT UNLESS ALTERED BY CONGRESS.

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

Section 2. Effective January 1, 2019, the cultivation, manufacturing, distribution, selling, possessing and use of the cannabis plant (genus cannabis) and all products derived from the cannabis plant (genus cannabis) is lawful within the entire geographic area of each and every county of this State.

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

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

Section 5. The cultivation, manufacturing, distribution, sale, possession and use of “Hemp” for personal, industrial, or commercial use 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 cultivation, manufacturing, distribution, sale, possession and use of “Cannabis” for personal, industrial, or commercial use 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.