



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2018-043A

May 23, 2018

David A. Couch, Esq.
1501 North University, Suite 228
Little Rock, AR 72207

Dear Mr. Couch:

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.

Section 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

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

¹ Ark. Code Ann. § 7-9-107(c) (Supp. 2017).

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).

consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to law,”⁴ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.⁵ 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.

REQUEST

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

Popular Name

An Act to Increase the Arkansas Minimum Wage

Ballot Title

An Act to amend the Arkansas Code concerning the State minimum wage; the Act would raise the current State minimum wage from eight dollars and fifty cents (\$8.50) per hour to nine dollars and twenty-five cents (\$9.25) per hour on January 1, 2019, to ten dollars (\$10.00) per hour on January 1, 2020, and to eleven dollars (\$11.00) per hour on January 1, 2021

GUIDELINES

The popular name is primarily a useful legislative device.⁶ 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

⁴ 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).

⁵ As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

⁶ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

proposal.⁷ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁸

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.⁹ 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."¹⁰ A ballot title's failure to "honestly and accurately reflect what is contained in the proposed [act or] Amendment" may lead the Court to conclude that the "omission is significant."¹¹ The Court has also disapproved the use of terms that are "technical and not readily understood by voters."¹² Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹³

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."¹⁴ At the same time, however, a ballot title must be brief and concise;¹⁵ 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.¹⁶ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible

⁷ 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 *infra* note 18.

⁸ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁹ *Becker v. Riviere*, 270 Ark. at 226, 604 S.W.2d at 558 (internal citations omitted).

¹⁰ *Lange v. Martin*, 2016 Ark. 337, 500 S.W.3d 154, at n. 2.

¹¹ *Id.* at *9, 500 S.W.3d at 159.

¹² *Wilson v. Martin*, 2016 Ark. 334, *9, 500 S.W.3d 160, 167.

¹³ *Id.*, 500 S.W.3d at 167.

¹⁴ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹⁵ See Ark. Code Ann. § 7-9-107(b).

¹⁶ *Bailey*, 318 Ark. at 284, 884 S.W.2d at 944.

legal argument the proposed measure might evoke.¹⁷ 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.”¹⁸ The ballot title must be honest and impartial,¹⁹ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.²⁰

Furthermore, the Court has confirmed that a ballot title cannot be approved if the text of the proposed initiated act itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the measure.²¹ 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.”²² Where the effects of a proposed initiated act 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.

RESPONSE

Your proposed popular name and ballot title are certified as submitted in light of the recent Arkansas Supreme Court ruling in *Couch v. Rutledge*, CV-18-432. A cautionary note is warranted, however, due to the significance of the subject matter undertaken and the far-reaching nature of your proposal. Experience has shown there is a correlation between the potential significant effect of initiated measures and their susceptibility to a successful ballot title challenge.

¹⁷ *Id.* at 293, 884 S.W.2d at 946-47.

¹⁸ *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).

¹⁹ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

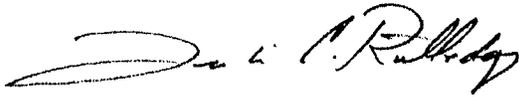
²⁰ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

²¹ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²² *Id.*

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,

A handwritten signature in black ink, appearing to read "Leslie Rutledge". The signature is fluid and cursive, with a large initial "L" and "R".

LESLIE RUTLEDGE
Attorney General

Enclosure

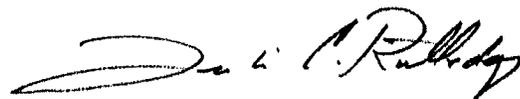
Instructions to Canvassers and Signers

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. Each petition part 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 \$2,500 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

AN ACT TO INCREASE THE ARKANSAS MINIMUM WAGE

BALLOT TITLE

AN ACT TO AMEND THE ARKANSAS CODE CONCERNING THE STATE MINIMUM WAGE; THE ACT WOULD RAISE THE CURRENT STATE MINIMUM WAGE FROM EIGHT DOLLARS AND FIFTY CENTS (\$8.50) PER HOUR TO NINE DOLLARS AND TWENTY-FIVE CENTS (\$9.25) PER HOUR ON JANUARY 1, 2019, TO TEN DOLLARS (\$10.00) PER HOUR ON JANUARY 1, 2020, AND TO ELEVEN DOLLARS (\$11.00) PER HOUR ON JANUARY 1, 2021

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 11-4-210(a), concerning the state minimum wage, is amended to read as follows:

(a)(1) Beginning October 1, 2006, every employer shall pay each of his or her employees wages at the rate of not less than six dollars and twenty-five cents (\$6.25) per hour except as otherwise provided in this subchapter.

(2)(A) Beginning January 1, 2015, every employer shall pay each of his or her employees wages at the rate of not less than seven dollars and fifty cents (\$7.50) per hour, beginning January 1, 2016 the rate of not less than eight dollars (\$8.00) per hour and beginning January 1, 2017 the rate of not less than eight dollars and fifty cents (\$8.50) per hour except as otherwise provided in this subchapter.

(3)(A) Beginning January 1, 2019, every employer shall pay each of his or her employees wages at the rate of not less than nine dollars and twenty-five cents (\$9.25) per hour, beginning January 1, 2020 the rate of not less than ten dollars (\$10.00) per hour and beginning January 1, 2021 the rate of not less than eleven dollars (\$11.00) per hour except as otherwise provided in this subchapter.