



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2019-014

February 27, 2019

Nate Steel, Attorney at Law
Capitol Law Group
400 West Capitol Avenue, Suite 2910
Little Rock, AR 72201

Dear Mr. Steel:

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 I 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 reference to the ballot title alone.³

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 (1984).

³ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

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, 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 constitutional amendment:

Popular Name

An Amendment to Create a Citizens Redistricting Commission for Decennial Redistricting of Arkansas Congressional and State Legislative Districts

Ballot Title

An amendment to establish a citizens commission for the purposes of decennial redistricting of congressional and state legislative districts (the “Commission”) to consist of seven (7) members, one appointed by the Speaker of the Arkansas House of Representatives, one by the President Pro Tempore of the Arkansas Senate, one by the Speaker Pro Tempore of the Arkansas House of Representatives, one by the Majority Leader of the Arkansas Senate, on by the Majority Leader of the Arkansas House of Representatives, one by the Minority Leader of the Arkansas Senate, and one by the Minority Leader of the Arkansas House of Representatives; repealing Article

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.

8 of the Arkansas Constitution establishing a Board of Apportionment comprised of the Governor, the Secretary of State, and the Attorney General; repealing Arkansas Code Annotated Section 7-2-101 through Arkansas Code Annotated Section 7-2-105; removing from the General Assembly the authority to establish decennial districts for each of its members of the United States Congress and placing that authority with the citizens commission formed hereunder; requiring the Commission to reapportion the house of representatives [*sic*] and the senate [*sic*] immediately following the official reporting of each decennial census of the United States, with reapportionment based on the population within each house [*sic*] and senate [*sic*] district as reported by the official decennial census of the United States; requiring the Commission to establish 100 house [*sic*] districts, with each house [*sic*] district to elect one member of the house of representatives [*sic*]; requiring the Redistricting Commission to establish 35 senate [*sic*] districts, with each senate [*sic*] district to elect one member of the senate [*sic*]; requiring that appointments to the Commission be made between January 1 and February 1 of each calendar year ending in one; and requiring that the Speaker of the Arkansas House of Representatives selects the chairman of the Commission.

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

“It has long been regarded as axiomatic that the majority of voters, when called upon to vote for or against a proposed measure, will derive their information about its contents from an inspection of the ballot title immediately before exercising the

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

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* n.20.

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

right of suffrage.”⁹ Accordingly, 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.¹⁰ 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.”¹¹ 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.”¹² The Court has also disapproved the use of terms that are “technical and not readily understood by voters.”¹³ Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹⁴

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.”¹⁵ At the same time, however, a ballot title must be brief and concise;¹⁶ otherwise voters could run afoul of the statutory five-minute limit in voting booths¹⁷ when other voters are waiting in line.¹⁸ 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.¹⁹ Yet the title must be “free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged

⁹ *Wilson v. Martin*, 2016 Ark. 334, *7, 500 S.W.3d 160, 166 (citing *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994)).

¹⁰ *Becker*, 270 Ark. at 226, 604 S.W.2d at 558.

¹¹ *Lange v. Martin*, 2016 Ark. 337, 500 S.W.3d 154, at n. 2.

¹² *Id.* at *9, 500 S.W.3d at 159.

¹³ *Wilson*, 2016 Ark. 334 at *9, 500 S.W.3d at 167 (stating that “voters [should not] be placed in a position of either having to be an expert in the subject or having to guess as to the effect his or her vote would have”).

¹⁴ *Id.*, 500 S.W.3d at 167.

¹⁵ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹⁶ *See* Ark. Code Ann. § 7-9-107(b).

¹⁷ Ark Code Ann. § 7-5-309 (Supp. 2017).

¹⁸ *Bailey*, 318 Ark. at 284, 884 S.W.2d at 944.

¹⁹ *Id.* at 293, 884 S.W.2d at 946-47.

with partisan coloring.”²⁰ The ballot title must be honest and impartial,²¹ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.²²

Furthermore, the Court has confirmed that a ballot title cannot be approved if the text of the proposed measure itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the measure.²³ 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.”²⁴ 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. 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 contemplate that I generate a ballot title when the one submitted is wholly deficient. Nor does the statute require that I modify the proposed measure itself, in order to then summarize its text in a suitable ballot title.²⁵ Instead, crafting and accurately summarizing the measure are the sponsor’s responsibilities prior to submission.

²⁰ *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 Comm.*, 318 Ark. at 249, 884 S.W.2d at 610 (1994).

²¹ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

²² *Christian Civic Action Comm.*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

²³ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²⁴ *Id.*

²⁵ *See* Op. Att’y Gen. 2017-032 (citing Ark. Code Ann. § 25-16-701, which prohibits the Attorney General from engaging in the private practice of law).

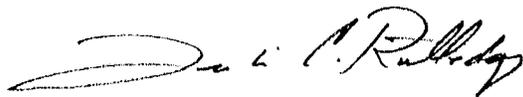
RESPONSE

Your proposed popular name and ballot title are certified as submitted. I believe a cautionary note is warranted, however, in light of the significance of the subject matter undertaken—apportionment and redistricting—and the complexity and far-reaching effects of this proposal. You should be aware that experience has shown a correlation between the length and complexity of initiated measures and their susceptibility to a successful ballot title challenge. Any ambiguity in the text of a measure could lead to a successful court challenge.

Please also be aware that this office has already certified the popular name and ballot title of what I understand to be two separate and independently proposed constitutional amendments that are—in most substantive respects—identical to your proposed measure.²⁶ Although this office has no statutory authority to refuse to review or to reject a proposed measure on that basis, sponsors of such similar, yet nevertheless separate and thus competing, measures should be aware of the potential for voter confusion during the subsequent phases of the initiative process, especially at the voting booth.²⁷

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

²⁶ See Ops. Att’y Gen. 2018-135, 2018-086.

²⁷ See Op. Att’y Gen. 2017-010 (expressing my “grave concerns about the potential for certifying two or more petitions that are identical in all substantive respects[,]” and my belief that, at least as to sponsors who appeared to be in communication or working with each other, “certifying identical measures would unavoidably lead to confusion.”).

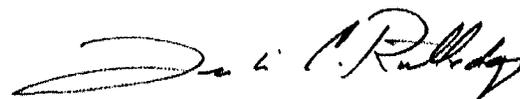
Instructions to Canvassers and Signers

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 AMENDMENT TO CREATE A CITIZENS REDISTRICTING COMMISSION FOR
DECENNIAL REDISTRICTING OF ARKANSAS CONGRESSIONAL AND STATE
LEGISLATIVE DISTRICTS

Ballot Title

An amendment to establish a citizens commission for the purposes of decennial redistricting of congressional and state legislative districts (the "Commission") to consist of seven (7) members, one appointed by the Speaker of the Arkansas House of Representatives, one by the President Pro Tempore of the Arkansas Senate, one by the Speaker Pro Tempore of the Arkansas House of Representatives, one by the Majority Leader of the Arkansas Senate, one by the Majority Leader of the Arkansas House of Representatives, one by the Minority Leader of the Arkansas Senate, and one by the Minority Leader of the Arkansas House of Representatives; repealing Article 8 of the Arkansas Constitution establishing a Board of Apportionment comprised of the Governor, the Secretary of State, and the Attorney General; repealing Arkansas Code Annotated Section 7-2-101 through Arkansas Code Annotated Section 7-2-105; removing from the General Assembly the authority to establish decennial districts for each of its members of the United States Congress and placing that authority with the citizens commission formed hereunder; requiring the Commission to reapportion the house of representatives and the senate immediately following the official reporting of each decennial census of the United States, with reapportionment based on the population within each house and senate district as reported by the official decennial census of the United States; requiring the Commission to establish 100 house districts, with each house district to elect one member of the house of representatives; requiring the Redistricting Commission to establish 35 senate districts, with each senate district to elect one member of the senate; requiring that appointments to the Commission be made between January 1 and February 1 of each calendar year ending in one; and requiring that the Speaker of the Arkansas House of Representatives selects the chairman of the Commission.

SECTION 1. The following is added as an amendment to the Arkansas Constitution:

§ 1. Short title.

This Amendment shall be known and cited as “The Arkansas Citizens’ Redistricting Amendment of 2020.”

§ 2. Establishing a Citizens’ Commission on Redistricting.

(a) On or before March 1 of each year that ends in one, there shall be established a Citizens’ Redistricting Commission (“Commission”). The Commission shall conduct the state’s decennial congressional and legislative redistricting, including, but not limited to preparing and adopting redistricting plans and conducting public hearings on proposed plans.

(b) The Commission shall consist of seven Arkansas citizens. Appointments to the Commission shall be made as follows:

(1) Between January 15 and March 1 of each year ending in one, the Speaker of the House of Representatives shall appoint one commissioner who shall serve as the chairman of the Commission, followed by one appointment made in turn by the President Pro Tempore of the Senate, Speaker Pro Tempore of the House of Representatives, the majority party leader of the Senate, the majority party leader of the House of Representatives, the minority party leader of the Senate, and the minority party leader of the House of Representatives.

(2) In the event that there are two or more minority parties within the House of Representatives or the Senate, the leader of the largest minority party by house or senate membership shall make the appointment.

(3) Of the seven members, no more than two members shall reside in the same congressional district.

(4) If a commissioner does not complete the term of office for any reason, a replacement commissioner shall be appointed in the manner of the outgoing commissioner’s original appointment as prescribed in Section 2(b). The replacement commissioner shall be appointed within fourteen days, and he or she shall have the same powers and duties as his or her predecessor, and shall serve out the remainder of the original term.

(5) Any official who fails to make an appointment within the specified time period shall forfeit the appointment to the next official in the order set forth above.

(6) Five commissioners, including the chairman, constitute a quorum. Four or more affirmative votes shall be required for any official action. The Commission shall conduct business in meetings open to the public, with at least 72 hours public notice provided.

(7) The Commission, or the Department of Finance and Administration acting on the Commission’s behalf, shall acquire as soon as practicable appropriate information and develop programs and procedures in preparation for drawing congressional and legislative redistricting plans on the basis of each federal census, obtain from the United States Bureau of Census the population data needed for congressional and legislative districting which the census bureau is required to provide this state under United States Pub. L. No. 94-171, and shall use said data to assign a population figure for purposes of decennial redistricting.

(8) The Commission, or the Department of Finance and Administration acting on the Commission’s behalf, shall use such data in order to:

(A) Prepare necessary descriptions of areas for which census data will be reported, and which are suitable for use as components of legislative districts;

(B) Prepare maps of counties, cities, and other political subdivisions and landmarks within the state, which may be used to illustrate the locations of legislative district boundaries proposed in plans drawn in accordance with Section 3.

(c) The Commission is subject to all aspects of Arkansas open meetings and freedom of information law.

(d) The Commission, with fiscal oversight from the Department of Finance and Administration or its successor, shall have procurement and contracting authority, may buy materials, including software, and may hire staff and consultants for the purpose of this section, including legal representation.

(e) The Commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation for the Commission.

(f) Members of the Commission are eligible for reimbursement of expenses pursuant to law including a per diem of up to \$200.00. This amount may be increased by the General Assembly by a majority vote.

(g) Employees of the Department of Finance and Administration or its successor shall not influence or attempt to influence the district-mapping decisions of the Commission.

(h) Each commissioner's term of office shall be either ten years from the date of the commissioner's appointment or until the date of appointment of the first member of the next redistricting commission. Each commissioner's duties established by this section expire upon completion of the commissioner's ten-year term or upon the appointment of the first member of the next redistricting commission; however, commissioners may be reappointed following the procedures in Section 2(b). The Commission shall not meet or incur expenses after the redistricting plan is completed, except if litigation or any government approval of the plan is pending, or to revise districts if required by court decisions or if the number of congressional or legislative districts is changed.

§ 3. Congressional and Legislative Districts.

(a) The Arkansas House of Representatives shall be made up of 100 members elected from 100 districts established pursuant to this Amendment. Each district shall have one member.

(b) The Arkansas Senate shall be made up of 35 members elected from 35 districts established pursuant to this Amendment. Each district shall have one member.

(c) On or before April 15 of each year that ends in one, the Commission shall conduct the state's decennial congressional redistricting, including but not limited to preparing and adopting redistricting plans and conducting public hearings on proposed plans.

(d) On or before November 15 of each year that ends in one, the Commission shall conduct the state's decennial legislative redistricting, including but not limited to preparing and adopting redistricting plans and conducting public hearings on proposed plans, preparing maps of counties, cities and other areas within the state, which may be used to illustrate the locations of legislative district boundaries proposed in plan drawn in accordance with this section.

(e) As soon as practicable after February 1 of each year ending in one, the Commission, or the Department of Finance and Administration acting on the Commission's behalf, shall obtain from the United States Bureau of the Census the population data needed for congressional and legislative districting which the census bureau is required to provide this state under United States Pub. L. No. 94-171, and shall use that data to each area described in Section 2(b)(8). Upon completing that task, the Commission shall begin the preparation of congressional and legislative districting plans.

(f) The Commission shall establish single-member congressional and legislative districts using the following criteria:

(1) Legislative, or “senatorial” and “representative” districts, and congressional districts shall be established on the basis of population. Legislative and congressional districts, respectively, shall have a population as nearly equal as practicable to the ideal population for such districts. Ideal population is determined by dividing the number of districts to be established into the population of the state reported in the federal decennial census.

(A) Legislative districts shall have a population which varies by no more than one percent from the applicable ideal district population, except as required to comply with Sections 3(f)(2–6) and (g). Before adopting a redistricting plan the Commission shall issue a report justifying any deviation of a district’s population in excess of one percent from the applicable ideal district population, nor shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population. No senatorial district shall have a population which exceeds that of any other senatorial district by more than five percent, and no representative district shall have a population which exceeds that of any other representative district by more than five percent.

(B) No congressional district shall have a population which varies by more than one percent from the applicable ideal district population, except as necessary to ensure that a congressional district with more than one county shall not be separate entirely by a county belonging to another congressional district.

(2) Districts shall adhere to the United States Constitution and the federal Voting Rights Act.

(3) Districts shall be composed of contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous. Contiguousness mean that a person can reach any point in a district without having to cross the street.

(4) The geographic integrity of any city, county, local neighborhood, or community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions. A community of interest is a contiguous population which shares common social, ethnic, or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) Districts shall be reasonably compact in form. In general, reasonably compact districts are those which are not irregularly shaped, to the extent permitted by natural or political boundaries, and the compactness of a district is greatest when the length of the district and the width of the district are equal, and when the distance needed to traverse the perimeter boundary of a district is as short as possible.

(6) To the extent practicable, district boundaries shall use visible geographic features, coincide with the boundaries of political subdivision of the state, and include undivided census tracts. The Commission shall minimize the number of divided counties, cities, and census tracts in that order. If a district is entirely contained within a county or city, that district shall not be considered to divide that county or city. If a city is in more than one county, the city shall not be considered divided so long as all portions of that city within a county are contained entirely within a single district. Where feasible, no county or city shall be divided more than once.

(g) No district shall be drawn to discriminate or favor a political party, incumbent legislator or member of Congress, or other person or group, nor be drawn for the purpose of augmenting or diluting the voting strength of a group of individuals speaking the same language or racial minority group, except as required to comply with federal law.

(h) Commission shall establish the legislative and congressional districts according to the following procedures:

(1) At any time prior to finalizing a redistricting plan, the Commission shall conduct at least one public hearing in each congressional district in this state, after providing adequate advance notice to the public so that any interested citizens have a reasonable opportunity to express their views with regard to redistricting plans.

(2) The Commission shall develop and maintain a public website making available all data used or considered by the Commission and containing the following: copies of all proposed plans or maps, with population and demographic data for each district; transcripts of all meetings of the Commission; and copies of all written reports or other materials required by this Amendment to be prepared by the Commission or the Department of Finance and Administration.

(3) The Commission shall develop at least three draft maps of congressional districts and at least three draft maps of legislative districts based on the parameters set forth in this section, and present, including publishing on the internet, such draft districts to the public for comment, which comment shall be taken for at least thirty days. In establishing these draft districts, the Commission shall not use any of the following data:

- (A) Addresses of incumbent legislator or members of Congress.
- (B) Political affiliations of registered voters.
- (C) Voting history
- (D) Previous election results.

(i) Upon presenting the draft maps of districts to the public for comment, the Commission shall use and make public the data listed in Section 3(h) to evaluate compliance of the draft districts with this section and any applicable criteria in this section. The Commission shall then establish final district boundaries.

(j) If a challenge is filed with the supreme court alleging excessive population variance among districts established in a plan adopted by the Commission, the Commission has the burden of justifying any variance in excess of one percent between the population of a district and the applicable ideal district population.

(k) The provisions regarding this section are self-executing. The Commission shall certify to the Secretary of State the establishment of congressional and legislative districts on or before October 31 in years ending in one.

(l) Consistent with Article 5, Section 3 of the Arkansas Constitution, after establishment of legislative districts, the qualified electors of each senate district shall elect a senator in the next election in the year ending in two, and at the first session of the newly elected senate, the senators shall divide themselves into two classes, by lots, and the first class shall hold their places for two years only, after which all shall be elected for four years.

(m) The Department of Finance and Administration or its successor shall submit to the legislature, prior to each regular session of the General Assembly beginning with January 2021, a recommendation for an appropriation for adequate redistricting expenses, including for necessary software and other materials, and shall make available adequate office space for the operation of the Commission. The legislature shall make the necessary appropriations by majority vote.

§ 4. General Provisions

(a) Article 8 of the Arkansas Constitution is hereby repealed in its entirety.

(b) The authority for apportionment and redistricting of districts for U.S. Congress is hereby removed from the General Assembly and vested in the Commission. Arkansas Code Annotated sections 7-2-101-105 are hereby repealed in the entirety.

(c) Original Jurisdiction (to be exercised on application of citizen and taxpayer) is hereby vested in the Supreme Court of this State to compel (by mandamus, contempt, or otherwise) the Commission to perform its duties.

§ 5. Severability.

In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this amendment is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this amendment, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this amendment.

SECTION 2. EFFECTIVE DATE. This Amendment shall be effective on and after November 20, 2020.