



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-028

February 20, 2024

Erika Gee, Attorney
Wright Lindsey & Jennings LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201

Dear Ms. Gee:

I am writing in response to your request, made under A.C.A. § 7-9-107, that I certify the popular name and ballot title for a proposed constitutional amendment. In Opinion No. 2024-014, I rejected a prior version of your proposed initiated amendment to the Arkansas Constitution. You have now revised the language of your proposal and submitted it for certification.

My decision to certify or reject a popular name and ballot title is unrelated to my view of the proposed measure's merits. I am not authorized to consider the measure's merits when considering certification.

1. Request. Under A.C.A. § 7-9-107, you have asked me to certify the following popular name and ballot title for a proposed initiated amendment to the Arkansas Constitution:

Popular Name

Arkansas Medical Cannabis Amendment of 2024

Ballot Title

This amendment to the Arkansas Constitution expands access to medical cannabis by qualified patients under the Arkansas Medical Marijuana Amendment of 2016, Amendment 98 and ratifies and affirms that amendment as originally adopted and as amended by any legislative act, except as specified; amending Amendment 98, §2(4)(B) to define "cultivation facility" as including sale and delivery of usable marijuana to a processor; amending Amendment 98, §2(12) to replace the definition of "physician" with "health care practitioner," which includes medical and

osteopathic doctors, nurse practitioners, physicians' assistants, and pharmacists and to remove requirements for federal controlled-substances registration; amending Amendment 98, §§ 4(f), 5(a)(1)-(2), 5(f)(1), 5(h); and 15 to replace references to physicians with references to health care practitioners; amending Amendment 98, § 2(13)(C) to add language to the definition of "qualifying medical condition" including any condition not otherwise specified in Amendment 98 that a health care practitioner considers debilitating to a patient that might be alleviated by the use of usable marijuana; amending Amendment 98, § 2(14)(A) to allow non-Arkansas residents to obtain registry identification cards in the same way as Arkansas residents; amending Amendment 98, § 2(17) to define "usable marijuana" as including all parts of the plant *Cannabis sativa*, including any seeds, resin, compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, and to exclude hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; amending Amendment 98, § 2(19) to remove language requiring a physician-patient relationship from the definition of "written certification" and to allow assessments in person or by telemedicine; amending Amendment 98, § 3(e) to allow licensed dispensaries to receive, transfer, or sell marijuana seedlings, plants, or usable marijuana to and from Arkansas-licensed cultivation facilities, processors, or other dispensaries, to accept marijuana seeds, seedlings, or clones from any individual or entity authorized by law to possess them, and to sell usable marijuana, marijuana seedlings, plants or seeds to qualifying patients and designated caregivers; amending Amendment 98, § 3(h) to remove language allowing professional licensing boards to sanction a physician for improper evaluation of a patient's medical condition or for violating the standard of care; amending Amendment 98, § 3(1) to remove authorization for Department of Health rules concerning visiting qualifying patients obtaining marijuana from a dispensary; amending Amendment 98, § 4(a)(4)(A) to require criminal background checks for all applicants seeking to serve as designated caregivers, with the exception of parents or guardians of minor qualifying patients applying to serve as designated caregivers for those minors; amending Amendment 98, § 5(d) to extend the expiration date of registry identification cards from one to three years and to add two additional years to the expiration of date of existing cards; amending Amendment 98, § 8(e)(8) to remove and replace advertising restrictions with restrictions for dispensaries, processors, and cultivation facilities narrowly tailored to prevent advertising and packaging from appealing to children and to require packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amounts of the product; amending Amendment 98, § 8(m)(1)(A) to remove prohibitions on dispensary-provided paraphernalia requiring combustion of marijuana, requirements relating to vaporizers, and requirements for warnings and educational materials regarding methods of

ingestion; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana in any form to dispensaries, processors, or other cultivation facilities; amending Amendment 98, § 16 to replace its current language with a waiver of state sovereign immunity so that a licensed person or entity may seek injunctive relief in the event the state fails to follow Amendment 98; amending Amendment 98, § 21 to remove a prohibition on the growing of marijuana by qualifying patients and designated caregivers and to allow such growing under Amendment 98; repealing Amendment 98, §§ 23 and 26 in their entirety; amending Amendment 98 to allow qualifying patients or caregivers at least 21 years old to keep and to plant marijuana plants in limited quantities and sizes at their domicile solely for the personal use of a qualifying patient, to prohibit sale, bartering, and trade of such marijuana plants, and to provide for regulation of such activities by the Alcoholic Beverage Control Division; amending Amendment 98 to allow possession by adults of up to one ounce of usable marijuana and to allow sale of marijuana by licensed cultivation facilities and dispensaries for adult use if current federal law prohibiting such activities changes; amending Arkansas Constitution, Article 5, § 1, to provide that unless provided in such constitutional amendment, no constitutional amendment shall be amended or repealed unless approved by the people under the Constitution; providing that this amendment's provisions are severable, nullifying any provision of state law in conflict with this amendment; and providing that the amendment is self-executing.

2. Rules governing my review. Arkansas law requires sponsors of statewide initiated measures to “submit the original draft” of the measure to the Attorney General.¹ An “original draft” includes the full text of the proposed measure along with its ballot title and popular name.² Within ten business days of receiving the sponsor’s original draft, the Attorney General must respond in one of three ways:

- First, the Attorney General may approve and certify the ballot title and popular name in the form they were submitted.³
- Second, the Attorney General may “substitute and certify a more suitable and correct ballot title and popular name.”⁴ But A.C.A. § 7-9-107 does not authorize the Attorney General to modify the text of the proposed measure itself.

¹ A.C.A. § 7-9-107(a).

² A.C.A. § 7-9-107(b).

³ A.C.A. § 7-9-107(d)(1).

⁴ *Id.*

- Third, the Attorney General may reject both the popular name and ballot title “and state his or her reasons therefor and instruct” the sponsors to “redesign the proposed measure and the ballot title and popular name.”⁵ This response is permitted when, after reviewing the proposed measure, the Attorney General determines that “the ballot title or the nature of the issue” is (1) “presented in such manner” that the ballot title would be misleading or (2) “designed in such manner” that a vote for or against the issue would actually be a vote for the outcome opposite of what the voter intends.⁶

3. Rules governing the popular name. The popular name is primarily a useful legislative device.⁷ While it need not contain detailed information or include exceptions that might be required of a ballot title, the popular name must not be misleading or partisan.⁸ And it must be considered together with the ballot title in determining the ballot title’s sufficiency.⁹

4. Rules governing the ballot title. The ballot title must summarize the proposed act. The Arkansas Supreme Court has developed general rules for what must be included in the summary and how that information must be presented. Sponsors must ensure their ballot titles impartially summarize the measure’s text and give voters a fair understanding of the issues presented.¹⁰ The Court has also disapproved the use of terms that are “technical and not readily understood by voters.”¹¹ Ballot titles that do not define such terms may be deemed insufficient.¹²

Additionally, sponsors cannot omit material from the ballot title that qualifies as an “essential fact which would give the voter serious ground for reflection.”¹³ Yet the ballot title must also be brief and concise lest voters exceed the statutory time allowed to mark a ballot.¹⁴ The ballot title is not required to be perfect, nor is it reasonable to expect the title

⁵ A.C.A. § 7-9-107(e).

⁶ *Id.*

⁷ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁸ *E.g.*, *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 414–15, 316 S.W.2d 207, 208–09 (1958).

⁹ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

¹⁰ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

¹¹ *Wilson v. Martin*, 2016 Ark. 334, 9, 500 S.W.3d 160, 167 (citing *Cox v. Daniels*, 374 Ark. 437, 288 S.W.3d 591 (2008)).

¹² *Id.*

¹³ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹⁴ A.C.A. §§ 7-9-107(d)(2) (requiring the ballot title “submitted” to the Attorney General or “supplied by the Attorney General” to “briefly and concisely state the purpose the proposed measure”), 7-5-309(b)(1)(B)

to address every possible legal argument the proposed measure might evoke.¹⁵ The title, however, must be free from any misleading tendency—whether by amplification, omission, or fallacy—and it must not be tinged with partisan coloring.¹⁶ Although the ballot title need not summarize existing law,¹⁷ it must be honest and impartial,¹⁸ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁹ The Court has held that a proposed measure that expressly states that it “will repeal inconsistent laws” is sufficient to inform the voters “that all laws which are in conflict will be repealed.”²⁰

Finally, the Court has held 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.²¹ Where the effects of a proposed measure on current law are unclear or ambiguous, I am unable to ensure the popular name and ballot title accurately reflect the proposal’s contents until the sponsor clarifies or removes the ambiguities in the proposal itself.

5. Application to your popular name. Your popular name uses the phrase “medical cannabis.” But none of the operative and substantive portions of the measure’s text, §§ 3 to 8, define or use the phrase “medical cannabis.”²² Nor does Amendment 98 define or use that phrase. And, as I noted in Opinion No. 2024-014, such a phrase creates ambiguity concerning whether “medical cannabis” is a category distinct from “usable marijuana,” “cannabis,” or even “medical marijuana.” Cannabis generally can refer to what is being regulated here—“usable marijuana” or marijuana—or to what is not being regulated here—hemp,²³ which is exempted from the definition of “usable marijuana” in § 3(e) of the

(allowing no more than ten minutes); *see Bailey*, 318 Ark. at 288, 884 S.W.2d at 944 (noting the connection between the measure’s length and the time limit in the voting booth).

¹⁵ *Plugge v. McCuen*, 310 Ark. 654, 658, 841 S.W.2d 139, 141 (1992).

¹⁶ *Bailey*, 318 Ark. at 284, 884 S.W.2d at 942 (internal citations omitted); *see also Shepard v. McDonald*, 189 Ark. 29, 70 S.W.2d 566 (1934).

¹⁷ *Armstrong v. Thurston*, 2022 Ark. 167, 10, 652 S.W.3d 167, 175.

¹⁸ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁹ *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

²⁰ *Richardson v. Martin*, 2014 Ark. 429, 9, 444 S.W.3d 855, 861.

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

²² Only §1 of the measure’s text, the “Short Title, which is not required for initiated constitutional amendments, and § 2 of the measure’s text, the “Effective Date; Intent,” use the phrase “medical cannabis.”

²³ *See, e.g., A.C.A. §§ 5-64-101(16)(A)* (defining “marijuana” as “[a]ny part and any variety or species, or both, of the Cannabis plant that contains THC (Tetrahydrocannabinol) whether growing or not...[but] does not include...[h]emp-derived cannabidiol” that contains no more than .3% delta-9 THC on a dry-weight

measure's text. In my opinion, the phrase "medical marijuana" is a better reflection of your proposed measure. Therefore, I am substituting and certifying a "more suitable" popular name.²⁴ The popular name provided below is substituted and certified for your proposed constitutional amendment.

6. Application to your ballot title. Having reviewed the text of your proposed constitutional amendment and ballot title, I believe the following changes to your ballot title are necessary to ensure that your ballot title clearly and accurately sets forth the purpose of your proposed initiated amendment to the Arkansas Constitution:

- ***"Medical cannabis."*** For the reasons discussed above in the popular name section and in Opinion No. 2024-014, I have replaced the term "cannabis" with "marijuana" in the phrase "medical marijuana" that appears in the first clause of the ballot title.
- ***"Physicians" vs. "health care practitioners."*** The ballot title states that the proposed measure amends Amendment 98, § 5(a)(1)–(2), to "replace references to physicians with references to health care practitioners." But only § 5(a)(1) contains any reference to "physician." So I have changed the citation in that clause from "Amendment 98, § 5(a)(1)–(2)" to "Amendment 98, § 5(a)(1)."
- ***"Obtain" vs. "apply for and receive."*** The ballot title currently provides that the proposed measure amends "Amendment 98, § 2(14)(A) to allow non-Arkansas residents to obtain registry identification cards." But the measure's text uses the phrase "to apply for and receive" instead of "obtain," which is less clear and accurate. So I have replaced the term "obtain" in that clause with the phrase "to apply for and receive."
- ***Removal of warning and educational requirements.*** The ballot title provides that the proposed measure amends "Amendment 98, § 8(m)(1)(A) to remove prohibitions on dispensary-provided paraphernalia requiring combustion of marijuana, requirements relating to vaporizers, and requirements for warnings and educational materials regarding methods of ingestion." But the measure's text amends § 8(m)(1)(A) to read: "A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana plants and seeds, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated

basis"), 2-15-503 (defining "industrial hemp" as the "plant *Cannabis sativa* and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent (0.3%) of the hemp-derived cannabidiol on a dry weight basis, unless specifically controlled under the Uniform Controlled Substances Act, § 5-64-101 *et seq.*").

²⁴ See A.C.A. § 7-9-107(d)(1) (authorizing the Attorney General to "substitute and certify a more suitable and correct ballot title and popular name for each amendment or act").

caregiver.” The measure’s text says nothing about “remov[ing] prohibitions on” the “requirements for warnings and educational materials regarding methods of ingestion.” Therefore, there is a mismatch between the language contained in the ballot title and the measure’s text. Further, Amendment 98, § 8(m)(1)(B) pertains to requirements for warnings and educational materials, but the ballot title and the measure’s text only references amending § 8(m)(1)(A). So I have removed the portion of the clause concerning “requirements relating to vaporizers, and requirements for warnings and educational materials regarding methods of ingestion.”

- **Ballot title summaries.** The Arkansas Supreme Court has interpreted the Arkansas Constitution to require that sponsors include all material in the ballot title that qualifies as an “essential fact which would give the voter serious ground for reflection.”²⁵ But your proposed constitutional amendment contains material provisions that do not appear in your ballot title, which would likely give voters “serious ground for reflection” and would render the ballot tile misleading by omission (all emphases below have been added):
 - Amending Amendment 98, § 5(a)(2) to remove language requiring reasonable registry identification card application fees or renewal fees;
 - Amending Amendment 98 to allow qualifying patients or caregivers at least 21 years old and in possession of a valid registry identification card to **possess, plant, dry, and process** marijuana plants in limited quantities and sizes at their domicile solely for the personal use of **the** qualifying patient, to prohibit sale, bartering, and trade of such marijuana plants, and to provide for regulation of such activities by the Alcoholic Beverage Control Division;
 - Amending Amendment 98, § 2(17) to define “usable marijuana” as **cannabis and other substances** including all parts of the plant *Cannabis sativa*, **whether growing or not**, including any seeds, resin, compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, and to exclude hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis;
 - Amending Amendment 98, § 8(e)(8) to remove and replace advertising restrictions with restrictions for dispensaries, processors, and cultivation facilities narrowly tailored to prevent advertising and packaging from appealing to children **and to require the Alcoholic Beverage Control to make rules that require** packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amounts of the product; and

²⁵ *Bailey*, 318 Ark. at 285, 884 S.W.2d at 942.

- Amending Amendment 98 to authorize the Alcoholic Beverage Control Division to enact rules and regulate the wholesale and retail sale of marijuana by licensed cultivation facilities and dispensaries for adult use if current federal law prohibiting such activities changes.

Therefore, I have added language to your ballot title that summarizes these provisions.

- **Grammatical changes.** I have also made minor grammatical changes and clarifications to your ballot title to ensure it is not misleading or confusing to the voter and that it accurately reflects the content of your proposed constitutional amendment. Some of the key grammatical changes are as follows:
 - The semicolon between “5(h)” and “15” has been changed to a comma;
 - The phrase “‘qualifying medical condition’ including any condition not otherwise specified in Amendment 98” has been changed to “‘qualifying medical condition’ to include any condition not otherwise specified in Amendment 98”;
 - The phrase “with the exception of parents or guardians of minor qualifying patients” has been changed to “with the exception of parents or guardians of minors who are qualifying patients”; and
 - The first occurrence of the word “of” in the phrase “the expiration *of* date of existing cards” has been removed so that the phrase now reads: “and to add two additional years to the expiration date of existing cards.”²⁶

7. Substitution and certification. With the above changes incorporated, the following popular name and ballot title are substituted and certified:

Popular Name

Arkansas Medical Marijuana Amendment of 2024

Ballot Title

This amendment to the Arkansas Constitution expands access to medical marijuana by qualified patients under the Arkansas Medical Marijuana Amendment of 2016, Amendment 98 and ratifies and affirms that amendment as originally adopted and as amended by any legislative act,

²⁶ This grammatical change also accurately matches the measure’s text, which uses the phrase “expiration date.”

except as specified; amending Amendment 98, § 2(4)(B) to define "cultivation facility" as including sale and delivery of usable marijuana to a processor; amending Amendment 98, § 2(12) to replace the definition of "physician" with "health care practitioner," which includes medical and osteopathic doctors, nurse practitioners, physicians' assistants, and pharmacists and to remove requirements for federal controlled-substances registration; amending Amendment 98, §§ 4(f), 5(a)(1), 5(f)(1), 5(h), and 15 to replace references to physicians with references to health care practitioners; amending Amendment 98, § 2(13)(C) to add language to the definition of "qualifying medical condition" to include any condition not otherwise specified in Amendment 98 that a health care practitioner considers debilitating to a patient that might be alleviated by the use of usable marijuana; amending Amendment 98, § 2(14)(A) to allow non-Arkansas residents to apply for and receive registry identification cards in the same way as Arkansas residents; amending Amendment 98, § 2(17) to define "usable marijuana" as cannabis and other substances including all parts of the plant *Cannabis sativa*, whether growing or not, including any seeds, resin, compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, and to exclude hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; amending Amendment 98, § 2(19) to remove language requiring a physician-patient relationship from the definition of "written certification" and to allow assessments in person or by telemedicine; amending Amendment 98, § 3(e) to allow licensed dispensaries to receive, transfer, or sell marijuana seedlings, plants, or usable marijuana to and from Arkansas-licensed cultivation facilities, processors, or other dispensaries, to accept marijuana seeds, seedlings, or clones from any individual or entity authorized by law to possess them, and to sell usable marijuana, marijuana seedlings, plants or seeds to qualifying patients and designated caregivers; amending Amendment 98, § 3(h) to remove language allowing professional licensing boards to sanction a physician for improper evaluation of a patient's medical condition or for violating the standard of care; amending Amendment 98, §3(1) to remove authorization for Department of Health rules concerning visiting qualifying patients obtaining marijuana from a dispensary; amending Amendment 98, § 4(a)(4)(A) to require criminal background checks for all applicants seeking to serve as designated caregivers, with the exception of parents or guardians of minors who are qualifying patients applying to serve as designated caregivers for those minors; amending Amendment 98, § 5(a)(2) to remove language requiring reasonable registry identification card application fees or renewal fees; amending Amendment 98, § 5(d) to extend the expiration date of registry identification cards from one to three years and to add two additional years to the expiration date of existing cards; amending Amendment 98, § 8(e)(8) to remove and replace advertising restrictions with restrictions for

dispensaries, processors, and cultivation facilities narrowly tailored to prevent advertising and packaging from appealing to children and to require the Alcoholic Beverage Control to make rules that require packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amounts of the product; amending Amendment 98, § 8(m)(1)(A) to remove prohibitions on dispensary-provided paraphernalia requiring combustion of marijuana; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana in any form to dispensaries, processors, or other cultivation facilities; amending Amendment 98, § 16 to replace its current language with a waiver of state sovereign immunity so that a licensed person or entity may seek injunctive relief in the event the state fails to follow Amendment 98; amending Amendment 98, § 21 to remove a prohibition on the growing of marijuana by qualifying patients and designated caregivers and to allow such growing under Amendment 98; repealing Amendment 98, §§ 23 and 26 in their entirety; amending Amendment 98 to allow qualifying patients or caregivers at least 21 years old and in possession of a valid registry identification card to possess, plant, dry, and process marijuana plants in limited quantities and sizes at their domicile solely for the personal use of the qualifying patient, to prohibit sale, bartering, and trade of such marijuana plants, and to provide for regulation of such activities by the Alcoholic Beverage Control Division; amending Amendment 98 to allow possession by adults of up to one ounce of usable marijuana, to allow sale of marijuana by licensed cultivation facilities and dispensaries for adult use if current federal law prohibiting such activities changes, and to provide for the regulation of the wholesale and retail of marijuana by licensed cultivation facilities and dispensaries by the Alcoholic Beverage Control Division; amending Arkansas Constitution, Article 5, § 1, to provide that unless provided in such constitutional amendment, no constitutional amendment shall be amended or repealed unless approved by the people under the Constitution; providing that this amendment's provisions are severable, nullifying any provision of state law in conflict with this amendment; and providing that the amendment is self-executing.

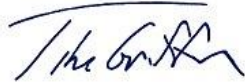
While the foregoing has been substituted and certified, I believe that, in light of the significance of the subject matter undertaken and the potential complexity and far-reaching effects of this proposal, a few cautionary notes are warranted. You should be aware that experience has shown a correlation 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. Significant changes in law often have unintended consequences that, if known, would give voters serious ground for reflection. As several of my predecessors have noted when certifying certain lengthy and complex ballot titles, the Arkansas Supreme Court has repeatedly warned sponsors of

statewide measures about their ballot titles' length and complexity.²⁷ In Opinion No. 2023-038, I recently summarized the Court's decisions on the significance of a ballot title's length and complexity.

Under A.C.A. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Arkansas Constitution and the associated penalties for violations. I have included a copy of the instructions that should be incorporated into your petition before circulation.

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General

²⁷ *E.g.*, Ark. Att'y Gen. Ops. 2023-038, 2007-160, 2005-212, 2000-137.