

COURT USE ONLY PURSUANT TO ARK. SUP. CT. ADMIN. ORDER NO. 2(B)

IN THE ARKANSAS SUPREME COURT

CONRAD REYNOLDS, ARKANSAS VOTER
INTEGRITY INIATIVE, INC., individually
and on behalf of RESTORE ELECTION
INTEGRITY ARKANSAS, a ballot question
committee

PETITIONERS

vs. Case No.:

JOHN THURSTON, in his official capacity as
SECRETARY OF STATE and the STATE
BOARD OF ELECTION COMMISSIONERS

RESPONDENTS

COMPLAINT IN ORIGINAL JURISDICTION

COMES NOW the petitioners, by and through their attorney,
Clinton W. Lancaster, and for their cause of action states:

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¹The PDF of this document contains bookmarks to its various sections in compliance with Ark. R. Sup. Ct. 4-1(a). All hyperlinks generated by the creation of this document, if any, have been removed using Adobe Acrobat Pro Continuous Release, Version 2023.006.20360.

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JURISDICTION

1. That this case pertains to two ballot measures seeking to amend the Arkansas Constitution.

2. That a request for certification to the Secretary of State sufficiency of the ballot titles and popular names only was made to the State Board of Election Commissioners (SBEC) and it has rejected the measures by repeatedly refusing to act.

3. That a petition was sought for certification of the sufficiency of the ballot titles and popular names only from the Secretary of State (“Secretary”) consistent with this court’s opinions in *Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000) and *Ward v. Priest*, 350 Ark. 345, 86 S.W.3d 884 (2002) and the Secretary rejected the measures by repeatedly refusing to act.

4. That this court has original jurisdiction of the sufficiency of the ballot initiatives in this case pursuant to Ark. Const. Amend. 80, § 2 and Ark. Const. Art. 5, § 1.

5. That this complaint also brings constitutional challenges to two statutes.

6. That this court has jurisdiction of the constitutional challenges because they are solely questions of law, this court cannot appropriately dispose of this case without addressing the constitutionality of the statute at issue, and because the petitioners do not seek declaratory relief but rather a direct remedy. *Armstrong v. Thurston*, 2022 Ark. 167, 4, 652 S.W.3d 167, 172 (2022) (citing *Finn v. McCuen*, 303 Ark. 418, 422, 798 S.W.2d 34, 36 (1990), *overruled on other grounds by Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000)).

OVERVIEW AND ISSUES FOR THE COURT TO RESOLVE

7. That the petitioners seek to determine the legal sufficiency of their ballot titles and popular names.

8. That this lawsuit seeks a finding that Ark. Code. Ann. §§ 7-9-109 and 7-9-126(e) unmistakably conflict with the plain language of Ark. Const. Article 5, § 1 rendering §§ 107 and 126(e) unconstitutional.

9. That this lawsuit seeks an order enjoining all requirements and implementation of § 107 and § 126(e) by the Secretary of State and

ordering the Secretary to follow the plain language of Ark. Const. Article 5, § 1.

10. That this lawsuit seeks expedited review.

PARTIES

11. That Col. Conrad Reynolds (Ret.) is a resident of Faulkner County, Arkansas, and a member of the Arkansas Voter Integrity Initiative, Inc., (AVII).

12. That AVII is an Arkansas corporation operating as a 501(c)(4) organization and in good standing with the State of Arkansas.

13. That Restore Election Integrity Arkansas (REIA) is a ballot question committee formed under the laws of Arkansas and on file with the Arkansas Ethics Commission.

14. That John Thurston is the duly elected Secretary of State (Secretary). This suit is only against him in his official capacity, seeks nothing from him personally, is not an opinion or expression related to his service to the State, and is nothing more than a suit against the State.

15. The SBEC is a constitutionally created board with the Secretary as its chair. This suit is only against the board members in their official capacities, seeks nothing from them personally, is not an

opinion or expression related to their service to the State, and is nothing more than a suit against the State.

FACTS

Procedural Facts

16. That REIA formed as a ballot question committee on October 19, 2023. *See* Exhibit 1 (attached).

17. That REIA submitted two proposed ballot measures to the Arkansas Attorney General on November 9, 2023, and those measures were rejected as insufficient. *See* Exhibit 2 (attached).

18. That on December 26, 2023, REIA resubmitted the two proposed ballot measures, as they had been edited, to the Attorney General and he has yet to respond with his opinions regarding their sufficiency. *See* Exhibit 3 (attached). It is these amended ballot measures which are at issue in this case. *See* Exhibit 4 (attached) (Absentee Ballot and Absentee Voting Amendment) *and* Exhibit 5 (attached (Election Integrity Restoration Amendment).

19. That, on December 27, 2023, REIA submitted the two proposed ballot measures to the SBEC, of which the Secretary is the chair, and on January 4, 2024, the SBEC announced that it refused to

certify the measures to the Secretary in violation of the provisions of Article 5, § 1. *See* Exhibit 6 (attached).

20. That, on January 4, 2024, the petitioners called the SBEC's attention to the *Stilley* case, but the SBEC has still refused to act or even respond. *See* Exhibit 6 (attached).

21. That, on December 29, 2023, the petitioners requested that the Secretary certify the sufficiency of the ballot title and popular name. *See* Exhibit 7 (attached).

22. That, on January 8, 2024, the Secretary responded and refused to certify the sufficiency of the titles. *See* Exhibit 8 (attached).

23. That, on the same day, the petitioners pointed out this court's holdings in *Stilley* and again petitioned for the Secretary to certify the legal sufficiency of the ballot title and popular name. *See* Exhibit 9 (attached).

24. That the Secretary again refused to act. *See* Exhibit 10 (attached).

Facts Relating to the Merits of the Case

25. That Ark. Const. Art. 5, § 1 states:

Title. At the time of filing petitions, the exact title to be used on the ballot shall by the petitioners be submitted with the petition, and on state-wide measures, shall be submitted to the State Board of Election Commissioners, who shall certify such title to the Secretary of State, to be placed upon the ballot;

Sufficiency. **The sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the State, which shall have original and exclusive jurisdiction over all such causes.;**

“[t]he first power reserved by the people is the initiative” and that **“ten per cent [of qualified voters]** may propose a constitutional amendment by initiative petition;”

and

“Upon all initiative or referendum petitions provided for in any of the sections of this article, it shall be necessary to file from **at least fifteen of the counties** of the State, petitions bearing the signature of **not less than one-half of the designated percentage** of the electors of such county.”

(emphasis added).

26. That, the General Assembly changed the initiative requirements in 2023 with Act 236 of 2023, codified at Ark. Code Ann. § 7-9-126(e), which now requires that:

[i]n order to certify a measure for the statewide election ballot, the official charged with verifying the signatures on an initiative petition or referendum petition shall also verify:

- (A) Petitions are filed from **at least fifty (50) counties** of the state; and
- (B) The petitions bear the signature of at least one-half (1/2) of the designated percentage of the electors of each county represented in those counties as set forth of this section.

(emphasis added).

27. That the legislature has expanded the requirements for ballot initiatives beyond those written into the Arkansas Constitution to require signatures from fifty counties instead of only fifteen.

28. That a previous version of Ark. Code Ann. § 7-9-107 required that ballot initiatives be submitted to the Secretary for his approval. *See* Ark. Code Ann. § 7-9-107 (2019).

29. That Act 194, § 2 of 2023 (codified at Ark. Code Ann. § 7-9-107) changed the words “Secretary of State” to “Attorney General.” Act 194 also gave the Attorney General the ability to approve, reject, or instruct that the sponsor change the popular name, ballot title, or petition or otherwise redesign his, her, or its measure. *Compare* Ark. Code Ann. § 7-9-107 (2019) *with* Ark. Code Ann. § 7-9-107 (2023).

30. That these expanded powers for the Attorney General relating to ballot initiatives are not in the Constitution and are expressly contrary

to the Constitution, which gives the Secretary sole authority of the sufficiency of statewide petitions “in the first instance.” Ark. Const. Art. 5, § 1.

31. That our initiative and referendum process reserves to the people full power to propose legislative measures for enactment by vote of the people. *Cochran v. Black*, 240 Ark. 393, 395–96, 400 S.W.2d 280, 282 (1966)

32. That this court has previously interpreted Ark. Const. Art. 5, § 1 and held that the clear intent of the initiative and referendum provisions of the Constitution was to give the people enlarged legislative and constitutional powers and it must be liberally construed in order to effectuate its purposes. *Richardson v. Martin*, 2014 Ark. 429, 4, 444 S.W.3d 855, 858 (2014) (citing *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992)); *Kyzar v. City of W. Memphis*, 360 Ark. 454, 459, 201 S.W.3d 923, 928 (2005) (citing *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992)); *Pritchett v. Spicer*, 2017 Ark. 82, 3, 513 S.W.3d 252, 254 (2017) (citing *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992)); *Ark. Game & Fish Comm'n v. Edgmon*, 218 Ark. 207, 211, 235 S.W.2d 554, 557 (1951). *See also Yarbrough v. Witty*, 336 Ark. 479, 484,

987 S.W.2d 257, 260 (1999). Substantial, not perfect, compliance with Article 5 is all that is required. *Cochran v. Black*, 240 Ark. 393, 397–98, 400 S.W.2d 280, 283 (1966).

COUNT I: SUFFICIENCY OF THE BALLOT MEASURES

33. That all previous allegations are incorporated into this count.

34. That this court decides the sufficiency of the ballot title as a matter of law. *Armstrong v. Thurston*, 2022 Ark. 167, 8, 652 S.W.3d 167, 174 (2022) (citing *Stirtz v. Martin*, 2018 Ark. 281, at 4, 556 S.W.3d 523, 527).

35. That Amendment 80, § 2 gives this court original jurisdiction to determine the sufficiency of the ballot measures and is less restrictive than Article 5, § 1 because it does not require any precursors to original jurisdiction, such as approval of the Attorney General or the Secretary.

36. That under Article 5, § 1 all that is required, at the most, to invoke this court's original jurisdiction to review the sufficiency of a ballot title is for the sponsor to petition the Secretary and the Secretary to have taken some action relating to the petition. That occurred on January 8, 2024, when the Secretary rejected the measures by refusing to act.

37. That this court should certify the petitioners ballot initiatives and order that they be placed on the November ballot if all other constitutional requirements are met.

COUNT II: CHALLENGE TO ARK. CODE. ANN. § 7-9-107

38. That all previous allegations and citations of law are incorporated into this count.

39. That this statute requires Attorney General approval of the language in a proposed a ballot initiative.

40. That this court has previously found that a version of this statute was constitutional *Washburn v. Hall*, 225 Ark. 868, 871, 286 S.W.2d 494, 497 (1956). However, the Attorney General approval requirement clearly and unmistakably conflicts with the plain language of Article 5, § 1 and Amendment 80, § 2. *See Armstrong, supra*. The petitioners seek review of that decision and asks the court to overrule its precedent based on two arguments:

- A. **Ark. Code Ann. § 7-9-107 creates an additional requirement for ballot access that directly and unmistakably conflicts with Ark. Const. Art. 5, § 1.**

Additional access requirements not found in the constitution are an improper change to the constitution by the legislature and violate the

clear, plain terms of Article 5, § 1's "Unwarranted Restrictions Prohibited" Clause (hereafter "Unwarranted Restrictions Clause"), which holds that "[n]o law shall be passed to . . . prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions."

The crux of this argument is simple. Popular names and ballot titles must be submitted to the Secretary of State, who has the only power to approve the name and title "in the first instance." Article 5, § 1. Any challenges to the name and title are resolved by this court. *Id.* In effect, there are two constitutional stops in the journey to certify ballot names and titles—the secretary and this court. However, § 107 adds a new "first" stop—the Attorney General. And not only does it add the Attorney General's approval, it gives him the power to reject the entire ballot title, popular name, and petition, or instruct the petitioners to proposed measure and the ballot title and popular name in a manner that would not be misleading. Ark. Code Ann. 7-9-107.

Nowhere in Article 5, Sec. 1 are these additional requirements found. Instead, they are legislatively manufactured barriers to the first power reserved to the people—the ability to legislate themselves. It is a

well-established legal principle that constitutional provisions, including amendments, take precedence over any law passed by the legislature. *Gravett v. Villines*, 314 Ark. 320, 326, 862 S.W.2d 260, 263 (1993); *City of Little Rock v. Bd. of Imp.*, 42 Ark. 152, 160 (1883) (whenever a constitution speaks on a subject, the words of the constitution governs). *See also Moore v. Harper*, 600 U.S. 1, 19–20 (2023) (citing *Marbury v. Madison*, 1 Cranch 137, 177, 5 U.S. 137, 2 L.Ed. 60 (1803)) (“Certainly all those who have framed written constitutions,” we reasoned, “contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void”).

The framers of our constitution foresaw such a monster as § 7-9-107 and wrote into the stone foundation of our government a specific prohibition to protect this sacred right of the people to govern themselves. “No law shall be passed. . .to prohibit the circulation of petitions” and “[n]o law shall be passed. . .in any manner interfering with the freedom of the people in procuring petitions.” Ark. Const. Art. 5, § 1. Procure means to obtain something, especially by special effort or means or

achieve or bring about a result. PROCURE, Black's Law Dictionary (11th ed. 2019). However, that is just the thing that § 7-9-107 does—it is a law passed by the legislature that prohibits the circulation of petitions and interferes with the freedom of the people to self-legislate through a ballot initiative.

B. *Washburn* and § 7-9-107 are in direct contradiction to this court's previous holdings, have been abrogated or superseded by Amendment 80, § 2, and violate the Self Executing Clause of Art. 5, § 1.

Ark. Code Ann. § 7-9-107(f) is a legislative expansion of the constitutional powers of this court's original jurisdiction. This court has already rejected attempts to impart jurisdiction on it related to the sufficiency of ballot measures and indicated that the Attorney General review of ballot titles and popular names is not constitutionally germane to the initiative process. *Finn v. McCuen*, 303 Ark. 418, 425, 798 S.W.2d 34, 37–38 (1990), *overruled on other grounds by Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000) (citing *Washburn, supra*) (“The issue in the *Washburn* case was whether the refusal of the secretary of state to certify a referendum was proper in view of the fact that it had no popular name or ballot title. We were not concerned with the provision in Act 195

for relief in this court in the event the attorney general refused to act”); *Scott v. McCuen*, 289 Ark. 41, 45, 709 S.W.2d 77, 79 (1986), *overruled on other grounds by Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000) (citations omitted) (“We simply cannot create our own right to answer legal questions regarding initiated acts; that right must be given to us by the constitution”). This is even more true today with the passing of Amendment 80.

Amendment 80, § 2 was a specific provision crafted to avoid a last-minute, eleventh-hour challenge to a ballot measure. For years, this court has implored the legislature to take some action to facilitate an expeditions ballot initiative process. The first attempt to resolve this court’s concerns was Act 877 of 1999, which has now been repealed. *See Stilley, infra*. The second was Amendment 80, § 2. *See Ward, infra*.

In *Stilley*, this court spoke candidly about its views on the initiative process and the barriers facing the people to exercise their power to self-legislate:

We are mindful that in the past ten years at least seven measures have been stricken from the ballot at the eleventh hour before the November general election owing to a deficiency in the text of the ballot title.

We commend the General Assembly's past effort in attempting to establish reasonable statutory timetables to implement initiative and referendum measures under Article 5, § 1. We respectfully ask its further consideration and action and encourage the General Assembly to make another attempt to establish an initiative and referendum procedure that will permit early resolution of such issues. Until appropriate action is taken to correct the problems attendant to proposals submitted under Article 5, § 1, citizens can continue to expect measures to be removed from the ballot immediately prior to the election.

This court does not enjoy being in the “last-minute” position of review. The people of Arkansas deserve an initiative and referendum procedure which allows them the confidence that measures, after having been adequately reviewed, will not be removed from the ballot. The sponsors of initiative proposals should also be assured their ballot titles and proposed measures meet required guidelines and rules before they spend their time, energy and monies in getting their proposal before the voters.

Stilley, 341 Ark. at 335–36, 16 S.W.3d at 255–56 (citing seven cases where ballot measures failed in an eleventh-hour challenge).

In *Ward*, a concurring Chief Justice joined by Justice Holt expounded on the role of Amendment 80, § 2 in timely and expeditiously resolving the sufficiency of ballot measures:

Those opposed to proposed amendments have developed the disagreeable practice of challenging the ballot title and popular name so late in the election cycle that if they prevail, there is no time to remedy any problems.

[U]nder the terms of Amendment 80 this court now has original jurisdiction over petitions challenging sufficiency, and authority to issue rules controlling petitions challenging sufficiency of statewide petitions under Article 5, § 1. The judicial article, prior to Amendment 80, did not give the supreme court original jurisdiction of initiative and referendum petitions and proposed constitutional amendments. The supreme court's jurisdiction in these matters was found in Article 5, § 1. In 2000, the citizens passed Amendment 80, which gives the supreme court “[o]riginal jurisdiction to determine sufficiency of State initiative and referendum petitions and proposed constitutional amendments.”

The citizens were told by the proponents of Amendment 80 that avoiding last minute challenges to ballot proposals was one of the things Amendment 80 would accomplish. With the passage of Amendment 80, this court now has the opportunity to fashion the vehicle by which those who invest so much time and money in obtaining the signatures will have a reasonable and timely opportunity to correct any deficiencies in order to keep their proposal on the ballot.

Ward, 350 Ark. at 380–81, 86 S.W.3d at 897 (2002) (Hannah, C.J., concurring) (citations omitted).

Article 5, § 1 permits the legislature to make laws which facilitate the implementation of the article. However, that is not what this statute does. Instead, it is a barrier forced upon the people by the legislature. Now, the people must craft their ballot measures in such a manner that it complies with the discretion of the Attorney General, a politician with

political interests that either directly or silently influencing his thought and actions and, who, to date, has not approved any of many proposed ballot measures for the November 2024 general election.

Article 5, § 1, Amendment 80, § 2, and their progeny of cases detail a tortured history of the “first power” of the people to self-legislate. They show an evolution of the desire and need to get ballot title sufficiency issues to this court to avoid the quagmire of restraints that does the torturing. *Washburn*, its line of cases, and § 7-9-107 stand as unwanted, artificial barriers in the path of the people’s power expressed in Article 5, § 1 and Amendment 80, § 2. *Washburn* and § 107 are not benefiting or facilitating the initiative process, but are two of the devices used to slow the process while torturing its participants.

41. That it is seemingly impossible to liberally construe this provision of the Constitution as required by *Richardson, supra*, to effectuate its noble purpose of empowering the people to govern themselves and also find that the additional hoop jumping mandated by the legislature to exercise that power is constitutionally kosher.

42. That the additional requirements in Ark. Code Ann. § 7-9-107 are an artificial barrier to the people’s power and right to amend their

Constitution which makes the exercise of the people's power harder or otherwise more difficult.

43. That this court should find that Ark. Code Ann. § 7-9-107 violates the Arkansas Constitution because it restricts, inhibits, infringes, and/or makes the exercise of the right to initiative more difficult or otherwise less accessible to the people in contravention of the Constitution's plain purpose and intent.

44. That this court should enjoin the application of this statute.

COUNT III: CHALLENGE TO ARK. CODE ANN. § 7-9 126(e)

45. That all previous allegations and citations of law are incorporated into this count.

46. That this court will strike down a statute when there is a clear and unmistakable conflict between the statute and the constitution. *Armstrong v. Thurston*, 2022 Ark. 167, 4–5, 652 S.W.3d 167, 172 (2022) (citing *McCarty v. Ark. St. Plant Bd.*, 2021 Ark. 105, at 3, 622 S.W.3d 162, 164).

47. That the Arkansas Constitution clearly sets out the signature requirements to obtain ballot access for an initiated act or measure. Ark. Const. Art. 5, § 1.

48. That Ark. Code. Ann. § 7-9-126(e) contains a specific signature requirement that is more stringent and requires more counties than what is found in the Constitution.

49. That these heightened, more stringent requirements are an improper rewriting of the constitution by the legislature and violates the Unwarranted Restrictions Clause of Article 5, § 1, *supra*.

50. That the General Assembly lacks the authority to enact legislation which make constitutional rights less accessible. *Miller Cnty. v. Beasley*, 203 Ark. 370, 156 S.W.2d 791, 793 (1941) (“[t]he general assembly can neither enlarge nor restrict a constitutional provision without offending the constitution”).

51. That there is a clear and unmistakable conflict between § 126(e) and the constitution.

52. That § 126(e) is a direct barrier, made from whole cloth knitted from a nefarious yarn,² to ability of the petitioners to access the ballot for their initiatives.

²As stated multiple times during discussions in committee meetings and on the floor of both chambers during the 2022–23 Regular Session, making the initiative process more difficult was the express intent of the legislature in passing Act 236 because it was too easy to amend the Constitution under Article 5, § 1.

53. That this court should find § 126(e) unconstitutional.

54. That this court should enjoin the application of this statute.

COUNT IV: MOTION FOR INJUNCTION

55. That all previous allegations and citations of law are incorporated into this count.

56. That, for the reasons contained in this complaint, Ark. Code Ann. §§ 7-9-107 and 126(e) violate our Constitution on their faces—particularly the Unwarranted Restrictions Clause.

57. That § 107 prohibits the plaintiffs from collecting signatures until approval of the ballot titles are achieved. This is contrary to the longstanding practice of obtaining signatures and submitting signatures and the ballot title to the Secretary. *Armstrong v. Thurston*, 2022 Ark. 167, 3, 652 S.W.3d 167, 171 (2022) (dicta) (ballot title submitted to Secretary with required signatures already obtained by the sponsor); *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270, 2, 606 S.W.3d 582, 583 (2020) (dicta); *Miller v. Thurston*, 2020 Ark. 267, 3, 605 S.W.3d 255, 257 (2020) (dicta).

58. That the prevention of the plaintiffs from obtaining signatures while this lawsuit is pending shortens the time the petitioners

have to obtain signatures and this presents irreparable harm as this court lacks the authority to enlarge the constitutionally mandated deadlines.

59. That, for the same reason, § 126(e) clearly expands the counties from which signatures must be obtained from fifteen to fifty. This also violates the Unwarranted Restrictions Clause and this court's previous interpretation of Article 5, § 1's signature requirements.

60. That for these reasons, the petitioners move this court for a temporary and permanent injunction of Ark. Code Ann. §§ 7-9-107 and 126(e).

COUNT V: MOTION TO EXPEDITE

61. That all previous allegations and citations of law are incorporated into this count.

62. That counsel for the plaintiffs moves this court to expedite every single election case brought before the court—which to date this court has graciously granted. This is not because of the deep and nonexistent satisfaction and enjoyment which comes from having to write complex, persuasive briefs and litigate at a faster-than-normal speed or that these cases are more important than others on the court's docket.

Instead, it is because nearly every election case has a time component. In the instant case, the following time and work components are squarely facing the plaintiffs and merit expedited consideration:

- A. The law currently prohibits the plaintiffs from collecting any signatures until its ballot measures are approved by the Attorney General. Ark. Code Ann. § 7-9-107(a). While the plaintiffs could, technically, obtain signatures, if the Attorney General rejects the ballot title, instructs the plaintiffs to rewrite, or this court upholds § 107, then the signatures are for naught.
- B. It is now January of 2024 and litigation is just beginning on this issue. Even expedited consideration can take up to nearly two months. *See Armstrong v. Thurston* (CV-22-482) (docket entries and not the opinion reveals that the case, which this court expedited, was first filed on August 4, 2022, and resolved by an opinion from this court on September 28, 2022).
- C. The deadline to file the ballot measure with all required signatures is July 5, 2024—a mere seven months away. To meet this deadline, the plaintiffs must obtain 90,704 signatures from as few as fifteen or possibly up to fifty different counties—and signatures from fifty counties is a much more time-consuming task than obtaining them from fifteen counties.
- D. Every day that passes without collecting signatures causes the number of signatures to be collected per day to rise. For example, on October 5, 2023, the petitioners needed approximately 333 signatures per day to meet the July 5, 2024, deadline. By December 5, 2023, that number had risen to needing 427 signatures per day. On March 5, 2024, the number climbs to 745 per day. On May 5, 2024, it will be 1516

signatures per day needed to meet the requirement by the deadline.

- E. There is another metric that comes from the passage of time—statistical decay. For every day that passes without signatures, the resources, both financial and manpower, that must be devoted to obtaining the signatures increases (due to the higher number of signatures needed per day). If the petitioners cannot meet the increased demand of resources for signatures, then the odds that they cannot obtain all the signatures before the deadline also increases with every passing day. Put simply, every day that passes costs the petitioners more money and resources to obtain a sufficient number of signatures while simultaneously reducing the odds that they will obtain all the signatures required.
- F. The deadline to publish the ballot measure is June 5, 2024, a mere six months away and, the plaintiffs need to know if they will be close to obtaining the signatures to make an informed decision about whether to incur the cost of publication.
- G. The plaintiffs intend to use at least some paid canvassers and will need as much time as possible to comply with the stringent requirements for paid canvassers. This includes applications, sworn statements by the canvassers, disclosures to the Secretary, criminal background checks, and deployment of the canvassers. Ark. Code Ann. §§ 7-9-601–602.
- H. That the Secretary requests, if not requires, that petitions be grouped together by county. There will likely be multiple canvassers in multiple counties and the compilation needed to adhere to this requirement will be no small feat.
- I. That every day that passes is a missed opportunity to obtain signatures. The plaintiffs have not been able to gather signatures at the times and places where, historically, large groups of politically active residents and voters meet, such as

Christmas parties, political dinners, and county committee meetings. The plaintiffs stand to miss early Spring events in which large groups of politically active people will gather at congressional district meetings and other locales that make up very ripe signature collection atmospheres.

63. That the plaintiffs move the court to expedite this case on its docket to ensure that it can be heard and resolved so that the petitioners can begin obtaining signatures for their initiatives and complete all requirements to access the ballot in time for the November 2024 election.

WHEREFORE, the plaintiffs pray this honorable court finds their ballot measures sufficient; find that Ark. Code Ann. §§ 7-9-107 and 7-9-126(e) are unconstitutional; enjoin the enforcement of those statutes; for a temporary restraining order and permanent injunction; to expedite this case; and for all other just and proper relief.

Respectfully Submitted,

**LANCASTER & LANCASTER
LAW FIRM, PLLC**

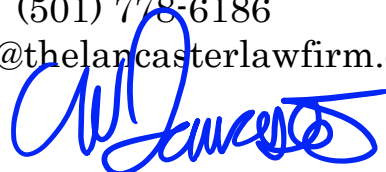
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BALLOT QUESTION COMMITTEE (BQC)* STATEMENT OF ORGANIZATION

To be filed with:
Arkansas Ethics Commission
Post Office Box 1917
Little Rock, AR 72203
Phone (501) 324-9600
Fax (501) 324-9606

(Arkansas Ethics Commission File Stamp)

☐ Check if this is an amendment to a previously filed statement of organization

Section One: BQC Name

Name of BQC (in full): RESTORE ELECTION INTEGRITY ARKANSAS

Section Two: BQC Address & Phone Number

If BQC has no office address, use the address of the BQC officer authorized to receive notices on behalf of the BQC.

Address: C/O LANCASTER LAW FIRM, PLLC, 900 S. SHACKLEFORD, STE. 300

City: LITTLE ROCK State: AR Zip: 72211 Telephone Number: (501) 776-2224

Section Three: BQC Officers and Directors

Provide the name, title, address, and telephone number of the treasurer and other principal officers and directors of the BQC.

Name: JOHN BAILEY Title: DIRECTOR/CHAIRMAN

Address: 1400 W. MARKHAM STREET, STE 202 City: LITTLE ROCK State: AR Zip: 72201

Telephone Number: 5013745050

Name: JAN BAILEY Title: CO-DIRECTOR/CHAIRWOMAN

Address: 1400 W. MARKHAM STREET, STE 202 City: LITTLE ROCK State: AR Zip: 72201

Telephone Number: 5013745050

Name: CONRAD REYNOLDS Title: CHIEF OPERATING OFFICER

Address: 18 WESTIN DRIVE City: CONWAY State: AR Zip: 72034

Telephone Number: 5012690636

Name: WILL HUFF Title: SECRETARY

Address: 18 WESTIN DRIVE City: CONWAY State: AR Zip: 72034

Telephone Number: 2483965205

* The term "ballot question committee" is defined in Ark. Code Ann. § 7-9-402(2)(A) and (B) and § 600(c)(1) and (2) of the Ethics Commission's Rules on Ballot and Legislative Question Committees.

Revised 12/2017

Section Four: Financial Information

Provide the name and address of each financial institution in which the BQC deposits money or anything else of monetary value.

Name of Financial Institution: STONE BANK

Address: 900 S. SHACKLEFORD ROAD City: LITTLE ROCK State: AR Zip: 72211

Name of Financial Institution: _____

Address: _____ City: _____ State: _____ Zip: _____

Section Five: Members

Provide the name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any.

JOHN BAILEY ARKANSAS VOTER INTEGRITY INITIATIVE, INC.

JAN BAILEY

COL. CONRAD REYNOLDS

WILL HUFF

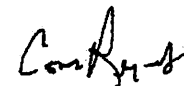
Section Six: Brief Statement

Provide a brief statement identifying the substance of each ballot question as to which the BQC will expressly advocate the qualification, disqualification, passage, or defeat, and, if known, the date each ballot question shall be presented to a popular vote at an election.

RESI ARKANSAS WILL WORK TO PLACE ON THE BALLOT A CONSTITUTIONAL AMENDMENT TO
REQUIRE ELECTIONS IN THIS STATE TO BE CONDUCTED BY SECURE PAPER BALLOTS MARKED
BY HAND WITH PERMANENT INK AND CERTIFICATION OF AN ELECTION AFTER A HUMAN INTELLIGENCE
REVIEW OR COUNTING. RESI WILL ALSO ATTEMPT TO PLACE ON THE BALLOT SUBSTANTIVE
CHANGES TO ELECTION DAY AND ABSENTEE VOTING PRACTICES.

OCTOBER 13, 2023

Date



Signature of BQC Officer



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-108

November 29, 2023

Clinton W. Lancaster
Attorney at Law
900 South Shackleford Road, Suite 300
Little Rock, Arkansas 72211

Dear Mr. Lancaster:

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.

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

An amendment to the Arkansas Constitution to conduct all elections by paper ballots containing inherent security features which protect the integrity and authenticity of an official ballot, with vote selections marked by hand using permanent ink placed directly on the ballot by the voter (except when otherwise required by federal law), permitting the counting of election day votes only after the polls close on election day, requiring the vote count to be verified by human intelligence before certification of the vote, requiring that all elections in this State be conducted by voters selecting only one candidate or issue per race with the winner determined by which candidate or issue receives the majority plus at least one vote of the total votes, preserving the special runoff system, ensuring that elections cannot be conducted in this state using an internet, Bluetooth, or wireless connection, and allocating funding to ensure free, fair, and secure elections.

Ballot Title

An amendment to the Arkansas Constitution that repeals Amendment 50, § 4 and amends Amendment 50, § 2 to remove the language that permits elections to be conducted by voting machines, modify the language of Amendment 50, § 2 as well as adding new sections to Amendment 50 which effectuate a policy and practice that all elections in this State must be conducted with paper ballots containing inherent security features designed to prevent unauthorized duplication, with vote selections marked by hand using permanent ink placed directly on the ballot by the voter in a manner which ensures the secrecy of the votes cast on the ballot and the anonymity of the voter casting the ballot, requiring that no election day votes be counted or tabulated before the close of the polls on election day, requiring that the tabulation of votes be verified by human intelligence before certification of the vote, requiring that all elections for government positions or issues in this State be conducted by voters selecting only one candidate or issue per race with the winner determined by which candidate or issue receives the majority plus at least one vote of the total votes, ensuring that elections cannot be conducted in this state using an internet, Bluetooth, or wireless connection, and allocating funding to ensure free, fair, and secure elections.

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
- 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

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.*

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 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 The ballot title must be honest and impartial,¹⁷ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁸

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.¹⁹ 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. Having reviewed the text of your proposed initiated amendment, as well as your proposed popular name and ballot title, I have concluded that I must reject your proposed popular name and ballot title and instruct you to redesign them. The following problems in the **text of your proposed amendment** prevent me from (1) ensuring your ballot title is not misleading or (2) substituting a more appropriate ballot title:

- ***Allocation of funding.*** The popular name and ballot title state that this proposed amendment will allocate funding for elections. But nothing in the proposed text allocates funding. Instead, your text contains two conflicting statements about the allocation of funding. Section 2 of your text states that the amendment's "intent" is, in part, to "allocate funding to effectuate this amendment." But section 11 of your proposed text states that the "General Assembly shall...allocate funding" to carry out the amendment. These conflicting provisions prevent me from ensuring that your ballot title's summary is not misleading.
- ***Enacting clause.*** While the state constitution requires proposed initiated acts to include an enacting clause—"Be it Enacted by the People of the State of

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

¹⁸ *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

¹⁹ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

Arkansas”—initiated constitutional amendments do not require enacting clauses.²⁰ Therefore, as this office has repeatedly concluded, the inclusion of an enacting clause required for “bills” in your proposed constitutional amendment creates an ambiguity as to what the voters are being asked to consider, a bill or a constitutional amendment.²¹

- **“Human intelligence.”** The popular name, the ballot title, and the text of the proposed measure all contain the phrase “human intelligence,” which the text defines as “the thought and physical process of a human being instead of the thought or process of a computer or an artificial intelligence.” This language is confusing because the meaning of “thought and physical process” are unclear. Does this mean a human cannot use any machine or computer, such as a calculator or Excel spreadsheet, to aid in his or her “thought and physical process”? The answer to this question would surely give voters “serious ground for reflection.” The answer is also important to determine which statutes would be supplanted by the amendment. For example, under A.C.A. § 7-5-602(c),²² paper ballots must be “run through an electronic vote tabulation device before a hand count is conducted.” And A.C.A. § 7-5-606 specifies the requirements for “exhibit marking devices and electronic vote tabulating devices.” Since your definition of the term “human intelligence” is unclear, I cannot ensure that the ballot title is not misleading.
- **Definition of “disabled voter.”** The measure’s text defines “Disabled Voter” as “a voter with a disability as that term is defined under the Help America Vote Act.” But A.C.A. § 7-5-311 defines “disability” differently than federal law when it includes “sensory impairment.” It is unclear whether you intend your definition of “disabled voter” to exclude those with sensory impairment as that term is used in § 7-5-311. If so, then this would be a change in law that may give voters “serious ground for reflection,” requiring this change in law to be identified in the ballot title. But because it is unclear to me at this time whether you intend this result, I cannot ensure your ballot title is not misleading.
- **“Public office” vs. “electable position.”** Section 9(a) provides that “[a]ll elections for public office or electable positions in city, county, or state government shall be conducted with voters selecting only one candidate for each race.” Because you use both “public office” and “electable positions,” which typically mean the same thing,

²⁰ Ark. Const., art. 5, § 1 (“Enacting Clause”); see *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 262–63, 872 S.W.2d 349, 355 (1994) (“The term ‘bills’ as used in the Enacting Clause section of Amendment 7 does not refer to statewide constitutional amendments but only to initiated proposals where the people are seeking to enact their own laws.”).

²¹ E.g., Ark. Att’y Gen. Ops. 2018-076, 2017-016, 2015-065, 2013-039, 2012-013, 2009-169.

²² See also A.C.A. § 7-5-603(2)(A) (“After being run through a tabulation device, the paper ballots shall be placed in a sealed double-locking hard shell ballot box....”).

it is unclear whether this redundancy is intended or whether you intend to give each a different meaning. Because this is unclear, I cannot be sure of your intent and cannot ensure your ballot title is not misleading.

- **Issue elections.** Most ballots can be mutually divided into elections regarding candidates or issues. Section 9(c) attempts to regulate the latter by providing that “[a]ll elections to amend the Arkansas Constitution as well as any city, county, or State government initiatives, referenda, measures, matters, or issues referred to the voters shall be conducted with voters making only one selection *for each race*.” (Emphasis added.) This is confusing because “initiatives, referenda, measures, matters, or issues” are not generally considered “races.” The use of the term “race,” implies a contest between candidates, not a decision on whether to support or oppose an issue. Therefore, your use of the term “race” conflicts with the sort of elections this provision seems designed to regulate. In light of this conflict, I cannot be sure of your intent and cannot ensure your ballot title is not misleading.
- **Effect of federal law.** The second sentence of section 4 provides that “any disabled voter may also vote in county, city, or state elections by voting machines in the same manner as during federal elections pursuant to the Help America Vote Act.” It is unclear to me how one votes by “voting machine” when the proposed amendment repeals the use of voting machines.²³ Perhaps you intend this section to be an exception from the effect of your other provisions that remove voters’ ability to use voting machines. If that is your intent, it is not clearly reflected in the text. That lack of clarity prevents me from ensuring your ballot title is not misleading.
- **Secrecy of individual votes.** Amendment 50, § 2 to the Arkansas Constitution currently requires that the secrecy of individual votes be maintained: “All elections by the people shall be by ballot or by voting machines which insure the secrecy of individual votes.”²⁴ The text of your proposed amendment would repeal the secrecy requirement in Amendment 50, § 2. Section 6 of your proposed text would replace Amendment 50, § 2 with the following language, none of which maintains the current “secrecy of individual votes”: “All elections by the people in this State shall be by a paper ballot containing inherent security features which makes the paper ballot difficult to duplicate or counterfeit.” This repeal might also be read as having the effect of repealing the provision of Amendment 81 to our constitution that protects the secrecy of votes. Yet your ballot title summarizes the proposed text as “ensur[ing] the secrecy of the votes cast on the ballot and the anonymity of the voter casting the ballot.” You appear to believe that the method of voting required by your text would itself ensure the secrecy of individual votes. That may be true. But

²³ See also A.C.A. § 7-5-603(2)(D) (providing that “[a]ll ballots from voting machines used for compliance with the Equal Access to Voting Rights Act...the Americans with Disabilities Act...and the Help America Vote Act of 2002...shall be counted with the hand-counted paper ballots”).

²⁴ See also Ark. Const., amend. 81 (“Protection of secrecy of votes”).

since it is unclear to me whether you intend to remove the constitutional right to the secrecy of individual votes, I cannot ensure your ballot title is not misleading.

- **Legislative Implementation, Self-Executing clause.** Section 11 of your proposed text conflicts with other provisions in your text. Section 11 states that “all its provisions shall be treated as mandatory.” But there are provisions in the text itself that allow, rather than require, certain action. This contradiction prevents me from ensuring your ballot title is not misleading.

While the foregoing defects are sufficient grounds for me to reject your submission, please note that there are several other issues in your proposed measure that you may wish to correct or clarify:

- **Popular name length.** The popular name—at 152 words—is longer than a typical popular name. It instead reads like a second ballot title. Although this alone is not misleading, you may wish to significantly shorten the popular name to better meet the purpose of popular names as described above.
- **Partisan coloring language in the popular name.** It is my opinion that your proposed popular name contains impermissible “partisan coloring” language when it uses the word “integrity.” The Arkansas Supreme Court has held that “partisan coloring” language is “a form of salesmanship”²⁵ that “gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.”²⁶ The word “integrity,” as used in the popular name (i.e., “protect the integrity”), gives voters only the impression that the proponents of the proposed amendment wish to convey—a “[s]teadfast adherence to a strict moral or ethical code...being unimpaired; sound[.]”²⁷ To paraphrase the Arkansas Supreme Court, the “[voter] is entitled to form” his or her “own conclusions” on whether the proposed measure promotes integrity.²⁸
- **Partisan coloring in the ballot title.** It is my opinion that the ballot title also contains impermissible “partisan coloring” language when it uses the words “to ensure free, fair, and secure elections.” Such words, like a slogan, give voters only the impression that the proponents of the proposed amendment wish to convey—as if to vote otherwise is to ensure the opposite of those characteristics. Again, the “voter is entitled to form” his or her “own conclusions” on whether the proposed measure promotes elections that would be “free, fair, and secure.”

²⁵ *Bradley v. Hall*, 220 Ark. 925, 929, 251 S.W.2d 470, 472 (1952).

²⁶ *Christian Civic Action Comm.*, 318 Ark. at 249, 884 S.W.2d at 610.

²⁷ THE AMERICAN HERITAGE DICTIONARY 911 (5th ed. 2011).

²⁸ *Johnson v. Hall*, 229 Ark. 400, 403, 316 S.W.2d 194, 196 (1958).

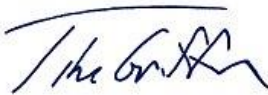
Mr. Clinton W. Lancaster
Attorney at Law
Opinion No. 2023-108
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- **Runoff elections.** Section 9 of your proposed text, specifically subsections (b), (d), and (f), contains language concerning when and how a runoff election occurs. Under those provisions, a runoff election must occur when no candidate receives “at least fifty percent (50%) plus at least one vote.” This procedure would change the law as it applies to municipal elections. Under A.C.A. § 7-5-106(a)(2)(A), a municipal runoff election occurs when “there are more than two” candidates in a given race and neither receives either “[a] majority of the votes cast” or “[a] plurality of forty percent.” Further, under A.C.A. § 7-5-106(a)(2)(B), if a candidate in such a race does receive a plurality of 40% of the votes cast, then no runoff election occurs only if the candidate “obtain[ed] at least twenty percent (20%) more of the votes cast than the second-place candidate.” Your proposed amendment would abolish these municipal runoff procedures. The ballot title would need to apprise voters of these changes in law.
- **Severability clause.** Section 12 of your proposed measure inaccurately states that “any part or subpart of this amendment...deemed to violate the federal constitution...shall be repealed and treated as though it was never a part of the amendment.” The power of repeal belongs to the legislature, not the judiciary.²⁹ This section should be reworded.
- **Grammatical issues.** Your ballot title only uses commas. But because of the length and complexity of your ballot title, which includes multiple instances of a series within a series, the use of semicolons would provide greater clarity and promote readability. Additionally, random capitalization appears throughout the text of your proposed amendment, which does not appear to serve any purpose. You may wish to correct this.

Because of the issues identified above, my statutory duty is to reject your proposed popular name and ballot title, stating my reasons therefor, and to instruct you to “redesign” your proposed constitutional amendment, popular name, and ballot title.³⁰

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

Sincerely,



TIM GRIFFIN
Attorney General

²⁹ See BLACK’S LAW DICTIONARY 1553 (11th ed. 2019) (defining “repeal” as “abrogation of an existing law by express legislative act”).

³⁰ A.C.A. § 7-9-107(e).

Opinion No. 2023-109

November 29, 2023

Clinton W. Lancaster
Attorney at Law
900 South Shackleford Road, Suite 300
Little Rock, Arkansas 72211

Dear Mr. Lancaster:

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.

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

An Amendment to the Arkansas Constitution to set the time for absentee voting, create absentee voting procedures, determine the manner in which absentee ballots are counted or tabulated, and ensure that elections cannot be conducted in this state using an internet, Bluetooth, or wireless connection.

Ballot Title

An amendment to the Arkansas Constitution that amends Amendment 50 to add additional sections effectuating a policy and practice in which absentee ballots may only be distributed within the thirty days prior to election day, limited to only registered voters who are unable to be present at the polls on election day because they are physically absent from or hospitalized, incarcerated, or in a long-term care facility within the county in which they are registered to vote, requiring the county clerk to distribute an absentee ballot only to a requesting and qualified voter, prohibiting absentee ballot harvesting as well as the unauthorized possession of absentee ballots by persons other than the requesting voter, the United States Postal Service, or a duly appointed and authorized election official, preventing the tracking of absentee ballots once they have been sent or provided to the voter,

protecting information about who has requested an absentee ballot, ensuring that all absentee ballots are counted on election day before the early or election day votes are counted, prohibiting all elections in this state from being conducted using an internet, Bluetooth, or wireless connection, and requiring that absentee ballots and absentee voting which does not strictly conform to the requirements of this amendment to not be counted.

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
- 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

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.*

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).

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 amendment. The 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 amendment'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 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 The ballot title must be honest and impartial,¹⁷ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁸

Finally, the Court has held that a ballot title cannot be approved if the text of the proposed amendment itself contributes to confusion and disconnect between the language in the popular

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

¹⁸ *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

name and the ballot title and the language in the proposed amendment.¹⁹ Where the effects of a proposed amendment 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. Having reviewed the text of your proposed initiated amendment, as well as your proposed popular name and ballot title, I have concluded that I must reject your proposed popular name and ballot title and instruct you to redesign them. As explained in more detail below, multiple provisions in the text of your proposed amendment are ambiguous. The following ambiguities prevent me from ensuring your ballot title is not misleading:

- **Enacting clause.** Our state constitution requires that all “bills” initiated by the people (that is, proposed initiated acts) include an enacting clause with the following language: “Be It Enacted by the People of the State of Arkansas.”²⁰ There is no such requirement for initiated constitutional amendments,²¹ yet your proposed constitutional amendment includes an enacting clause. This office has long concluded that the inclusion of an enacting clause required for “bills” in a proposed constitutional amendment creates an ambiguity as to what the voters are being asked to consider, a bill or a constitutional amendment.²²
- **Unclear language regarding physical absence.** The text in § 7(c) of the proposed amendment states, “Only those voters who are unable to be present at the polls on election day because they are physically absent from or hospitalized, incarcerated, or a resident of a long-term care facility within the county in which they are registered to vote shall qualify for, possess, and utilize an absentee ballot.” This language is confusing because you do not identify the place from which the voter must be physically absent. Must the voter simply be physically absent from the polling place, or must the voter be absent from the county? The answer to this question would give the voter “serious ground for reflection because it is unclear.”
- **Ambiguity regarding Amendment 51, § 9(i).** The text in § 5 of your proposed amendment states, “The terms of this amendment shall not apply to Ark. Const. Amend. 51, § 9(i).” Presumably, you have included this stipulation in your proposed amendment to avoid violating the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA),²³ which Amendment 51, § 9(i) implements. But *how* you intend your proposed amendment to operate in conjunction with Amendment 51, § 9(i) is unclear. That subsection allows

¹⁹ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²⁰ Ark. Const., art. 5, § 1 (“Enacting Clause”).

²¹ See *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 262–263, 872 S.W.2d 349, 355 (1994) (“The term ‘bills’ as used in the Enacting Clause section of Amendment 7 does not refer to statewide constitutional amendments but only to initiated proposals where the people are seeking to enact their own laws.”).

²² See Ark. Att’y Gen. Ops. 2018-076, 2017-016, 2015-065, 2013-039, 2012-013, 2009-169.

²³ 52 U.S.C. § 20301 *et seq.*

certain qualified servicemembers, their family members, and overseas citizens who are absent from their voting residence to “vote without prior registration by absentee ballot by submission of a federal postal card application.” I assume that you intend for none of your proposal’s application requirements to apply to citizens who are covered by UOCAVA and Amendment 51, § 9(i). But what about your proposal’s requirements regarding the opening, canvassing, and counting of ballots? Arkansas law currently allows the absentee ballots of UOCAVA voters to be counted if they are executed no later than election day and received no later than ten days after the election.²⁴ Do you intend for the ballots of UOCAVA voters to be exempt from § 7(e)(5) of your proposed amendment, which prohibits the counting of any absentee ballots not physically present and in the process of being canvassed and counted when the polls close on election day? Furthermore, § 7(e)(3) of your proposed amendment prohibits the counting or tabulations of early voting and election day votes “prior to the end of the tabulation and public posting of absentee voting.” Does this mean that no early voting or election day votes may be counted until all UOCAVA ballots are received, potentially up to ten days after election day? Until you clarify these ambiguities, I cannot ensure the ballot title is not misleading.

- **Assistance for voters with disabilities.** While your proposed amendment prohibits anyone but the qualifying absentee voter from marking a vote selection on the absentee ballot, it includes an exception that allows voters with disabilities to receive assistance with *marking* their ballots. But there is no similar exception to allow a person assisting a voter with a disability to *handle, possess, or return* the absentee ballot on the voter’s behalf. It is unclear whether you intend to allow voters with disabilities to receive assistance with receiving and returning their absentee ballots. If so, you should include an exemption similar to the one that allows assistance with marking ballots. If not, this fact should be reflected in the ballot title, along with a notice to voters that this provision likely violates federal law.²⁵

While the foregoing defects are sufficient grounds for me to reject your submission, please note that there are several other issues I have identified in your proposed popular name and ballot title that you may wish to correct or clarify:

- **Insufficient summaries.** Your proposed constitutional amendment includes provisions that would give voters “serious ground for reflection,” yet they do not appear in the ballot title. For example:
 - **Tracking.** The ballot title simply states that absentee ballots cannot be tracked “once they have been sent or provided to the voter.” But your proposed constitutional amendment does more than that. It prohibits the tracking of an absentee ballot “by any method from the time the ballot leaves the possession of

²⁴ See A.C.A. § 7-5-411(a)(1)(A)(ii).

²⁵ See, e.g., 42 U.S.C. § 12131–12134 (Americans with Disabilities Act), 52 U.S.C. § 10508 (Voting Rights Act); see also Ark. Att’y Gen. Ops. 2018-076, 2011-163, 2011-038 (declining to certify proposed ballot titles if they failed to adequately inform voters that activities authorized by a proposed measure remained illegal under preemptive federal law or that the proposed measure conflicted with federal law).

the county clerk until the time it is returned to the county clerk.” That means that the voter would be unable to track his or her own ballot and would have no way of knowing if it is received and counted by the county clerk’s office.²⁶ A provision in the proposed amendment that prevents them from knowing if their *own* votes are received and counted would likely give voters “serious ground for reflection.”

- ***Limitations on who may touch a ballot.*** Your proposed constitutional amendment prohibits anyone from touching, handling, or possessing an absentee ballot except for the voter, certain election workers, and postal workers. While your ballot title states that “ballot harvesting” and the “unauthorized possession” of absentee ballots are prohibited, the prohibitions contained in your proposal are much broader and should be reflected in the ballot title.
- **§ 9 Severability.** This section of your proposal states that the amendment shall “be construed in a manner that harmonizes the intent of the amendment with the federal constitution,” but that if a harmonic outcome is not possible, “then the offensive portion, section, or language shall be **repealed** and treated as through it was never a part of the amendment.” Please note that this language is inaccurate. The power of repeal belongs to the legislature, not the judiciary.²⁷ This section should be reworded.
- **Runoff elections.** Your proposed amendment states, “Under no circumstances may a request for an absentee ballot for a primary, general or special election be valid for a subsequent election that occurs after the requested primary, general, or special election.” It also states that voting in “a primary, general, or special election in this state ... shall not be conducted or completed using an internet, Bluetooth, or wireless connection.” It is not clear whether you intend this language to include runoff elections, but if you do, you may wish to clarify that intent.
- **Popular name length.** Your proposed popular name is quite long. It reads more like a second ballot title than a popular name. While the length of your proposed popular name does not appear to be so cumbersome as to be misleading, you may wish to shorten it.
- **Grammatical issues.** Your ballot title only uses commas. But because of the length and complexity of your ballot title, which includes multiple instances of a series within a series, the use of semicolons would provide greater clarity and promote readability. Additionally, random capitalization appears throughout the text of your proposed amendment, which does not appear to serve any purpose. You may wish to correct this.

²⁶ Although your proposed amendment allows qualified absentee voters to return their ballots via the U.S. Postal Service, multiple services offered by the U.S. Postal Service include “USPS Tracking” in their price. Thus, it is not clear whether an absentee voter could mail a ballot via the U.S. Postal Service without violating your proposed amendment.

²⁷ See BLACK’S LAW DICTIONARY 1553 (11th ed. 2019) (defining “repeal” as “abrogation of an existing law by express legislative act”).

Because of the issues identified above, my statutory duty is to reject your proposed popular name and ballot title, stating my reasons therefor, and to instruct you to “redesign” your proposed constitutional amendment, popular name, and ballot title.²⁸

Senior Assistant Attorney General Kelly Summerside prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", written over a horizontal line.

TIM GRIFFIN
Attorney General

RETRIEVED FROM DEMOCRACYDOCKET.COM

²⁸ A.C.A. § 7-9-107(e).



Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Ballot Initiatives (2)

Ryan Owsley <ryan.owsley@arkansasag.gov>

Wed, Dec 27, 2023 at 10:27 AM

To: "clint@TheLancasterLawFirm.com" <clint@thelancasterlawfirm.com>

Mr. Lancaster,

Per A.C.A. § 7-9-107(c), please find the attached file-marked copies of your proposed statewide measures. In accordance with A.C.A. § 7-9-107(d)(1), you will receive our response within ten business days from the date of the file mark.

Best regards,

Ryan

Ryan Owsley

Deputy Attorney General

Opinions & FOIA Division

OFFICE OF ATTORNEY GENERAL TIM GRIFFIN

323 Center Street, Suite 200

Little Rock, Arkansas 72201

(501) 682-2007 (Main)

(501) 682-1784 (Direct)

From: Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Sent: Tuesday, December 26, 2023 2:57 PM

To: Office of Attorney General <oag@arkansasag.gov>

Subject: Ballot Initiatives (2)

You don't often get email from clint@thelancasterlawfirm.com. [Learn why this is important](#)

[Quoted text hidden]

2 attachments

 **Filemarked BT Request 2023-132.pdf**
727K

 **Filemarked BT Request 2023-133.pdf**
458K

RETRIEVED FROM DEMOCRACYDOCKET.COM

Instructions to Canvassers and Signers

1. Under the Arkansas Constitution, citizens have the power to (a) initiate legislation by petition of 8% of the legal voters, (b) initiate constitutional amendments by petition of 10% of legal voters, or (c) order a referendum on 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 upon such 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. A signer must provide her or her printed name, date of birth, residence, city or town of residence, and date of signing. If, due to a disability, a petition signer needs help providing this information, another person may print the signer's information and that person must sign and print her or her name in the petition's margin.

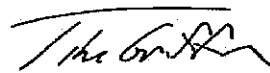
4. A canvasser must be both a citizen of the United States and a resident of the State of Arkansas.

5. Under A.C.A. § 7-9-103, a person commits a Class A misdemeanor, punishable by a fine of up to \$2,500 and confinement of up to one year in jail, if the person knowingly (a) prints a name, address, or birth date other than his or her own to a petition or (b) prints the date of signing for another person, unless the signer requires assistance due to disability and the person complies with § 7-9-103.

6. Under A.C.A. §§ 5-55-601 and 7-9-109, a person commits a Class D felony, punishable by a fine of up to \$10,000 and up to six years imprisonment, if the person:

- **Knowingly:**
 - Signs a name other than his or her name to a petition;
 - Signs his or her name more than once on a petition; or
 - Signs a petition when he or she is not legally entitled to do so;
- While acting as a canvasser, notary, sponsor, as defined under A.C.A. § 7-9-101, or as a sponsor's agent:
 - Signs a name other than his or her own to a petition;
 - 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;
 - Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;
 - Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;
 - 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
 - Knowingly misrepresents the purpose and effect of the petition or the measure for the purpose of causing a person to sign a petition;
- While acting as a canvasser, knowingly makes a false statement on a petition verification form;
- While acting as a sponsor, files a petition or a petition part with the official charged with verifying the signatures knowing that the petition or petition part contains one or more false or fraudulent signatures, unless the sponsor clearly strikes each false or fraudulent signature before filing;
- While acting as a canvasser, witnesses signatures on a petition part but knowingly allows another canvasser who did not witness all signatures on a petition part to execute a false verification affidavit with respect to that petition part; or
- While acting as a sponsor, sponsor's agent, or representative:
 - Knowingly pays a canvasser for petitioner signatures on a petition part not personally witnessed by that paid canvasser; or
 - Knowingly submits to the Secretary of State a petition part where the verifying canvasser has not witnessed each signature on that petition part.

7. Under A.C.A. § 7-9-601, a person commits a Class A misdemeanor, punishable by a fine of up to \$2,500 and up to one year in jail, if the person pays or offers to pay a person, or receives payment or agrees to receive payment, on a basis related to the number of signatures obtained on a statewide petition.



Tim Griffin
Attorney General of Arkansas

Revised 3/02/23

FILED

DEC 29 2023

**Arkansas
Secretary of State**

INITIATIVE PETITION

To the Honorable John Thurston, Secretary of State of the State of Arkansas. We, the undersigned registered voters of the State of Arkansas, respectfully propose the following amendment to the Constitution of the State, and by this, our petition, order that the same be submitted to the people of said state, to the end that the same may be adopted, enacted, or rejected by the vote of the registered voters of said state at the regular general election to be held on the 5TH day of NOVEMBER, 2024, and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature.

POPULAR NAME

An amendment to the Arkansas Constitution to set the time for absentee voting, create absentee voting procedures, determine the manner in which absentee ballots are counted or tabulated, and ensure that elections cannot be conducted in this state using an internet, Bluetooth, or wireless connection.

BALLOT TITLE

An amendment to the Arkansas Constitution that amends Amendment 50 to add additional sections effectuating a policy and practice in which absentee ballots may only be distributed within the thirty days prior to election day, limited to only registered voters who are unable to be present at the polls on election day because they are physically absent from the county in which they are registered to vote, or hospitalized, incarcerated, or in a long-term care facility within the county in which they are registered to vote; requiring the county clerk to distribute an absentee ballot only to a requesting and qualified voter; prohibiting absentee ballot harvesting by limiting possession of absentee ballots to the requesting voter, an individual assisting a disabled voter, the United States Postal Service, or a duly appointed and authorized election official; preventing the tracking of absentee ballots once they have been sent or provided to the voter unless the voter tracking his or her own ballot or verifying that his or her cast absentee ballot has been received by a duly authorized election official; protecting information about who has requested an absentee ballot; ensuring

that all absentee ballots are counted on election day before the early or election day votes are counted; prohibiting all elections in this state from being conducted using an internet, Bluetooth, or wireless connection; requiring that absentee ballots and absentee voting which does not strictly conform to the requirements of this amendment to not be counted; and directing the Arkansas General Assembly to allocate funding to effectuate and implement the terms of this amendment.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS AS AN AMENDMENT TO THE ARKANSAS CONSTITUTION AND NOT AN INITIATED BILL OR REFERENDUM

§ 1 Short Title

This amendment to the Arkansas Constitution shall be known as the “Arkansas Absentee Ballot and Absentee Voting Election Integrity and Security Amendment.”

§ 2 Effective Date

This amendment shall be effective on and after November 18, 2024.

§ 3 Definitions

- (a) “Absentee ballot” means any document or item, electronic, paper, or otherwise, that is intended to be used by a voter outside the interior of an official polling place established by the county board of election commissioners for early or election day voting to cast his or her vote selections with the intention that the votes marked on the ballot will be counted by an election official as an official vote.
- (b) “Absentee voting” means the marking, casting, or selection of votes on an official ballot outside the interior area of an official polling place established by the county clerk for early or election day voting with intent that the markings, castings, or selections on the ballot will be counted by an election official as an official vote or votes.

- (c) “Ballot Harvesting” means the gathering, handling, collection, distribution, or submission to the voter or an election official of absentee ballots by persons, corporations, or organizations who are not an election official authorized to distribute, collect, or possess absentee ballots, the voter possessing his or her own absentee ballot, a person assisting a disabled voter as set forth in this amendment, or an employee or agent of the United States Postal Service.
- (d) “Long Term Care Facility” means nursing homes, Skilled Nursing Facility, Intermediate Care Facility, retirement homes, residential care apartment complexes, or adult family homes that are licensed or certified by the state and listed as a long-term care facility by the Department of Human Services or its successor agency.

§ 4 Effect on Federal Law

This amendment shall not apply when its terms or language are superseded by federal law.

§ 5 Effect on Amendment 51, § 9(i)

The terms of this amendment shall not apply to Ark. Const. Amend. 51, § 9(i) or to any ballots requested, obtained, cast, canvassed, or counted pursuant to the federal Uniform Overseas Citizens Absentee Voting Act.

§ 6 Repealer

Any statute or Act of the Legislature that conflicts with the terms of this amendment are repealed as of the effective date of this amendment.

§ 7 Creation of Amendment 50, § 5 (or next sequentially number section after § 4)

This amendment shall create Amendment 50, § 5 and state:

- (a) **Privilege of Absentee Voting**

All qualified and registered voters shall have the right to suffrage on election day at the place designated for voting by the county board of election commissioners. Absentee voting in the state of Arkansas is not a right but a privilege. No person shall have the right to vote by absentee ballot in any state or federal election.

(b) Statement of Intent

Absentee ballots and absentee voting are extremely susceptible to fraud and manipulation because the sanctity of the act of voting occurs outside of the protections of the polling place. To combat absentee voting fraud, including, but not limited to, undue voter influence, ballot tampering, ballot harvesting, illegally marked absentee ballots, and illegally returned absentee ballots, the absentee balloting and absentee voting laws in this amendment shall be strictly construed, and all doubts resolved in favor of ensuring that votes cast on absentee ballots are not fraudulent. If an absentee vote or absentee ballot is cast and it does not strictly comply with the requirements of this amendment, then the absentee votes in question shall not be counted.

(c) Qualifications

Only those voters who are unable to be present at the polls on election day because they are physically absent from the county in which they are registered to vote, or hospitalized, incarcerated, or a resident of a long-term care facility within the county, in which they are registered to vote shall qualify for and utilize an absentee ballot.

(d) Absentee Voting Procedure

- (1)** Qualified and registered voters may request and vote an absentee ballot for themselves only and no other person.
- (2)** All qualified and registered voters desiring to vote by an absentee ballot shall request an absentee ballot, in writing, from the county

clerk, and, at the time of the request, the voter shall attest, under oath, as to his or her qualifications for an absentee ballot.

- (3) Applications for absentee ballots are limited to one absentee ballot per election and each application expires after the election for which the absentee ballot was requested. Under no circumstances may a request for an absentee ballot for a primary, general, or special election be valid for a subsequent election, including a runoff election, that occurs after the requested primary, general, or special election.
- (4) Absentee ballots shall only be sent or provided to the qualified voter who made the request.
- (5) Prior to issuing, delivering, or causing to be delivered an absentee ballot to a requesting and qualified voter, the county clerk shall verify that the requestor is a registered and eligible voter in the county in which the absentee ballot was requested.
- (6) No absentee ballot shall be sent or provided to a voter more than thirty (30) days prior to election day.
- (7) Only the qualifying and requesting voter may mark a vote selection on an absentee ballot. Additionally, absentee ballots shall only be touched, handled, or possessed by the qualifying voter who requested the absentee ballot, a county election commissioner, a county clerk or deputy county clerk, a duly appointed and authorized election worker, a member or employee of the State Board of Election Commissioners, or an employee or agent of the United States Postal Service who is transporting the absentee ballot in a sealed envelope on behalf of the county clerk or the absentee voter.
 - (i) **Exception.** A person may help or otherwise assist a qualifying absentee voter with a disability, as that term is defined by state or federal law, mark vote selections on an absentee ballot and return the absentee ballot to the county clerk's office by placing the voted ballot into the custody of the United States Postal Service. The person

assisting the voter shall provide in the same envelope as the returned absentee ballot a sworn statement that does not reveal the voter's selections attesting to the accuracy in which he or she assisted the voter, an assurance to not reveal the voter's selections except at the voter's instruction, and a legible photocopy or image of his or her identification. Such identification shall be consistent with the identification required by Article 3, Section 1. The absentee ballot shall only be counted after the county clerk has, using the identification provided, verified that the assisting individual is a natural person and that the identification is not fraudulent or for a fraudulent or fictional person.

- (8) Absentee ballots shall only be provided to or returned by the requesting voter in person at the physical office of the county clerk or by use of the United States Postal Service.
- (9) Except for a voter tracking his or her own ballot or verifying that his or her cast absentee ballot has been received by a duly authorized election official, the locations of absentee ballots shall not be tracked by any person or entity by any method from the time the ballot leaves the possession of the county clerk until the time it is returned to the county clerk.
- (10) Any information about who has requested or returned an absentee ballot shall be considered confidential, not a public record subject to inspection, and exempt from disclosure from the start of the absentee voting period until the polls close on election day.
- (11) All absentee ballots shall conform to the same security requirements for early or election day voting and ballots.
- (12) The requirements of this section are mandatory and the failure to strictly follow any individual requirement shall result in the ballot not being counted. There is no manner or method to cure a ballot that does not strictly conform to the requirements of this section.

(e) Counting of Absentee Ballots

- (1) Absentee ballots may not be opened, canvassed, or counted before the time the polls open on election day. Instead, the opening, canvassing, and counting of absentee ballots may begin at the time the polls open on election day and all absentee ballots shall be counted prior to the close of the polls on election day.
- (2) The results of the absentee ballot races, the count of votes, and any other information related to canvassed or counted absentee ballots shall not be disclosed until the polls close on election day.
- (3) Early voting and election day votes may not be counted or tabulated prior to the end of the tabulation and public posting of absentee voting.
- (4) No absentee ballots may be counted after early voting or election day vote counting has begun.
- (5) In the event that a large number of absentee ballots were cast in an election such that it is impossible to count all the absentee ballots before the close of the polls, then all ballots which were in the canvassing and counting process prior to the close of the polls shall immediately continue to be counted before any early voting or election day votes are tabulated. However, no newly received or additional ballots shall be added to the number of ballots being canvassed or tabulated. If any absentee ballots are not physically present and in the canvassing or tabulation process by the close of the polls on election day, then those ballots shall not be counted.

(f) Prohibited Election Practices

- (1) In a public election in this state, the selecting of votes for a candidate or issue, casting of ballots, tabulation of votes on a ballot, or tabulations pertaining to ballots shall not be conducted or completed using an internet, Bluetooth, or wireless connection.

§ 8 Legislative Implementation, Self-Executing

This amendment shall be self-executing, and all its provisions shall be treated as mandatory. No legislation shall be enacted, nor rules promulgated to restrict, hamper, or impair the intent of this amendment. The General Assembly may enact legislation to effectuate the terms of this amendment.

§ 9 Appropriations

The General Assembly shall make such appropriations as may be required for the effectuation of this amendment.

§ 10 Severability

If any provision of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the amendment which can be given effect without the invalid provision or application, and to this end the provisions of this amendment are declared to be severable.

§ 11 No Amendments

Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment.

SIGNATURES FOR _____

| | Signature | Printed Name | Date of Birth | Residence (address) | City or Town of Residence | County | Date of Signing |
|-----|-----------|--------------|---------------|---------------------|---------------------------|--------|-----------------|
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 4. | | | | | | | |
| 5. | | | | | | | |
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| 7 | | | | | | | |
| 8. | | | | | | | |
| 9. | | | | | | | |
| 10. | | | | | | | |

On this ____ day of _____, 2024, before me, the undersigned Notary Public, personally appeared _____ known well to me or satisfactorily proven by provided

identification documents, to be the person described in the foregoing Canvasser Affidavit and acknowledged that he or she executed the same in capacity of a Canvasser for the purpose of fulfilling legal requirements of a Canvasser in the State of Arkansas; and that I personally witnessed the signature of the Canvasser.

Signature of Notary _____

My Commission Expires: _____

Notary's County of Residence: _____

State of Arkansas, County of _____

I, _____, being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town of _____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Current residence _____

Indicate one: _____ Paid Canvasser _____ Volunteer/Unpaid Canvasser

PLACE SEAL ABOVE

Instructions to Canvassers and Signers

1. Under the Arkansas Constitution, citizens have the power to (a) initiate legislation by petition of 8% of the legal voters, (b) initiate constitutional amendments by petition of 10% of legal voters, or (c) order a referendum on 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 upon such 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. A signer must provide her or her printed name, date of birth, residence, city or town of residence, and date of signing. If, due to a disability, a petition signer needs help providing this information, another person may print the signer's information and that person must sign and print her or her name in the petition's margin.

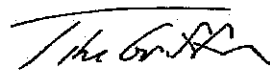
4. A canvasser must be both a citizen of the United States and a resident of the State of Arkansas.

5. Under A.C.A. § 7-9-103, a person commits a Class A misdemeanor, punishable by a fine of up to \$2,500 and confinement of up to one year in jail, if the person knowingly (a) prints a name, address, or birth date other than his or her own to a petition or (b) prints the date of signing for another person, unless the signer requires assistance due to disability and the person complies with § 7-9-103.

6. Under A.C.A. §§ 5-55-601 and 7-9-109, a person commits a Class D felony, punishable by a fine of up to \$10,000 and up to six years imprisonment, if the person:

- **Knowingly:**
 - Signs a name other than his or her name to a petition;
 - Signs his or her name more than once on a petition; or
 - Signs a petition when he or she is not legally entitled to do so;
- **While acting as a canvasser, notary, sponsor, as defined under A.C.A. § 7-9-101, or as a sponsor's agent:**
 - Signs a name other than his or her own to a petition;
 - 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;
 - Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;
 - Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;
 - 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
 - Knowingly misrepresents the purpose and effect of the petition or the measure for the purpose of causing a person to sign a petition;
- **While acting as a canvasser, knowingly makes a false statement on a petition verification form;**
- **While acting as a sponsor, files a petition or a petition part with the official charged with verifying the signatures knowing that the petition or petition part contains one or more false or fraudulent signatures, unless the sponsor clearly strikes each false or fraudulent signature before filing;**
- **While acting as a canvasser, witnesses signatures on a petition part but knowingly allows another canvasser who did not witness all signatures on a petition part to execute a false verification affidavit with respect to that petition part; or**
- **While acting as a sponsor, sponsor's agent, or representative:**
 - Knowingly pays a canvasser for petitioner signatures on a petition part not personally witnessed by that paid canvasser; or
 - Knowingly submits to the Secretary of State a petition part where the verifying canvasser has not witnessed each signature on that petition part.

7. Under A.C.A. § 7-9-601, a person commits a Class A misdemeanor, punishable by a fine of up to \$2,500 and up to one year in jail, if the person pays or offers to pay a person, or receives payment or agrees to receive payment, on a basis related to the number of signatures obtained on a statewide petition.



Tim Griffin
Attorney General of Arkansas

Revised 3/02/23

FILED

DEC 29 2023

**Arkansas
Secretary of State**

INITIATIVE PETITION

To the Honorable John Thurston, Secretary of State of the State of Arkansas. We, the undersigned registered voters of the State of Arkansas, respectfully propose the following amendment to the Constitution of the State, and by this, our petition, order that the same be submitted to the people of said state, to the end that the same may be adopted, enacted, or rejected by the vote of the registered voters of said state at the regular general election to be held on the 5TH day of NOVEMBER, 2024, and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature.

POPULAR NAME

An amendment to the Arkansas Constitution to enhance the security of public elections, require the use of secure hand marked paper ballots, permit disabled voters to continue using voting machines, regulate the counting and verification of votes cast during an election, preserve the current method of selecting candidates, and ensure that elections cannot be conducted in this State using an internet, Bluetooth, or wireless connections.

BALLOT TITLE

An amendment to the Arkansas Constitution that repeals or amends parts of Amendment 50, § 2 and Amendment 50, § 4 to remove the language that permits all elections to be conducted by voting machines and add to and modify the language of Amendment 50 which effectuates a policy and practice that, except for only those voters with disabilities who may continue to use a voting machine, all elections in this State must be conducted with secure paper ballots containing inherent security features designed to prevent unauthorized duplication; with vote selections marked by hand using permanent ink placed directly on the ballot by the voter in a manner which continues to both insure and ensure the secrecy of the votes cast on the ballot and the anonymity of the voter casting the ballot; requiring that no early or election day votes be counted or tabulated before the close of the polls on election day; requiring that the certification of all elections be based on a hand count of the votes

performed and verified by human intelligence; requiring that all elections for public electable positions in this State be conducted by voters selecting only one candidate per race with the winner (including in municipal elections) determined by which candidate receives the most votes after first obtaining more than fifty percent (50%) of all votes cast after all lawful votes have been counted; ensuring that elections cannot be conducted in this State using an internet, Bluetooth, or wireless connection; and directing the Arkansas General Assembly to allocate funding to effectuate and implement the terms of this amendment.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS AS AN AMENDMENT TO THE ARKANSAS CONSTITUTION AND NOT AN INITIATED BILL OR REFERENDUM

§ 1 Short Title

This amendment to the Arkansas Constitution shall be known as the “Arkansas Election Integrity Restoration and Preservation Amendment.”

§ 2 Effective Date

This amendment shall be effective on and after November 18, 2024.

§ 3 Definitions

- (a) “Disabled Voter” means a voter with a disability as that term is defined by the Help America Vote Act, the Americans with Disabilities Act of 1990, or the Arkansas Civil Rights Act of 1993 and includes those voters who are blind or visually impaired.
- (b) “Hand-Marked” means the physical touching of a secure paper ballot by a voter with a permanent ink pen held by the voter’s hand and creating a mark on the secure paper ballot for his or her vote selections by manipulating the permanent ink pen with the voter’s hand to create the mark on the ballot.

- (c) “Help America Vote Act” means the federal act of the same name passed by the United States Congress and signed into law by President George W. Bush in 2002.
- (d) “Human Intelligence” means the mental processes of a human being consisting of human thought as well as the physical and chemical processes of the human brain instead of the thought or process of a computer or an artificial intelligence.
- (e) “Inherent Security Features” means watermarks or other features on paper that is made up of unique or complex patterns, holograms, and/or florescent ink.
- (f) “Secure Paper Ballot” means a ballot used for voting which contains inherent security features designed to prevent unauthorized duplication or counterfeiting.

§ 4 Effect on Federal Law

This amendment shall not apply when its terms or language are superseded by federal law.

§ 5 Effect on Amendment 81

This amendment shall have no effect on Amendment 81 and the terms of this amendment shall be construed and implemented in a manner that harmonizes the terms of this amendment with those contained in Amendment 81.

§ 6 Effect on Amendment 50, § 2

This amendment shall amend Amendment 50, § 2 to now read:

Except for disabled voters who choose to use a voting machine, all public elections by the people in this State shall be by a secure paper ballot containing inherent security features with vote selections hand-marked by the voter using permanent ink in such

a manner that both ensures and insures the anonymity of the voter and the secrecy of individual votes.

§ 7 Effect on Amendment 50, § 4

This amendment shall amend Amendment 50, § 4 to now read:

Voting machines may only be used by disabled voters in compliance with the Help America Vote Act and any voter who qualifies to use a voting machine pursuant to that Act may also use a voting machine in any public election in this State. However, no voter shall be forced, mandated, or otherwise compelled to use a voting machine against his or her will.

§ 8 Creation of Amendment 50, § 5

This amendment shall create Amendment 50, § 5 and state:

Except for votes cast on absentee ballots, no votes for any election may be counted or otherwise tabulated until after the polls close on the final day of the election and certification of all elections shall be based on a hand count of the votes performed and verified by human intelligence.

§ 9 Creation of Amendment 50, § 6

This amendment shall create Amendment 50, § 6 and state:

- (a) All elections for public electable positions in city, county, or State government shall be conducted with voters selecting only one candidate for each race.
- (b) The winning candidate shall be the one who received the most votes after first obtaining more than fifty percent (50%) of all votes cast after all lawful votes have been counted. If no candidate receives more than fifty percent (50%) of all votes cast after all lawful votes have been counted, then the two candidates who received the most votes will run against each other in a special runoff election conducted according to the

time, manner, and places set by the General Assembly. However, all runoff elections must comply with the terms of this amendment.

- (c) If more than one candidate is selected in a race, then it shall be declared to be an overvote and no vote for the overvoted candidate shall be counted from the ballot containing the overvote.

§ 10 Creation of Amendment 50, § 7

This amendment shall create Amendment 50, § 7 and state:

(a) Prohibited Election Practices

- (1) In a public election in this State the selecting of votes, casting of ballots, tabulation of votes on a ballot, or tabulations pertaining to ballots shall not be conducted or completed using an internet, Bluetooth, or wireless connection.

§ 11 Legislative Implementation, Self-Executing

This amendment shall be self-executing, and all its provisions shall be treated as mandatory. No legislation shall be enacted, nor rules promulgated to restrict, hamper, or impair the intent of this amendment. The General Assembly shall enact legislation to effectuate the terms of this amendment and allocate funding to the appropriate state governmental agency and county board of election commissioners to facilitate, implement, and carry out this amendment.

§ 12 Appropriations

The General Assembly shall make such appropriations as may be required for the effectuation of this amendment.

§ 13 Severability

If any provision of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the amendment which can be given effect without the invalid provision or application, and to this end the provisions of this amendment are declared to be severable.

§ 14 No Amendments

Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment.

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SIGNATURES FOR _____

| | Signature | Printed Name | Date of Birth | Residence (address) | City or Town of Residence | County | Date of Signing |
|-----|-----------|--------------|---------------|---------------------|---------------------------|--------|-----------------|
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 4. | | | | | | | |
| 5. | | | | | | | |
| 6. | | | | | | | |
| 7 | | | | | | | |
| 8. | | | | | | | |
| 9. | | | | | | | |
| 10. | | | | | | | |

On this ____ day of _____, 2024, before me, the undersigned Notary Public, personally appeared _____ known well to me or satisfactorily proven by provided

identification documents, to be the person described in the foregoing Canvasser Affidavit and acknowledged that he or she executed the same in capacity of a Canvasser for the purpose of fulfilling legal requirements of a Canvasser in the State of Arkansas; and that I personally witnessed the signature of the Canvasser.

Signature of Notary _____

My Commission Expires: _____

Notary's County of Residence: _____

State of Arkansas, County of _____
I, _____, being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town of _____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Current residence _____

Indicate one: _____ Paid Canvasser _____ Volunteer/Unpaid Canvasser

PLACE SEAL ABOVE



Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Certification to Sec of State

1 message

Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Tue, Jan 2, 2024 at 1:38 PM

To: Chris Madison <Chris.Madison@arkansas.gov>

Chris,

First off, congratulations on the promotion.

Second, I was hoping the SBEC had certified the ballot name and popular title to the Secretary of State. I have a lot of signatures to collect in a very short period of time. We submitted the measures to the Secretary in compliance with the statute that says we have to do so before collecting signatures. However, I would also like to get the SBEC certification going as well.

Can you tell me what the timeline is for that?

--

Clinton W. Lancaster,
Partner, Attorney at Law

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STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane, Suite 122 South
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996

Secretary of State
John Thurston
Chairman

Sharon Brooks
Jamie Clemmer
Bilenda Harris-Ritter
William Luther
J. Harmon Smith
Johnathan Williams
Commissioners



Chris Madison
Director

Jon Davidson
Educational Services Manager

Charlie Morris
Election Administration Supervisor

Tena Arnold
Business Operations Manager

Lancaster Law Firm, PLLC
Attn: Mr. Clinton Lancaster
P.O. Box 1295
Benton, Arkansas, 72018

Via Email: clint@thelancasterlawfirm.com

Re: Submittal of two Election Related Ballot Measures as Initiatives for amendment to the Arkansas Constitution.

Mr. Lancaster,

The State Board of Election Commissioners are in receipt of your emailed submissions proposing two election related ballot initiatives. Your email was received on December 27, 2023. Your enclosure letter and two proposed initiative submissions have been reviewed by the State Board.

As you are aware, under our state constitution, the Board's authority to certify ballot titles is triggered **only when** the sponsor of the underlying proposal has simultaneously submitted his signed petitions to the Secretary of State for signature counting and verification. Article 5, section 1 requires that "[a]t the time of filing petitions the exact title to be used on the ballot shall by the petitioners be submitted with the petition." (Emphases added.) When that happens, "the State Board of Election Commissioners...shall certify such title to the Secretary of State, to be placed upon the ballot...."

By the phrase "at the time of filing petitions," the constitution is referring to a provision that occurs near the beginning of article 5, section 1: "**Initiative petitions for state-wide measures shall be filed** with the Secretary of State not less than four months before the election at which they are to be voted upon...." (Emphases added.)

State Board staff conferred with Staff for the Arkansas Secretary of State and found that there has been no submission of signed petitions to the Secretary for signature verification for your two proposals. As you are also aware, under Ark. Code Ann. § 7-9-107(a), the General Assembly prohibits sponsors from gathering signatures on proposed measures until the ballot titles and popular names have been certified by the Arkansas Attorney General's Office.

Based on these facts and series of events, the Board does not have the authority to act on your proposal to certify the "exact title" to the Secretary of State. As such, the State Board is unable to "certify such title to the Secretary of State."

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Richard Chris Madison", written over a horizontal line.

Richard Chris Madison
Director – State Board of Election Commissioners

Cc: file

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Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Ballot Title Submissions for the November 2024 General Election

Clinton W. Lancaster <clint@thelancasterlawfirm.com>



Thu, Jan 4, 2024 at 2:26 PM

To: Chris Madison <Chris.Madison@arkansas.gov>

Director Madison,

As to a petition meaning both the text and the signatures, the Arkansas Supreme Court has held differently.

.

We overrule  *Finn v. McCuen*, 303 Ark. 418, 798 S.W.2d 34 (1990), and  *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986), to the extent that they prevent a review of the text of a popular name and ballot title and the validity of the proposed measure prefatory to the gathering of signatures.

Stilley v. Priest, 341 Ark. 329, 337, 16 S.W.3d 251, 256–57 (2000).

.

.

In *Stilley*, the court specifically took up the issue and said that a petition is two parts and can be reviewed separately. In fact, the court held that multiple reviews of a ballot measure by the Secretary and the Supreme Court would promote the laudable goals of the initiative process. As such, I am asking that you certify the portions of ballot measures I submitted to the Secretary of State or send me correspondence that the Board refuses to do so.

Finally, I am well aware of the statute regarding the AG. However, it is a patent violation of Art 5, Sec. 1 and that is an issue for me, the AG, and a court to deal with in due course.

I attached the case for your review. Time is of the essence for my clients so I appreciate your prompt attention to this matter.

--

Clinton W. Lancaster,
Partner, Attorney at Law

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reply email or by calling (501) 776-2224.

[Quoted text hidden]

 **Stilley v Priest.pdf**
255K

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Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Ballot Measures

10 messages

Clinton W. Lancaster <clint@thelancasterlawfirm.com>
To: electionsemail@sos.arkansas.gov

Fri, Dec 29, 2023 at 4:25 PM

Good afternoon,

Pursuant to Ark. Code Ann. 7-9-104(c)(2), a sponsor must file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

We are ready to begin obtaining signatures.

Attached, you will find two ballot measures submitted by me on behalf of Restore Election Integrity Arkansas, a ballot question committee, and Col. Conrad Reynolds who are acting as its sponsors.

--

Clinton W. Lancaster,
Partner, Attorney at Law

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2 attachments **231227_Paper Ballot SBEC-SOS Packet_REIA_cwl.pdf**
197K **231227_Abentee Voting SBEC-SOS Packet_REIA_cwl.pdf**
210K

Josh Bridges <josh.bridges@sos.arkansas.gov>

Tue, Jan 2, 2024 at 3:16 PM

To: "Clinton W. Lancaster" <clint@thelancasterlawfirm.com>, ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Good Afternoon,

Please see the attached file stamped copies of the petition parts that were sent to our office on December 29, 2023.

I am also attaching a sponsor contact form that we request be completed and sent back for our records. Any correspondence will be sent to the person/entity on this form.

Thanks,

Josh Bridges

Arkansas Secretary of State

Assistant Director of Elections

Phone: 501-682-3419

Cell: 501-414-1656

Fax: 501-682-3408

E-mail: josh.bridges@sos.arkansas.gov

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From: Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Sent: Friday, December 29, 2023 4:25 PM

To: ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Subject: Ballot Measures

External Message

[Quoted text hidden]

3 attachments



Absentee Ballot Amendment - Sample Petition Part 12-29-2023.pdf

324K

 **Election Integrity Amendment - Sample Petition Part 12-29-2023.pdf**
239K

 **I&R Sponsor Contact Form.pdf**
284K

Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Wed, Jan 3, 2024 at 10:09 AM

To: Jennifer Lancaster <jennifer@thelancasterlawfirm.com>, [REDACTED]

[REDACTED] Kelly McElhaney <kelly@thelancasterlawfirm.com>, [REDACTED]
[REDACTED]

--

Clinton W. Lancaster,
Partner, Attorney at Law

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[Quoted text hidden]

3 attachments
 **Absentee Ballot Amendment - Sample Petition Part 12-29-2023.pdf**
324K

 **Election Integrity Amendment - Sample Petition Part 12-29-2023.pdf**
239K

 **I&R Sponsor Contact Form.pdf**
284K

Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Wed, Jan 3, 2024 at 10:35 AM

To: Josh Bridges <josh.bridges@sos.arkansas.gov>

Cc: ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Bcc: Jennifer Lancaster <jennifer@thelancasterlawfirm.com>, [REDACTED]

[REDACTED] Kelly McElhaney <kelly@thelancasterlawfirm.com>, [REDACTED]
[REDACTED]

Josh,

I hope you had a great Christmas and New Year. Attached are the sponsor forms for each measure. We would like the Secretary to certify or reject the ballot titles and popular names of each measure consistent with Art. 5, Sec. 1. I understand that there is a statute that says the Attorney General has to approve it, but I don't consider that statute to be constitutional. If the Secretary is not comfortable certifying the measures, please reject them.

If the Secretary approves the ballot titles and popular names, we will submit the measures with signatures by the July deadline.

Thanks

--

Clinton W. Lancaster,
Partner, Attorney at Law

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[Quoted text hidden]

2 attachments



PAPER BALLOT SPONSOR FORM.pdf
184K



AB SPONSOR FORM.pdf
333K

Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Thu, Jan 4, 2024 at 2:38 PM

To: Josh Bridges <josh.bridges@sos.arkansas.gov>, Michael Harry <michael.harry@sos.arkansas.gov>

Cc: ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Josh,

Can you confirm that your office received my request for the Secretary to certify or reject the ballot titles and popular names of our measures? If so, when can we expect a response?

--

Clinton W. Lancaster,
Partner, Attorney at Law

LANCASTER & LANCASTER

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clint@TheLancasterLawFirm.com

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[Quoted text hidden]

Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>

Thu, Jan 4, 2024 at 3:00 PM

To: "Clinton W. Lancaster" <clint@thelancasterlawfirm.com>, Josh Bridges <josh.bridges@sos.arkansas.gov>, Michael Harry <michael.harry@sos.arkansas.gov>

Cc: ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Mr. Lancaster:

We have received your request.

Leslie Bellamy

Director of Elections

Arkansas Secretary of State Elections Division

500 Woodlane, Suite 26

Little Rock, AR 72201

501-683-3721-desk

leslie.bellamy@sos.arkansas.gov



From: Clinton W. Lancaster <clint@thelancasterlawfirm.com>
Sent: Thursday, January 4, 2024 2:39 PM
To: Josh Bridges <josh.bridges@sos.arkansas.gov>; Michael Harry <michael.harry@sos.arkansas.gov>
Cc: ElectionsEMail <ElectionsEMail@sos.arkansas.gov>
Subject: Re: Ballot Measures

External Message

[Quoted text hidden]

Clinton W. Lancaster <clint@thelancasterlawfirm.com> Fri, Jan 5, 2024 at 9:53 AM
To: Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>
Cc: Josh Bridges <josh.bridges@sos.arkansas.gov>, Michael Harry <michael.harry@sos.arkansas.gov>, ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Thank you. Do you have a timeline of when we can expect to hear back from the Secretary?

--
Clinton W. Lancaster,
Partner, Attorney at Law

LANCASTER & LANCASTER
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clint@TheLancasterLawFirm.com
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[Quoted text hidden]

Josh Bridges <josh.bridges@sos.arkansas.gov>

Fri, Jan 5, 2024 at 10:48 AM

To: "Clinton W. Lancaster" <clint@thelancasterlawfirm.com>, Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>
Cc: Michael Harry <michael.harry@sos.arkansas.gov>, ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Mr. Lancaster,

We do not have a timeline on a response. We will send it as soon as it becomes available.

Thanks,

Josh Bridges

Arkansas Secretary of State

Assistant Director of Elections

Phone: 501-682-3419

Cell: 501-414-1656

Fax: 501-682-3408

E-mail: josh.bridges@sos.arkansas.gov

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From: Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Sent: Friday, January 5, 2024 9:54 AM

To: Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>

Cc: Josh Bridges <josh.bridges@sos.arkansas.gov>; Michael Harry <michael.harry@sos.arkansas.gov>; ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

Subject: Re: Ballot Measures

External Message

Thank you. Do you have a timeline of when we can expect to hear back from the Secretary?

--

Clinton W. Lancaster,
Partner, Attorney at Law

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[Redacted]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Redacted]

[Quoted text hidden]

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Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Fri, Jan 5, 2024 at 10:51 AM

To: Josh Bridges <josh.bridges@sos.arkansas.gov>

Cc: Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>, Michael Harry <michael.harry@sos.arkansas.gov>, ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

How long, on average in the past, has it taken the Secretary to respond?

--

Clinton W. Lancaster,
Partner, Attorney at Law

**LANCASTER & LANCASTER
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[Quoted text hidden]

Josh Bridges <josh.bridges@sos.arkansas.gov>

Fri, Jan 5, 2024 at 11:07 AM

To: "Clinton W. Lancaster" <clint@thelancasterlawfirm.com>

Cc: Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>, Michael Harry <michael.harry@sos.arkansas.gov>, ElectionsEMail <ElectionsEMail@sos.arkansas.gov>

We do not have that information.

Rest assured, you will be the first to receive the response from the Secretary.

Josh Bridges

Arkansas Secretary of State

Assistant Director of Elections

Phone: 501-682-3419

Cell: 501-414-1656

Fax: 501-682-3408

E-mail: josh.bridges@sos.arkansas.gov

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From: Clinton W. Lancaster <clint@thelancasterlawfirm.com>
Sent: Friday, January 5, 2024 10:52 AM
To: Josh Bridges <josh.bridges@sos.arkansas.gov>
Cc: Leslie Bellamy <leslie.bellamy@sos.arkansas.gov>; Michael Harry <michael.harry@sos.arkansas.gov>; ElectionsEMail <ElectionsEMail@sos.arkansas.gov>
Subject: Re: Ballot Measures

External Message

How long, on average in the past, has it taken the Secretary to respond?

--
Clinton W. Lancaster,
Partner, Attorney at Law

LANCASTER & LANCASTER
LAW FIRM, PLLC

clint@TheLancasterLawFirm.com
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[Redacted]

[Quoted text hidden]



JOHN THURSTON

ARKANSAS SECRETARY OF STATE

January 8, 2024

Via Email: clint@thelancasterlawfirm.com

Attn: Clinton Lancaster
Attorney at Law
Lancaster Law Firm, PLLC
Benton, Arkansas 72018

Re: Proposed Ballot Measures Submitted to the Secretary of State

Mr. Lancaster:

The Secretary of State's office has received your proposed ballot measures entitled Absentee Ballot Amendment and Election Integrity Amendment. Your email was received and file marked by our office on December 29, 2023.

You have requested that I either certify or reject the proposed ballot titles. There is no provision in the Constitution or in Arkansas Code that gives the Secretary of State the authority to either certify or reject proposed ballot titles.

Therefore, as Secretary of State, I do not have the Constitutional or statutory authority to comply with your request.

Sincerely,

A handwritten signature in cursive script that reads "John Thurston".

Hon. John Thurston
Arkansas Secretary of State

LANCASTER LAW FIRM, PLLC

January 7, 2024

John Thurston
ARKANSAS SECRETARY OF STATE

Josh Bridges
ASSISTANT DIRECTOR OF ELECTIONS
josh.bridges@sos.arkansas.gov

BY EMAIL ONLY

**RE: REQUEST TO CERTIFY THE SUFFICIENCY OF BALLOT TITLES AND
POPULAR NAMES**

**ABSENTEE VOTING AMENDMENT
PAPER BALLOT AMENDMENT**

Dear Mr. Bridges:

It seems like we are having a semantics issue or, perhaps, the fine attorneys at the Secretary's office are misunderstanding or overlooking some case law. First, let's start with the fact that the Secretary's office has a long history of "certifying" the sufficiency of a petition. This is constitutional.

Sufficiency. The sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the State, which shall have original and exclusive jurisdiction over all such causes.

Ark. Const. Art. 5, § 1.

The Arkansas Supreme Court has held that a petition under Art. 5, § 1 is the signatures or the text either separately or combined. The court specifically permits both the Secretary and the Supreme Court to pass on the legal sufficiency of the ballot title and popular name prior to submitting or even gathering signatures. The court even expressed its approval of the expeditious nature of the multi-instance review process. The relevant text from the case is below.

We first observe that while Art. 5, § 1 does contemplate filing the initiative petition with the requisite signatures with the Secretary of State for a sufficiency determination, **at no point does it preclude an earlier review of the text of the popular name and ballot title or the validity of the proposed amendment.**

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An early resolution of a contest to the content of a popular name and ballot title and the validity of the initiative would certainly facilitate the process for legislative enactments by the people.

Stilley v. Priest, 341 Ark. 329, 334, 16 S.W.3d 251, 254 (2000) (emphasis added).

It may well be that our decision today will result in two reviews of some petitions, the first dealing with the text of the popular name and ballot title and the validity of the proposed amendment, and the second occurring after certification of the petition's signatures.

Stilley v. Priest, 341 Ark. 329, 337, 16 S.W.3d 251, 256 (2000) (emphasis added).

Art. 5, § 1 does provide for a determination of the legal sufficiency of the signatures by the Secretary of State subject to this court's review but at no point does it foreclose a prior review of the legal sufficiency of the proposed initiative's text, including the popular name and ballot title.

Moreover, Art. 5, § 1 clearly uses the term “petition” at one point to refer to the proposed initiative prior to filing when it states that a “petition” may be circulated in “parts” for the gathering of signatures.

Stilley v. Priest, 341 Ark. 329, 337, 16 S.W.3d 251, 256 (2000) (emphasis added).

There is also a precedent for what I am asking the secretary to do:

On August 31, 1999, respondent Sharon Priest, as Secretary of State also approved and certified as sufficient the popular name and ballot title for the ballot.

Stilley v. Priest, 341 Ark. 329, 331, 16 S.W.3d 251, 253 (2000).

In conclusion, the Secretary has the clear, constitutional authority to certify the sufficiency of the ballot title and popular name, which is precisely what I am requesting that he do. As I recently said on the Dave Elswick show, every day that passes makes it harder and harder for our team to collect the signatures we need for these measures to be on the ballot in November. This consequentially means that every day the Secretary does not act on our measures (whether intentional or otherwise), he is either actively or passively impeding a constitutional and democratic process reserved to the people.

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While I am not a political consultant to the Secretary and he has, unfortunately, stopped speaking to me over our disputes about election integrity, I continue to express my support for his campaign for the Treasurer's office. I take this opportunity to point out that, according to a Rasmussen poll conducted within the past few months, these ballot measures are very popular with a majority of his constituents and voting base.

The popularity of these measures with his voting base and their desire to see them on the ballot may have a value for his campaign and hopefully impresses upon the Secretary of the heightened need for his expeditious review of the sufficiency of the ballot title and popular name. Thank you for your time and I look forward to hearing from you soon.

Sincerely,



Clinton W. Lancaster
Attorney at Law

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JOHN THURSTON

ARKANSAS SECRETARY OF STATE

January 8, 2024

Via Email: clint@thelancasterlawfirm.com

Attn: Clinton Lancaster
Attorney at Law
Lancaster Law Firm, PLLC
Benton, Arkansas 72018

Re: Proposed Ballot Measures Submitted to the Secretary of State

Mr. Lancaster:

The Secretary of State's office has received your response to our declining to comply with your request for certification or rejection of proposed ballot titles.

You rely on the case of *Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000) for your belief that the Secretary of State has authority to certify or reject proposed ballot titles. However, this belief is misplaced. The decision in *Stilley* was based on the process created by Act 877 of 1999 and whether or not it complied with provisions of the Constitution. It is important to note that Act 877 of 1999 was repealed by Act 1413 of 2013. The process described in Act 877 of 1999 is no longer in affect.

Therefore, as previously stated, the Secretary of State does not have authority to comply with your request.

Sincerely,

A handwritten signature in cursive script that reads "John Thurston".
Hon. John Thurston
Arkansas Secretary of State