



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-033

May 21, 2025

David A. Couch
5420 Kavanaugh Boulevard, Suite 7530
Little Rock, Arkansas 72707

Dear Mr. Couch:

I am writing in response to your request, made under A.C.A. § 7-9-107, that I certify the popular name and ballot title for a proposed constitutional amendment. In Opinion Nos. 2025-018, 2025-021, and 2025-026, I rejected prior versions of your proposed initiated amendment to the Arkansas Constitution. You have now revised the language of your proposal and submitted it for certification.

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

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

Popular Name

AN AMENDMENT CONCERNING CONSTITUTIONAL AMENDMENTS,
INITIATED ACTS, AND REFERENDUM

Ballot Title

This is a proposed change to the Arkansas Constitution. The General Assembly (state lawmakers) cannot change the Constitution by themselves. Before a statewide petition can be circulated, it must be sent to the Attorney General. The Attorney General will either approve the title, rewrite it, or reject it. If it is rewritten or rejected, that decision can be appealed to the Arkansas Supreme Court. The Secretary of State will give the petition a name. The Secretary of State must also publish a notice that explains how people can challenge the name or title. Any challenge must be made within 45 days. No other challenges will be allowed after that time. For referendums, state lawmakers will decide the name and title. Canvassers must swear that to the best of their knowledge each signature was made by a legal voter who signed in their presence. If a bill has an emergency clause, the

vote on that clause must happen at least 24 hours after the bill passes. Only the people, not state lawmakers, can propose a change to Article 5, Section 1 of the Constitution. Any new law that effects the initiative or referendum process must be approved by voters at the next general election. Any state law that conflicts with this amendment will not be valid. If part of the amendment is found to be invalid, the rest will still be valid if able to stand on its own.

2. Rules governing my review. In Opinion No. 2025-018, issued in response to your previous request for review and certification, I described the rules and legal standards that govern my review of popular names and ballot titles. And in Opinion No. 2025-026, I explained a new requirement imposed by Act 602 of 2025, which prohibits the Attorney General from certifying “a proposed ballot title with a reading level above eighth grade.”¹ I rely on the same rules and legal standards outlined in those opinions and incorporate them here by reference.

3. Application. Having reviewed the text of your proposed constitutional amendment, as well as your proposed popular name and ballot title, my statutory duty at this stage is to substitute and certify the popular name and ballot title indicated below. In Opinion No. 2025-026, I explained that I could not approve your ballot title because it ranked at grade level 12.2 on the Flesch-Kincaid Grade Level formula. I also identified two other minor issues: a grammatical error in the proposal’s text and the proposal’s failure to mention any standards upon which a popular name could be challenged. You have now corrected both of these issues, and you have rewritten your ballot title so that it ranks at an 8.5 on the Flesch-Kincaid Grade Level formula. With regard to your proposed ballot title, I have made several minor changes to ensure that the ballot title clearly and accurately sets forth the purpose of your proposed initiated amendment to the Arkansas Constitution, while remaining at an eighth-grade reading level. With these changes incorporated, the following popular name and ballot title are substituted and certified:

Popular Name

An Amendment Concerning Constitutional Amendments,
Initiated Acts, and Referendums

Ballot Title

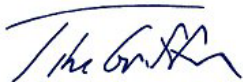
This is a proposed change to the Arkansas Constitution. The General Assembly cannot change or repeal a constitutional amendment that voters have approved. Before a statewide petition can be circulated, the proposed law and ballot title must be sent to the Attorney General. Within 10 days, the Attorney General approves the ballot title, rewrites it, or rejects it. The Attorney General approves the ballot title if it clearly explains the issues. If it does not, the Attorney General rewrites it. If no substituted language can explain the issues clearly, the Attorney General rejects the title. If the Attorney General rewrites or rejects the title, that decision can be

¹ Act 602 of 2025, § 2.

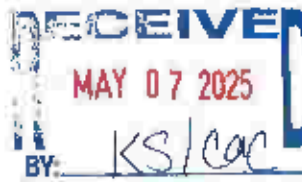
appealed to the Arkansas Supreme Court immediately. The Court shall hear and decide the case quickly. Once a ballot title is approved, the Attorney General sends it to the Secretary of State. Within 5 days, the Secretary of State gives the petition a popular name. The name cannot be misleading or partisan. The Secretary of State must also publish a notice that explains how the name or title can be challenged. Any challenge must be made within 45 days. After that, no other challenges are allowed. For statewide referendums, the ballot title is the title of the Act given by the General Assembly. The popular name is the subtitle. Canvassers must declare that to the best of their knowledge each signature was made by a legal voter who signed in front of them. Previously, canvassers signed an affidavit. This changes the affidavit to a declaration under penalty of perjury. If a bill has an emergency clause, the vote on that clause must be held at least 24 hours after the bill passes. Only the people can propose a change to Article 5, Section 1 of the Constitution. The General Assembly cannot refer an amendment to that section to the people for a vote. If a law affects the people's right to the initiative or referendum process, the law only takes effect if voters approve it at the next general election. Laws that regulate these rights must serve a compelling state interest. They must be narrowly tailored to serve that interest. This measure repeals all inconsistent state laws. If part of the amendment is held invalid, the rest will still be valid if it can stand on its own.

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", with a horizontal line above it.

TIM GRIFFIN
Attorney General



MAY 07 REC'D
ATTORNEY GENERAL

POPULAR NAME

AN AMENDMENT CONCERNING CONSTITUTIONAL AMENDMENTS, INITIATED ACTS, AND REFERENDUM

BALLOT TITLE

This is a proposed change to the Arkansas Constitution.

The General Assembly (state lawmakers) cannot change the Constitution by themselves.

Before a statewide petition can be circulated, it must be sent to the Attorney General. The Attorney General will either approve the title, rewrite it, or reject it. If it is rewritten or rejected, that decision can be appealed to the Arkansas Supreme Court.

The Secretary of State will give the petition a name. The Secretary of State must also publish a notice that explains how people can challenge the name or title. Any challenge must be made within 45 days. No other challenges will be allowed after that time.

For referendums, state lawmakers will decide the name and title.

Canvassers must swear that to the best of their knowledge each signature was made by a legal voter who signed in their presence.

If a bill has an emergency clause, the vote on that clause must happen at least 24 hours after the bill passes.

Only the people, not state lawmakers, can propose a change to Article 5, Section 1 of the Constitution.

Any new law that effects the initiative or referendum process must be approved by voters at the next general election.

Any state law that conflicts with this amendment will not be valid. If part of the amendment is found to be invalid, the rest will still be valid if able to stand on its own.

AN AMENDMENT CONCERNING CONSTITUTIONAL AMENDMENTS, INITIATED ACTS, AND REFERENDUM

Stricken language would be deleted from and underlined language would be added to present law.

Article 5, Section 1

§ 1. Initiative and Referendum

The legislative power of the people of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but the people reserve to themselves the power to propose legislative measures, laws and amendments to the Constitution, and to enact or reject the same at the polls independent of the General Assembly; and also reserve the power, at their own option to approve or reject at the polls any entire act or any item of an appropriation bill.

Initiative. The first power reserved by the people is the initiative. Eight per cent of the legal voters may propose any law and ten per cent may propose a constitutional amendment by initiative petition and every such petition shall include the full text of the measure so proposed. 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; provided, that at least thirty days before the aforementioned filing, the proposed measure shall have been published once, at the expense of the petitioners, in some paper of general circulation.

Referendum. The second power reserved by the people is the referendum, and any number not less than six per cent of the legal voters may, by petition, order the referendum against any general Act, or any item of an appropriation bill, or measure passed by the General Assembly, but the filing of a referendum petition against one or more items, sections or parts of any such act or measure shall not delay the remainder from becoming operative. Such petition shall be filed with the Secretary of State not later than ninety days after the final adjournment of the session at which such Act was passed, except when a recess or adjournment shall be taken temporarily for a longer period than ninety days, in which case such petition shall be filed not later than ninety days after such recess or temporary adjournment. Any measure referred to the people by referendum petition shall remain in abeyance until such vote is taken. The total number of votes cast for the office of Governor in the last preceding general election shall be the basis upon which the number of signatures of legal voters upon state-wide initiative and referendum petitions shall be computed.

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.

Emergency. If it shall be necessary for the preservation of the public peace, health and safety that a measure shall become effective without delay, such necessity shall be stated in one section, and if upon a yea and nay vote two-thirds of all the members elected to each house, or two-thirds of all the members elected to city or town councils, shall vote upon separate roll call in favor of

the measure going into immediate operation, such emergency measure shall become effective without delay. Any such separate vote must occur at least twenty-four (24) hours after the passage of the measure. It shall be necessary, however, to state the fact which constitutes such emergency. Provided, however, that an emergency shall not be declared on any franchise or special privilege or act creating any vested right or interest or alienating any property of the State. If a referendum is filed against any emergency measure such measure shall be a law until it is voted upon by the people, and if it is then rejected by a majority of the electors voting thereon, it shall be thereby repealed. The provision of this sub-section shall apply to city or town councils.

Local for Municipalities and Counties. The initiative and referendum powers of the people are hereby further reserved to the legal voters of each municipality and county as to all local, special and municipal legislation of every character in and for their respective municipalities and counties, but no local legislation shall be enacted contrary to the Constitution or any general law of the State, and any general law shall have the effect of repealing any local legislation which is in conflict therewith.

Municipalities may provide for the exercise of the initiative and referendum as to their local legislation. General laws shall be enacted providing for the exercise of the initiative and referendum as to counties. Fifteen per cent (15%) of the legal voters of any municipality or county may order the referendum, or invoke the initiative upon any local measure. In municipalities the number of signatures required upon any petition shall be computed upon the total vote cast for the office of mayor at the last preceding general election; in counties upon the office of circuit clerk. In municipalities and counties the time for filing an initiative petition shall not be fixed at less than sixty (60) days nor more than ninety (90) days before the election at which it is to be voted upon; for a referendum petition at not less than thirty (30) days nor more than ninety (90) days after the passage of such measure by a municipal council; nor less than ninety (90) days when filed against a local or special measure passed by the General Assembly.

Every extension, enlargement, grant, or conveyance of a franchise or any rights, property, easement, lease, or occupation of or in any road, street, alley or any part thereof in real property or interest in real property owned by municipalities, exceeding in value three hundred dollars, whether the same be by statute, ordinance, resolution, or otherwise, shall be subject to referendum and shall not be subject to emergency legislation.

General Provisions

Definition. The word "measure" as used herein includes any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character.

No Veto. The veto power of the Governor or mayor shall not extend to measures initiated by or referred to the people.

Amendment and Repeal. No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any city council, except that any such measure other than a constitutional amendment approved by a vote of the people may be amended or repealed upon a ye and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly, or of the city council, as the case may be.

Election. All measures initiated by the people whether for the State, county, city or town, shall be submitted only at the regular elections, either State, congressional or municipal, but referendum

petitions may be referred to the people at special elections to be called by the proper official, and such special elections shall be called when fifteen per cent of the legal voters shall petition for such special election, and if the referendum is invoked as to any measure passed by a city or town council, such city or town council may order a special election.

Majority. Any measure submitted to the people as herein provided shall take effect and become a law when approved by a majority of the votes cast upon such measure, and not otherwise, and shall not be required to receive a majority of the electors voting at such election. Such measures shall be operative on and after the thirtieth day after the election at which it is approved, unless otherwise specified in the Act.

This section shall not be construed to deprive any member of the General Assembly of the right to introduce any measure, but no measure shall be submitted to the people by the General Assembly, except a proposed constitutional amendment or amendments as provided for in this Constitution.

Article 5, Section 1 may only be amended by a constitutional amendment initiated by the people and not by an amendment submitted to the electors by the General Assembly pursuant to Article 19, Section 22.

Canvass and Declaration of Results. The result of the vote upon any State measure shall be canvassed and declared by the State Board of Election Commissioners (or legal substitute therefor); upon a municipal or county measure, by the county election commissioners (or legal substitute therefor).

Conflicting Measures. If conflicting measures initiated or referred to the people shall be approved by a majority of the votes severally cast for and against the same at the same election, the one receiving the highest number of affirmative votes shall become law.

The Petition

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; on county and municipal measures such title shall be submitted to the county election board and shall by said board be placed upon the ballot in such county or municipal election.

Initiative Popular Name and Ballot Title. Prior to a petition on a state-wide measure being circulated, the proposed measure and the exact title to be used on the ballot shall be submitted to the Attorney General. Within ten days, the Attorney General shall:

(A) Certify that the ballot title provides a fair and reasonable understanding of the issues in the proposed measure; or

(B) Determine that the ballot title does not provide a fair and reasonable understanding of the issues in the proposed measure and provide a substituted ballot title that does provide such understanding of the issues in the measure, accompanied by a written statement clearly explaining all the reasons for such determination and substitution and certify such substituted ballot title; or

(C) Determine that the ballot title does not provide a fair and reasonable understanding of the issues in the proposed measure and that no substituted language could provide a fair and reasonable understanding. If the Attorney General determines that no substituted language could

provide a fair and reasonable understanding of the measure, the Attorney General shall reject the ballot title and provide petitioners with a written statement clearly explaining all the reasons for such determination and rejection.

Any substitution or rejection made by the Attorney General under this section is subject to immediate review by the Supreme Court, which shall have original and exclusive jurisdiction and shall expeditiously hear and decide any such action.

The Attorney General upon certification of the ballot title shall deliver the certification to the Secretary of State on the day of certification. Within five days of receipt of the certification the Secretary of State shall prepare and assign a popular name to the measure that is not misleading or partisan. The Secretary of State shall within ten days cause to be published in a newspaper of state-wide circulation and shall publish on its website a notice informing the public of the popular name and the certification of the ballot title and the procedure identified in this section to govern any party who may contest the popular name or certification before the Supreme Court.

The procedure shall be as follows:

- (A) Any legal action against the popular name or certification or both shall be filed with the Supreme Court within forty-five (45) days of the Secretary of State's publication;
- (B) No such action filed later than forty-five (45) days following publication shall be heard by the Supreme Court;
- (C) An action timely filed shall be advanced by the Supreme Court as a matter of public interest and shall be heard and decided expeditiously.

Referendum Name and Ballot Title. The Ballot Title for any state-wide referendum petition shall be the title of the Act as assigned by the General Assembly and the popular name shall be the subtitle as assigned by the General Assembly.

Limitation. No limitation shall be placed upon the number of constitutional amendments, laws, or other measures which may be proposed and submitted to the people by either initiative or referendum petition as provided in this section. No petition shall be held invalid if it shall contain a greater number of signatures than required herein.

Verification. Only legal votes shall be counted upon petitions. Petitions may be circulated and presented in parts, but each part of any petition shall have attached thereto the affidavit declaration under penalty of perjury of the person circulating the same, that all signatures thereon were made in the presence of the affiant-declarant, and that to the best of the affiant's-declarant's knowledge and belief each signature is genuine, and that the person signing is a legal voter and no other affidavit, declaration, or verification shall be required to establish the genuineness of such signatures.

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. The sufficiency of all local petitions shall be decided in the first instance by the county clerk or the city clerk as the case may be, subject to review by the chancery court.

Court Decisions. If the sufficiency of any petition is challenged such cause shall be a preference cause and shall be tried at once, but the failure of the courts to decide prior to the election as to the sufficiency of any such petition, shall not prevent the question from being placed upon the

ballot at the election named in such petition, nor militate against the validity of such measure, if it shall have been approved by a vote of the people.

Amendment of Petition. (a)(1) If the Secretary of State, county clerk or city clerk, as the case may be, shall decide any petition to be insufficient, he or she shall without delay notify the sponsors of such petition, and permit at least thirty (30) days from the date of such notification, in the instance of a state-wide petition, or ten (10) days in the instance of a municipal or county petition, for correction or amendment.

(2) For a state-wide petition, correction or amendment of an insufficient petition shall be permitted only if the petition contains valid signatures of legal voters equal to:

(A) At least seventy-five percent (75%) of the number of state-wide signatures of legal voters required; and

(B) At least seventy-five percent (75%) of the required number of signatures of legal voters from each of at least fifteen (15) counties of the state.

(b) In the event of legal proceedings to prevent giving legal effect to any petition upon any grounds, the burden of proof shall be upon the person or persons attacking the validity of the petition.

Unwarranted Restrictions Prohibited. No law shall be passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions; but laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions. Any law passed effecting the people's exercise of their right to the initiative or referendum is effective only if approved by the electors at the general election immediately following passage.

Publication. All measures submitted to a vote of the people by petition under the provisions of this section shall be published as is now, or hereafter may be provided by law.

Enacting Clause. The style of all bills initiated and submitted under the provisions of this section shall be, "Be It Enacted by the People of the State of Arkansas, (municipality or county, as the case may be)." In submitting measures to the people, the Secretary of State and all other officials shall be guided by the general election laws or municipal laws as the case may be until additional legislation is provided therefor.

Self-Executing. This section shall be self-executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted to restrict, hamper, or impair or otherwise regulate the exercise of the rights herein reserved to the people, unless such legislation serves a compelling state interest and is narrowly tailored to serve that interest.

Inconsistent provisions inapplicable. All provisions of the Constitution, statutes, and common law of this State to the extent inconsistent or in conflict with any provision of this Amendment are expressly declared null and void.

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

