



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-038

June 5, 2023

Veronica McClane
Citizens for Arkansas Public Education and Students
352 School Road
Rose Bud, Arkansas 72137

Dear Ms. McClane:

Under A.C.A. § 7-9-107, you have asked me to review and certify the following popular name and ballot title for a proposed statewide referendum. **My decision under § 7-9-107 is based entirely on whether the proposed measure meets the legal standards required by the constitution as interpreted by the Arkansas Supreme Court. Any personal views I may hold on the merits of this measure have no bearing on my decision under this statute.**

You have submitted a third version of your proposed measure to refer Act 237 of 2023. In Opinion No. 2023-029, I concluded that your popular name was sufficient as submitted and that your ballot title could not be certified. The prior version of your ballot title was 742 words. The current version—which is 8,154 words and spans 16 pages—is attached.

In what follows, I:

- explain (1) the general rules governing the Attorney General’s review, and (2) the specific rules governing the sufficiency of popular names and ballot titles; and
- apply those specific rules to your draft.

1. Rules governing this review. Arkansas law requires sponsors of statewide referenda 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:

¹ A.C.A. § 7-9-107(a).

² A.C.A. § 7-9-107(b).

- 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 popular name and ballot title.”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

In order to arrive at one of those three responses, the Attorney General examines the popular name and ballot title to ensure they comply with Arkansas law as interpreted by the Arkansas Supreme Court. Although those standards, which are explained below, can be complicated, the basic purpose of the review is simple: the popular name and ballot title must accurately and impartially summarize the provisions of the law the voters will be asked to approve or reject.

2. 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

3. Rules governing the ballot title. The ballot title must summarize the act to be referred. 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 summarize the referred act in a way that is impartial and gives the voter a fair understanding of the issues presented.¹⁰ Sponsors cannot omit material from the ballot title that qualifies as an “essential fact which would

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).

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).

give the voter serious ground for reflection.”¹¹ Yet the ballot title must also be brief and concise lest voters exceed the statutory time allowed to mark a ballot.¹² 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.¹³ 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.¹⁴

In sum, the ballot title must be honest and impartial,¹⁵ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁶

4. Application. The General Assembly has empowered me to reject or modify a ballot title either (1) when it is “misleading” or (2) when a vote “for” is actually a vote against (or vice versa). Both problems were present in your first submission. While your second submission resolved the problem of the impact of a vote for or against the measure, the submission remained misleading in several ways. Now, in your third submission, your ballot title essentially cuts and pastes from nearly every section of the LEARNS Act. Therefore, I cannot conclude that it is misleading. Under the scope of the review the General Assembly has given me, I must certify the attached popular name and ballot title as you have submitted them.

But please be advised that my certification under A.C.A. § 7-9-109 that your ballot title is no longer misleading does not necessarily mean your ballot title meets all standards the Arkansas Supreme Court has interpreted Arkansas law to require. As several of my predecessors have noted when certifying certain lengthy and complex ballot titles, the Court has repeatedly warned sponsors of statewide measures about their ballot titles’ length and complexity.¹⁷ A ballot title’s length and complexity has been a key issue in several cases, which have considered complex ballot

¹¹ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹² 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) (Supp. 2021) (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).

¹³ *Plugge v. McCuen*, 310 Ark. 654, 658, 841 S.W.2d 139, 141 (1992).

¹⁴ *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)

¹⁵ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁶ *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

¹⁷ *See, e.g., Ark. Att’y Gen. Op. No. 2000-137.*

titles with the following word counts: 550 words;¹⁸ 587 words;¹⁹ 709 words;²⁰ 727 words;²¹ 735 words;²² 900 words;²³ 994 words;²⁴ and 1,000 words.²⁵ In most of these cases, the Court has held that a ballot title’s length alone cannot render it legally insufficient but “is only one consideration in determining the sufficiency of a ballot title.”²⁶ Nevertheless, the Court has declared that, it is possible for the underlying measure to be “so expansive that it precludes the writing of an acceptable ballot title.”²⁷ This would occur, the Court said, when the underlying measure to be summarized is “so all-encompassing that to include every important factor of the proposal in the ballot title would cause the ballot title to be **so complex, detailed[,] and lengthy** that the Arkansas voter could not intelligently make a choice on the title within [what was at the time] the five minutes [now ten minutes] allowed in the voting booth.”²⁸ This warning was related to a 587-word ballot title that summarized a 40-page underlying measure. Of the word counts referenced above, the Court has used length and complexity as a major factor in declaring ballot titles insufficient when the titles were 550 words, 587 words, 709 words, and 727 words.

In contrast to these ballot titles ranging from 550 words to 727 words that the Court considered to be too complex and lengthy, your ballot title—at 8,154 words and 16 pages—is the longest in Arkansas history. If the Court considered a 587-word title too complex and lengthy that a voter likely would not be able to grasp it within the time allowed to vote, then that is almost certainly the case for one that is nearly 14 times longer. Granted, the cases considering the length and complexity of ballot titles generally consider *initiated* measures—ones over which the sponsor can control the length and complexity of the underlying measure on which the people are being asked to vote. Nevertheless, the Court has not interpreted Amendment 7 as having a different set of rules

¹⁸ *Scott v. Priest*, 326 Ark. 328, 932 S.W.2d 746 (1996).

¹⁹ *Page v. McCuen*, 318 Ark. 342, 344, 884 S.W.2d 951, 952 (1994) (addressing a challenge to a “587-word ballot title which attempted to cover a forty-page long proposal, comprised of twenty-three sections and more than 150 subsections.”).

²⁰ *Christian Civic Action Committee*, 318 Ark. 241, 884 S.W.2d 605 (declaring the ballot title invalid because of length and defects, with length being the major factor).

²¹ *Dust v. Riviere*, 277 Ark. 1, 638 S.W.2d 663 (1982) (invalidating the ballot title because it was too lengthy, complex, misleading, and confusing).

²² *Newton v. Hall*, 196 Ark. 929, 120 S.W.2d 364 (1938).

²³ *Bailey v. Hall*, 198 Ark. 815, 131 S.W.2d 635 (1939).

²⁴ *Walker v. Priest*, 342 Ark. 410, 417, 29 S.W.3d 657, 658–59 (2000).

²⁵ *Crochet v. Priest*, 326 Ark. 338, 931 S.W.2d 128 (1996).

²⁶ *See, e.g., Walker*, 342 Ark. at 418–19, 931 S.W.2d at 660 (collecting and analyzing cases).

²⁷ *Page*, 318 Ark. at 347, 884 S.W.2d at 954.


²⁸ *Id.* (brackets and emphasis added).

for referenda. And the Court’s rationale behind its conclusions about the complexity and length of ballot titles for *initiatives* seems to apply with equal force to ballot titles for *referenda*.

Therefore, like one of my predecessors, I must highlight the “particular hazards attendant to the preparation of a ballot title for a lengthy and complex proposal” like you are attempting to refer to the voters.²⁹ As the Court has noted, some measures “preclude the writing of an acceptable ballot title.”³⁰ But the legislature has not authorized me to reject a ballot title because of its length and complexity. As my predecessor noted, whether your proposal is the kind for which it is impossible to write a sufficiently complete and brief ballot title “is a matter to be decided by the Arkansas Supreme Court.”³¹

Deputy Attorney General Ryan Owsley 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

²⁹ Ark. Att’y Gen. Op. No. 2000-137, at 1.

³⁰ *Page*, 318 Ark. at 347, 884 S.W.2d at 954.

³¹ Ark. Att’y Gen. Op. No. 2000-137, at 4.