

CV-24-13

IN THE ARKANSAS SUPREME COURT

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

PETITIONERS

vs.

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

RESPONDENTS

AN ORIGINAL ACTION

BRIEF OF THE PETITIONERS

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JURISDICTIONAL STATEMENT

1. This is action regarding the legal sufficiency of ballot titles and popular names of two pre-signature ballot measures proposed by the petitioners. The petitioners invoke this court to sit in original jurisdiction pursuant to Ark. Const. Amend. 80, § 2(D)(4) and the Sufficiency Clause of Ark. Const. Art. 5, § 1.

STATEMENT OF THE CASE AND THE FACTS

Overview of the Ballot Measures

The respondents proposed two ballot measures—one relating to paper ballots and another pertaining to absentee voting. ADD. 36, 46. The paper ballot measure would return Arkansas to a state in which all voters cast their votes on paper ballots marked by hand, except those voters who are disabled who have a right to vote in federal elections by using a voting machine. ADD. 46. It would require that paper ballots have enhanced security features which would make the ballots difficult to duplicate or copy and require that the certification of election be based off a hand count of the paper ballots. *Id.* To clear up what is perceived as confusion about the measure, preliminary and unofficial vote counts can still be done by use of a tabulator already in the possession of all seventy-five counties. *Id.*

The paper ballot measure would also accomplish a few other matters. ADD. 36. It would preserve the current method of voting in Arkansas by having voters choose only one candidate or ballot measure per election. *Id.* It would require a candidate to get at least fifty percent of the vote to be declared the winner. *Id.* Finally, it would prohibit

elections from being conducted in this state using a wireless or internet connection. *Id.*

The absentee voting measure would greatly enhance the security of that type of voting, It would end nearly all forms of ballot harvesting by prohibiting anyone but the voter from requesting an absentee ballot as well as prohibiting anyone but the voter, an election official, or a postal service worker from handling absentee ballots (the only exception is for disabled persons who may have someone provide them assistance). *Id.*

The absentee voting measure would also shorten the time for early voting, restrict the eligibility for obtaining an absentee ballot, and tightly regulate the manner in which absentee votes are counted. *Id.* Notably, the measure would require strict compliance with the terms of the proposed amendment or the ballot would not be counted—a fact disclosed in the ballot title. *Id.* Finally, like its sister proposal, the measure would prohibit elections from being conducted in this state using a wireless or internet connection. *Id.*

Constitutional Challenges

As part of their original action, the petitioners bring two constitutional challenges. One challenge deals with the Sufficiency

Clause of Article 5, § 1 and Amendment 80, § 2(D)(4) and the other is to a statute requiring signatures from *at least* fifty counties instead of *at least* fifteen.

Procedural Facts

Restore Election Integrity Arkansas (REIA) formed as a ballot question committee on October 19, 2023. ADD. 1. REIA submitted two proposed ballot measures to the Arkansas Attorney General on November 9, 2023, and those measures were rejected as insufficient. The measures were resubmitted as they had been edited, to the Attorney General on December 26, 2023. ADD. 14. He responded by rejecting the paper ballot measure and substantially rewriting the absentee voting measure. ADD. 3, 8. Both the State Board of Election Commissioners (SBEC) and the Secretary of State refused, repeatedly, to certify or reject the sufficiency of the ballot titles and popular names. ADD. 16-32. On January 9, 2024, the petitioners filed the instant case and, in an embedded motion, sought expedited proceedings and a temporary restraining order enjoining the enforcement of the constitutionally challenged statutes. On January 17, 2024, this court granted the motion

to expedite and for which the petitioners again express their deepest gratitude.

ARGUMENT

I. THIS COURT HAS ORIGINAL JURISDICTION OF THE LEGAL SUFFICIENCY OF THE BALLOT TITLES AND POPULAR NAMES OF THE PETITIONERS' BALLOT MEASURES.

There are two constitutional provisions imparting original jurisdiction over the sufficiency of ballot titles and popular names. A fight will surely ensue over which provision controls this court's original jurisdiction in this case and over all other ballot measure cases to come for the foreseeable future. Looking at two parts of our constitution, the petitioners believe they have the answer.

In constitutional interpretations, the first step is to read the law as it is written and interpret it in accordance with established principles of constitutional construction. *Gibson v. Little Rock Downtown Neighborhood Ass'n, Inc.*, 2023 Ark. 45, 10, 660 S.W.3d 835, 842 (2023) (citing *Johnson v. Wright*, 2022 Ark. 57, 640 S.W.3d 401). When the language of the constitution is plain and unambiguous, each word must be given its obvious and common meaning. *Id.* Neither rules of

construction nor rules of interpretation may be used to defeat the clear and certain meaning of a constitutional provision. *Id.* (citing *Buonaiuto v. Gibson (Buonaiuto I)*, 2020 Ark. 352, 609 S.W.3d 381). However, the court also construes a constitutional provision in such a way that an express purpose or implied result will be given effect. *Fort Smith Sch. Dist. v. Beebe*, 2009 Ark. 333, 8–9, 322 S.W.3d 1, 6 (2009) (citing *Rockefeller v. Hogue*, 244 Ark. 1029, 429 S.W.2d 85 (1968)).

A. Amendment 80, § 2(D)(4), by its plain text, controls the question of original jurisdiction independent of the Sufficiency Clause of Article 5, § 1.

Constitutional provisions are construed in the same manner as statutes. *McElroy v. Grisham*, 306 Ark. 4, 14, 810 S.W.2d 933, 938–39 (1991) (citing *McDonald v. Bowen*, 250 Ark. 1049, 468 S.W.2d 765 (1971); *Shepherd v. City of Little Rock*, 183 Ark. 244, 35 S.W.2d 361 (1931)). This means that the court construes the constitution so that no word is left void, superfluous, or insignificant, and gives meaning and effect to every word in the constitution, if possible. *Gibson v. Buonaiuto (Buonaiuto II)*, 2022 Ark. 206, 11, 655 S.W.3d 59, 66–67. The crux of this analysis indicates that the court cannot give effect to Amendment 80, §

2(D)(4) without finding that it partially abrogated, superseded, or repealed a part of Article 5, § 1 or harmonizing the two provisions.

Reading the plain language of Amendment 80, § 2(D)(4), it says that this court has original jurisdiction of actions relating to the sufficiency of statewide ballot measures. That is all that it says. That is all that it means.

It does not say that this court has original jurisdiction ‘after first going and getting the approval of the Attorney General.’ Notably, Amendment 80, § 2(D)(4) does not impart jurisdiction on this court after the Secretary of State has passed on the sufficiency of the ballot title and popular name “in the first instance.” Instead, it says what it means, means what it says, and has no other qualifications. But that is not where the analysis stops.

Amendment 80, § 2(D)(5) further spells out the nature of the court’s original jurisdiction and it directly relates to and informs of this court’s original jurisdiction of state initiative petitions. Amendment 80, § 2(D)(5) gives this court original jurisdiction over “only such other original jurisdiction as provided by this Constitution.” The court must construe this provision as well to give both subsections meaning and

avoid leaving any word, much less an entire subsection, superfluous. *St. Vincent Med. Grp. v. Baldwin*, 2023 Ark. 151, 6–7, 675 S.W.3d 862, 866–67 (2023) (citing *DaimlerChrysler Corp. v. Smelser*, 375 Ark. 216, 223, 289 S.W.3d 466, 473 (2008) (explaining that if the legislature used both costs and expenses that it must have meant to distinguish between the two). To give meaning to Amendment 80, § 2(D)(4), this court has impart a meaning that is not strictly confined to the language of Article 5, § 1.

To do otherwise would make Amendment 80, § 2(D)(5) not just superfluous, but totally and wholly meaningless. This is because Amendment 80, § 2(D)(5) does absolutely nothing for any other provision of the constitution which gives this court original jurisdiction. In other words, of course this court has original jurisdiction over the matters spelled out as such in the constitution! Why the need to say otherwise?

The answer to that lies in Amendment 80, § 2(D)(4), because it means that this court has original jurisdiction of the sufficiency of the ballot measures, minus the stops at the SBEC or the Secretary of State—and especially the Attorney General. Repealing a part of the constitution by implication is not the stuff of calm seas and fair weather. To avoid that drastic step, this court can make the two provisions harmonic.

Harmonization occurs when two provisions relating to the same subject are said to be *in pari materia* and read in a harmonious manner, if possible. *Hackie v. Bryant*, 2022 Ark. 212, 6, 654 S.W.3d 814, 818–19 (2022) (citing *Ark. Soil & Water Conservation Comm'n v. City of Bentonville*, 351 Ark. 289, 300, 92 S.W.3d 47, 54 (2002)). Harmonization is a blending of two provisions in such a manner that both thrive, or at least not butcher each other. However, harmonization is not possible if both sections are not given effect.

The only way to harmonize these two provisions is to recognize two separate methods for the review of the sufficiency of ballot titles and popular names. One method is by going through the Secretary and appealing to this court by the original jurisdiction provision of the Sufficiency Clause (this also gives meaning and effect to Amendment 80, § 2(D)(4) because it recognizes the ability of the Sufficiency Clause to impart original jurisdiction to this court). The second, more direct method for original jurisdiction to this court is via Amendment 80, § 2(D)(4).

B. Original jurisdiction lies pursuant to Article 5, § 1 and *Armstrong v. Thurston*.

Putting aside Amendment 80, § 2(D)(4) from consideration in its entirety, jurisdiction is still proper in this court pursuant to Article 5, §

1. While the state argues that the plaintiffs have not submitted a petition to the secretary and there is no authority for a pre-signature review, the state's arguments are misplaced for the reasons explained in Section II of this brief, *infra*. Original jurisdiction in Article 5, § 1 is found in its interpretation by this court.

The plaintiffs submitted a petition to both the SBEC and the Secretary and requested their approval or rejection of the sufficiency of the ballot titles and popular names. Both entities refused to act. By not approving the ballot measures, they were rejected. While this may seem like too far of a logical jump, it is a permissible one due to how this court interprets constitutional provisions.

Since 1848—when Arkansas's statehood was in its infancy, before it seceded from the Union, joined the Confederacy, and passed its second constitution after rejoining the Union (ratified in 1874)—this court has given constitutional amendments a liberal construction “as a frame of laws established by the people according to their own free pleasure and sovereign will...so that the true objects of the grant may be promoted.” *State v. Scott*, 9 Ark. 270, 270 (1849). This court construes constitutional amendments liberally to accomplish their purposes. *Fort Smith Sch.*

Dist. v. Beebe, 2009 Ark. 333, 8, 322 S.W.3d 1, 6 (2009) (citing *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994)). The purpose of Article 5, § 1 is clearly and unmistakably spelled out in the opening sentences of the text. It is that 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. (emphasis added). Moreover, initiative acts, such as the one in the case at bar, are the “first power.” *Id.*

A liberal construction of Article 5, § 1 means that the failure of the secretary to act is a rejection of the sufficiency of the measure. There is no other way for this court to read Article 5, § 1 to accomplish its true object of empowerment of the people to self-legislate. An inapposite reading would have the effect of diminishing that power—which this court has repeatedly held that it will not do. *Yarbrough v. Witty*, 336 Ark. 479, 484–85, 987 S.W.2d 257, 260 (1999). *See also Porter v. McCuen*, 310 Ark. 674, 677, 839 S.W.2d 521, 522 (1992) (citing *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72 (1935)). Any stricter of an interpretation would determine that the power reserved to the people in our constitution would be relegated to whether the secretary and SBEC choose to act and, if they

choose not to act then no determination of sufficiency can be obtained to impart original jurisdiction on this court. In such events, the power found in Article 5, § 1 would not be a power at all, but a privilege—the exercise of which is determined by government officials and not the people.

This court has established a precedent of exercising original jurisdiction even when the Secretary of State has failed to act. *Armstrong v. Thurston*, 2022 Ark. 154 (per curiam). In *Armstrong*, the SBEC failed to certify the ballot measure at issue in that case to the Secretary of State. *Armstrong v. Thurston*, 2022 Ark. 167, 7, 652 S.W.3d 167, 173 (2022) (majority opinion). However, that did not stop Armstrong from invoking this court to sit in original jurisdiction. It also means that the secretary never even acted on the *Armstrong* ballot measure prior to the invocation of this court's original jurisdiction—jurisdiction it used to resolve all the issues with the ballot measure. *Id.* at 3, 652 S.W.3d at 171 (majority opinion). Using the court's authority to issue and determine any and all writs necessary in aid of its jurisdiction, it issued a writ of mandamus, *sua sponte*, to the Secretary of State to decide the sufficiency of the initiative in that case, which it can also do in the instant case if it so desires. *Id.* at 154 (per curiam). The procedural history of *Armstrong*

stands in direct contradiction to the necessity of the secretary to act. Still, employing a liberal construction, the secretary acted by willfully refusing to act.

II. THERE IS AMPLE AUTHORITY FOR REVIEW OF THE LEGAL SUFFICIENCY OF A PRE-SIGNATURE BALLOT MEASURE.

To be painfully clear, constitutional rights do not flow from statutes. *See Miller Cnty. v. Beasley*, 203 Ark. 370, 156 S.W.2d 791, 793 (1941). However, statutory rights flow from the constitution. *Id.* A statute created and passed in aid of the constitution is not a modification of a constitutional right. *See id.* Such statute does not create the right, but only the process relating to the right. *See id.* The repeal of a statute dictating the process simply means that the process that existed no longer exists, but not that the constitution is without any process whatsoever. Holding otherwise means that a constitutional right cannot be implemented or utilized unless the legislature provides a process to use the constitutional right and it is bedrock American law that this simply is not how our form of government functions.

With this in mind, the state's position on a pre-signature review is plainly wrong and it makes an argument this court rejected years ago in

Ward v. Priest. 350 Ark. 345, 353, 86 S.W.3d 884, 887 (2002) (citing *Stilley, supra*) (“[u]nder the respondent's interpretation of Act 877 and this court's decision in *Stilley v. Priest*, the General Assembly would be allowed to change the provisions of [Article 5, § 1] to the Arkansas Constitution—clearly an impermissible exercise of legislative authority”).

- A. This court has previously held that a ballot petition is made up of at least two parts and a pre-signature sufficiency review does not offend the constitution.**

In *Stilley v. Priest*, this court conducted a constructional analysis of Article 5, § 1. 341 Ark. 329, 335, 16 S.W.3d 251, 255 (2000). Specifically, the court looked at what constitutes an initiative ballot “petition.” *Id.* at 337, 16 S.W.3d at 256. Prior to *Stilley*, this court had held that a petition was both the language of the measure and the signatures. *Id.* at 333–34, 16 S.W.3d at 254. However, the *Stilley* Court looked at Article 5, § 1 with fresh eyes.

This court specifically found that Article 5, § 1 provides 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. *Id.* at 337, 16 S.W.3d at 256. The court's reasoning was bolstered by giving effect to the term "petition" in Article 5, § 1 as it is clearly used 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. *Id.* The court overruled its own precedent to the extent that they prevented 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. *Id.* at 337, 16 S.W.3d at 256–57 (citing *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)).

In the instant case, the state overlooks a key component of the *Stilley* case. The state approaches *Stilley* from the perspective that the *Stilley* Court was primarily interpreting Act 877 of 1999. Act 877 was a law passed to facilitate implementation of Article 5, § 1. *Id.* at 335, 16 S.W.3d at 255. However, the court was construing Article 5, § 1 to determine if the framework set out in Act 877 offended Article 5, § 1. The *Stilley* Court concluded that Act 877's framework did not offend Article 5, § 1. *Id.* The crucial point is that this court interpreted Article 5, § 1, and from that provision of the constitution, it found that the petition is

multiple parts, subject to a pre-signature review, and capable of multiple reviews by both the secretary and this court. *Id.* at 337, 16 S.W.3d at 256–57. It is only possible that these features were inherent and existing in Article 5, § 1, not in a statute.

This is because a statute “can neither enlarge nor restrict a constitutional provision without offending the constitution.” *Miller Cnty. v. Beasley*, 203 Ark. 370, 156 S.W.2d 791, 793 (1941). It also means that Act 877 was not expansion of Article 5, § 1 in that Act 877 did not create a definition of a petition as having multiple parts, permit a pre-signature review, or allow for multiple reviews because Act 877 did not have that power. *Id.* It also means that its repeal cannot remove those findings by the court in its interpretation of Article 5, § 1, because if it could, then parts of the constitution would disappear with the statute implemented to facilitate the constitution. This is the heart of the state’s argument—the rights in *Stilley* disappeared when the legislature repealed Act 877. *Contra Ward, supra* (citing *Stilley, supra*). The state’s conclusion that the legislature can override a constitutional provision by repealing one of its own Acts is offensive to the constitution and clearly contrary to our caselaw. *Id. See also Abbott, Gravett, supra.*

III. THIS COURT HAS JURISDICTION OF THE CONSTITUTIONAL CHALLENGES.

A constitutional challenge in an original action was presented recently in *Armstrong v. Thurston*. 2022 Ark. 167, 7, 652 S.W.3d 167, 173 (2022). In taking up the issue, the court recognized that its duty to refrain from addressing constitutional issues if or when the case can be disposed of without determining constitutional questions. *Id.* (citing *Tollett v. Wilson*, 2020 Ark. 326, at 8–9, 608 S.W.3d 602, 603). *Id.* at 3, 652 S.W.3d at 171. However, the *Armstrong* Court was unable to appropriately dispose of that case without addressing the constitutionality of the statute at issue. It also held that the issue of the validity of the statute was before it in an original action that did not seek declaratory relief but rather sought a direct remedy. *Id.* (citing *Finn v. McCuen*, 303 Ark. 418, 422, 798 S.W.2d 34, 36 (1990), *overruled on other grounds by Stilley, supra*).

Applying *Armstrong* to the § 107 and § 126(e) challenges, these statutes are directly in the way of resolution of the sufficiency of the ballot measures because the court cannot determine if measures are legally sufficient without addressing whether the attorney general's approval is required and whether the ballot title and popular name is

legally sufficient for fifteen counties or fifty. The plaintiffs do not seek a declaration from the court in this original action, but a direct remedy—the sufficiency of their ballot titles and popular names for fifteen counties instead of fifty. There is precedence for the addressing the constitutional challenges and that precedent is applicable to this case.

A. Challenge to Ark. Code Ann. § 7-9-107.

The burden is always on the party challenging a statute to prove its unconstitutionality, and all doubts are resolved in favor of upholding the constitutionality of the statute, if possible. *Id.* at 4–5, 652 S.W.3d at 172 (citing *McCarty v. Ark. St. Plant Bd.*, 2021 Ark. 105, at 2–3, 622 S.W.3d 162, 164). This court will strike down a statute only when there is a clear and unmistakable conflict between the statute and the constitution. *Id.* Additionally, as a threshold matter, this case must be incapable of being resolved without addressing or disposing of this statute. *Id.* (citing *Tollett, supra*). It is incapable because, if this statute is valid, then the petitioners must get the Attorney General’s approval. However, if the court is going to use its jurisdiction to determine the sufficiency of the ballot measures in the case at bar, then it cannot do so without finding the statute constitutionally offensive.

This statute is unconstitutional on its face and the petitioners call on this court to overrule its precedent holding otherwise. If the court finds it to be constitutional, then, in the alternative, it is unconstitutional as applied to the petitioners in this case.

The statute requires Attorney General approval of the language in a proposed a ballot initiative before the sponsor can begin collecting signatures. Ark. Code Ann. § 7-9-107(a) (submission to the Attorney General required) and § 107(d)(e) (power of Attorney General to certify or reject). *See also* Ark. Code Ann. § 7-9-125(b)(2) and (c)(6) (signatures may only be obtained on petitions approved by the Attorney General, and only after his approval). It also permits the Attorney General to rewrite a measures popular name and ballot titles. *Id.* at § 107(d)(1).

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. The petitioners seek review of that decision and asks the court to overrule its precedent based on two arguments:

- i. **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, which prohibits laws from being "passed to . . . prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions." *See also City of Fayetteville v. Washington County*, 369 Ark. 455, 472, 255 S.W.3d 844, 856 (2007) ("it is axiomatic that the General Assembly cannot amend the Arkansas Constitution" and "it is clearly beyond the authority of the General Assembly to amend a constitutional provision by a legislative act that runs counter to the express language of that provision"). *See also Abbott, Gravett, Miller Cnty., supra.*

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 under Article 5, § 1—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 expansive power to: reject the entire ballot title; popular name, and petition; instruct the petitioners to redesign the proposed measure in a manner that would not be misleading; or even rewrite it himself. *Id.*

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*, 314 Ark. at 326, 362 S.W.2d at 26; *City of Little Rock v. Bd. of Imp.*, 42 Ark. 152, 160 (1883). 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 powerful right of the people to govern themselves and prohibit government interference with that power. Ark. Const. Art. 5, § 1 (Sufficiency Clause). 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 obtain self-legislation.

- ii. ***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 Article 5, § 1.**

As set out in Section I, *supra*, Amendment 80, § 2(D)(4) creates its own path for ballot measures to come to this court. Because Amendment 80, § 2(D)(4) is distinct from Article 5, § 1, and § 107 is a statute pertaining to Article 5, § 1, then either § 107 does not apply to invocations of this court's original jurisdiction under Amendment 80, § 2(D)(4) or the holding in *Washburn* has been abrogated by Amendment 80, § 2(D)(4). However, § 107 is still constitutionally offensive to Article 5, § 1.

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 influence his thought and actions.

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 the very devices used to slow the process while torturing its participants.

iii. In the alternative, § 107 is unconstitutional as applied to the petitioners.

The manner in which the Attorney General has carried out the mandates of § 107 has violated Article 5, § 1 and this court’s well-established standards and precedents for the sufficiency of popular names and ballot titles. The petitioners have a right under Article 5, § 1 to access the ballot if its ballot name and popular title are not misleading and it obtains all required signatures in a lawful manner. § 107 is being unconstitutionally applied to the petitioners for the following reasons:

(a) The standards used by the Attorney General are not the same as the ones used by this court. For example, the Attorney General

says that he “cannot tell if it [a ballot title] is misleading” and that is a basis for its rejection. ADD. 8. The standard for names and titles, *inter alia*, is that they cannot be misleading such that it would thwart a fair understanding of the issues presented. *Stiritz v. Martin*, 2018 Ark. 281, 4, 556 S.W.3d 523, 527 (2018) (citing *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996)). *See also* Ark. Code Ann. § 7-9-107(e). In the sense used by the Attorney General, he is creating additional standards that must be met which are different than the ones promulgated by this court.

(b) The Attorney General is creating his own doctrine of law and applying it to the petitioners’ measures as well. The Attorney General takes issue with the definition of disability being the same as in the ADA, ARCA, and HAVA and referencing those acts to make the definition in the amendment. Again, this is not a ‘misleading’ or ‘not misleading’ issue but one of constitutional interpretation. The Attorney General’s position is that this court, at some point in the future, will be completely unable to determine how “disability” is defined by either looking at the definition in those acts as it existed at the time the amendment was passed by the voters or how it is currently defined by those acts (assuming that the definitions will have changed).

To justify the denial, the Attorney General has taken a case from North Dakota and speculated on how this court would interpret that court's "full text" doctrine. *Haugen v. Jaeger*, 2020 N.D 177, 948 N.W.2d 1, 3 (N.D 2020) (per curiam). Arkansas has never recognized this doctrine. In fact, there are at least fifty separate instances dating back to at least 1936 in which a statute, another provision of the constitution, the Code of Federal Regulations, the United States Code, or the federal constitution were cited in an Amendments 101, 100, 98, 91, 89, 82, 81, 79, 78, 75, 73, 71, 70, 67, 65, 51, 38, 35, and 22 to the Arkansas Constitution. *See* Amend. 98, § 2 (adopts a definition found in two series of statutory laws by citing the statutes); Amend. 91, § 15 (term defined as it is found in a statute). *See also* Amend 51, §§ 13, 14, and 17 (election law amendment referencing statutes and commanding certain government officials to act according to those statutes).

(c) The Attorney General rewrote the petitioners absentee voting ballot matter to change the popular name and ballot title to make it remarkably different from the one drafted by the petitioners in violation of their right to political speech. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995). *Fed. Election Comm'n v. Cruz*, 596

U.S. 289, 306 (2022) (citations omitted); *303 Creative LLC v. Elenis*, 600 U.S. 570, 596, (2023) (citations omitted).

B. Challenge to Ark. Code Ann. § 7-9-126(e).

As a threshold matter the court cannot resolve the legal sufficiency of the petitioners' ballot titles and popular names without determining whether they are sufficient for fifteen counties or fifty counties. *See Armstrong*, 2022 Ark. at 4, 652 S.W.3d at 172 (citing *Tollett, supra*). The sufficiency of the measures' language for the number of counties cannot be resolved in the absence of the court addressing this statute because the failure to do so would leave the issue of legal sufficiency only partly resolved and a cloud on the nature of the court's jurisdiction this case.

There is a clear and unmistakable conflict between the statute and the constitution in this challenge. *Id.* at 4–5, 652 S.W.3d at 172 (citing *McCarty v. Ark. St. Plant Bd.*, 2021 Ark. 105, at 3, 622 S.W.3d 162, 164). The Arkansas Constitution clearly sets out the signature requirements to obtain ballot access for an initiated act or measure. Ark. Const. Art. 5, § 1. Those requirements are 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. *Id.* However, Ark.

Code. Ann. § 7-9-126(e) contains a specific signature requirement that is more stringent by requiring more counties than what is found in the Constitution. Instead of **at least** fifteen counties, § 126(e)(2)(A) requires petitions from **at least** fifty counties. *Compare* Ark. Const. Art. 5, § 1 *with* Ark. Code Ann. § 126(e)(2)(A) (emphasis added).

It is axiomatic, black letter law, and written into the cornerstone of our constitutional republic that the acts of the legislature cannot amend the Arkansas Constitution. *City of Fayetteville, Abbott, Gravett, Miller Cnty., supra*. These enhanced signature requirements are a legislative expansion of the number of counties required for ballot access which acts as an improper restriction on a constitutional provision and a rewriting of the constitution by the legislature in violation of the Unwarranted Restrictions Clause. It is highly anticipated that the respondents will argue that the fifteen-county requirement in the constitution is a floor, not a ceiling. In other words, that there is nothing prohibitive about adding more counties to the requirement. That argument is a semantic equivocation—a mackerel swimming in the weeds of words.

If Article 5, § 1 contained a floor and not a ceiling, then the legislature could, theoretically, create a ceiling. The language would look

something like “petitions must be gathered from at least fifteen counties, but not more than fifty counties.” The fifteen counties are the minimum—the floor. The fifty counties are the maximum—a ceiling. However, the legislature cannot move the floor and call it a ceiling, which is exactly what they have done in § 126(e). They created a floor of fifty counties—signatures must come from *at least* fifty counties—and a ceiling of *not more than* seventy-five counties (because that is the total number of counties in the State). Ceilings prohibit one from going higher, but they have never prohibited one from going lower—even when you are standing on them. Please do not fall for the semantic equivocation when the state calls the new, legislatively created floor of fifty counties a ceiling.

IV. THE POPULAR NAMES AND BALLOT TITLES ARE LEGALLY SUFFICIENT FOR AT LEAST FIFTEEN COUNTIES.

This court decides the sufficiency of the ballot title as a matter of law. *Armstrong*, 2022 Ark. at 8–9, 652 S.W.3d at 174–75 (citing *Stiritz v. Martin*, 2018 Ark. 281, at 4, 556 S.W.3d 523, 527). Under the Article 5, § 1, the burden of proof in challenges to ballot titles and popular names is on the party bringing the challenge to prove that it is misleading or

insufficient. *Id.* (citing *Knight v. Martin*, 2018 Ark. 280, at 7, 556 S.W.3d 501, 507). The ballot title must be an impartial summary of the proposed amendment, and it must give the voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law. *Id.* (citing *Rose v. Martin*, 2016 Ark. 339, at 4, 500 S.W.3d 148, 151). A ballot title must be free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring. *Id.* The ballot title need not contain a synopsis of the proposed amendment or cover every detail of it, but it cannot omit material information that would give the voters serious ground for reflection. *Id.* (citing *Cox v. Daniels*, 374 Ark. 437, 443, 288 S.W.3d 591, 595 (2008)).

A ballot title does not need to include every possible consequence or impact of a proposed measure, and it does not need to address or anticipate every possible legal issue. *Armstrong*, 2022 Ark. at 8–9, 652 S.W.3d at 174–75 (citing *Stiritz*, 2018 Ark. 281, at 7, 556 S.W.3d at 529.) This court has long recognized the impossibility of preparing a ballot title that would suit everyone. *Id.* (citing *Cox*, 374 Ark. at 443, 288 S.W.3d at 595). The ultimate issue is whether the voter, while inside

the voting booth, is able to reach an intelligent and informed decision for or against the proposal and understands the consequences of his or her vote based on the ballot title. *Id.*

The court's most significant rule in determining the sufficiency of the title is that it be given a liberal construction and interpretation in order that it secure the purposes of reserving to the people the right to adopt, reject, approve, or disapprove legislation. *Id.* (citing *Wilson v. Martin*, 2016 Ark. 334, at 8, 500 S.W.3d 160, 166). But that does not imply that liberality is boundless or that common sense is disregarded. *Id.* (citing *Knight*, 2018 Ark. 280, at 7, 556 S.W.3d at 507). It is not the court's purpose to examine the relative merit or fault of the proposed changes in the law; rather, its function is merely to review the measure to ensure that, if it is presented to the people for consideration in a popular vote, it is presented fairly. *Id.* (citing *Wilson*, 2016 Ark. 334, at 8, 500 S.W.3d at 166).

A. The Absentee Voting Amendment's Popular Name and Ballot Title Are Legally Sufficient.

Unlike the ballot title, the popular name is primarily a useful legislative device. *Roberts v. Priest*, 341 Ark. 813, 821–22, 20 S.W.3d 376, 380–81 (2000) (citation omitted). Its purpose is to identify the proposal

for discussion prior to election. *Id.* (citations omitted). The popular name is not held to the same stringent standards and need not be as explicit as a ballot title, yet it may not contain language that is misleading or partisan. *Id.* (citations omitted). When the court reviews the sufficiency of a ballot title and popular name, it construes the two provisions together. *Id.* (citations omitted). Popular names tend to fail if they present different ideas or concepts than the text or the ballot title, fail to sufficiently convey an intelligible idea of the scope and import of the proposed amendment, or are tinged with partisan coloring. *See id.* *See also Cox*, 2012 Ark. at 12, 423 S.W.3d at 84.

This particular popular name is nothing more than language about the scope of the ballot title in the format of a larger, 10,000-foot view. It serves as the bullet point headings to what is outlined in the ballot title. There is nothing misleading or partisan about it and it conveys an intelligible idea of what the amendment is going to import—laws related to absentee voting.

The ballot title informs the voter that a “for” vote will be to amend in the manner set out in the title. The title conveys all the pertinent,

relevant, and necessary information to cause the voter to be satisfied with the effects of a for or against vote.

The amendment makes some substantive changes to the absentee voting laws. However, the changes are contained in the title and informs the voter of what the new laws would be if the amendment passes. As such, there is nothing missing which would cause the voter to have a serious ground for reflection. The changes being made and spelled out in the title are:

- A. Amending the constitution.
- B. Setting a definitive absentee voting period of thirty days. *See* Ark. Code Ann. § 7-5-407(a)(2) (forty-six day absentee voting period).
- C. Changing the qualifications for eligibility to vote absentee as well as specifically spelling out those qualifications. *See id.* at § 402.
- D. Changing that an absentee ballot may be distributed to the qualifying voter. *See* Ark. Code Ann. § 7-5-409(d)(e)(f)(g).
- E. Permitting an exception to the amendment for those assisting a disabled voter. *See id.*
- F. Changing how absentee ballots are returned to the clerk. *See id.* at § 7-5-411.

It also informs the voter of what will be new laws related to voting.

These include:

- A. Preventing the tracking of absentee ballots except when a voter tracks his or her own ballot on its return trip to the county clerk.
- B. Preventing the disclosure of information about who has requested or returned an absentee ballot; and
- C. Not counting absentee ballots that do not strictly comply with the absentee voting laws.

While the Attorney General, in his latest missive on the absentee voting amendment, took umbrage with some parts of the measure, this court does not give his opinion any deference. *Bailey v. McCuen*, 318 Ark. 277, 284, 884 S.W.2d 938, 942 (1994). The petitioners address his concerns only to show that the title, as written, is sufficient and the points he complained about are not material. The Attorney General's re-write added information to the ballot title that is not material. One such requirement is a statement or summarization of current law relating to the absence of the right to vote by absentee ballot.

First, the United States Supreme Court has long held that absentee voting is not a right but a privilege. *McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 807 (1969) (the right to vote is not the right to receive an absentee ballot). *See Tully v. Okeson*, 78 F.4th 377, 388 (7th Cir. 2023) (*Tully ID*); *Tully v. Okeson*, 977 F.3d 608, 618 (7th Cir. 2020)

(*Tully I*); *Mays v. LaRose*, 951 F.3d 775, 792 (6th Cir. 2020) (citing *McDonald*, 394 U.S. at 807–09) (“there is no constitutional right to an absentee ballot”); *Texas Democratic Party v. Abbott*, 978 F.3d 168, 188, 194 (5th Cir. 2020) (*Abbot II*); *Texas Democratic Party v. Abbott*, 961 F.3d 389, 405 (5th Cir. 2020) (*Abbott I*).

This court has long recognized that every person is presumed to know the law, whether civil or criminal. *City of Farmington v. Smith*, 366 Ark. 473, 480, 237 S.W.3d 1, 6 (2006). Perhaps that is the reason why this court has stated that the ballot title is not required to state or summarize the present law. *Cox*, 374 Ark. at 445, 288 S.W.3d at 596 (citing *Becker v. Riviere*, 270 Ark. 219, 224, 604 S.W.2d 555, 558 (1980)). This overly inclusive detail of a current statement of law is not something that must be included in the title.

As to the not counting of absentee ballots not present and in the canvassing process at the time the polls close, this is also a statement of current law. All returned absentee ballots must be received by 7:30 p.m. on election day and counted prior to the close of the polls, which is also 7:30 p.m. on election day. Ark. Code Ann. §§ 7-5-304(a); 7-5-411(a)(1)(A)(i); and 416(a)(7)(A). Since the absentee ballots must be

received and counted prior to 7:30 p.m. on election day when the polls close, there is no major shift or serious innovation of law that would warrant requiring notice of this provision in the ballot title. The same thing is true for Amendment 50 and UOCAVA. The measure does not change Amendment 50 and exempts UOCAVA. In both of these concerns that caused the Attorney General to rewrite, no changes to current law are made but only makes current law part of the constitution.

On the prohibition on anyone from touching, handling, or possessing an absentee ballot except for certain listed individuals this information is already sufficiently in the ballot title. It is plainly and clearly spelled out that the measure will limit “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.” Adding language that includes an additional statement that people other than those listed cannot touch, handle, or possess an absentee ballot would be redundant. It would also likely cause confusion as the voter would wonder why the title said one thing and then immediately said the same thing in a different way.

Considering the return of the absentee ballot by the USPS, this type of exacting precision is not required by this court. A ballot title need not contain a synopsis of the proposed amendment or cover every detail of it. *Stiritz*, 2018 Ark. at 4, 556 S.W.3d at 527 (citing *Rose v*, 2016 Ark. at 4, 500 S.W.3d at 151). If information omitted from the ballot title is an essential fact that would give the voter serious ground for reflection, it must be disclosed. *Id.* The question to the court becomes: is the fact that a person assisting a disabled voter must return the disabled person's absentee ballot by the USPS an essential fact that would give a voter serious ground for reflection? The short answer to that is no, it is not an essential fact but the kind of detail inherent in the proposed amendment that does not have to be disclosed in a ballot title.

B. The Paper Ballot Amendment's Popular Name and Ballot Title Are Legally Sufficient.

The paper ballot measure and the absentee voting measure are similarly structured. The popular name provides a 10,000-foot view of the ballot title. The goal of both popular names was to provide the voter the ability to quickly recognize the measures on the ballot and provide the voter with an overview of the contents of the ballot title. There is nothing

misleading, partisan, or nefarious about the paper ballot measure's popular name.

The ballot title is also straightforward. It informs the voter of the following material information which are changes to existing law:

- A. Repeals or amends specific parts of Amendment 50 and details the language that will be repealed and amended.
- B. It creates a policy and practice in which elections are conducted using paper ballots with specific security criteria and which are hand marked by the voter with a specific type of ink;
- C. Creates an exception for those with disabilities in compliance with federal law for federal elections and extending that exception to state elections;
- D. Requires that the method of voting must continue to insure and ensure the secrecy of the votes cast on the ballot and the person casting the ballot;
- E. Prohibits the counting of early or election day votes before the polls close on election day;
- F. Requires that certification (not unofficial or preliminary counts) be based on a hand count of the votes performed and verified by "human intelligence."
- G. Preserves the current method of voting in our state by choosing one candidate per race and setting the standard for declaring winners (including in municipal elections, which is important because they are different than other elections by statute); and

H. Prohibits elections from being conducted based on the internet or wirelessly;

Whereas the absentee voting measure is more akin to a type of cosmetic upgrade to make that type of voting leaner, stronger, and more protected, the paper ballot measure is an overhaul of the voting system in our state. However, all the material information is present. The title clearly, and accurately, spells out what is being removed, what is being added, the effect it will have on the elections, reaffirms the right to vote by machine for those with disabilities, will continue to protect the secrecy of the ballot, and even where the funding for the amendment will come. There is nothing left out which would give the voter pause. Nothing is hidden, there are no complex terms, and even the commonly understood terms like “disabilities” and “human intelligence” have common, accepted, and easily understandable definitions.

To the extent that the Attorney’s General opinion matters, his rejections of this proposed measure hinge on only two bases. The first is the full text doctrine, also known as the ‘whole cloth doctrine,’ and the definition of “human intelligence.” The arguments about the inapplicability of the full text doctrine, or, as the petitioners call it, the ‘whole cloth’ doctrine, are addressed in Section III(A)(iii)(b), on page 30,

supra, and will not be regurgitated here. The petitioners ask that the court consider that the full text doctrine does not apply and has never applied in Arkansas as a basis for rendering a ballot title or popular name insufficient and that we have used references to statutes over fifty times in constitutional amendments since at least 1936. Simply put, the full text doctrine is not our law, never has been, and we have a different practice for amending our constitution.

As to all the definitions in the proposed measure, this court has a clear doctrine of law about definitions in ballot titles and popular names. A title is not required to include every detail, term, definition, or how the law will work. *Cox*, 2012 Ark. at 9, 423 S.W.3d at 83. Instead, this court has only ever held that a definition is required when it is a technical term not readily understood by voters, such that voters would be placed in a position of either having to be an expert in the subject, guess as to the effect a vote would have, or if overly technical terms are used to disguise from the voters a commonly understood term. *Wilson v. Martin*, 2016 Ark. 334, 9, 500 S.W.3d 160, 167 (2016) (citations omitted).

While there is rampant debate over the quality or levels of human intelligence, and whether it is even possessed by certain, specific

humans, there is nothing technical, complex, or magical about the term “human intelligence.” Even the Attorney General’s opinion states that the term is “not misleading,” but that he cannot determine if the term would be defined to allow a human to use a calculator or some other device to count votes. That type of analysis is substantive, not procedural. Additionally, questions of how a court would interpret a definition have never been a basis for rejecting a measure’s name and title. If a voter steps into a voting booth, reads the title of this measure, and is unable to make an informed decision on how to vote because he cannot determine the definition of “human intelligence,” then there are far graver problems facing Arkansas than the popular name and ballot title of this measure.

CONCLUSION

This court has jurisdiction of this matter pursuant to two provisions in our constitution. This moment is the one the court, and the people, have been waiting for since the 1990s and for which Amendment 80 was passed. It is time to stop the torturous methods of bleeding the money out of ballot sponsors and the life from the initiative process. The petitioners simply want access to the ballot. Their measures comply with this court’s standards and the actions of the legislature and the Attorney

General are unrequired hoop jumping which takes the power to self-legislate from the people. Please, end the madness and restore the power found in our constitution to the people—where it rightfully belongs.

REQUESTED RELIEF

1. Find Ark. Code Ann. §§ 107 and 126(e) unconstitutional, overruling *Washburn* in the process.
2. Conduct a pre-signature review of the sufficiency of the ballot titles and popular names of the ballot measures in this case.
3. Find that the ballot titles and popular names of both measures are legally sufficient.

Respectfully Submitted,

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By: /S/ CLINTON W. LANCASTER
Clinton W. Lancaster, 2011179

CERTIFICATE OF SERVICE

By my signature above, I certify pursuant to Ark. R. Civ. P. 5(e) that a copy of the foregoing has been delivered by the below method to the following person or persons:

First Class Mail Email AOC/ECF Hand Delivery

Justin Brascher

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Ark. Sup. Ct. Admin. Order 19 in that there is no unredacted confidential information (no confidential information is contained in the brief), Admin Order No. 21 in that this brief contains no live hyperlinks (hyperlinks, if any, removed by Adobe Acrobat Pro Continuous Release Version 2023.008.20458), and conforms to Rule 4-2(d) because the jurisdictional statement, statement of the case, argument section, conclusion, and requested relief portions of this brief, including the footnotes (if any), contains **8581** words.



By: /S/ CLINTON W. LANCASTER
Clinton W. Lancaster, 201117

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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

Doc ID: 5a956510d56271b78c8e64c8a1a1d96ba7556fc4

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

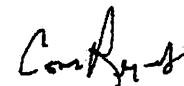
Section Six: Brief Statement

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. 2023-132

January 11, 2024

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 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.

2. Rules governing my review. In Attorney General Opinion 2023-109, issued in response to your previous request for review and certification, I articulated the rules and standards that govern this process. I rely on those same rules and standards here, and I incorporate them by reference into this opinion.

3. Application to your popular name. As I noted in Opinion No. 2023-109, your proposed popular name is so long that it reads more like a second ballot title than a popular name. Therefore, I am substituting and certifying a “more suitable” popular name.¹ The popular name provided on page 4, below, is substituted and certified for your proposed amendment.

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

- **Ballot title summaries.** As I explained in Attorney General Opinion 2023-109, our state constitution requires that sponsors include all material in the ballot title that qualifies as an “essential fact which would give the voter serious ground for reflection.”² Your proposed constitutional amendment contains several material provisions that do not appear in your ballot title but would likely give voters “serious ground for reflection.” These include provisions that:
 - Declare absentee voting a privilege, not a right;
 - Prohibit anyone from touching, handling, or possessing an absentee ballot except for certain listed individuals;³

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

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

³ In your last submission, which was the subject of Attorney General Opinion 2023-109, I noted that even though the text of your proposed amendment prohibited anyone from touching, handling, or possessing an absentee ballot except for the voter, certain election workers, and postal workers, your ballot title only stated that “ballot harvesting” and the “unauthorized possession” of absentee ballots were prohibited. This version of your ballot title clarifies and expands the list of individuals who may possess an absentee ballot, yet it still does not inform the voter that your proposed text

- Require that an individual who assists a disabled voter return the disabled voter's absentee ballot to the county clerk's office by using the United States Postal Service and not by returning the ballot in person at the physical office of the county clerk;
- Prohibit the counting of any absentee ballots not physically present and in the canvassing or tabulation process by the close of the polls on election day; and
- Exempt Ark. Const. amend. 51, § 9(i) and any ballots requested, obtained, cast, canvassed, or counted pursuant to the federal Uniform Overseas Citizens Absentee Voting Act from the terms of this amendment.

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

- **Grammatical changes.** I have also made a few minor grammatical changes and clarifications to your ballot title to ensure it is not misleading or confusing to the voter and that it accurately reflects the content of your proposed constitutional amendment. Only one of these changes is substantive: my change of the word "all" to "any" in your provision regarding the use of internet, Bluetooth, or wireless connections. Your ballot title describes the proposed amendment as "prohibiting all elections in this state from being conducted using an internet, Bluetooth, or wireless connection." The use of the word "all" suggests that some of the elections in the state may be conducted using an internet, Bluetooth, or wireless connection," so long as not "all" of them are. But the text of your proposed amendment states, "In a public election in this state, the selecting of votes for a candidate or issue, casting of ballots, tabulation of votes for a ballot, or tabulations pertaining to ballots shall not be conducted or completed using an internet, Bluetooth, or wireless connection." This suggests that you intend to prohibit the use of an internet, Bluetooth, or wireless connection in *any* public election in the state.⁴ Therefore, to better reflect the language of your proposed text, I have changed "all elections" to "any election" in your ballot title.

In addition to these edits to your ballot title, I must also note an issue in the text of your proposal. In Attorney General Opinion 2023-109, I explained that initiated constitutional amendments do not require enacting clauses,⁵ and that the inclusion of an enacting clause required for "bills" in your first proposed constitutional amendment created an ambiguity as to what the voters are being

prohibits the touching or handling of absentee ballots by anyone who does not fall into one of the categories of listed individuals. Consequently, I have added this information to the ballot title.

⁴ When used as an adjective in a negative context, such as in a prohibition, "any" commonly means "not even one." See Bryan A. Garner, *GARNER'S MODERN ENGLISH USAGE* 71 (5th ed. 2022). Therefore, I believe "any" better encompasses the meaning of your proposed text.

⁵ See also Ark. Const., art. 5, § 1 ("Enacting Clause"); *Mertz v. States*, 318 Ark. 390, 394, 885 S.W.2d 853, 855 (1994) ("Simply put...all bills initiated must be submitted in the following language set forth in Amendment 7: "Be it enacted by the people of the State of Arkansas..."); *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.").

asked to consider, a bill or a constitutional amendment.⁶ Instead of removing the enacting clause altogether, the text of your current proposed constitutional amendment now reads: “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.”

While the inclusion of an enacting clause is improper in a constitutional amendment,⁷ I cannot say that this clause, as worded, would be misleading to the voter.⁸ Still, please note that this question appears to be one of first impression. A court could find that your clause is an enacting clause and is therefore inherently misleading when used for a constitutional amendment, despite the additional language added to the clause in this submission.

With this caveat and with the above changes incorporated, the following popular name and ballot title are substituted and certified:

Popular Name:

The Absentee Voting Amendment of 2024

Ballot Title:

An amendment to the Arkansas Constitution declaring that absentee voting in the state of Arkansas is not a right but a privilege; amending Amendment 50 to add additional sections effectuating a policy and practice in which absentee ballots may only be distributed within the 30 days before 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 they are 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 the touching, handling, or possessing 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; allowing an individual assisting a disabled voter to return the disabled voter’s absentee ballot to the county clerk’s office only by placing the voted ballot into the custody of the United States Postal Service but not by returning the ballot in person at the physical office of the county clerk; preventing the tracking of absentee ballots once they have been sent or provided to the voter unless the voter is 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

⁶ *E.g.*, Ark. Att’y Gen. Ops. 2018-076, 2017-016, 2015-065, 2013-039, 2012-013, 2009-169.

⁷ See BLACK’S LAW DICTIONARY 315 (11th ed. 2019) (defining “enacting clause” as “[t]he part of a *statute* stating the legislative authority by which it is made and often the date when it will take effect.”) (emphasis added).

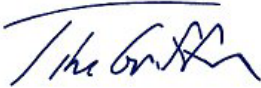
⁸ As explained in Attorney General Opinion 2023-109, the General Assembly has only empowered me to reject or modify a ballot title when it is misleading or when a vote “for” is actually a vote against (or vice versa).

election day votes are counted; prohibiting the counting of any absentee ballots not physically present and in the canvassing or tabulation process by the close of the polls on election day; exempting Ark. Const. amend. 51, § 9(i), which allows certain groups of citizens to vote without prior registration by absentee ballot, and any ballots requested, obtained, cast, canvassed, or counted pursuant to the federal Uniform Overseas Citizens Absentee Voting Act from the terms of this amendment; prohibiting any election in this state from being conducted using an internet, Bluetooth, or wireless connection; requiring that absentee ballots and absentee voting that does not strictly conform to the requirements of this amendment not be counted; and directing the Arkansas General Assembly to allocate funding to effectuate and implement the terms of this amendment.

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

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

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TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-133

January 11, 2024

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 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

323 CENTER STREET, SUITE 200
LITTLE ROCK, ARKANSAS 72201

ADD. 008

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.

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

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

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).

against the issue would actually be a vote for the outcome opposite of what the voter intends.⁶

3. Rules governing the popular name and the ballot title. In Opinion No. 2023-108, issued in response to your first submission for review and certification, I explained the rules and legal standards that govern my review of popular names and ballot titles. I rely on those same rules and legal standards here and incorporate those rules and standards by reference.

4. 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, the current version of the popular name and the ballot title fails to make all the changes noted in my response to your first submission, Opinion No. 2023-108. 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:⁷

In Opinion 2023-108, I noted that it was unclear whether you intended your definition of “disabled voter”—“a voter with a disability as that term is defined under the Help America Vote Act”—to exclude someone with sensory impairments, when the definition of “disability” under such federal law differs from state law. State election law concerning voters with disabilities defines “disability” as “any physical, mental, or *sensory impairment*.”⁸ Your measure’s text now defines “disabled voter” as “a voter with a disability as that term is defined by the Help America Vote Act [(HAVA)], the Americans with Disabilities Act of 1990 [(ADA)], or the Arkansas Civil Rights Act of 1993 [(ACRA)] and includes those voters who are blind or visually impaired.” Yet the HAVA does not contain a definition of “disability,” and the definitions of “disability” under the ADA and the Arkansas Civil Rights Act ACRA are narrower than the definition contained in A.C.A. § 7-5-311.⁹ So the addition of more statutes compounds, rather than clarifies, the issues I

⁶ *Id.*

⁷ Although A.C.A. § 7-9-107 does not authorize the Attorney General to modify the text of the proposed measure itself, the Attorney General still reviews the text of the proposed measure because the ballot title and popular name cannot be certified when the “text of the proposed amendment itself” is ambiguous or misleading. *Roberts*, 341 Ark. at 825, 20 S.W.3d at 382. And in line with the caselaw, my predecessors have consistently rejected ballot titles “due to ambiguities in the text” of the proposed measure.” *E.g.*, Ark. Att’y Gen. Ops. 2016-015, 2015-132, 2014-105, 2014-072, 2013-079, 2013-046, 2013-033, 2011-023, 2010-007, 2009-083, 2008-018, 2005-190, 2002-272, 2001-074, 2001-397, 2001-129, 2000-084, 1999-430.

⁸ A.C.A. § 7-5-311(c) (emphasis added).

⁹ 42 U.S.C.A. § 12102 (**ADA**) (defining “disability” as “a physical or mental impairment that substantially limits one or more major life activities”; “a record of such an impairment”; or “being regarded as having such an impairment”); A.C.A. § 16-123-102(5) (**ACRA**) (defining “disability” as “a physical or mental impairment that substantially limits a major life function”); *see also Faulkner v. Arkansas Children’s Hosp.*, 347 Ark. 941, 954, 69 S.W.3d 393, 401 (2002) (noting that the “definition of disability in both the ACRA and the ADA are in all relevant respects the same”).

noted with the new definition. The way you have defined this term is confusing, would give voters “serious ground for reflection,” and fails to adequately inform voters about how your measure would change existing law. As I noted before, your definition also appears to change the law. Here, it changes the law as it pertains to voters who (1) are deaf or hearing-impaired or (2) have a disability that does not substantially limit a major life activity. If that is your intent, it would amount to a substantial change in law that would surely give voters “serious ground for reflection.” Such a material change would need to be noted in the ballot title. Therefore, I simply reiterate what I said in Opinion No. 2023-108, which I incorporate in this opinion.

Your approach to defining this term is also problematic because it attempts to incorporate other statutory definitions by reference, which violates the “full text” requirement. The absence of the measure’s full text then renders the ballot title misleading by omission. Amendment 7 (Ark. Const., art. 5, § 1) to our state constitution requires that the “full text” of the initiated measure accompany each petition. Consequently, under A.C.A. § 7-1-107, all sponsors must give the Attorney General “[t]he full text of the proposed measure.” And while the Arkansas Supreme Court has yet to interpret the meaning of the phrase “full text of the proposed measure,” the North Dakota Supreme Court recently reviewed a substantially identical phrase in its own law.¹⁰ In *Haugen v. Jaeger*, the North Dakota Supreme Court reviewed the legal validity of an initiated constitutional amendment that, by explicit citation, incorporated certain statutes into the state constitution.¹¹ There, the legal question was whether such an incorporation violated the state’s full-text requirement.

Reaffirming a nearly 100-year-old decision on that topic of law, *Dyer v. Hall*,¹² the *Haugen* court held that such an incorporation by reference violates the full-text requirement for two reasons. First, it cut against “the purpose of the full-text requirement,” which “was to obviate all uncertainty as to the subject-matter dealt with in the Constitution.”¹³ Second, *Haugen* approvingly cited *Dyer*’s additional point that when initiated measures incorporate laws by reference, the “voters have no opportunity to read or examine fairly the contents [of those incorporated laws] and appreciate the real import of the proposed amendment.”¹⁴ In my opinion, the Arkansas Supreme Court likely would agree with *Haugen*’s conclusion and reasoning when interpreting our own full-text requirements.

Here, you, like the sponsors in *Haugen*, expressly incorporate by reference statutes, two federal and one state, into the definition of “disabled voter” without providing the actual definitions. Therefore, voters reviewing the ballot title are not sufficiently advised about

¹⁰ I have also recently reviewed in detail the holding of this particular North Dakota Supreme Court decision in Ark. Att’y Gen. Op. 2023-113.

¹¹ 2020 N.D. 177, 948 N.W.2d 1.

¹² 51 N.D. 391, 199 N.W. 754 (1924).

¹³ 2020 N.D. 177, 4, 948 N.W.2d at 4 (internal quotations omitted).

¹⁴ *Id.* at 4, 948 N.W.2d at 3 (internal quotations omitted).

the content of the statutes you are attempting to incorporate into the definition of “disabled voter,” and the absence of the measure’s full text means the ballot title is misleading by omission.

Because you have not yet resolved these issues concerning the definition of “disabled voter,” 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.

5. Additional issues. While the foregoing defects are sufficient grounds for me to reject your submission, please note that your proposed measure contains several other issues that you may wish to correct or clarify. You have chosen to selectively resolve a subset of such additional problems I noted in response to your first submission (Opinion No. 2023-108).

- **Enacting clause.** Although the inclusion of an enacting clause is improper in a constitutional amendment,¹⁵ I cannot say that this clause, as worded, would be misleading to the voter.¹⁶ Still, please note that this question appears to be one of first impression. A court could find that your clause is an enacting clause and is therefore inherently misleading when used for a constitutional amendment, despite the additional language added to the clause in this submission.
- **“Human intelligence.”** The ballot title and the text of your proposed measure, like your previous submission, contain the phrase “human intelligence.” The way your prior submission defined this term was confusing. You have now revised this definition. As this side-by-side comparison shows, the definition of “human intelligence” changed as follows:

First Submission, § 3 Definitions	Second Submission, § 3 Definitions
“Human Intelligence” means “the thought and physical process of a human being instead of the thought or process of a computer or an artificial intelligence.”	“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.”

And the current proposed ballot title and text of the proposed measure use “human intelligence” as follows:

¹⁵ See BLACK’S LAW DICTIONARY 315 (11th ed. 2019) (defining “enacting clause” as “[t]he part of a *statute* stating the legislative authority by which it is made and often the date when it will take effect.”) (emphasis added).

¹⁶ As explained in Ark. Att’y Gen. Op. 2023-109, the General Assembly has only empowered me to reject or modify a ballot title when it is misleading or when a vote “for” is actually a vote against (or vice versa).

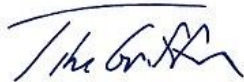
Proposed Ballot Title	Proposed Text, § 8
The proposed ballot title states “that the certification of all elections be based on a hand count of the votes performed and verified by human intelligence.”	Section 8 of the proposed measure provides that “certification of all elections shall be based on a hand count of the votes performed and verified by human intelligence.”

To read the new definition and ballot title together: all elections must be “based on a hand count of the votes performed and verified by...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.”

In Opinion 2023-108, I noted that the definition of “human intelligence” provided in the first submission was confusing because the meaning of “thought and physical process” was unclear. In your current submission, you appear to replace the phrase “thought and physical process” with additional language. It is unclear whether this additional language outright addresses the Opinion 2023-108’s question of whether a human can use a machine or computer, such as a calculator or Excel spreadsheet to aid in the hand count process. The line between determining the meaning of words within a measure versus interpreting the measure is fine. While I review the meaning of words to determine whether they are confusing or misleading, it is not my place to actually interpret the measure’s text.¹⁷ Therefore, I cannot definitively conclude that this new definition, as worded, would be misleading to the voter.¹⁸ But whether or not the new language here is confusing or misleading is borderline, and I note that a court could find that the language is misleading.

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

Sincerely,



TIM GRIFFIN
Attorney General

¹⁷ See, e.g., *Cox v. Daniels*, 374 Ark. 437, 451, 288 S.W.3d 591, 600 (2008) (“[W]e cannot engage in the interpretation and construction of the text of the amendment....”).

¹⁸ Again, the General Assembly has only empowered me to reject or modify a ballot title when it is misleading or when a vote “for” is actually a vote against (or vice versa).



Clinton W. Lancaster <clint@thelancasterlawfirm.com>

Ballot Initiatives (2)

Ryan Owsley <ryan.owsley@arkansasag.gov>
To: "clint@TheLancasterLawFirm.com" <clint@thelancasterlawfirm.com>

Wed, Dec 27, 2023 at 10:27 AM

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



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

**LANCASTER & LANCASTER
LAW FIRM, PLLC**

clint@TheLancasterLawFirm.com

Tel: (501) 776-2224

Fax: (501) 778-6186

www.TheLancasterLawFirm.com

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STATE BOARD OF ELECTION COMMISSIONERS

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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,



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

LANCASTER & LANCASTER
LAW FIRM, PLLC
clint@TheLancasterLawFirm.com
Tel: (501) 776-2224
Fax: (501) 778-6186

www.TheLancasterLawFirm.com

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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>

Fri, Dec 29, 2023 at 4:25 PM

To: electionsemail@sos.arkansas.gov

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

**LANCASTER & LANCASTER
LAW FIRM, PLLC**

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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 McElhane <kelly@thelancasterlawfirm.com>, [REDACTED]
[REDACTED]

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

**LANCASTER & LANCASTER
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clint@TheLancasterLawFirm.com
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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 McElhane <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

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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

LAW FIRM, PLLC

clint@TheLancasterLawFirm.com

Tel: (501) 776-2224

Fax: (501) 778-6186

www.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

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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
LAW FIRM, PLLC
clint@TheLancasterLawFirm.com
 Tel: (501) 776-2224
 Fax: (501) 778-6186

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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

LANCASTER & LANCASTER

LAW FIRM, PLLC

clint@TheLancasterLawFirm.com
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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>
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>

Fri, Jan 5, 2024 at 10:51 AM

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
Tel: (501) 776-2224
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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
Tel: (501) 776-2224
Fax: (501) 778-6186

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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.**

P.O. BOX 1295 T: (501) 776-2224
BENTON, AR 72018 F: (501) 778-6186

LLF@THELANCASTERLAWFIRM.COM

LANCASTER LAW FIRM, PLLC

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.

LANCASTER LAW FIRM, PLLC

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. Friest*, 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

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.

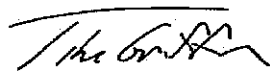
4. A canvasser must be both a citizen of the United States and a resident of the State of Arkansas.

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.							
6.							
7.							
8.							
9.							
10.							

State of Arkansas, County of _____

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: _____

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.

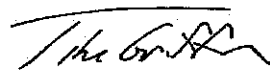
4. A canvasser must be both a citizen of the United States and a resident of the State of Arkansas.

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.

RETRIEVED FROM DEMOCRACYDOCKET.COM

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.							

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

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: _____

ADD. 053

PLACE SEAL ABOVE