TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2026-123

November 24, 2026

Ms. Makenzie Hall

Via email only: makenzieh701@gmail.com

Dear Ms. Hall:

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 initiated act.

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 act:

Popular Name

Arkansas Minimum Wage Increase

Ballot Title

Arkansas Fair Wage and Tipped Employee Act of 2028

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:

[1] A.C.A. § 7-9-107(a)(1).

[2] *Id.* § 7-9-107(b).

- First, the Attorney General may approve and certify the ballot title and popular name in the form they were submitted.[3]

- Second, the Attorney General may "substitute and certify a more suitable and correct ballot title and popular name."[4]

- Third, the Attorney General may reject both the popular name and ballot title "and state his or her reasons therefor and instruct" the sponsors to "redesign the proposed measure and the ballot title and popular name."[5] This response is permitted when, after reviewing the proposed measure, the Attorney General determines that (1) "the ballot title or the nature of the issue" is "presented in such manner that the ballot title would be misleading"; (2) "the ballot title or nature of the issue" is "designed in such manner" that a vote for or against the issue would actually be a vote for the outcome opposite of what the voter intends; or (3) the text of the proposal conflicts with the United States Constitution or a federal statute.[6] This response is also permitted when a proposed ballot title fails to comply with Act 602 of 2025, which prohibits the Attorney General from certifying "a proposed ballot title with a reading level above eighth grade as determined by the Flesch-Kincaid Grade Level Formula as it existed on January 1, 2025."[7] If a proposed ballot title is written above an eighth-grade reading level, I am authorized to substitute a "more suitable"[8] ballot title or to reject the proposed ballot title, state the reasons for the rejection, and "instruct the petitioners to redesign the proposed ballot title or proposed measure in a manner that does not violate [Act 602]."[9]

3. Rules governing the popular name. The popular name is primarily a useful legislative device,[10] and its purpose is to identify the proposal for discussion.[11] While it need not contain detailed information or include exceptions that might be required of a ballot title, the popular name

[3] *Id.* § 7-9-107(d)(1).

[4] *Id.*

[5] *Id.* § 7-9-107(f).

[6] *Id*. Act 154 of 2025 created this third basis for rejection. It also prohibits a sponsor from submitting multiple initiative petitions or referendum petitions that are "conflicting measures," and it requires the Attorney General to reject all such petitions.

[7] Act 602 of 2025, § 2, as codified at A.C.A. § 7-9-107(l)(1).

[8] A.C.A. § 7-9-107(d)(1).

[9] *Id.* § 7-9-107(l)(1).

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

[11] *Paschall v. Thurston*, 2024 Ark. 155, at 10, 699 S.W.3d 352, 359 (citing *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 699 (2000)).

must not be misleading or partisan.[12] And it must be considered together with the ballot title in determining the ballot title's sufficiency.[13] Thus, a popular name can be misleading if it references only a subset of the topics covered in the measure's text.[14]

4. Rules governing the ballot title. The ballot title must summarize the proposed initiated act. The Arkansas Supreme Court has developed general rules for what must be included in the summary and how that information must be presented. Sponsors must ensure their ballot titles impartially summarize the proposed initiated act's text and give voters a fair understanding of the issues presented.[15] The Court has also disapproved the use of terms that are "technical and not readily understood by voters."[16] Ballot titles that do not define such terms may be deemed insufficient.[17] And, as mentioned above, the General Assembly has prohibited ballot titles "with a reading level above eighth grade."[18]

Additionally, sponsors cannot omit material from the ballot title that qualifies as an "essential fact which would give the voter serious ground for reflection."[19] Yet the ballot title must also be brief and concise lest voters exceed the statutory time allowed to mark a ballot.[20] The ballot title is not required to be perfect, nor is it reasonable to expect the title to address every possible legal argument the proposed measure might evoke.[21] The title, however, must be free from any misleading tendency—whether by amplification, omission, or fallacy—and it must not be tinged with partisan coloring.[22] The ballot title must be honest and impartial,[23] and it must convey an

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

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

[14] *Paschall*, 2024 Ark. 155, 13–16, 699 S.W.3d at 361–63.

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

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

[17] *Id.*

[18] Act 602 of 2025, § 2, as codified at A.C.A. § 7-9-107(l).

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

[20] A.C.A. §§ 7-9-107(d)(2) (requiring the ballot title "submitted" to the Attorney General or "supplied by the Attorney General" to "briefly and concisely state the purpose of the proposed measure"); 7-5-309(b)(1)(B) (allowing no more than ten minutes); *see Bailey*, 318 Ark. at 288, 884 S.W.2d at 944 (noting the connection between the measure's length and the time limit in the voting booth).

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

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

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

intelligible idea of the scope and significance of a proposed change in the law.[24] The ballot title need not summarize existing law though.[25] The Court has held that a statement that a measure "will repeal inconsistent laws" is sufficient to inform the voters "that all laws which are in conflict will be repealed."[26] But if a ballot title describes some of a measure's changes with specificity while describing other changes more generally, this can render the ballot title misleading.[27]

Finally, the Court has held that a ballot title cannot be approved if the text of the proposed measure itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.[28] Yet a ballot title need not account for all possible legal effects and consequences of a proposed measure.[29]

5. Application. Having reviewed the text of your proposed initiated act, as well as your proposed popular name and ballot title, I have concluded that I must reject your proposed ballot title as misleading because it makes no attempt to summarize the measure's text in a way that complies with the law described above. As my predecessors and I have noted many times, although the Attorney General is authorized to "modify a proposed ballot title to render it a more accurate summary" of the underlying measure, the Attorney General is "not authorized to craft a ballot title that amounts to an independent product."[30]

6. Additional Issues. While the foregoing defect provides sufficient grounds for me to reject your submission, I have identified other issues in your proposal that you may wish to address if you resubmit:

- ***Impact on existing law.*** While the text of your measure mentions current state law, you have failed to indicate whether your proposal would repeal, amend, or supplement existing provisions of the Arkansas Minimum Wage Act governing the minimum wage. Without that designation, it would be difficult to determine precisely how the proposal would interact with existing law and, in turn, to ensure any ballot title meets the Arkansas Supreme Court's requirement that ballot titles convey the scope of the proposed change in law.[31]

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

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

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

[27] *See Paschall*, 2024 Ark. 155 at 16, 699 S.W.3d at 363.

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

[29] *McGill v. Thurston*, 2024 Ark. 149, 14–15, 699 S.W.3d 45, 55.

[30] *See, e.g.*, Ark. Att'y Gen. Ops. 2024-031, 2023-098, 2018-112, 2013-112.

[31] *Christian Civic Action Comm.*, 318 Ark. at 250, 884 S.W.2d at 610.

- ***Enacting clause.*** Article 5, section 1 of the Arkansas Constitution requires initiated acts to contain the enacting clause, "Be It Enacted by the People of the State of Arkansas." Although your proposal contains that language, it appears at the end of the measure rather than at the beginning, which is the conventional practice. You may wish to move the placement of the enacting clause to the beginning of the measure.

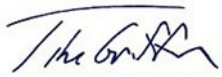
- ***Popular name.*** You designated the proposal's name as its "common name" rather than its "popular name," as required by A.C.A. § 7-9-107(b).

- ***Missing word.*** In paragraph (d) of Section 2, your proposal states, "In no circumstance shall an employee's combined hourly cash wages and qualifying tips fall below the applicable general minimum wage." Other than this paragraph, you used "minimum cash wage" consistently in this section.

This is not an exhaustive list. Additional deficiencies may be discovered upon review of subsequent proposals.

Assistant Attorney General Jodie Keener prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN
Attorney General