



**TIM GRIFFIN**  
ATTORNEY GENERAL

Opinion No. 2023-023

April 24, 2023

Steve Grappe  
Citizens for Arkansas Public Education and Teachers  
352 School Rd.  
Rose Bud, AR 72137

Dear Mr. Grappe:

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

In what follows, I:

- reproduce the popular name and ballot title exactly as you have submitted them;
- explain (1) the general rules governing the Attorney General's review, and (2) the specific rules governing the sufficiency of popular names and ballot titles; and
- apply those specific rules to your draft.

You submitted the following popular name and ballot title:

Popular Name

LEARNS ACT / SB 294 / ACT 237 OF 2023

Ballot Title

AN ACT TO CREATE THE LEARNS ACT; TO AMEND VARIOUS PROVISIONS OF THE ARKANSAS CODE AS THEY RELATE TO EARLY CHILDHOOD THROUGH GRADE TWELVE (12) EDUCATION IN THE STATE OF ARKANSAS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES. MAJOR PROVISIONS INCLUDE:

- GIVING SCHOOL SUPERINTENDENTS AND PRINCIPALS AUTHORITY TO MAKE

- ALL EMPLOYMENT-RELATED DECISIONS;
- ADD ADDITIONAL SCHOOL SAFETY REQUIREMENTS;
  - IMPLEMENT LITERACY SCREENERS FOR KINDERGARTEN THRU [*sic*] THIRD GRADE, EXPAND LITERACY SUPPORT PROGRAMS AND REQUIRE MATH INTERVENTION PLANS;
  - ADD STUDENT SUCCESS PLAN REQUIREMENTS;
  - AUTHORIZE CONTRACTS WITH CHARTER SCHOOLS OR OTHER APPROVED ENTITIES FOR TRANSFORMATION OF SCHOOLS RATED “D” OR “F”;
  - PROHIBIT INDOCTRINATION OF STUDENTS WITH CERTAIN IDEOLOGIES;
  - REQUIRE CURRICULUM MATERIALS ON CHILD SEXUAL ABUSE AND HUMAN TRAFFIC [*sic*], BUT WITH PARENTAL EXCEPTIONS AND PROHIBITING INSTRUCTION ON SEXUAL ORIENTATION, GENDER IDENTITY, AND OTHER SEXUAL TOPICS BEFORE FIFTH GRADE;
  - ESTABLISH A HIGH-IMPACT TUTORING PILOT PROGRAM AND A COURSE CHOICE PROGRAM;
  - ESTABLISH CAREER-READY PATHWAY DIPLOMAS;
  - REQUIRE 75 HOURS OF COMMUNITY SERVICE FOR HIGH SCHOOL GRADUATION STARTING WITH THE 2026-2027 CLASS;
  - ALLOW SCHOOL DISTRICTS AND CHARTER SCHOOLS TO OFFER UP TO 12 WEEKS OF PAID MATERNITY LEAVE TO THOSE EMPLOYED FULL-TIME FOR MORE THAN ONE YEAR;
  - REQUIRE WRITTEN PERFORMANCE TARGETS FOR SUPERINTENDENTS;
  - REPEAL INCENTIVES FOR TEACHER RECRUITMENT AND RETENTION IN HIGH-PRIORITY DISTRICTS;
  - REPEAL THE TEACHER FAIR DISMISSAL ACT OF 1983, ARKANSAS CODE 6-17-1501 ET SEQ., AND THE PUBLIC SCHOOL EMPLOYEE FAIR HEARING ACT, ARKANSAS CODE 6-17-1701 ET SEQ.;
  - INCREASE THE MINIMUM BASE SALARY FOR TEACHERS TO \$50,000 PER YEAR; REQUIRE TEACHER CONTRACTS TO COVER 190 SCHOOL DAYS PER YEAR, INCLUDING 178 DAYS OF ON-SITE, IN PERSON INSTRUCTION, PROHIBIT PERSONNEL CONTRACTS WITH MORE RIGHTS THAN ALLOWED BY STATE LAW; ABOLISH MANDATORY STEP INCREASES FOR YEARS OF SERVICE AND MASTER’S DEGREES; AND INCREASE SALARIES OF EXISTING TEACHERS BY \$2,000 PER YEAR FOR THE 2023-2024 YEAR;
  - AUTHORIZING TEACHER MERIT BONUSES OF UP TO \$10,000 PER YEAR;
  - REMOVE NUMERICAL LIMITS ON SCHOOL CHOICE TRANSFERS, EXCEPT AS REQUIRED BY A COURT-APPROVED DESEGREGATION PLAN;
  - ESTABLISH EDUCATIONAL FREEDOM ACCOUNT PROGRAM TO ALLOW PARENTS TO DIRECT STATE FUNDS TO PAY CERTAIN EXPENSES OF ATTENDING PRIVATE SCHOOLS;
  - ESTABLISH A TRANSPORTATION MODERNIZATION GRANT PROGRAM, INCLUDING FUNDING FOR RIDESHARE PROGRAMS AND NEIGHBORHOOD CARPOOL STRATEGIES;

- REMOVE NUMERICAL LIMITS ON THE NUMBER OF CHARTER SCHOOLS;
- PROVIDE FOR ARKANSAS TEACHER ACADEMIES AT POSTSECONDARY INSTITUTIONS AND SCHOLARSHIPS FOR ATTENDEES; AND
- TRANSFER THE DIVISION OF CHILD CARE AND EARLY CHILDHOOD EDUCATION FROM THE DEPARTMENT OF HUMAN SERVICES TO THE DEPARTMENT OF EDUCATION.<sup>1</sup>

**1. Rules governing this review.** Arkansas law requires sponsors of statewide referenda measures to “submit the original draft” of the measure to the Attorney General.<sup>2</sup> An “original draft” includes the full text of the proposed measure along with its ballot title and popular name.<sup>3</sup> 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.<sup>4</sup>
- Second, the Attorney General may “substitute and certify a more suitable popular name and ballot title.”<sup>5</sup>
- 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.”<sup>6</sup> This response is permitted when, after reviewing the proposed measure, the Attorney General determines that “the ballot title or the nature of the issue” is (1) “presented in such manner” that the ballot title would be misleading or (2) “designed in such manner” that a vote for or against the issue would actually be a vote for the outcome opposite of what the voter intends.<sup>7</sup>

In order to arrive at one of those three responses, the Attorney General examines the popular name and ballot title to ensure it complies with the legal standards established by Arkansas law as interpreted by the Arkansas Supreme Court. Although those standards, which are explained below,

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<sup>1</sup> This is an exact quote of your popular name and ballot title, including the underlined bullets and the formatting in all capital letters—neither of which is necessary. Popular names and ballot titles are much easier to read with normal capitalization.

<sup>2</sup> A.C.A. § 7-9-107(a).

<sup>3</sup> A.C.A. § 7-9-107(b).

<sup>4</sup> A.C.A. § 7-9-107(d)(1).

<sup>5</sup> *Id.*

<sup>6</sup> A.C.A. § 7-9-107(e).

<sup>7</sup> *Id.*

can be complicated, the basic purpose of the review is simple: the popular name and ballot title must accurately and impartially summarize the provisions of the law the voters will be asked to approve or reject.

**2. Rules governing the popular name.** The popular name is primarily a useful legislative device.<sup>8</sup> While it need not contain detailed information or include exceptions that might be required of a ballot title, the popular name must not be misleading or partisan.<sup>9</sup> And it must be considered together with the ballot title in determining the ballot title’s sufficiency.<sup>10</sup>

**3. Rules governing the ballot title.** The ballot title must summarize the act to be referred. The Court has developed general rules for what must be included in the summary and how that information must be presented. Sponsors must ensure their ballot titles summarize the referred act in a way that is impartial and gives the voter a fair understanding of the issues presented.<sup>11</sup> Sponsors cannot omit material from the ballot title that qualifies as an “essential fact which would give the voter serious ground for reflection.”<sup>12</sup> Yet the ballot title must also be brief and concise lest voters exceed the statutory time allowed to mark a ballot.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

In sum, the ballot title must be honest and impartial,<sup>16</sup> and it must convey an intelligible idea of the scope and significance of a proposed change in the law.<sup>17</sup>

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<sup>8</sup> *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

<sup>9</sup> *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).

<sup>10</sup> *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

<sup>11</sup> *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

<sup>12</sup> *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

<sup>13</sup> A.C.A. §§ 7-9-107(d)(2) (requiring the ballot title “submitted” to the Attorney General or “supplied by the Attorney General” to “briefly and concisely state the purpose the proposed measure”); 7-5-309(b)(1)(B) (Supp. 2021) (allowing no more than ten minutes); *see Bailey*, 318 Ark. at 288, 884 S.W.2d at 944 (noting the connection between the measure’s length and the time limit in the voting booth).

<sup>14</sup> *Plugge v. McCuen*, 310 Ark. 654, 658, 841 S.W.2d 139, 141 (1992).

<sup>15</sup> *Bailey*, 318 Ark. at 284, 884 S.W.2d at 942 (internal citations omitted).

<sup>16</sup> *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

<sup>17</sup> *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

**4. Application.** Having reviewed your draft under the foregoing rules, I must reject your popular name and ballot title and instruct you to redesign them. Section 7-9-107(e) authorizes the Attorney General to reject the entire submission when the ballot title is misleading or worded in a way that a vote for or against the issue would actually be a vote for the outcome opposite of what the voter intends. Your popular name and ballot title suffer from the same problem: the impact of a vote for or against the measure is unclear to the voter. If someone votes “for” a referendum issue, that person is voting to *approve* the act. But someone who votes “against,” is voting to *reject* the act. This means that most people who support the referendum effort and are fully informed will step into the voting booth and vote “against” on the issue. Because nothing in your popular name or ballot title indicates the impact of a vote for or against the measure, I must reject your draft and instruct you to redesign it. If you choose to redesign your popular name and ballot title, you may wish to consult examples that have been certified by this office.<sup>18</sup>

While the foregoing defect is sufficient grounds for me to reject your submission, please note that your ballot title suffers from several additional problems:

- ***Insufficient summaries.*** Most of the ballot title’s proposed summaries are insufficient. While I understand that it is challenging to summarize a 145-page act, your proposed summaries are more like descriptive labels for some of the act’s component parts. For example, the ballot title’s second bullet uses the phrase “add additional school safety requirements” to summarize several detailed safety measures that span six pages of the act. The ballot title—which does not even attempt to summarize the new safety measures—merely alludes to the fact that the act creates new school-safety requirements. Likewise, the act contains detailed rules governing student success plans. Rather than summarizing those rules, the ballot title vaguely describes the general topic: “add student success plan requirements.” Nothing about that description summarizes what the act adds to the plan requirements. Most of the proposed summaries suffer from this same problem. Since these topical labels do not even attempt to summarize what the act actually does, the ballot title is insufficient.
- ***Inaccurate summaries.*** Some of the proposed summaries in the ballot title are inaccurate or misleading. For example, the first bullet says the underlying act gives “school superintendents and principals authority to make all employment-related decisions.” This implies that the act grants superintendents and principles unfettered discretion employment decisions. But the section of Act 237 I assume this language is intended to summarize does not grant unfettered discretion. Rather, on page 5, lines 24–31, the discretion is limited to considering one’s performance, effectiveness, and qualifications—but not seniority. This example is meant to be illustrative not exhaustive

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<sup>18</sup> You can find such examples on the office’s website in the following opinions: 2015-036, 2013-054, 2013-043.

- **Missing summaries.** The ballot title contains no summary of several provisions. For example: (1) on page 5, lines 11–19, the act requires each school district to adopt rules that “require a public school district superintendent to consult with teachers...before making any decisions regarding the hiring or placement of a principal at the public school...”; (2) on pages 40–41, the act requires certain performance targets for superintendents; (3) on pages 81–82, the act triples the tax credit available for contributions to the Philanthropic Investment in Arkansas Kids Program; and (4) on pages 103–04, the act expands the required background checks to include volunteer coaches and increases superintendents’ reporting obligations regarding volunteer coaches. Your proposed ballot title never mentions these provisions. These examples are meant to be illustrative not exhaustive.
- **Confusing lead-in language.** The ballot title attempts to summarize the act in separate clauses that flow from the following lead-in language: “Major provisions include....” When this lead-in language is combined with the openers in each clause, the result is confusing and ungrammatical. This is clear when one reads the lead-in language together with the second bullet: “Major provisions include: ... add additional school safety requirements.” The same problem is evident with the third bullet: “Major provisions include: ... implement literacy screeners for kindergarten thru [*sic*] third grade....” Nearly every proposed summary suffers from this same disjointedness between the lead-in language and the proposed summaries.

These foregoing four sets of issues constitute further reasons why I must reject the ballot title.<sup>19</sup> If you choose to submit a redesigned draft, all the issues noted above are essential for you to consider. Since the popular name and ballot title require such a significant redesign, I have not attempted to identify every issue with this version of your original draft.

Deputy Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN  
Attorney General

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<sup>19</sup> You appear to have constrained your ballot title by the margins of the document you submitted. Nothing in Arkansas law requires that. You may wish to redesign your popular name and ballot title using standard paper size and margins.