



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-029

May 11, 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, which I have reproduced in the exact font style and size in which you submitted them:

Popular Name

A REFERENDUM TO APPROVE OR REJECT THE LEARNS ACT

Ballot Title

This referendum enables the people to vote for or against the LEARNS Act, enacted by the 94th General Assembly as Act 237 of 2023 (the "Act"). A vote "FOR" will approve the Act; a vote "AGAINST" will reject the Act. The Act provides:

- The "Arkansas Children's Educational Freedom Account Program" is created (replacing the "Succeed Scholarship Program"), whereby an amount equal to 90% of the prior year's statewide foundation funding for an eligible student may be set aside and used to pay tuition, fees, and other qualifying expenses at participating schools, including without limitation private schools.
- The minimum base salary for teachers is increased to \$50,000 per year. Existing teacher salaries are increased by \$2,000 per year for the 2023-2024 year. Merit bonuses of up to \$10,000 per year are authorized. Mandatory pay increases for years of services and advanced degrees are eliminated. Teacher contracts are extended to cover 190 school days per year, including 178 days of on-site, in-person instruction. Personnel contracts with more rights than allowed by state law are prohibited.
- Arkansas Code 6-17-811, providing incentives for teacher recruitment and retention in high-priority districts, is repealed.
- 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., are repealed.

323 CENTER STREET, SUITE 200
LITTLE ROCK, ARKANSAS 72201

- e) The Secretary of the Department of Education shall develop rules defining certain communications as “prohibited indoctrination”, including but not limited to certain racial theories.
- f) Curriculum materials shall be developed on child sexual abuse and human trafficking, but with parental exceptions and prohibiting instruction on sexual orientation, gender identity, and other sexual topics in kindergarten thru [sic] fourth grade.
- g) Existing school safety requirements are expanded to include assessments instead of audits, collaborate with medical professionals and fire departments in planning for lockdown drills, require safety expert reviews of new school architectural plans, require mental health support, increase the presence of uniformed law enforcement, and require district safety and security teams.
- h) Public school students shall perform 75 hours of community service for graduation starting with the 2026-2027 class.
- i) Numerical limits on school choice transfers are prohibited except as required by a court-ordered desegregation plan.
- j) The maximum number of open-enrollment charter schools is eliminated.
- k) School superintendents and principals have authority to make all employment-related decisions based on performance, effectiveness and qualifications, but not seniority, and must consult with teachers at each school before hiring or placing its principal.
- l) Literacy screeners must be implemented for kindergarten thru [sic] third grade, along with expanded literacy support programs, math intervention plans, literacy coaches and literacy tutoring grants for certain students, and other literacy and numeracy improvement programs.
- m) Schools must develop student success plans for each student based on graduation requirements, curriculum choices and other matters.
- n) Schools rated “D” or “F” or requiring Level 5 intensive support may partner with charter schools or other entities to operate a public school district transformation campus under contract.
- o) Programs shall be created for high-impact tutoring and provision of courses in certain schools by third-party course providers.
- p) Schools shall provide diploma options via career-ready pathways beginning with the ninth grade class of 2024-2025.
- q) Personnel employed by school districts and charter schools for at least one year shall be eligible for up to 12 weeks of paid maternity leave under certain conditions.
- r) Each school board shall include written performance targets on student achievement and graduation rates in its superintendent contract and publish such contract on the school district website.
- s) Employment restrictions are expanded to include mandatory reporting of arrests and charges for disqualifying offenses, extending ethical standards to volunteer athletic coaches and applicants for employment, background checks and mandatory reporting for volunteer athletic coaches, and mandatory reporting of substantiated allegations of ethical violations.
- t) The maximum amount of income tax credits under the Philanthropic Investment in Arkansas Kids Program is increased to \$6,000,000 per year.
- u) A Transportation Modernization Grant Program is established to improve resource sharing for transportation of public school, charter school and early childhood program students, including without limitation ridesharing and neighborhood carpool programs.
- v) A program is created to establish Arkansas Teacher Academies at postsecondary educational institutions and provide scholarships to eligible attendees.
- w) A unified early childhood care and education system is established. The Division of Child Care and Early Childhood Education is transferred from the Department of Human Services to the Department of Education.¹

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.² An “original draft” includes the full text of the proposed measure along with its ballot title and popular name.³ 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.⁴
- Second, the Attorney General may “substitute and certify a more suitable popular name and ballot title.”⁵
- 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.”⁶ 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)

¹ This is an exact quote of your popular name and ballot title—including the popular name’s 8-point font, and the ballot title’s 6-point font.

² A.C.A. § 7-9-107(a).

³ A.C.A. § 7-9-107(b).

⁴ A.C.A. § 7-9-107(d)(1).

⁵ *Id.*

⁶ A.C.A. § 7-9-107(e).

“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.⁷

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, 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.⁸ 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.⁹ And it must be considered together with the ballot title in determining the ballot title’s sufficiency.¹⁰

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.¹¹ Sponsors cannot omit material from the ballot title that qualifies as an “essential fact which would give the voter serious ground for reflection.”¹² Yet the ballot title must also be brief and concise lest voters exceed the statutory time allowed to mark a ballot.¹³ 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.¹⁴ The title, however, must be free from any misleading

⁷ *Id.*

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

⁹ *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).

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

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

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

¹³ 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).

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

tendency—whether by amplification, omission, or fallacy. And it must not be tinged with partisan coloring.¹⁵

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

4. Application. Under the foregoing rules, your proposed popular name is legally sufficient as submitted. But your proposed ballot title is insufficient and must be redesigned. As explained in more detail below, the current version of the ballot title (1) fails to adequately summarize the LEARNS Act; (2) fails to make all the changes noted in my response to your first submission; and (3) is printed in a font that is so small, most people would be unable to read it.

The following two sets of reasons are sufficient grounds to reject your proposed ballot title:

- **Missing summaries.** In my prior opinion rejecting your first draft, I noted that your “ballot title contains no summary of several provisions” and provided four such examples. Your second draft attempts to address each of those four examples. But as I noted in my prior opinion, those examples were “meant to be illustrative not exhaustive.” And since this second version of your ballot title does not even attempt to summarize numerous other provisions in the act, the ballot title is insufficient. For example, your ballot title never mentions the new requirements in § 24 of the LEARNS Act that vendors are now mandatory reporters of certain matters. Nor does your proposal mention anything about the new requirements (1) in § 51 regarding information for those seeking employment; or (2) in § 54 regarding the requirements that the Division of Higher Education establish uniform standards for awarding credit to students who complete advanced-placement exams or courses of study. Please note—as I emphasized before—that these examples are meant to be illustrative not exhaustive. Arkansas law requires that you adequately summarize the entire act.
- **Insufficient summaries.** In my prior opinion rejecting your first draft, I noted that most of your proposed ballot title’s summaries were insufficient because the proposed summaries were “more like descriptive labels for some of the act’s component parts.” I provided one example of such a problem. The second version of your ballot title fails to address this problem. For example, in response to your first submission, I noted that you had attempted to summarize six pages of new school-safety provisions with the vague phrase “add additional school safety requirements.” You have attempted to resolve this with the following revision: “(g) Existing school safety requirements are expanded to include assessments instead of audits, collaborate with medical professionals and fire departments in planning for lockdown drills, require safety expert reviews of new school architectural

¹⁵ *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)

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

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

plans, require mental health support, increase the presence of uniformed law enforcement, and require district safety and security teams.” In my own review of the school-safety provisions, there are roughly 17 specific additions to the law regarding school safety. While perhaps not every such addition needs to be summarized in the ballot title, your attempted summary continues to be more of a descriptive label rather than a summary. For example, the act requires public school districts and open enrollment public charter schools to establish district safety and security teams. Your proposed summary includes a reference to that provision: “require district safety and security teams.” But what does that entail? The act explains that (1) school nurses are required to be trained in enhanced emergency medical responses; (2) schools must have a comprehensive communication plan that school officials, students, and parents can use in the case of an emergency; and (3) plans must be implemented to allow local law enforcement to access a school’s camera systems in real time. Your proposed summary fails to address any one of those three. Further examples of insufficient summaries include the attempted summaries in subsections (g), (l), (m), and (o). Please note—as I emphasized before—that these examples are meant merely to be illustrative and are not an exhaustive list. Arkansas law requires that you adequately summarize the entire act.

As my predecessor noted in 2013 when faced with a similar set of problems on a proposed statewide referendum, while Arkansas law authorizes me to modify a proposed ballot title, I am not authorized to simply craft a ballot title in what amounts to a completely independent product.¹⁸ It is the sponsor’s duty to at least try to provide a complete summary of the act to be referred. As noted above in section three on the rules governing ballot titles, sponsors must balance brevity with completeness. At this point, you are erring far too much toward brevity.

While the foregoing two sets of reasons—namely, the missing and insufficient summaries—are sufficient grounds for my decision to refuse to certify your proposed ballot title, I also want to direct your attention to several additional problems:

- ***Continuing problems.*** You have failed to correct some of the problems noted in response to your first submission. When I rejected your prior submission for failing to adequately inform the voters about the impact of a vote for or against the measure, I encouraged you to research past Attorney General opinions that have certified popular names and ballot titles for statewide referenda proposals, specifically citing three such opinions.¹⁹ In keeping with customs established by decades of Attorney General opinions on whether to certify the legal sufficiency of statewide initiatives or referenda, I also noted several additional problems with your proposal. You have ignored several of these suggestions. For example, you have failed to correct the typographical errors I noted when I reproduced your ballot title in the prior opinion. Those same typographical errors appear in your current submission. I also noted that many of the openers in your ballot title’s clauses do not grammatically agree with the lead-in language. You have failed to correct this. While these

¹⁸ Ark. Att’y Gen. Op. 2013-043, p. 5.

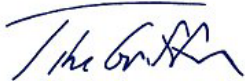
¹⁹ See Ark. Att’y Gen. Op. 2023-023, n18.

problems, by themselves, are not reasons why I am rejecting your proposal, I highlight them to make clear that your effort to redesign your proposed ballot title overlooked simple and easily corrected errors.

- ***Illegible fonts.*** There is no point in carefully summarizing the LEARNS Act if citizens cannot read the summary. Your popular name is in 8-point font, and your ballot title is in 6-point font. It is unclear why you have adopted these constraints. In my opinion, a court would most likely declare that a multipage ballot title in 6-point font is legally insufficient for that reason alone because, regardless of the summary's content, most people asked to sign the petition or to vote on the matter would be unable to read it.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General