

**IN THE ARKANSAS SUPREME COURT**

**ARKANSAS CITIZENS FOR TRANSPARENCY    PETITIONER**

**VS**

**TIM GRIFFIN IN HIS CAPACITY  
AS ATTORNEY GENERAL FOR THE  
STATE OF ARKANSAS**

**RESPONDENT**

**PETITION**

Comes the Petitioner and for its petition states:

1.    The Petitioner Arkansas Citizens for Transparency is a Ballot Question Committee formed to expressly advocate for the qualification and passage of the Arkansas Government Transparency Amendment. The members of the committee are citizens and registered voters in the state of Arkansas. A copy of the statement of organization filed with the Arkansas Ethics Commission is attached hereto as Exhibit A and incorporated herein by reference. Pursuant to Ark. Code Ann. §7-9-107 Petitioner submitted to the Attorney General a popular name, ballot title and complete text of a proposed initiated

amendment to provide the citizens of this state a constitutional right to government transparency on multiple occasions.

2. Tim Griffin is being sued in his capacity as the Attorney General for the State of Arkansas for failing to perform his duties as required by Ark. Code Ann. §7-9-107 and for acting in an unconstitutional manner, outside the scope of his duties and in contravention of his duties prescribed by Ark. Code Ann. §7-9-107. The actions of the Attorney General are in violation of the rights guaranteed to the citizens of this state pursuant to Article 5, Section 1 of the Arkansas Constitution.

3. The power to initiate an amendment is specifically reserved to the people of this state. The Attorney General is using his statutory duty to review and approve a ballot title to prevent the people from proposing the text of the amendment they want, denying approval of a popular name and a ballot title unless the text of the proposed amendment is written as directed by him, and using the ballot title process to prevent the petitioner from collecting signatures on the petition. His approval of the popular name and ballot title must occur prior to circulation of the petition. Ark. Code Ann. §7-9-107(a)

provides, “[b]efore any initiative or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures of petitioners, the sponsors shall submit the original draft to the Attorney General, with a proposed legislative or ballot title and popular name.

4. The petitions are required to be submitted to the Arkansas Secretary of State on or before July 5, 2024. Each day the Attorney General delays approval of the popular name and ballot title makes the Petitioner’s effort to collect the signatures more difficult and burdensome.

5. Arkansas Constitution, Article 5, Section 1 provides:

**Initiative and Referendum.** The legislative power of the people of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but 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; and also reserve the power, at their own option to approve or reject at the polls any entire act or any item of an appropriation bill.

The people have the constitutional right to propose an amendment to the Arkansas constitution free from interference of the Attorney General.

6. Arkansas Constitution, Article 5, Section 1 provides:

**Unwarranted Restrictions Prohibited.** No law shall be passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions; but laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions.

The General Assembly cannot pass a law that interferes with the freedom of the people in procuring petitions and can only enact laws that prevent fraudulent practices in the securing of signatures or filing of petitions. The plain language and text of Ark. Code Ann. §7-9-107 gives the Attorney General the ability to reject a popular name or ballot title misleading or designed in a manner that a vote for would be a vote against and conversely a vote against would be a vote for. The statute does not give the Attorney General the ability to require the people to rewrite their proposal because he does not like the provisions of the amendments, or the terms used in the proposal.

7. Ark. Code Ann. §7-9-107(b) provides in part that, “[w]ithin ten (10) days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct

ballot title and popular name for each amendment and act.” The Attorney General failed to either approve and certify or substitute and certify a popular name and ballot title for the initiated constitutional amendment submitted by the Petitioner. Ark. Code Ann. §7-9-107(b) further states, “[t]he ballot title so submitted shall briefly and concisely state the purpose of the proposed measure.” The ballot titles submitted by the Petitioner briefly and concisely stated the purpose of the proposed act and were not misleading.

8. Ark. Code Ann. §7-9-107(c) provides, “[i]f, as a result of his or her review of the ballot title and popular name of a proposed initiated act..., the Attorney General determines that the ballot title, or nature of the issue, is presented in such a manner that the ballot title would be misleading or designed in such a manner that a vote “FOR” the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote “AGAINST” an issue would be a vote for a viewpoint that the voter is against, the Attorney General may reject the entire ballot title, popular name, and petition and state his or her

reasons therefore and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.” The Attorney General did not reject the proposed ballot title because it was misleading or designed in a manner that a vote for would be a vote against or a vote against would be for. Again, the plain language of Ark. Code Ann. §7-9-107 limits the authority of the Attorney General to reject a ballot title. Because he did not find the ballot title was designed in a misleading manner, he is required to either approve and certify the ballot title submitted or to substitute and certify a ballot title.

9. Ark. Code Ann. §7-9-107(d) provides, “[i]f the Attorney General refuses to act or if the sponsors feel aggrieved at the Attorney General’s acts in such premises, the sponsors may, by petition, apply to the Supreme Court for proper relief.” The Attorney General has failed to act in accordance with Ark. Code Ann. §7-9-107 and the Petitioner is aggrieved. Jurisdiction is proper in this Court.

10. On November 27, 2023, Petitioner submitted to the Attorney General a proposed constitutional amendment along

with the proposed popular name and ballot title. A copy of the submission is attached hereto as exhibit B. On December 11, 2023, the Attorney General issued Opinion No. 2023-113 and refused to certify the popular name and ballot title submitted by the Petitioner. A copy of the Opinion is attached hereto as exhibit C. The popular name and ballot title as submitted briefly and concisely stated the purpose of the proposed measure. It was not designed in a manner that a vote for would have been a vote against the measure and conversely a vote against would have been a vote for. The plain language of the statute required the Attorney General to either approve the popular name and ballot title as submitted or substitute a popular name and ballot title written by the Attorney General. He did neither. The Attorney General's opinion stated, "Having reviewed the text of your proposed constitutional amendment, as well as your proposed popular name and ballot title, I must reject your popular name and ballot title due to the following problems ***in the text*** of your proposed measure, nearly all of which are imported into your ballot title." First, he states, "Your proposed text hinges on terms that are undefined and whose

definitions would give voters serious grounds for reflection.”

Second, he opines that the full text of the measure is not included in the proposal. The third reason he states for not approving the ballot title is that it fails to state the alleged impact on state statutes. Finally, the Attorney General stated the term “transparency” in the ballot title, has a positive ring to it and seems designed to persuade and not inform and suggested that another term be used in the future. The Attorney General concluded by rejecting the popular name and ballot and “instructed” the petitioner to redesign the proposed constitutional amendment, ballot title and popular name. The Attorney General’s rejection of the ballot title and popular name demonstrates that he has either a complete lack of understanding of his role in the initiative process or he is intentionally thwarting the effort of the petitioner to get this amendment approved for the ballot so that the voters of the state can decide its merits. It is not the Attorney General’s right to effectively decide the fate of this measure by denying approval of a popular name and ballot title. In addition, the Attorney General is not the final arbiter of the sufficiency of a popular



name or ballot title. That role belongs with this Court. The Attorney General's role is specified in the text of Ark. Code Ann. §7-9-107. The Attorney General by denying approval of the popular name and the ballot title is acting outside the scope of his statutory duties and interfering with the constitutional rights of Petitioner. This Court should compel the Attorney General to approve or rewrite the popular name and ballot title for each measure submitted by the Petitioner.

11. In *Ferstl v. McCuen*, 296 Ark. 504 (1988) this Court held, "It is not our function in the present litigation to interpret the amendment or explain how it is to be implemented. Neither is it our purpose in this opinion to discuss the proposal's merits or its faults. It is rather our function to see that the popular name and ballot title are a fair and honest means of presenting this measure to the people for their consideration. We must simply determine whether the sponsors of the proposed amendment have complied with the law, and whether the popular name and ballot title fairly represent the issue which will be presented to the electors. We hold that it is an adequate and fair representation without misleading tendencies or partisan

coloring.” Just as it is not this Court’s responsibility to interpret the amendment or to explain how it will be implemented prior to the measure becoming law, it is not the responsibility of the Attorney General either. The Attorney General’s statutory duty is limited by the text of Ark. Code Ann. §7-9-107. The objections raised by the Attorney General are outside of his statutory duties and infringe on the constitutional right of the Petitioner to place an amendment that it wants to put on the ballot and not one that it is forced to change by the Attorney General either negligently or intentionally exceeding his statutory authority.

12. Despite its contention that the popular name, ballot title and text of the proposed amendment submitted on November 27, 2023, were appropriate in all respects, the Petitioner resubmitted to the Attorney General a revised proposed initiated constitutional amendment along with four different proposed popular names and ballot titles. Attached hereto collectively as exhibit D is the text of the proposed constitutional amendment along with all four proposed popular names and ballot titles. Like any other citizen trying to express their constitutional right to the initiative process, the

petitioner's only recourse would be to initiate litigation before this Court. Not all voters have the resources or ability to bring forth a legal challenge. Thus, the Attorney General by exceeding his statutory authority can effectively deny a citizen's right to the initiative process by wrongfully denying the approval of a popular name or ballot title. On January 8, 2024 the Attorney General issued four separate opinions denying each of the proposed popular names and ballot titles. See Opinion Nos, 2023 – 123, 124, 125, 126. A copy of those opinions is attached hereto as exhibit E. The Attorney General again refused to approve and certify any of the proposed popular names and ballot titles submitted by the Petitioner and failed to substitute and certify a more suitable and correct ballot title and popular name. Instead, he issued a condescending and improper opinion chastising the Petitioner for not following his previous opinion in not writing the text of the measure as he wanted it written and not as the Petitioner wanted.

13. The refusal to approve and certify the popular name and ballot title or failure to substitute and certify a more suitable and correct ballot titles and popular names are in

violation of the duties of the Attorney General found in Ark. Code Ann. §7-9-107. Ark. Code Ann. §7-9-107(c) sets forth the circumstances under which the Attorney General can refuse to certify a ballot title. Those circumstances are that the ballot title or nature of the issue is “misleading or designed in such a manner that a vote “FOR” the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote “AGAINST” and issue would be a vote for a viewpoint that the voter is against.” None of the Attorney General’s opinions state that the ballot title or the issue is misleading or designed in an improper manner.

14. The duty of the Attorney General under Ark. Code Ann. §7-9-107(b) is to “[w]ithin ten (10) days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment and act.” The plain and unambiguous language of Ark. Code Ann. §7-9-107(c) provides that the only reason the Attorney General can refuse to approve or substitute a ballot title is if the ballot title or measure is misleading or designed in a deceitful manner. The popular name, ballot title

and text of the measure are not designed to be misleading. The language of the proposed amendment is not misleading. The Attorney General in his opinion does not contend that it is. Therefore, it is his obligation under Ark. Code Ann. §7-9-107(b) to approve and certify or substitute and certify a popular name and ballot title.

15. Pursuant to A.R.C.P. 65, the Court should enter a mandatory injunction compelling the Attorney General to either approve and certify the ballot titles submitted by the Petitioner or to substitute and certify more suitable and correct ballot titles for the submitted amendments within 3 days. It is the Petitioner's choice as to which proposal it wishes to pursue and not the Attorney General. The right to the initiative process belongs to the people and not the Attorney General. The Petitioner will be irreparably harmed by not having adequate time to collect the required number of signatures of registered voters needed to submit the measure to the Secretary of State by July 5, 2024. The Petitioner cannot begin collecting signatures until such time as the Attorney General approves the ballot title.

WHEREFORE, the Petitioner requests that the Court enter a mandatory injunction compelling the Attorney General to either approve and certify the ballot titles submitted by the Petitioner or to substitute and certify a more suitable and correct ballot titles within 3 days, that the mandatory injunction be issued immediately and, for all other just and proper relief to which he may be entitled.

Respectfully Submitted,

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