# No. CV-24-704

**IN THE ARKANSAS SUPREME COURT**

**STATE OF ARKANSAS, et al.** **APPELLANTS**

**v.**

**GOOD DAY FARM ARKANSAS, LLC, et al.** **APPELLEES**

**On Appeal from the Circuit Court of Pulaski County**
**Honorable Morgan E. Welch, Circuit Judge**

## BRIEF OF AMICUS CURIAE ARKANSAS STATE CHAMBER OF COMMERCE

Elizabeth R. Murray, No. 79244
Kevin A. Crass, No. 84029
Martin A. Kasten, No. 99100
Kathy McCarroll, No. 2014191
FRIDAY, ELDREDGE & CLARK, LLP
400 W. Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201-3493
Telephone: (501) 376-2011
murray@fridayfirm.com
crass@fridayfirm.com
mkasten@fridayfirm.com
mmccarroll@fridayfirm.com

*Attorneys for the Arkansas State Chamber of Commerce*

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## SUMMARY OF THE ARGUMENT

Why should the Court overrule *Edgmon* now? It has been the law since 1951. It comports with Arkansans' original understanding of the initiative-and-referendum powers. Its holding has been reaffirmed by this Court, which declared "it is axiomatic that the General Assembly cannot amend the Arkansas Constitution . . . by legislative enactments." *City of Fayetteville v. Washington Cnty.*, 369 Ark. 455, 472, 255 S.W.3d 844, 856 (2007). The General Assembly has also referred constitutional amendments consistent with *Edgmon*'s admonition instead of trying to overturn it. And to be sure, if the State's position is correct—that two-thirds of the General Assembly can amend any measure, including constitutional amendments, voted on by the people—could it not rewrite Amendment 7 in its own favor?

There is simply no justification, "special" or otherwise, for overturning *Edgmon* except to achieve a specific result in the context of this case. Such a practice is neither advisable nor compliant with the judiciary's duty to adhere to precedent. *Stare decisis* matters. And it matters to the business community, which relies on the stability, predictability, and finality in the law that *stare decisis* promotes and

protects. It is often repeated that *stare decisis* is a "foundation stone of the rule of law." *See, e.g.*, *Kimbrough v. Grieve*, 2024 Ark. 34, at 10 n.2, 685 S.W.3d 225, 231 (quoting *Kisor v. Wilkie*, 588 U.S. 558, 139 S. Ct. 2400, 204 L.Ed.2d 841 (2019)). To avoid transforming that maxim into merely hollow rhetoric, the Court should refuse to depart from its precedent in this case. *Edgmon* should be upheld.

## ARGUMENT*

### I. *Edgmon*'s precedential value should not be disturbed.

*Stare decisis* is not an "inexorable command." *Kimbrough*, 2024 Ark. 34, at 10 n.2, 685 S.W.3d at 231. But at the same time, it cannot have elastic application either. In crafting the federal constitution, the

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* Pursuant to Rule 4-6(c), the State Chamber states (i) no counsel for a party authored the brief in whole or in part, and (ii) no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief or otherwise collaborated in the preparation or submission of the brief. In addition, no other person or entity, other than the amicus curiae, its members, or its counsel, made such monetary contribution to the brief or collaborated in its preparation.

Framers sought to restrict the arbitrary and unchecked authority of the government. Adherence to established rules of law played an important role in the constitutional design. As Alexander Hamilton wrote, "To 'avoid an arbitrary discretion in the courts, it is indispensable that . . . judges should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.'" *Ramos v. Louisiana*, 590 U.S. 83, 116, 140 S. Ct. 1390, 1411, 206 L. Ed. 2d 583 (2020) (Kavanaugh, J., concurring) (quoting The Federalist No. 78, p. 529 (J. Cooke ed. 1961)). The same sentiments are echoed in this Court's earliest decisions, too. *See, e.g.*, *Rhea v. State*, 104 Ark. 162, 147 S.W. 463, 465–66 (1912) ("It is essential that there should be stability and uniformity in the construction and interpretation of the law. The conduct of the affairs of state, the rights and interests of individuals, the uniformity of the enforcement of the law, and the proper administration of justice, require in these matters that there should be settled rules."). Today, continued fidelity to precedent remains fundamental to business and more broadly, to a society such as ours that is governed by the rule of law. *See Payne v. Tennessee*, 501 U.S. 808, 848, 111 S. Ct. 2597, 2621, 115 L. Ed. 2d 720 (1991) (Marshall, J., dissenting).

Overruling precedent is no small matter. The Court's test is "whether adherence to the rule would result in great injury or injustice." *Chamberlin v. State Farm Mut. Auto. Ins. Co.*, 343 Ark. 392, 397–98, 36 S.W.3d 281, 284 (2001). Departing from precedent demands "a special justification." *Kimbrough*, 2024 Ark. 34, at 10 n.2, 685 S.W.3d at 231 (citation omitted). Pertinent here, this standard requires more than a change in the judicial method of interpretation. *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 457, 128 S. Ct. 1951, 1961, 170 L. Ed. 2d 864 (2008). And it means more than "an argument that the precedent was wrongly decided." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412, 144 S. Ct. 2244, 2273, 219 L. Ed. 2d 832 (2024) (citing *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 134 S.Ct. 2398, 189 L.Ed.2d 339 (2014)); *see also Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455, 135 S. Ct. 2401, 2409, 192 L. Ed. 2d 463 (2015) ("Indeed, *stare decisis* has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up.").

The Supreme Court of the United States has also enumerated certain factors to consider in determining whether to revisit precedent. They include the workability of the rule it established, its consistency

with other related decisions, reliance on the decision, and the quality of the precedent's reasoning. *See Loper Bright*, 603 U.S. at 407 (quoting *Knick v. Township of Scott*, 588 U.S. 180, 139 S.Ct. 2162, 204 L.Ed.2d 558 (2019)); *see also Edwards v. Thomas*, 2021 Ark. 140, at 29, 625 S.W.3d 226, 241 (Webb, J., concurring in part and dissenting in part) (incorporating the same factors into the analysis of whether an injustice or injury would result).

Here, the State has advanced no "special justification" for overruling *Edgmon*. It also has not identified any particular injury or injustice that would result from adhering to *Edgmon*. And all the *stare decisis* factors tip the scales demonstrably in favor of leaving *Edgmon* undisturbed.

### A. *Edgmon* is not unworkable and has been relied on by both this Court and the General Assembly.

As this Court has previously recognized, when it comes to constitutional interpretation, consistency is key:

> A cardinal rule in dealing with constitutional provisions is that they should receive a consistent and uniform interpretation so that they shall not be taken to mean one thing at one time, and a different thing at another time. Certainly, when a constitutional provision or a statute has been construed, and that construction consistently

> followed for many years, such construction should not be changed.

*Southwest Ark. Communications, Inc. v. Arrington,* 296 Ark. 141, 44-45, 753 S.W.2d 267, 269 (1988) (quoting *O'Daniel v. Brunswick Balke Collender Co.*, 195 Ark. 669, 113 S.W.2d 717 (1938)).

*Edgmon* has been good law since 1951, and this Court has since reaffirmed its holding. Take the case of *City of Fayetteville v. Washington Cnty.*, 369 Ark. 455, 472, 255 S.W.3d 844, 856 (2007). There, the Court considered the interplay between Amendments 74 and 78. The former authorized a uniform rate of 25 mills for each school district as the ad valorem property tax rate "to be used solely for maintenance and operation of the schools." The latter authorized the General Assembly to establish a procedure for tax-increment financing ("TIF") for redevelopment districts.

Acting under the guise of Amendment 78 and Act 1179, which the General Assembly passed shortly thereafter, the City of Fayetteville included mills in its TIF formula that should have gone exclusively to school maintenance under Amendment 74. On appeal, the City argued that Act 1179 allowed it to divert the tax revenue in this manner. This Court rejected that argument as unconstitutional:

We initially agree with the Arkansas Director of Finance and Administration that it is axiomatic that the General Assembly cannot amend the Arkansas Constitution, and specifically Amendment 74, by legislative enactments. . . . In addition, it is constitutionally impermissible to interpret Amendment 78 as conferring upon the General Assembly the authority to repeal in part a constitutional provision like Amendment 74 for purposes of redesignating any portion of the 25 mills for a use other than the maintenance and operation of the public schools. We further agree with the Director that to the extent any of the legislation cited by the City authorizes the diversion of the 25 mills for a different purpose other than the maintenance and operation of our public schools, that legislation would be unconstitutional.

Nor can we agree, as already discussed, that Amendment 78 empowers the General Assembly to divert the uniform rate of 25 mills under Amendment 74 for TIF funding by later legislation. The 25 mills under Amendment 74, as the circuit court correctly emphasized, is a tax adopted by the collective voters of the state, who levied the uniform rate of 25 mills as a matter of constitutional law when they approved Amendment 74. Hence, we hold that any increase or decrease in this uniform rate of tax or diversion of this tax for any other purpose must be submitted to the voters of this state for approval at a general election.

369 Ark. at 472–73, 255 S.W.3d at 856–57 (internal citations omitted). Thus, the Court, in no uncertain terms, reiterated *Edgmon*'s basic holding: the General Assembly cannot change amendments to the Arkansas Constitution through statutory enactments.

Undoubtedly, the General Assembly has ordered its affairs in accordance with *Edgmon* as well. For example, in November 2008, the electorate approved a voter-initiated constitutional amendment legalizing lotteries. Ark. Const., amend. 87. The amendment expressly limited the use of lottery proceeds to either funding the operating expenses of lotteries or scholarships and grants to Arkansans enrolled in "public and private non-profit two-year and four-year colleges and universities located within the State[.]" While Amendment 87 gave the legislature power to set criteria for the scholarships, it said nothing about diverting funding for other purposes. As such, when the General Assembly wanted to use lottery proceeds to support scholarships for vocational-technical schools, it referred a constitutional amendment to the people. Voters approved of Amendment 103 for that purpose in November 2024.

Other examples abound. *See, e.g.*, Ark. Const. amend. 72 (referred amendment that amended portions of Amendments 30 and 38 concerning libraries, both the product of initiative petitions); Ark. Const. amend. 96 (legislatively referred amendment to Amendment 6, which was itself a referred amendment, allowing the governor to retain her duties when absent from the state); Ark. Const. amend. 101 (referred amendment that extended the one-half percent sales and use tax under Amendment 91); *see also* Ark. Const. amends. 94 & 102 (amending sections of voter-initiated Amendment 73 on term limits).

Last but not least, the drafters of Amendment 98 had to also rely on *Edgmon* when they provided for amendments "in the same manner as required for amendment of laws initiated by the people." Under *Edgmon*, that language necessarily meant that any amendment required popular approval.

In short, as the foregoing demonstrates, the holding of *Edgmon* has proved workable and has been consistently relied on since it was handed down almost 75 years ago. These factors heavily favor a finding that *Edgmon* should retain its precedential value.

### B. *Edgmon* preserves the people's power over their constitution.

The same is true for the "quality of the precedent's reasoning"—the last relevant *stare decisi*s factor. At its core, *Edgmon* is based on a simple but paramount precept: the people rule. In fact, since at least 1907, Arkansas' official motto has been *Regnat Populus*—"The People Rule." Ark. Code Ann. § 1-4-107. The Arkansas Constitution is replete with affirmations of this principle. *See, e.g.*, Ark. Const. Preamble ("We, the People of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government; for our civil and religious liberty; and desiring to perpetuate its blessings, and secure the same to our selves and posterity; do ordain and establish this Constitution."); *id.* at art. II, § 1 ("All political power is inherent in the people and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same, in such manner as they may think proper."); *id.* at art. II, § 2 ("All men are created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their

own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.").

Because the people rule, it follows then that authority to change the constitution is vested in the people. Stated differently, the legislature does not have the inherent power to amend the state's constitution. This is hornbook law. *See* 16 C.J.S. Constitutional Law § 48 ("The power to propose amendments to a state constitution is not inherent in the legislative department and does not exist in the absence of a constitutional provision conferring such power.").

The reason for this rule is that state constitutions exist to constrain the legislature on behalf of the people. As such, the legislature is without power to change its governing instrument. Indeed, as far back as 1865, this Court in defining "constitution" explained that "it is the form of government delineated by the mighty hand of the people" and is "paramount to the legislature," such that "[t]he life giving principle and the death dealing stroke must proceed from the same hand." *Rison v. Farr*, 24 Ark. 161, 167-68, 1865 WL 377, at *4 (1865). In other words, "the constitution of the state of Arkansas . . . is the supreme law of the land, and is fixed, permanent, uncontrollable and transcendent in its nature

and operation, *and cannot be revoked or altered except by the power that made it*." *Id.* at 167-68, 1865 WL 377, at *5 (emphasis added). Thus, when the General Assembly acts to amend the constitution, it does so "not in its legislative capacity, but in the nature of a constitutional convention proposing amendments for action by the electorate." *Coulter v. Dodge*, 197 Ark. 812, 125 S.W.2d 115, 118 (1939).

A literal reading of the "amendment and repeal" provision of Amendment 7 turns this black-letter law on its head. As the *Edgmon* Court noted, it would vest the General Assembly with a "power that could be [exercised] to such an extent that the entire meaning of a constitutional provision achieved through amendment could be changed by legislative action." 218 Ark. at 211, 235 S.W.2d at 556-57. A literal reading would also impermissibly put initiated acts on the same footing as constitutional amendments. *Id.* Such results cannot be squared with either the intent of Amendment 7 or a basic understanding of constitutional law. If the General Assembly wants to change the Arkansas Constitution it can only do so with the consent of its authors—the people of Arkansas. *See also Harvey v. Ridgeway*, 248 Ark. 35, 48, 450 S.W.2d 281, 288 (1970) (stating that "the people of Arkansas risk their

constitutional changes in the hands of no one," they have the "inherent power when it comes to changing their constitution," and they "have reserved the right and power to make such changes in such manner as they think proper.")

### C. *Edgmon* is consistent with the original public meaning of the initiative-and-referendum powers.

It should also be noted that *Edgmon*'s reasoning comports with an originalist interpretation. *See United States v. Rahimi*, 602 U.S. 680, 737, 144 S. Ct. 1889, 1924, 219 L. Ed. 2d 351 (2024) (Kavanaugh, J., concurring) (identifying the two "core principles" of originalism to include that "the meaning of constitutional text is fixed at the time of its ratification and that the 'discoverable historical meaning ... has legal significance and is authoritative in most circumstances.'"). Here, the historical record as it relates to Amendment 7 supports *Edgmon*'s holding.

In the first three iterations of the Arkansas Constitution, only the General Assembly could propose amendments, and a two-thirds majority was generally required. The 1868 Constitution, however, was marked by significant change, largely dictated by the terms of the Reconstruction Acts of 1867. Arkansas' fourth constitution significantly enlarged the

power of the state government, especially the powers of the executive. *See* Cal Ledbetter, Jr., *The Constitution of 1868: Conqueror's Constitution or Constitutional Continuity?*, Ark. Hist. Assoc., Ark. Hist. Q. 44, 18-19, 31-34 (Spring 1985). While constitutional amendments could be made, they required majority approval in each chamber in two consecutive sessions, followed by referral to the people "in such manner and at such time as the General Assembly shall provide." Ark. Const. (1868), art. 13. The amendment process was deliberately difficult and time consuming, as the 1868 Constitution was drafted by "outsiders" loyal to the United States who did not want the constitution to be changed except when there were extraordinary majorities in the legislature and the public over a period of years. *Ledbetter*, *The Constitution of 1868*, *supra*, at 17, 36.

The years leading up to the 1874 constitutional convention were plagued by corruption. *See* Walter Nunn, *The Constitutional Convention of 1874*, Ark. Hist. Assoc., Ark. Hist. Q. 27, 182 (Autumn 1968). The legislature spent millions on non-existent public projects while the state's debt quadrupled and taxes skyrocketed. *Id.* Thus, in addition to curbing spending, a "primary concern of the convention was to enable the people to exercise more direct control over their public officials." *Id.* at 200. In

fact, the 1874 Constitution, with its numerous prohibitions, is often called the "thou shalt not" document. *Id.* at 201. As one noted historian concluded, "Rather than viewing a constitution as a document to enable the government to operate effectively and responsibly, the citizens emerging from Reconstruction looked upon it as a means of protection from their own government." *Id.*

Despite the prohibitionary measures put in place by the 1874 Constitution, unrestrained spending by the legislature was still a concern. *See* Calvin Ledbetter, Jr., *Adoption of Initiative and Referendum in Arkansas: The Roles of George W. Donaghey and William Jennings Bryan*, Ark. Hist. Assoc., Ark. Hist. Q. Vol. 51, 204 (Autumn, 1992). For example, in the ten years from 1901 until 1911, legislative sessions cost between $115,000 and $125,000 and routinely took twice as long as their sixty-day limit. *Id.* Corruption also continued, punctuated by the 1905 indictments of six lawmakers for taking bribes in connection with the construction of the state capitol and other legislation. *Id.* The "I&R," as it was commonly called, thus became viewed as a way to exercise *more* control over an unresponsive legislature—one that passed objectionable laws, refused to enact others that had popular support, and at the same

time "stayed in Little Rock too long" and drained the public coffers. See *id.* Indeed, when the I&R appeared on the ballot in 1910, it was adopted by an overwhelming majority—91,367 to 39,111. *Id.* at 219.

Given this historical record, *Edgmon*'s holding best reflects the original, public understanding of the scope of the initiative-and-referendum powers when they were adopted by the people. As the *Edgmon* Court explained, "the clear intent of the Initiative and Referendum Amendment was to give the people enlarged legislative and constitutional powers." 218 Ark. at 211, 235 S.W.2d at 557; *see also State ex rel. City of Little Rock v. Donaghey*, 106 Ark. 56, 152 S.W. 746, 751 (1912) (Wood and Smith, JJ., dissenting) ("Any one at all familiar with the history of that amendment knows that it has its origin in a desire on the part of the people to reserve to themselves power to propose amendments to the Constitution and to take away from their representatives in the General Assembly the entire power of proposing amendments, which had before been delegated to them."). Nothing in the case law preceding *Edgmon* or in the historical record indicates that Arkansans adopted the initiative-and-referendum powers only to make

them subservient to the legislature—the very same body the people sought to rein in.

*Edgmon*'s reasoning, rooted in a fundamental understanding of Arkansas' constitutional structure and history, remains valid. It is entitled to keep its precedential weight.

### D. Overturning *Edgmon*'s well-rooted principles will result in unnecessary instability.

While the foregoing legal analysis demonstrates why *Edgmon* should not be overruled, there are also practical considerations in play. The Arkansas Constitution is not an enabling document; its purpose is to constrain. *See Erxleben v. Horton Printing Co.*, 283 Ark. 272, 275, 675 S.W.2d 638, 640 (1984) ("The Arkansas Constitution is a limitation upon and not a grant of power to the legislature.") (citations omitted); *see also*, Nunn, *supra*, at 201. Yet, those constraints become meaningless if the General Assembly is free to make amendments through legislation. Not only can the General Assembly take more power for itself and subjugate the other branches to its authority, (Appellees' Br. at 32-33), it could undo or materially impact business and employers through changes to amendments regarding economic development districts or taxes, for example, or inject unrelated measures into amendments, as there is no

germaneness requirement. While we can only speculate on what the legislature may do if *Edgmon* is overruled, one thing is for sure—such uncertainty is not good business for this state.

Nor is the possibility of a never-ending game of ping pong between the voters and the legislature. One could see how this would develop. Two-thirds of the legislature changes an amendment, and the people either run a referendum or an initiative campaign to counter it. And if successful, two-thirds of the legislature then vetoes it. And back and forth.

Businesses cannot operate in an infinite ping-pong game. They depend on stability and predictability in the law so that they can plan accordingly. In other words, finality is foremost. This case presents no special or compelling reason to inject such constitutional uncertainty into our state's system of government.

## CONCLUSION

This Court should adhere to precedent, reject the State's invitation to overturn *Edgmon*, and affirm.

Respectfully submitted,

/s/ Elizabeth R. Murray
Elizabeth R. Murray, No. 79244
Kevin A. Crass, No. 84029
Martin A. Kasten, No. 99100
Kathy McCarroll, No. 2014191
FRIDAY, ELDREDGE & CLARK, LLP
400 W. Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201-3493
Telephone: (501) 376-2011
murray@fridayfirm.com
crass@fridayfirm.com
mkasten@fridayfirm.com
mmccarroll@fridayfirm.com

*Attorneys for the Arkansas State Chamber of Commerce*

## CERTIFICATE OF SERVICE

I, Elizabeth Murray, do hereby certify that I have served a true and correct copy of the above and foregoing on this the 1st day of May, 2025 by U.S. Mail to the presiding circuit judge and to the following counsel of record via email:

Steve Lancaster
Gary Marts
Erika Gee
WRIGHT, LINDSEY & JENNINGS LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
slancaster@wlj.com
gmarts@wlj.com
egee@wlj.com

*Attorneys for Appellees*

Jordan Broyles
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
(501) 301-0169
jordan.broyles@arkansasag.gov

*Attorneys for Appellants*

The Honorable Karen Whatley
Pulaski County Circuit Judge
401 West Markham, Room 220
Little Rock, AR 72201

/s/ Elizabeth R. Murray
Elizabeth R. Murray, No. 79244

## CERTIFICATE OF COMPLIANCE

I, the undersigned attorney, hereby certify that this brief complies with Administrative Order No. 19.

I further certify that this brief satisfies Administrative Order 21, Section 9 which states that filings shall not contain hyperlinks to external papers or websites.

Further, the undersigned states that the foregoing brief conforms to the word-count limitation identified in Rule 4-6(g). According to Microsoft Word (Office 365), this brief contains 3,550 words.

/s/ Elizabeth R. Murray
Elizabeth R. Murray