NO. CV-24-704

BEFORE 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, Presiding Judge

APPELLEES' BRIEF

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TABLE OF CONTENTS

Page

POINTS ON APPEAL

1. The Purported Amendments are void because the General Assembly had no authority to adopt them without a vote of the people.

    1.1 *Edgmon* established that Amendment 7 does not permit the General Assembly to amend the Constitution without the people's approval.

    1.2 *Edgmon* applied the correct standard for interpreting Amendment 7.

    1.3 Stare decisis requires application of *Edgmon*.

    1.4 The Purported Amendments are void because they were not approved by the people.

2. The Purported Amendments are void because they are not germane to Section 23.

TABLE OF AUTHORITIES

Page

Cases

Statutes and Rules

Miscellaneous

STATEMENT OF THE CASE AND FACTS

On November 8, 2016, the people of Arkansas adopted Amendment 98 to the Arkansas Constitution. (RP7). Amendment 98 allows the possession and use of medical marijuana by qualifying patients and provides guidelines for cultivating, dispensing, and prescribing medical marijuana to qualifying patients. (RP7). Section 23 of Amendment 98 prescribes a method for the General Assembly to amend the sections of Amendment 98:

> Except as provided in subsection (b) of this section, the General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend the sections of this amendment so long as the amendments are germane to this section and consistent with its policy and purposes.

Ark Const., Amend. 98, § 23(a).

Since enactment of Amendment 98 in 2016, the General Assembly has purportedly amended Amendment 98 twenty-seven times through legislative action without placing any of the amendments on the ballot for approval or rejection by the people. (RP7–8). The following legislative acts constitute the Purported Amendments:

- Act 4 of 2017, purporting to amend Amend. 98, §§ 4, 8 & 9
- Act 5 of 2017, purporting to amend Amend. 98, §§ 2, 5 & 10

- Act 438 of 2017, purporting to amend Amend. 98, § 2
- Act 479 of 2017, purporting to amend Amend. 98, §§ 2 & 6
- Act 544 of 2017, purporting to amend Amend. 98, § 2
- Act 545 of 2017, purporting to amend Amend. 98, §§ 4, 8 & 9
- Act 587 of 2017, purporting to amend Amend. 98, § 8
- Act 593 of 2017, purporting to amend Amend. 98, §§ 2 & 3
- Act 594 of 2017, purporting to amend Amend. 98, §§ 8 & 9
- Act 638 of 2017, purporting to amend Amend. 98, § 19
- Act 639 of 2017, purporting to amend Amend. 98, §§ 4, 8 & 9
- Act 640 of 2017, purporting to amend Amend. 98, § 8
- Act 641 of 2017, purporting to amend Amend. 98, § 8
- Act 642 of 2017, purporting to amend Amend. 98, §§ 8, 11, 12, 13, 24 & 25
- Act 670 of 2017, purporting to amend Amend. 98, § 17
- Act 740 of 2017, purporting to amend Amend. 98, §§ 4 & 6
- Act 948 of 2017, purporting to amend Amend. 98, §§ 5 & 8
- Act 1022 of 2017, purporting to amend Amend. 98, § 11
- Act 1023 of 2017, purporting to amend Amend. 98, §§ 4 & 8
- Act 1024 of 2017, purporting to amend Amend. 98, §§ 3 & 8

- Act 1099 of 2017, purporting to amend Amend. 98, § 6
- Act 1100 of 2017, purporting to amend Amend. 98, § 8
- Act 1 of 2017 (1st Ex. Sess.), purporting to amend Amend. 98, §§ 2, 4, 6, 8 & 17
- Act 8 of 2017 (1st Ex. Sess.), purporting to amend Amend. 98, §§ 2, 4, 6, 8 & 17
- Act 694 of 2019, purporting to amend Amend. 98 by adding § 26
- Act 1004 of 2019, purporting to amend Amend. 98, § 8
- Act 666 of 2021, purporting to amend Amend. 98, §§ 4 & 8

Instead of following the requirements of Ark. Const., Art. 19, § 22 for the General Assembly to propose amendments to the Constitution, the General Assembly adopted the Purported Amendments like simple legislative acts passed by votes in both houses and approved by the governor. (RP9). Since the legislative and executive approval of the Purported Amendments, the State of Arkansas has enforced the Purported Amendments through its agencies as though they are effective amendments to the Constitution. *See* (RP18) (admitting that the State of Arkansas has enforced the Purported Amendments since their adoption).

Appellant Good Day Farm Arkansas, LLC is a licensed medical marijuana cultivator subject to the requirements of Amendment 98. (RP5). Appellant Capital City Medicinals, LLC is a licensed medical marijuana dispensary, also subject to the requirements of Amendment 98. (RP5–6). As licensees under Amendment 98, Good Day and Capital City were subject to the Purported Amendments. (RP9).

Good Day and Capital City filed a complaint against the State of Arkansas, the Department of Finance and Administration, and the Alcoholic Beverage Control Division (collectively, "State"), seeking a declaratory judgment that the Purported Amendments are invalid and void. (RP4–5). That challenge was based on the General Assembly's lack of authority to amend the Constitution through legislative acts as recognized in *Ark. Game and Fish Comm'n v. Edgmon*, 218 Ark. 207, 235 S.W.2d 554 (1951). (RP10). Rather than submitting the Purported Amendments to the people for their approval, Good Day and Capital City alleged that the General Assembly adopted the Purported Amendments through legislation, which *Edgmon* prohibits. (RP10). Good Day and Capital City asserted that Amendment 98 did not change that requirement but adopted it by allowing amendments to

Amendment 98 under § 23 of the amendment only in the "same manner as required for amendment of laws initiated by the people," which requires referral of the amendment to the people for their approval. (RP10–11). Because the General Assembly lacked the authority to adopt the Purported Amendments, Good Day and Capital City requested a declaratory judgment that the Purported Amendments are unconstitutional, null, and void and that the original text of Amendment 98 as adopted by the people remains in effect without change. (RP11).

Good Day and Capital City later amended their complaint to add an additional argument for the invalidity of the Purported Amendments. (RP76). That additional argument asserted that the Purported Amendments are invalid because they do not satisfy the requirement of Amendment 98, § 23 that any amendments adopted under its provisions be "germane to this section and consistent with its policy and purposes." (RP77). The amended complaint asserted that the Purported Amendments are not germane to § 23 because they are not relevant, pertinent, or bearing a close relationship to the matter and scope of § 23, which is the process of amending Amendment 98. (RP77).

Because the Purported Amendments are not germane, they are invalid and void. (RP77).

The parties filed competing motions for summary judgment on Good Day and Capital City's claims, and the circuit court heard those motions at a hearing on June 1, 2023. (RT4–49). On June 14, 2023, the circuit court entered an order granting partial summary judgment for Good Day and Capital City on their claim for a declaratory judgment that the Purported Amendments are invalid. (RP147).

In that order, the circuit court considered whether the permission to amend parts of Amendment 98 in § 23 of the amendment "references to the power of the Legislature to refer amendments to the people for a vote" or allows legislative amendments without the people's approval. (RP149). The circuit court concluded that *Edgmon* was controlling and that "Section 23 authorizes Amendment to some, but not all provisions of Amendment 98, but ONLY by REFERRING ANY SUCH AMENDMENTS TO THE PEOPLE, and that no 'emphatic', nor any express, permission to do otherwise was granted." (RP149, 151). The circuit court also concluded that the Purported Amendments are invalid under the germaneness requirement of § 23 of Amendment 98.

(RP151). The circuit court reached that conclusion because "Amendment 98, § 23's requirement was specifically that any amendments be '***germane to this section*** and consistent with its policy and purposes.'" (RP151) (quoting Amend. 98, § 23) (emphasis in the original). Because the "Amendments do NOT address Section 23," the circuit court ruled that they are not germane to that section and are invalid. (RP151). The circuit court thus declared that the Purported Amendments are unconstitutional and void, leaving the original text of Amendment 98 as adopted by the people in effect. (RP151).

Good Day and Capital City had a separate claim for free-speech violations imposed by medical-marijuana regulations that was not covered by the circuit court's summary-judgment order. (RP151). Good Day and Capital City later dismissed that claim voluntarily. (RP227). The State then appealed the summary-judgment order. (RP232).

ARGUMENT

As the circuit court ruled, the Purported Amendments are invalid and void in two independent ways. First, the Purported Amendments are invalid and void because the General Assembly lacks the authority to amend Amendment 98 without a vote of the people, making those legislative amendments void. The Court should reject the State's attempt to undo *Edgmon* and give the General Assembly legislative fiat over the text of the Constitution and affirm the circuit court because the Purported Amendments were not approved by the people. Second, the Purported Amendments are invalid and void because they are not germane to § 23 of Amendment 98, and the State's strained effort to rewrite the text of the amendment under the absurdity doctrine should be rejected.

1. The Purported Amendments are void because the General Assembly had no authority to adopt them without a vote of the people.

Justice Scalia once remarked that attempts to change the allocation of government powers come "clad, so to speak, in sheep's clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis." *Morrison v.*

Olson, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting). But sometimes, the "wolf comes as a wolf." *Id.* (Scalia, J., dissenting). This is such a case, with the State directly attacking decades of precedent and trying to strip power over the Arkansas Constitution away from the people and hand unfettered power over the Constitution to the General Assembly.

More than 70 years ago, the Court turned away the same wolf, holding in *Edgmon* that the General Assembly cannot unilaterally amend the Arkansas Constitution. *Edgmon* recognized that Amendment 7 requires that amendments to the Constitution be submitted to and approved by the people. Even though *Edgmon's* interpretation of Amendment 7 to the Arkansas Constitution has been the law for three-quarters of a century, the State now demands that the Court discard that long-standing precedent and adopt the interpretation rejected as "inconceivable" in *Edgmon* that would allow the General Assembly to override nearly the entire Constitution. That attack on *Edgmon* has two prongs. First, the State claims that *Edgmon* failed to apply a formulation of the absurdity doctrine derived from a legal treatise that the Court first mentioned in 2016. Second, the State

claims that *stare decisis* has no application because *Edgmon* was wrongly decided. Neither argument has any merit.

1.1 *Edgmon* established that Amendment 7 does not permit the General Assembly to amend the Constitution without the people's approval.

By attacking *Edgmon* and demanding that the Court jettison it, the State implicitly accepts Good Day and Capital City's argument that § 23 of Amendment 98 incorporates Amendment 7's limitations on the General Assembly's authority to amend the Constitution. *See* (RP30–33). *Edgmon* holds that the General Assembly cannot amend the constitution unilaterally like it did with the Purported Amendments, so the State has to rid itself of *Edgmon* before it can persuade the Court to reverse the circuit court. The Court should reject that effort, though, because *Edgmon* was correctly decided, and the State has presented no good reason for the Court to overturn *Edgmon's* interpretation of Amendment 7, which has stood for most of that amendment's existence.

Amendment 7[1] states its purpose clearly. Under the amendment, "the people reserve to themselves the power to propose legislative measures, laws and amendments to the Constitution, *and* ***to enact or***

[1] The text of Amendment 7 appears in Ark. Const., Art. 5, § 1.

reject the same at the polls independent of the General Assembly." (Emphasis added). That method for amending the Constitution is distinct from the method available to the General Assembly, which is governed by Article 19, § 22 of the Constitution. *See Steele v. Thurston*, 2020 Ark. 320, 4, 609 S.W.3d 357, 361 (discussing "the distinction between constitutional amendments proposed by the Arkansas General Assembly and those initiated by the people").

The Court applied that purpose in *Edgmon* to reject the hyper-technical argument that the State tries to resurrect here. *Edgmon* arose from the General Assembly's attempt to amend Amendment 35 by directly disbursing funds that should have been under the control of the Game and Fish Commission. That issue brought the Court "to a consideration of the legislative right to amend, repeal, or otherwise change an initiated constitutional amendment." *Id.* at 209, 235 S.W.2d at 556. In particular, the Court considered language in Amendment 7 stating that "no measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any City Council, except upon a yea and nay vote on roll call of two-thirds of all members elected to each house of the General Assembly, or of the City Council, as

the case may be." *Id.* (quoting Amendment 7). The term "measure" is defined in Amendment 7 as including an "amendment."

The Court immediately dispensed with the sort of literal interpretation of Amendment 7 that the State advances here. "If the language should be literally construed," the Court pointed out, "then a constitutional amendment applicable to Little Rock alone, or to any other city, could be repealed by a vote of two-thirds of the members elected to the city council." 218 Ark. at 210, 235 S.W.2d at 556. Moreover, Art. 19, § 22 refers to referred constitutional amendments as "measures," too. *Id.* "Hence if the definition in Amendment and Repeal is applied throughout [the Constitution], then any or all of the more than forty amendments to the constitution could be repealed by the required vote of the legislature." *Id.* In other words, a literal interpretation—the same interpretation that the State pushes the Court to adopt here—would permit the General Assembly to strip the Constitution of every amendment adopted since the Constitution was first adopted more than 150 years ago.

Edgmon rejected that interpretation, which would have placed constitutional amendments "on about the same footing" as an initiated

act. *Id.* at 210–11, 235 S.W.2d at 556. Such a reading, the Court concluded, would destroy the very purpose of Amendment 7:

> It is inconceivable that in defining constitutional amendment as a measure the purpose was to invest the General Assembly with power (a) to repeal a constitutional amendment, or (b) with authority to amend an amendment—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.
>
> The clear intent of the Initiative and Referendum Amendment was to give the people enlarged legislative and constitutional powers. Certainly if the purpose had been to take away fundamental security then enjoyed or to be acquired under the Amendment, the right of two-thirds of those elected to the General Assembly to treat amendments as though they had been referred to it would have been expressed in more emphatic terms.

Id. at 211, 235 S.W.2d at 556–57. The Court thus held that the General Assembly lacks the authority to amend an amendment to the Constitution directly through legislation. The General Assembly must instead "submit constitutional amendments—not exceeding three at a session—for approval or rejection by the people" under Art. 19, § 22 of the Constitution. *Id.* at 210, 235 S.W.2d at 556.

1.2 *Edgmon* applied the correct standard for interpreting Amendment 7.

Acknowledging that *Edgmon* does not mention the absurdity doctrine, the State theorizes that the Court implicitly applied the doctrine in rejecting the sweeping interpretation of Amendment 7 that the State has tried to resurrect here. State Br. at 14. The State then faults the Court for not applying the absurdity doctrine—which the Court never said it was applying[2]—as formulated in cases decided

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[2] Despite the suggestion in the State's brief that the *Edgmon* Court blundered in its handling of the issue, it should be noted that justices who made up the unanimous Court that decided *Edgmon* served 119 years on this Court. Their numbers included the longest-serving justice in the history of this Court, Justice George Rose Smith, as well as Chief Justice Griffin Smith (the author of the opinion), who served nearly two decades. Two other justices on the Court, Justice J. Seaborn Holt and Justice Ed F. McFaddin, served 23 years each. And the *Edgmon* Court also included Justice Robert A. Leflar, perhaps the state's most renowned legal scholar. Put simply, the *Edgmon* court knew what it was doing.

nearly 70 years later. That argument fails, though, because *Edgmon* applied the standard for interpreting Amendment 7, a standard that the State never mentions in its haste to attack *Edgmon*.

The people of Arkansas adopted Amendment 7 in 1920. *Reynolds v. Thurston*, 2024 Ark. 97, 6, 689 S.W.3d 48, 51. Soon after the adoption of the amendment, this Court recognized that "Amendment No. 7 necessarily must be construed with some degree of liberality, in order that its purposes may be well effectuated." *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72, 73 (1935). "*Strict construction might defeat the very purposes, in some instances, of the amendment*." *Id*. (emphasis added). The purpose of the amendment, of course, was to "permit[] the exercise of the power reserved to the people to control, to some extent at least, the policies of the state." *Id*.

The careful respect of that purpose identified in *Reeves* as the guide to interpreting Amendment 7 actually dates back to its predecessor, an amendment adopted in 1910 that was replaced by the

1920 amendment.[3] When the Court considered the earlier amendment in 1912, it said that "in construing this amendment, it is our duty to keep constantly in mind the purpose of its adoption and the object it sought to accomplish. That object and purpose was to increase the sense of responsibility that the lawmaking power should feel to the people by establishing a power to initiate proper, and to reject improper, legislation." *Ferrill v. Keel*, 105 Ark. 380, 151 S.W. 269, 272 (1912)

The Court continued applying that interpretative standard in its Amendment 7 case law in the years leading up to *Edgmon*. *See Warfield v. Chotard*, 202 Ark. 837, 153 S.W.2d 168, 169 (1941) (interpreting Amendment 7 liberally so that exercise of powers by the people are "not thwarted by strict or technical construction") (quoting *Reeves*); *Beene v. Hutto*, 192 Ark. 848, 96 S.W.2d 485, 489 (1936) (same) (quoting *Reeves*). And that standard did not apply only to Amendment

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[3] *See* Jerald A. Sharum, *Arkansas's Tradition of Popular Constitutional Activism and the Ascendancy of the Arkansas Supreme Court*, 32 U. Ark. Little Rock L. Rev. 33, 44–46 (2009) (discussing the adoption of the 1910 and 1920 initiative and referendum amendments).

7. The Court long recognized that the "fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and of the people who adopted it." *Bailey v. Abington*, 201 Ark. 1072, 148 S.W.2d 176, 180 (1941).

Edgmon was thus decided under a standard that required construing Amendment 7 in order to give effect to its purpose of reserving control over state law in the people and avoiding "strict or technical constructions" that might thwart that purpose. Indeed, *Edgmon* cites *Reeves*, *Beene*, and other cases applying that standard in interpreting and applying Amendment 7. 218 Ark. at 210 n.1, 235 S.W.2d at 556 n.1. The Court thus was not applying some sort of underdeveloped version of the absurdity doctrine like the State claims here. Rather, the Court was applying the venerable standard that vindicates the right of the people to control the law over strict, technical constructions that undermine that purpose. *Edgmon* therefore rejected the construction that the State advances here because reading Amendment 7 as creating legislative authority to amend and repeal constitutional amendments would undermine the "clear intent" of the amendment "to give the people enlarged legislative and constitutional

powers." *Id.* at 211, 235 S.W.2d at 557. Otherwise, the Court would have permitted the legislature to repeal most of the Constitution.

Edgmon was correct. As the *Edgmon* points out, the literal interpretation that the State argues here would give city councils the authority to repeal constitutional amendments. 218 Ark. at 210, 235 S.W.2d at 556 ("If the language should be literally construed, then a constitutional amendment applicable to Little Rock alone, or to any other city, could be repealed by a vote of two-thirds of the members elected to the city council."). Not only that, the State's interpretation would give the General Assembly—a body that the constitution elsewhere grants only the authority to *propose* three amendments per legislative session for the people's consideration—unbridled authority to sweep away "any or all of the more than forty amendments[4] to the constitution," including amendments referred by previous legislatures and adopted by the people. *Id.* Under that regime, constitutional amendments would be mere legislation, "on about the same footing" as

[4] After the people's approval of two new amendments in 2024, the constitution now has 104 amendments.

initiated acts. *Id.* Rather than proposing three amendments at a time,[5] the General Assembly could amend the Constitution hundreds of times every legislative session.

As *Edgmon* recognized, that interpretation does not square with the stated purpose of Amendment 7. Key to that purpose is the people's control over the Constitution "*independent of the General Assembly*." (Emphasis added). Yet the State, without acknowledging that purpose,

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[5] Amendment 7 makes explicit reference to Art. 19, § 22's allowance of three referred amendments per legislative session and makes clear that proposed constitutional amendments are the only measures that the General Assembly may submit to the people. *See Edgmon*, 218 Ark. at 210, 235 S.W.2d at 556 ("Another provision prohibits the General Assembly from submitting 'measures' to the people 'except a proposed constitutional amendment or amendments as provided for in this Constitution.'"). That language establishes that while an amendment of other types of "measures" under Amendment 7 would not require a vote of the people, constitutional amendments must be referred for a vote.

insists that within an amendment designed to give the people power over their laws "independent of the General Assembly" lurks a poison pill allowing that same body to override the will of the people through legislation. *Edgmon* rejected that interpretation because it was "inconceivable" that the people would cede power over the constitution to the General Assembly in an amendment reserving that same power in the people. 218 Ark. at 211, 235 S.W.2d at 557.

The State's invocation of absurdity is thus beside the point. But even if the Court considers absurdity, the State's conception of the doctrine is cramped, consisting of a citation to a 2012 treatise and to a 2016 opinion of this Court citing that treatise. State Br. at 14–15. The Court recognized the concept of absurdity as part of its tools for interpreting constitutional provisions long before 2012, and *Edgmon* can hardly be faulted for failing to apply a formulation of the doctrine that would not exist for another 60 years.

Ten years before *Edgmon*, *Bailey, supra*, stated that "when the intention of a statute is plainly discernable from its provisions[,] that intention is as obligatory as the letter of the statute, and will even prevail over the strict letter." 201 Ark. at 1077, 148 S.W.2d at 179

(citation omitted). That rule particularly applies "where an adherence to such strict letter would lead to injustice, to *absurdity*, or contradictory provisions." *Id.* (emphasis added). As the Court phrased the standard in a later case, "this court is duty bound to reject any interpretation of a statute that results in absurdity or injustice, leads to contradiction, or defeats the plain purpose of the law." *Weiss v. Cent. Flying Serv., Inc.*, 326 Ark. 685, 690, 934 S.W.2d 211, 214 (1996). Those authorities show that considering whether an interpretation is absurd, at least when *Edgmon* was decided, is not merely a textual exercise seeking mistakes for which there is, to borrow the State's term, an "easy fix"—it requires consideration of whether the text contradicts its purpose.

Refusing to read Amendment 7 as contradicting its purpose is precisely what *Edgmon* did. That result was dictated by the standard applicable to consideration of that amendment and to the Constitution generally. And that result is as correct now as it was in 1951. The Court should reject the State's attempt to undo *Edgmon* by reading Amendment 7 in a way that makes the people's power over the

Constitution subordinate to the General Assembly, not independent of it.

1.3 *Stare decisis* requires application of *Edgmon*.

Edgmon was correctly decided, so *stare decisis* is not at issue. *See Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (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."). But if the Court believes that *Edgmon* is flawed, *stare decisis* requires the continued application of that longstanding precedent and rejection of the State's attempt to overturn it after nearly eight decades.

Stare decisis is "a foundation stone of the rule of law" that "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Kimbrough v. Grieve*, 2024 Ark. 34, 10 n.2, 685 S.W.3d 225, 231 n.2 (citations omitted). "Any departure from the doctrine demands special justification—something more than an argument that the precedent was wrongly decided." *Id.* (cleaned up).

Yet an argument that *Edgmon* was wrongly decided is all that the State offers in urging the Court to disregard *stare decisis*. The State dresses that argument up as "palpable error" but fails to show any error, let alone any palpability.[6] As shown above, *Edgmon* applied the correct standard for interpreting Amendment 7 by properly weighing its stated purpose and rejecting a literal interpretation that contradicted that purpose.

The State has cited no cases in which the Court found error, palpable or otherwise, justifying a departure from *stare decisis* based on the precedent's rejection of literal interpretation because it contradicted the stated purpose of the constitutional text. Rather, the State cites

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[6] Though the phrase "palpable error" pops up in several of this Court's cases discussing *stare decisis*, it does not appear that the Court has ever explained what distinguishes a palpable error from ordinary error. The earliest invocation of palpable error in the context of *stare decisis* required more than palpable error; it required "*very* palpable error." *W. Union Tel. Co. v. Byrd*, 197 Ark. 152, 122 S.W.2d 569, 574 (1938) (emphasis added).

Moore v. Moore, 2016 Ark. 105, 486 S.W.3d 766, which overruled precedent that appended a judicially created "active appreciation" analysis to treat the growth of businesses that were not marital property as marital property subject to division in a divorce. That case has little bearing here, where *Edgmon* simply applied the standard for interpreting Amendment 7 to reject a literal interpretation that undermined its stated purpose.

The State's next argument claims—without authority from this Court—that *stare decisis* means less here because the Constitution is at stake. State Br. at 16–17. That argument derives from a United States Supreme Court case discussing the federal constitutional scheme, under which interpretations of legislation are "balls tossed into Congress's court, for acceptance or not as that branch elects." *Kimble*, 576 U.S. at 456. Of course, the Arkansas Constitution differs materially from its federal counterpart, under which amendments require agreement of a supermajority of the states. In Arkansas, the Court's interpretation of the Arkansas Constitution is a ball tossed both to the people and to the General Assembly, each of which may propose and, in the people's case, adopt a fix through an amendment. Yet *Edgmon* has sat undisturbed

for more than 70 years, with no amendment to the Constitution attempting to undo the decision.

The age of *Edgmon* is an important factor requiring consideration in whether to adhere to *stare decisis*. *See Montejo v. Louisiana*, 556 U.S. 778, 792 (2009) (the "antiquity of the precedent" is a factor in the *stare decisis* consideration). The people adopted Amendment 7 in 1920. *Edgmon* was decided a little more than 30 years later, in January 1951. Thus, for most of Amendment 7's existence, *Edgmon* has been the controlling precedent on whether the amendment permits the General Assembly to operate on the Constitution through legislation. The State presents no compelling reason to depart from that venerable precedent now.

Indeed, "precedent governs until it gives a result so patently wrong, so manifestly unjust, that a break becomes unavoidable." *Cochran v. Bentley*, 369 Ark. 159, 174, 251 S.W.3d 253, 265 (2007) (citation omitted). The State has identified no such result here that makes a break with precedent unavoidable. In fact, the State has not even attempted to show such an injustice or even to identify a "special justification" of the sort identified in *Kimbrough*. The State merely

wants a different result so that the General Assembly holds the reins on the Constitution, which is not the sort of compelling interest that justifies a break from precedent.

Though the State has failed to identify a "patently wrong" or "manifestly unjust" result from allowing *Edgmon* to stand, it is not hard to imagine the chaos that might be unleashed if the State gets its way. Most of the constitutional text lies in the 104 amendments to the Arkansas Constitution. Those amendments cover subjects ranging from the structure of the state's government to fundamental rights enjoyed by the people, so the power to change those amendments without a vote of the people would be extremely broad. Indeed, the legislative power over the Constitution would be almost limitless because there would be no subject-matter restriction on what an amendment could do. In other words, an amendment on one subject could be amended to cover a completely different subject.

For example, a legislature empowered to amend or to repeal constitutional amendments could strip executive power from the governor. *See* Ark. Const., Amend. 6, § 2 (vesting executive power in the governor). Or such a legislature could cement itself in power by

making legislative terms indefinite. *See* Ark. Const., Amend. 73, § 2. Almost nothing would be off the table for a legislature with absolute authority over the text of the Constitution.

Such a legislature could also grant itself the judicial power to make this Court subservient to the General Assembly. The judicial power is vested in this Court through Amendment 80. *See* Ark. Const., Amend. 80, §§ 1–4. A General Assembly wielding the power to amend or to repeal Amendment 80 could thus remove the Court's excusive authority over rules of pleading, practice, and procedure under § 3 of Amendment 80. A General Assembly with that power also could shorten the terms of the justices of this Court under § 16 of the amendment or impose term limits or new qualifications for serving on the Court. Or the General Assembly could reduce or increase the number of justices required under § 2 of Amendment 80. No matter covered in Amendment 80 or any other amendment would be safe from legislative meddling. Separation of powers would no longer exist in any meaningful way—the General Assembly would reign supreme.

Contemplating the breadth of the legislative authority over the Constitution that the State advocates takes the issue back to what the

Court recognized in *Edgmon*. An intent to give the legislature such all-encompassing authority over the Constitution would have been stated, as the Court put it in *Edgmon*, "in more emphatic terms" than what is found in Amendment 7. And surely an opinion at odds with such emphatic terms would have been met with some resistance at some point over the past 74 years. No resistance has arisen because *Edgmon* was correctly decided. The Court should uphold it.

1.4 The Purported Amendments are void because they were not approved by the people.

The State attacks *Edgmon* because Amendment 98, § 23 incorporates Amendment 7—as interpreted by *Edgmon*—by reference. The circuit court thus ruled that because "*Edgmon* is still the law on this issue 72 [now 74] years later," it compelled an interpretation of § 23 as incorporating "those same limitations and requirements recognized in *Edgmon*," meaning that proposed amendments to Amendment 98 had to be referred to the people. (RP150–51). The State has not shown any error in that ruling.

Section 23 of Amendment 98 allows the General Assembly to amend Amendment 98 "in the same manner as required for amendment of laws initiated by the people." Section 23 does not refer specifically to

any other provision of the Constitution as providing a "manner" for the legislature to amend the Constitution. The matter of "laws initiated by the people," however, is covered in Amendment 7, which, as *Edgmon* recognized, does not give the General Assembly any authority to amend the Constitution absent a vote of the people.

The interpretation of Section 23 of Amendment 98 thus requires interpretation of Amendment 7 in concert with the rest of the Constitution. As discussed above, Amendment 7 must "be liberally construed to effectuate its purpose" of reserving control over the constitution in the people. *Thompson v. Younts*, 282 Ark. 524, 530, 669 S.W.2d 471, 475 (1984). That purpose requires that "any doubtful interpretation must be resolved in favor of the popular will." *Id.* at 531, 669 S.W.2d at 475. Because that "residuum of power [over state law and policy] remains in the electors, their acts should not be thwarted by strict or technical construction." *Warfield*, 202 Ark. at 153 S.W.2d at 169. In other words, the Court interprets Amendment 7 to protect the will of the people against intrusions from legislative authorities.

Edgmon established that Amendment 7 provides no "manner" for legislative amendment of the Constitution like that exercised in the

Purported Amendments. Any doubt in the matter must be resolved in favor of protecting the right of the people to approve changes to the Constitution. *Edgmon* makes clear that any intention to deprive the people of that right must be done in "emphatic terms" that leave no doubt as to the intent. Section 23 of Amendment 98 makes only a vague reference to an unspecified provision of the Constitution. That vague reference is hardly clear or "emphatic" enough to establish a curtailment of the people's right to approve changes to the Constitution. The only reading of Section 23 that protects the right of the people to control amendments to the Arkansas Constitution is to read "same manner as required for amendment of laws initiated by the people" as referring to the General Assembly's authority to refer constitutional amendments under Article 19, § 22 to a vote of the people. That language cannot refer to a long-rejected legislative authority to amend the Constitution without a vote of the people.

The overriding preference for the will of the people over legislative intrusions defeats the State's argument for a broad reading of Amendment 98, § 23 justifying the repeated legislative interference with Amendment 98. Section 23 does not simply say that the General

Assembly may amend Amendment 98, which was an available route when the people adopted the amendment. *See, e.g.,* Ark. Const., Amend. 89, § 11 ("The General Assembly may by a three-fourths vote of each house of the General Assembly amend the provisions of this amendment so long as the amendments are germane to this amendment and consistent with its policy and purposes."). Instead of language like that in Amendment 89, Amendment 98, § 23 refers vaguely to Amendment 7. By referring to Amendment 7, Amendment 98, § 23 incorporates the limitations and requirements recognized in *Edgmon*.

The State does not dispute that the Purported Amendments were not submitted to the people as required by *Edgmon*. The Purported Amendments were adopted by legislative fiat, not by the people. And the failure to seek and to win the approval of the people for the Purported Amendments makes them invalid and void. This Court should affirm the circuit court.

2. The Purported Amendments are void because they are not germane to Section 23.

The circuit court also ruled that the Purported Amendments are invalid and void for the separate reason that they do not meet § 23's

express requirement that amendments must be "germane to this section and consistent with its policy and purposes."[7] (RP151). Despite its staunch advocacy for literal readings of the Constitution in its attack on *Edgmon*, the State here asks the Court to ignore the statutory text and read "germane to this section" as "germane to this amendment." State Br. at 19–21. But the State has presented no reason for the Court to ignore what the text says in favor of what the State wishes it would say, so the Court should reject this argument and affirm the circuit court's ruling that the Purported Amendments are not germane to § 23.

In this context, the Court has held that "germane" means relevant, pertinent, or "having a close relationship." *Martin v. Haas*, 2018 Ark. 283, 11, 556 S.W.3d 509, 516 (considering whether an act was germane to Ark. Const., Amend. 51). "In essence, whether an

[7] The State acknowledges that germaneness is a separate requirement for amendments to comply with the language of § 23(a). State Br. at 18. Accordingly, the failure of an amendment to be germane to § 23 invalidates the amendment regardless of how the Court decides the State's first issue challenging *Edgmon*.

amendment is relevant, pertinent, or bears a close relationship to Amendment 51 turns on the subject matter and scope of Amendment 51." *Id*. So whether an amendment is relevant, pertinent, or bearing a close relationship to § 23 turns on the subject matter and scope of that section. The subject of § 23 is the process for amending Amendment 98, so only legislative amendments dealing with the process of amending Amendment 98 are germane to § 23. The State has not shown or even argued that any of the challenged amendments are germane to § 23.

Rather than showing that the Purported Amendments are germane to § 23, the State asks the Court to ignore the constitutional text and read it as saying "germane to this amendment" instead of "germane to this section." That effort rests on the claim that construing the language of § 23 "just as it reads," as the rules of statutory construction require, *see Johnson v. Wright*, 2022 Ark. 57, 6, 640 S.W.3d 401, 405, would result in an absurdity. State Br. at 20. This supposed absurdity arises because § 23(b)(3) prohibits amendments to § 23 itself.

But the language that defendants ask the Court to ignore does not require *amending* § 23—it merely requires that any amendment be *germane* to § 23. In other words, such amendment must only be related

topically to § 23. An amendment thus could be germane to § 23 without amending its text directly. For instance, the General Assembly-adopted amendment codified in § 26 of Amendment 98—which the State once thought to be part of the original amendment text adopted by the people in 2016 (RP88)—is germane to § 23 because it deals with amendments to Amendment 98. Whatever the purpose of giving the amendment its own section, § 26 shows that an amendment "germane to this section" is indeed possible and that construing the language as it reads does not leave § 23 "superfluous, meaningless, and inoperative" or absurd as the State argues here.

Nor is § 23(b)(3)'s additional prohibition on amendments to §§ 3 and 8 of Amendment 98 undermined by construing "germane to this section" as it reads. *See* State Br. at 20. Under the circuit court's interpretation of § 23, the General Assembly is not powerless to propose amendments to Amendment 98—it is powerless to amend Amendment 98 unilaterally. The prohibition on amendments to §§ 3 and 8 thus refers to such referred amendments. In other words, the General Assembly may propose amendments to Amendment 98 but cannot

propose amendments to §§ 3, 8, or 23. The circuit court's interpretation thus gives effect to all the provisions of Amendment 98, § 23.

The State also disregards this Court's fundamental interpretative principle that it will not read language into a provision in the guise of construction, particularly not in an area where the adopting body knows how to engage the issue explicitly. *See Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 487, 749 S.W.2d 666, 669 (1988) (declining to adopt an interpretation of a tax statute because "if the legislature had intended to fix some predetermined value, . . . it could have easily said so" because "the legislature knows how to set a predetermined value" and had done so specifically in other statutes). Under that principle, the fact that other amendments say what defendants wish Amendment 98, § 23 would say (*see* State Br. at 21) provides no basis for rewriting the statute. The intent in § 23 was different, so the language is different. That different language in § 23 requiring amendments "germane to this section" cannot be ignored or read as saying something else simply because the State wishes that language was broader.

Again, the State makes no argument that the Purported Amendments were germane to § 23, opting instead to argue that the

circuit court erred in applying the constitutional text as it reads. But the State fails to show any error in that ruling or any absurdity in the constitutional text. Because the Purported Amendments are not germane to § 23, they are invalid and void. This Court should affirm the circuit court.

REQUEST FOR RELIEF

The Purported Amendments are invalid and void because they were not properly adopted and because they are not germane to § 23 of Amendment 98. The circuit court thus correctly declared the Purported Amendments void and unenforceable, and this Court should affirm that ruling.

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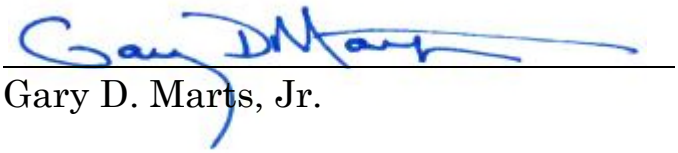
CERTIFICATE OF SERVICE

I certify that on March 19, 2025, I filed this brief using the Court's eFlex filing system, which will serve a copy on all counsel of record.



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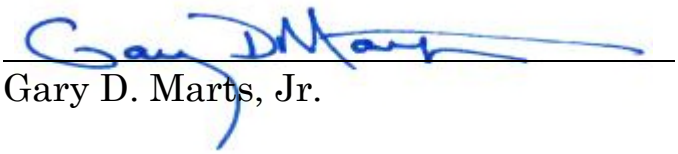
CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Administrative Order No. 19, that it complies with Administrative Order No. 21, Section 9, and that it conforms to the word-count limitations in Rule 4-2(d) of this court's rules. The sections specified in Rule 4-2(d) as counting against the word-count limitation altogether contain 6,969 words.



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