Case No. CV-24-704

IN THE ARKANSAS SUPREME COURT

State of Arkansas;
Department of Finance and Administration; and
Alcoholic Beverage Control Division
Appellants

v.

Good Day Farm Arkansas, LLC and
Capital City Medicinals, LLC
Appellees

On Appeal from the Circuit Court
of Pulaski County, Arkansas

The Honorable Morgan E. Welch
Circuit Judge, Sixteenth Division

Appellants' Reply Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Constitutional Amendments

Other Authorities

ARGUMENT

Appellees ask the Court to ignore the Arkansas Constitution's plain language and long-standing principles of constitutional interpretation. They rely exclusively on *Edgmon*—a case with neither reason nor reliance on its side.

In contrast, the State Defendants simply ask the Court to interpret the Constitution as it always does. As to Amendment 7, the plain language is unambiguous and requires no further interpretation—a truth admitted but ignored by the *Edgmon* Court. On Section 23 of Amendment 98, the plain language would render Section 23 inoperative by its own terms. Thus, the Court should turn to long-established interpretive doctrines—rooted in objective textual principles, not judicial policy intuitions.

1. It is undisputed that the text of Amendment 7 grants the General Assembly power to amend Amendment 98.

The parties may disagree on *Edgmon* and Amendment 98, but one point of agreement is certain—the text of Amendment 7 unequivocally states that "[n]o measure approved by a vote of the people shall be amended or repealed by the General Assembly … except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly." Ark. Const. art. 5, § 1; *see also* Appellees' Br. at 17-18.

Compare Amendment 7's language to the original Initiative and Referendum Amendment, ratified in 1910 ("1910 I&R Amendment"). It was a legislative

amendment, under Article 19, § 22. *State v. Moore*, 103 Ark. 48, 145 S.W. 1999 (1912); *State v. Donaghey*, 106 Ark. 56, 152 S.W. 746 (1912). Before the 1910 I&R Amendment, only the General Assembly could pass statutory law or proposed constitutional amendments. *Moore,* 145 S.W. at 200-01; *Donaghey*, 152 S.W. at 747. Under the 1910 I&R Amendment, there was no provision explicitly giving the General Assembly any power to alter laws initiated by the people. *Moore,* 145 S.W. at 200; *Donaghey*, 152 S.W. at 747.

Ten years later, when the people initiated and voted on Amendment 7, the people specifically included the language allowing for legislative amendment by vote of two-thirds majority of the House and Senate. *See* Proposed Amendment No. 13 to the Constitution of Arkansas, 1919 Ark. Acts 481–89 (Reg. Sess.). This change in wording effects an intentional change in meaning: the plain language of Amendment 7—unlike the text of the 1910 I&R Amendment—explicitly allows the General Assembly to amend initiated constitutional amendments, including Amendment 98.

2. *Edgmon* should be overturned.

a. The *Edgmon* Court followed no standard in construing Amendment 7.

Appellees repeatedly argue that the Court should ignore the plain language of Amendment 7. But this Court has been unequivocal that "article 5, section 1 of the Arkansas Constitution" is no exception to normal interpretive principles:

"Neither rules of construction nor rules of interpretation may be used to defeat [its] clear and certain meaning . . . ." *Ark. Dep't of Educ. v. Jackson*, 2023 Ark. 140, at 7–8, 675 S.W.3d 416, 421.

Yet the *Edgmon* Court undeniably avoided their obligation to look to the plain text of Amendment 7. *Ark. Game & Fish Comm'n v. Edgmon*, 218 Ark. 207, 235 S.W.2d 554 (1951). Implicit in their failure to address whether the language is clear and unambiguous is the reality that they could not opine that Amendment 7's text was ambiguous. So instead, they ignored it all together, merely calling it "inconceivable" that the People might have a different policy preference than the *Edgmon* Court. *Edgmon*, 218 Ark. at 211, 235 S.W.2d at 556. Rightfully, Appellees have to concede the language is clear. But trying to preserve *Edgmon*, Appellees fashion a "standard" that they would have this Court apply only to Amendment 7. Appellees' Br. 21.

Appellees argue that "*Edgmon* simply applied the 'standard for interpreting Amendment 7 to reject a literal interpretation that undermined its stated purpose." *Id*. at 30. Stating further, that Amendment 7 was interpreted "to protect the will of the people against intrusions from legislative authorities." *Id*. at 35. But as explained above, the amendatory history shows the opposite: Amendment 7 was an intentional deviation from the 1910 I&R Amendment, giving the General Assembly express authority to amend or repeal initiated measures—whether a

constitutional amendment or other measure. Thus, the *Edgmon* Court did the opposite of what Appellees claim. The *Edgmon* Court substituted its opinion in total disregard of the will of the people in amending Amendment 7.

Going one step further, the *Edgmon* Court concluded that initiated constitutional amendments can only be amended by the legislature if submitted to the people for approval or rejection under Article 19, § 22. *Edgmon*, 218 Ark. at 210-11, 235 S.W.2d at 556-57. The cases addressing the 1910 I&R Amendment explicitly differentiate between constitutional amendments by the legislature, governed by Article 19, § 22 since 1974, and the later constitutional amendments initiated by the people under the 1910 I&R Amendment. *Grant v. Hardage*, 106 Ark. 506, 153 S.W. 826, 827 (1913) (explaining that, to the extent there is a conflict, the 1910 I&R Amendment controls over Article 19, § 22, otherwise 1910 I&R Amendment would be "render[ed] nugatory"); *see also Moore*, *supra*; *Donaghey*, *supra*; *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656 (1912).

This characterization of the text as "inconceivable" and the incorrect application of Article 19, § 22 is exactly why the absurdity doctrine is to be applied so narrowly. Appellees' attack the traditional absurdity doctrine as a 2012 invention. Not so. The traditional absurdity doctrine pre-dates the Revolution and was adopted in the United States. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 234 n.1, 237 n.14 (2012) (first citing

William Blackstone, *Commentaries on the Laws of England* § 2, at 60 (4th ed. 1770), then citing 1 Joseph Story, *Commentaries on the Constitution of the United States* § 427, at 303 (2d ed. 1858)). Neither condition of the absurdity doctrine is met for Amendment 7—the people explicitly included the language allowing amendment by the General Assembly, and there is no obvious word or phrase left out to constitute an absurdity. Scalia & Garner, *supra*, at 238.

b. *Edgmon* is not saved by stare decisis.

Appellees argue that like our elders, *Edgmon* should be respected due to its age. Appellees' Br. 31. They further argue that because it has not yet been overturned, it must be correct. This ignores reality: *Edgmon* has not been relied on, by this Court or the General Assembly; in fact, the General Assembly has, unchallenged, amended initiated constitutional amendments since *Edgmon*.

As recently pronounced by the Supreme Court, stare decisis "plays an important role in our case law" and "serves many valuable ends" but it is "not an inexorable command," "and is at its weakest when we interpret the Constitution." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 263-64 (2022) (internal citations omitted). When it comes to the Constitution, there is a higher priority that a matter is settled correctly, than just settled. *Id*. at 264. As demonstrated above, the *Edgmon* Court took great liberties in judicially revising Amendment 7 to reach a result the Court felt was reasonable, not what the people explicitly granted in

Amendment 7. The Court now has the opportunity to correct faulty precedent and should overrule *Edgmon*.

Edgmon was an aberration in 1951 and is nothing more than an apparition today. It has never been cited for its atextual holding and—taking this Court's cue—the General Assembly has for years exercised its power to amend other initiated amendments, on topics from voter registration to gifts from lobbyists to the independent citizens commission. *See* Ark. Const. amend. 51, §§ 5–15 (voter-registration provisions amended by multiple acts between 1971 and 2023); *id.* art. 19, § 30 (provision related to gifts from lobbyists amended by seven acts); *id.* art. 19, § 31 (provisions about the independent citizens commission amended by two acts).

It is time for the Court to hammer the final nail and overrule *Edgmon*.

3. Section 23 grants the General Assembly power to amend Amendment 98 in the manner set forth in Amendment 7.

a. Section 23(a) establishes the manner of amendment by Amendment 7, not Article 19, § 22.

There is no dispute that Section 23(a) allows for amendment to certain provisions of Amendment 98. The disagreement lies in the manner of amendment. Relying on *Edgmon*, the circuit court held that Amendment 7 requires the legislature to submit proposed amendments to the people under Article 19, § 22 of the Constitution. (RP 149–151). Again, as demonstrated above, reaching such a

conclusion renders the two-thirds majority provision nugatory. *Grant v. Hardage*, 106 Ark. 506, 153 S.W. 826, 827 (1913). Article 19, § 22 predated the 1910 I&R Amendment by 36 years (Amendment 7 by 46 years, and Amendment 98 by 142 years). If the people intended for the 1910 I&R Amendment, Amendment 7, or Amendment 98 to be controlled by Article 19, § 22, they failed to mention it—ever.

b. <u>Ambiguity exists in reconciling the use of "germane" in Section 23(a).</u>

The question for the Court is whether the "germane" requirement of Section 23(a) is to apply to Section 23(a) itself or to this section of the constitution, *i.e.*, Amendment 98. Appellees now ask the Court to look at the text (unlike Amendment 7) and say it applies to Section 23. But this interpretation is impermissible because it renders superfluous, meaningless, and inoperative all of Section 23. *Simpson v. Calvary SPV I, LLC*, 2014 Ark. 363, at 3–4, 440 S.W.3d 335, 337-38. Unlike in *Edgmon*, the conditions of the absurdity doctrine are satisfied here to warrant the Court engaging in constitutional interpretation. *See* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 237–38 (2012).

Under the principles of constitutional interpretation, the Court must take the next step to review Amendment 98 in its entirety and "reconcile provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part." *Id*. at 4, 440 S.W.3d at 338. The Court is to interpret the provision where "it

is clear that a drafting error or omission has circumvented legislative intent." *Simpson*, 2014 Ark. at 4, 440 S.W.3d at 338. In so doing, it is obvious that the intent of Section 23 was to allow amendment to Amendment 98 so long as the amendment was germane to Amendment 98.

CONCLUSION

For these reasons, the Court should reverse the circuit court's order, grant summary judgment in favor of the State of Arkansas, Department of Finance and Administration, and Alcoholic Beverage Control Division and dismiss the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I filed a copy of the foregoing via eFlex on May 1, 2025, which notifies all counsel of record. Further, a copy will be e-mailed to the Honorable Karen Whatley, who succeeds Hon. Morgan E. Welch in the Sixteenth Division of Pulaski County Circuit Court.

/s/ Jordan Broyles
Jordan Broyles

CERTIFICATE OF COMPLIANCE

This brief complies with Administrative Order No. 19's requirements concerning confidential information, Administrative Order No. 21, § 9's requirement that briefs not contain hyperlinks to external papers or websites, and with the word-count limitation in Arkansas Supreme Court Rule 4-2(d), in that it contains 1,761 words within the argument.

/s/ Jordan Broyles
Jordan Broyles