

# NO. CV-22-482

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IN THE ARKANSAS SUPREME COURT

Original Action

EDDIE ARMSTRONG and LANCE HUEY,  
individually and on behalf  
of RESPONSIBLE GROWTH ARKANSAS,  
a ballot question committee

PETITIONERS

v.

JOHN THURSTON, et al.

RESPONDENTS

SAVE ARKANSAS FROM EPIDEMIC, et al.

INTERVENORS

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## PETITIONERS' BRIEF

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## ISSUES

- I. The Board erred in rejecting the ballot title because it is sufficient under this Court's precedent.
  - I.A. This Court's standard for determining the sufficiency of a ballot title requires liberal construction and interpretation, not minute details like those the Board demanded.
  - I.B. The ballot title includes the information necessary to inform voters about the content of the Amendment.
- II. Ark. Code Ann. § 7-9-111's ballot title certification process is unconstitutional.
  - II.A. Ark. Code Ann. § 7-9-111 imposes an unwarranted restriction on the initiative process by unconstitutionally creating a new role for the Board that departs from Amendment 7's text.
  - II.B. Ark. Code Ann. § 7-9-111 differs substantially from the former procedure in which the attorney general helped sponsors prepare sufficient ballot titles.
  - II.C. Because the Board exceeded its constitutional authority, the Court should vacate the Board's rejection of the Amendment's ballot title and order certification of the Amendment for the November general election ballot.

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## **JURISDICTIONAL STATEMENT**

Petitioners bring this action under this Court's original and exclusive jurisdiction to determine the sufficiency of statewide initiative petitions. Ark. Const. Art. V, § 1; Ark. Sup. Ct. R. 6-5(a).

## STATEMENT OF THE CASE AND FACTS

Petitioner Responsible Growth Arkansas submitted over 190,000 petition signatures to Secretary of State John Thurston in support of a proposed constitutional amendment, more than doubling the required number of signatures. Add. 4, ¶ 11. The proposed amendment has the popular name “An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of Those Facilities” (“Amendment”). Add. 18. Secretary Thurston later certified the sufficiency of the signatures in support of the Amendment to qualify it for the November general election ballot. Add. 14.

But the Amendment faced one more hurdle before making the ballot: the State Board of Election Commissioners (“Board”), exercising its new authority under Act 376 of 2019 (codified at Ark. Code Ann. § 7-9-111) to sit as arbiter of popular names and ballot titles. That role diverges from the Board’s constitutionally prescribed role under Ark. Const., Amend. 7, which commands only that when a ballot title is submitted to the Board, it “*shall* certify such title to the Secretary of



State, to be placed upon the ballot.” (Emphasis added). Act 376 converted that constitutional mandate to a statutory option in which the Board decides the legal issue of whether the ballot title is sufficient. Ark. Code Ann. § 7-9-111(i). Under that statutory procedure, Secretary Thurston submitted the popular name and ballot title for the Amendment to the Board on July 11. Add. 4, ¶ 12.

That ballot title provided an overview of the substance of the Amendment. The Amendment’s principal changes to existing law authorize the possession and use of cannabis by adults and allow the cultivation and sale of cannabis to adults by licensed commercial facilities, which are listed in the ballot title. Add. 18. And because the Amendment amends specific provisions of Amendment 98 governing medical marijuana, the ballot title informs voters of those changes by stating each specific section of Amendment 98 affected and stating whether those sections are being repealed, replaced, removed, or otherwise amended. Add. 18–19. If the Amendment adds new provisions to an existing section of Amendment 98, the added provision is described generally in the ballot title. Add. 18–19.

The ballot title thus informs voters that the Amendment is “amending Amendment 98 concerning medical marijuana in pertinent part, including:”

- amending Amendment 98, § 3(e) to allow licensed medical or adult use dispensaries to receive, transfer, or sell marijuana to and from medical and adult use cultivation facilities, or other medical or adult use dispensaries, and to accept marijuana seeds from individuals legally authorized to possess them;
- repealing Amendment 98, § 8(c) regarding residency requirements;
- repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children;
- amending Amendment 98, § 8(k) to exempt individuals owning less than 5% of dispensary or cultivation licensees from criminal background checks;
- amending Amendment 98, § 8(m)(1)(A) to remove a prohibition on dispensaries supplying, possessing, manufacturing, delivering, transferring, or selling paraphernalia that requires the combustion of marijuana;
- amending Amendment 98, § 8(m)(3)(A)(i) to increase the marijuana plants that a dispensary licensed under that amendment may grow or possess at one time from 50 to 100 plus seedlings;
- amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana to dispensaries, adult use dispensaries, processors, or other cultivation facilities;
- amending Amendment 98, §§ 10(b)(8)(A) and 10(b)(8)(G) to provide that limits on the amount of medical marijuana dispensed shall not include adult use cannabis purchases;

- amending Amendment 98, §§ 12(a)(1) and 12(b)(1) to provide that dispensaries and dispensary agents may dispense marijuana for adult use;
- amending Amendment 98, § 13(a) to allow medical and adult use cultivation facilities to sell marijuana to adult use dispensaries;
- repealing Amendment 98, § 17 and prohibiting state or local taxes on the cultivation, manufacturing, sale, use, or possession of medical marijuana;
- repealing Amendment 98, § 23 and prohibiting legislative amendment, alteration, or repeal of Amendment 98 without voter approval;
- amending Amendment 98, § 24(f)(1)(A)(i) to allow transporters or distributors licensed under Amendment 98 to deliver marijuana to adult use dispensaries and cultivation facilities licensed under this amendment.

Add. 18–19. The ballot title thus informs voters that the Amendment will change specific parts of Amendment 98 and tells voters when any new provision will be added.

But when the Board met to discuss the popular name and ballot title on August 3, it decided that the description of one of the changes to Amendment 98 was insufficient because the ballot title did not recite the precise language of one of the sections of Amendment 98 that the Amendment would change. Add. 15–16. That section was identified in the clause informing voters that Amendment would “repeal[] and replac[e] Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with

requirements for child-proof packaging and restrictions on advertising that appeals to children.” Add. 15–16, 18.

In its written explanation issued the next day, the Board said that it declined to certify the ballot title for three reasons attacking that single clause of the ballot title. First, the Board decided “that omitting from the Ballot Title the fact that [the Amendment] is repealing Ark. Const. Amend. 98 § 8(e)(5)(A)’s<sup>1</sup> limitation on the maximum dosage of ‘tetrahydrocannabinol per portion’ (THC) is material information that is not included in the Title.” Add. 15. Of course, the ballot title says that the Amendment will be “repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B),” which is the limitation that the Board identified. Add. 18. The Board acknowledged that language in the ballot title but found it insufficient because it does not state the contents of the repealed provision of Amendment 98. Add. 16.

Second, the Board essentially restated its first point by concluding the ballot title’s language informing voters that Amendment 98 §

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<sup>1</sup> The Board omitted the fact that the ballot title informs voters that the Amendment would also repeal Section 8(e)(5)(B). *See* Add. 18.

8(e)(5)(A) would be repealed but not repeating its contents “is a material omission that voters would need to know when voting For or Against the measure.” Add. 16. The Board “reasoned that setting a limitation” on THC “protects children and others who may unknowingly access consumable products that contain THC.” Add. 16. Not reciting or summarizing the repealed provision, the Board concluded for a second time, makes the ballot title misleading. Add. 16.

Third, the Board decided that the ballot title misleads by informing voters that the Amendment will repeal and replace Amendment 98, § 8(e)(5)(A) with requirements for child-proof packaging and restrictions on advertising that appeals to children. Add. 16. Even though the ballot title tells voters the provision of existing law that would be repealed and gives a general description of what would replace the repealed provision, the Board thinks that a voter who agreed “that packaging should not appeal to children[] but may not agree that the per dose limitation on THC should be removed” might be fooled. Add. 16. Such a voter might be fooled because the ballot title “places emphasis on the new clause in such a way that obscures the removal of a protective measure regarding dosage.” Add. 16.

For those three reasons, “taken together or separately,” the Board declined to certify the ballot title for inclusion on the November 2022 general election ballot. Add. 16. On August 4, the Board informed Responsible Growth Arkansas in writing of its decision as required by Ark. Code Ann. § 7-9-111. Add. 15. Later that day, Responsible Growth Arkansas filed this original action. Add. 1.

In its complaint, Responsible Growth Arkansas requested that the Court vacate the Board’s decision and order the Amendment certified for the November general election ballot for two reasons. First, the Board’s ruling contradicts this Court’s precedents governing the legal sufficiency of popular names and ballot titles. Add. 8–9, ¶¶ 26–27. Because the ballot title is sufficient under those precedents, the complaint asked the Court to order the Amendment be placed on the November ballot. Add. 9–10. Second, the part of Ark. Code Ann. § 7-9-111 giving the Board the ability to reject ballot titles violates Amendment 7, which requires that the Board “shall certify such title to the Secretary of State, to be placed upon the ballot” without giving the Board discretion to reject it. Add. 8, ¶ 25. Respondents filed their

answer on August 16. Add. 29. And intervenors filed their answer on August 22. Add. 38.

## ARGUMENT

“Regnat Populus—The People Rule—is the motto of Arkansas. It should ever remain inviolate.” *Republican Party of Ark. v. State ex rel. Hall*, 240 Ark. 545, 549, 400 S.W.2d 660, 662 (1966). One way that the people rule in Arkansas is through the initiative, “the first power reserved by the people.” *Zook v. Martin*, 2018 Ark. 293, 4, 557 S.W.3d 880, 883 (quoting Ark. Const. art. 5, § 1). The reservation of that “power lies at the heart of our democratic institutions.” *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

Yet the ability of the people to exercise that “first power” has been unconstitutionally restricted by Ark. Code Ann. § 7-9-111 and its creation of new authority in the Board to reject ballot titles. And the Board has further restricted the people’s power by ignoring this Court’s precedent on the sufficiency of ballot titles and imposing its own unduly restrictive standard that makes approval of a ballot title nearly impossible. The Amendment is but the latest victim of the Board’s efforts to keep the people from voting on initiative proposals. This Court should ensure that it is the last victim by enforcing its



precedents, under which the ballot title is sufficient, and by finding the Ark. Code Ann. § 7-9-111 ballot title approval process unconstitutional.

**I. The Board erred in rejecting the ballot title because it is sufficient under this Court’s precedent.**

The first reason the Court should vacate the Board’s ruling is because it failed to apply this Court’s standard for judging the sufficiency of ballot titles, choosing instead to substitute an unduly restrictive standard requiring a summary of existing law in a ballot title, which this Court has never required. Under the correct standard, the Amendment’s ballot title is sufficient and should be certified for the ballot because it provides voters an intelligible, honest, and impartial summary of what the Amendment would do if adopted.

**I.A. This Court’s standard for determining the sufficiency of a ballot title requires liberal construction and interpretation, not minute details like those the Board demanded.**

The sufficiency of a ballot title is a matter of law.<sup>2</sup> *Bailey v. McCuen*, 318 Ark. 277, 284, 884 S.W.2d 938, 942 (1994). The “most

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<sup>2</sup> Because a question of law is at stake, this Court gives no deference to the Board’s attempt to decide that legal issue. *See Myers v. Yamato Kogyo Co., Ltd.*, 2020 Ark. 135, 5, 597 S.W.3d 613, 617 (“By giving deference to agencies’ interpretations of statutes, the court

significant rule” in deciding sufficiency is that the ballot title receive “liberal construction and interpretation in order that it secure the purposes of reserving to the people the right to adopt, reject, approve, or disapprove legislation.” *Rose v. Martin*, 2016 Ark. 339, 5, 500 S.W.3d 148, 152. To satisfy that standard, a ballot title need only provide “an impartial summary of the proposed amendment” that “give[s] the voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law.” *Knight v. Martin*, 2018 Ark. 280, 7, 556 S.W.3d 501, 506 (citations omitted).

A ballot title provides a fair understanding of the issues presented if it is “free of any misleading tendency whether by amplification, omission, or fallacy.” *Id.* But avoidance of misleading omissions does not mean that a ballot title must “contain a synopsis of the proposed amendment or cover every detail of it.” *Id.* And “ballot titles are not required to include every possible consequence or effect of a proposed measure and need not cover or anticipate every possible legal argument

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effectively transfers the job of interpreting the law from the judiciary to the executive. This we cannot do.”).

that the proposed measure might evoke.” *Id.* at 11, 556 S.W.3d at 509. Accordingly, the “ultimate issue is whether the voter, while inside the voting booth, is able to reach an intelligent and informed decision for or against the proposal and understands the consequences of his or her vote based on the ballot title.” *Id.* at 7, 556 S.W.3d at 507 (citations omitted). In short, if the ballot title provides voters an impartial summary of the amendment informing them what it will do if adopted, the ballot title is sufficient.

The Board ignored most of the Court’s well-developed standard for considering the sufficiency of a ballot title. Add. 15–16. The Board instead reduced the standard to a single-minded focus on what it wrongly viewed to be an omission, never considering the broader question of whether the ballot title will provide voters an adequate basis to make an informed decision on whether to vote for or against the Amendment. Add. 15–16. By ignoring that “ultimate issue,” the Board applied an improperly restrictive standard that led to an erroneous rejection of the Amendment’s ballot title.

Aside from the impropriety of ignoring this Court’s precedent on a matter of law, the Board’s arbitrary and capricious fabrication of its

own stricter standard for ballot titles is unfair to initiative sponsors. When initiative sponsors draft a ballot title, they rely on this Court's extensive precedent as guidance to what sufficiency requires. That guidance tells sponsors both what is necessary and what is unnecessary. But sponsors who follow that guidance too often find that they fall short of the Board's own standard, which relies on no fixed principles beyond the preferences of the Board's members. That process is unfair—and it underscores the way in which the Board's role runs afoul of Amendment 7 by hampering the initiative process.

And, as shown in the following section, that unfairness is not hypothetical—it is exactly what occurred here, where Responsible Growth Arkansas drafted a ballot title in accordance with this Court's holdings that a ballot title need not summarize existing law or describe it in detail, *e.g.*, *Cox v. Daniels*, 374 Ark. 437, 445, 288 S.W.3d 591, 596 (2008), only to learn that the Board applies a different standard requiring what this Court has repeatedly said is not required. The Board's arbitrary treatment of the ballot title underscores the way in which this procedure hampers the initiative process.

**I.B. The ballot title includes the information necessary to inform voters about the content of the Amendment.**

Because it ignored this Court's precedents, the Board erred in finding an omission of any sort in the ballot title. The "omission" that the Board's exacting, unpredictable scrutiny found in a description of a change to Amendment 98 is no omission at all because the ballot title informs voters of every change to Amendment 98. The Board ignored that fact in favor of requiring the ballot title to include "a synopsis of the proposed amendment or cover every detail of it" in a way that this Court simply does not require. Had the Board considered this Court's precedent, it would have found that the Court has long rejected the position that a ballot title must identify changes to particular provisions of existing law with specificity.

The analysis of the ballot title begins with the part that the Board found insufficient regarding the Amendment's proposed changes to Amendment 98, which deals with medical marijuana. To ensure that voters know about those changes, the ballot title lists every affected provision of Amendment 98 and tells voters how it is affected. Thus, if the Amendment would repeal part of Amendment 98, the ballot title tells voters about that repeal by identifying the repealed provision

specifically.<sup>3</sup> If the Amendment would amend Amendment 98, the ballot title says so and informs voters generally about the change.<sup>4</sup> And if the Amendment would repeal part of Amendment 98 and replace it with new language, the ballot title tells voters about those changes, too.<sup>5</sup> The ballot title thus informs voters about every proposed change to Amendment 98, giving them the sort of impartial summary of the Amendment that this Court’s sufficiency standard requires.

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<sup>3</sup> For example, “repealing Amendment 98, § 8(c) regarding residency requirements.” Add. 18.

<sup>4</sup> For example, “amending Amendment 98, § 3(e) to allow licensed medical or adult use dispensaries to receive, transfer, or sell marijuana to and from medical and adult use cultivation facilities, or other medical or adult use dispensaries, and to accept marijuana seeds from individuals legally authorized to possess them.” Add. 18.

<sup>5</sup> For example, “repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children.” Add. 18.

By providing those details, the Amendment’s ballot title exceeds what this Court has required in past cases when it comes to changes in the law contained in a proposed amendment. In *Knight*, the challenger of a ballot title for Issue No. 4, a proposed casino gambling amendment, complained that the ballot title omitted “necessary information because it fail[ed] to inform voters that Issue No. 4 overturns article 2, section 19’s constitutional ban on monopolies and perpetuities.” 2018 Ark. 280 at 8, 556 S.W.3d at 507. The Court rejected that argument in part because “the ballot title identifies Issue No. 4 as a constitutional amendment, which is sufficient to inform voters that change will result.” *Id.* at 8, 556 S.W.3d at 508 (citing *Cox*). If telling voters that a proposed initiative will amend the constitution is “sufficient to inform voters that change will result,” giving voters that information *and* telling them specifically the provisions being changed exceeds what is required.

Another example of that rule is *Cox*, in which the challenger argued that the ballot title for a state lottery amendment was “insufficient because it omits information concerning how the proposal would impact existing constitutional law regarding lotteries.” 374 Ark.

at 445, 288 S.W.3d at 596. The challenger tried to distinguish *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980), which held that a ballot title for an amendment dealing with interest rates need not disclose “the present interest limitations” or summarize usury law. That attempted distinction rested on the fact that “while the ballot title approved by this court in the *Becker* case did not state existing law, it”— like the ballot title that the Board rejected here—“expressly referred to the particular constitutional provision to be amended,” which the lottery amendment ballot title did not do. *Id.*

The Court rejected that argument because “the present ballot title is not required to state the present ban on lotteries, nor to summarize the Arkansas law on lotteries.” *Cox*, 374 Ark. at 445, 288 S.W.3d at 596. “The fact that it is an amendment is sufficient to inform the voters that change will result,” and more information about the existing law and its requirements would not “aid the voters in making an informed choice in the voting booth.” *Id.*

The Board made the same error that the challengers in *Knight*, *Cox*, and *Becker* made by insisting that the ballot title provide an exhaustive description of one part of Amendment 98 that the



Amendment would change. The analysis of the Board’s error begins with the fact that the ballot title describes an amendment to the Arkansas Constitution, which “is sufficient to inform the voters that change will result.”

Moving from that principle, like the ballot title in *Becker*, this ballot title expressly refers to the constitutional provision to be amended, so voters know exactly what provision will be changed. Such references provide substantial information to voters because those references to the Arkansas Constitution must be understood under the presumption that every Arkansan knows the laws of the state, including its constitutional provisions. *See City of Farmington v. Smith*, 366 Ark. 473, 480, 237 S.W.3d 1, 6 (2006) (stating that “every person is presumed to know the law” and applying that presumption to the state and federal constitutions as interpreted by the courts).

Accordingly, the Board erred in concluding that the ballot title was misleading because it did not recite the content of Section 8(e)(5)(A) of Amendment 98, which limits THC in food or drink containing

marijuana to 10 mg.<sup>6</sup> Add. 15–16. The ballot title tells voters that the Amendment will repeal Section 8(e)(5)(A) if adopted. A voter reading the ballot title would therefore know that the Amendment would repeal Section 8(e)(5)(A)’s THC limitation, which voters are presumed to know because it is existing law. That change in the law is not hidden, obscured, or omitted—it is stated plainly in the ballot title. Nothing about the ballot title’s description of the proposed repeal of Section 8(e)(5)(A) is misleading.

The Board’s second finding that the ballot title is misleading is wrong for the same reason. In fact, the Board’s second point is essentially the first point restated in a way to make one purported omission seem like two separate omissions. Here, the Board claims that “removing the concentration limit from edible products”—i.e., the entire

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<sup>6</sup> The Board’s description of Section 8(e)(5)(A) in its first point is incomplete because it does not mention that the section deals only with food or drink containing marijuana. Add. 15–16. The Board only mentions food or drink in its second point, which essentially restates the first point.

contents of Section 8(e)(5)(A), which simply imposes that limit—is misleading because the limitation “protects children and others who may unknowingly access consumable products that contain THC” thus should be stated in the ballot title. Add. 16. But, again, voters are told that the Amendment would repeal Section 8(e)(5)(A), and voters are presumed to know the law referenced specifically in the ballot title. Nothing in this Court’s precedents requires the ballot title to recite the exact provisions in the existing law that would change if voters adopt the amendment.

For its third finding, the Board again focused on the same ballot title clause that it targeted in its first two findings. Again, the Board faulted that clause’s supposed failure to quote Section 8(e)(5)(A)’s provisions, this time because the ballot title tells voters that the Amendment will replace the repealed Section 8(e)(5)(A) with “requirements for child proof packaging and restrictions on advertising that appeals to children.” Add. 16. Generally informing voters about the substance of the proposed replacement language while not reciting the exact language of the existing law that it would replace, the Board concluded, “places emphasis on the new clause in such a way that

obscures the removal of a protective measure regarding dosage.” Add.

16. That conclusion ignores the nature of the provisions at issue. While voters are presumed to know existing law, they do not know the contents of the changes that the Amendment would make. So telling voters generally what the replacement language would do is more important than repeating what they already presumptively know about existing law being repealed and replaced.

The Board also expresses concern in its third point about a hypothetical voter who “could well agree that packaging should not appeal to children, but may not agree that the per dose limitation on THC should be removed.” Add. 16. That concern does not go to the sufficiency of the ballot title—that concern merely identifies the decision-making process for all voters, who must consider every initiative by weighing perceived benefits against perceived detriments. What matters is whether the ballot title gives voters notice that those issues are at stake. The ballot title performs that function by telling voters that Section 8(e)(5)(A) will be repealed and replaced with “requirements for child proof packaging and restrictions on advertising that appeals to children.” Whether that proposed change is a good idea

or will satisfy every voter is beyond the scope of the sufficiency analysis. *See Conway v. Martin*, 2016 Ark. 322, 9, 499 S.W.3d 209, 215 (“[T]his court will not interpret the proposed measure or discuss its merits or faults, and it is not necessary that a ballot title include every possible consequence or impact of a proposed measure.”).

Much of intervenors’ answer similarly focuses on similar arguments about the merits of the Amendment that have nothing do with the sufficiency analysis. The affidavit of Kevin Sabet attached to the answer consists largely of such complaints about the health effects of marijuana, an argument that should be made to voters, not this Court. Similarly, the effect of the Amendment on police dogs outlined in David Burnett’s affidavit attached to intervenors’ answer is one of the sorts of consequences or impacts of the Amendment that need not be explained in the ballot title. “This court has repeatedly stated that a ballot title does not need to include every possible consequence or impact of a proposed measure, and it does not need to address or anticipate every possible legal issue.” *Stiritz v. Martin*, 2018 Ark. 281, 7, 556 S.W.3d 523, 529 (citation omitted). And a “ballot title also is not required to account for every possible occurrence that might impose

some effect upon the amendment's operation, particularly those that are speculative. *Id.* at 7–8, 556 S.W.3d at 529. Though intervenors' answer offers little insight into their arguments, the arguments simply do not go to the sufficiency of the ballot title.

Aside from those specific errors in the Board's analysis of the ballot title, the Board also erred by focusing on a single clause of the ballot title and not considering the ballot title as a whole. A "ballot title is sufficient if it recites the general purposes of the proposed law and if the ballot title contains enough information to sufficiently advise voters of the true contents of the proposed law." *Cox*, 374 Ark. at 446, 288 S.W.3d at 596–97. This ballot title performs that task by informing voters that it will change Arkansas law by authorizing the possession and use of cannabis by adults and by authorizing the cultivation and sale of cannabis by licensed facilities. Add. 18.

The ballot title, however, does not stop with informing voters about the general purpose of the Amendment and its contents. The ballot title instead provides more detail than this Court required in *Knight*, *Cox*, and *Becker* by identifying specific provisions of existing law that the Amendment will change and telling voters how they will

change. The Board found fault in a single clause informing voters about a single change in existing law without ever considering the essential question for testing sufficiency: whether the perceived problem with that clause precluded a fair understanding of the issues presented in the Amendment or its scope and significance. Telling voters that a particular section of Amendment 98 will be repealed without summarizing the contents of that section does not preclude the required understanding of the Amendment that the ballot title must convey. *See Cox*, 374 Ark. at 445, 288 S.W.3d at 596 (“We have stated that the ballot title is not required to state or summarize the present law.”). The Board missed the forest for a single tree.

The ballot title is sufficient because it tells voters about the changes that the Amendment will make to the law, providing a fair understanding of the issues presented and the scope and significance of the proposed changes in the law. The single clause on which the Board premised its rejection of the ballot title omits nothing and misleads no one. Nor does that single clause generally describing a single change to existing law leave the ballot title unable to convey the necessary understanding of the Amendment to voters. The Board erred in

denying certification of the ballot title, and this Court should declare the ballot title sufficient, vacate that erroneous ruling, and order the Board and Secretary Thurston to certify the Amendment for the November general election ballot.

**II. Ark. Code Ann. § 7-9-111’s ballot title certification process is unconstitutional.**

The second reason the Court should vacate the Board’s ruling and order certification of the Amendment for the November ballot is Amendment 7, which invalidates the ballot title certification process under Ark. Code Ann. § 7-9-111(i). Amendment 7 assigns the Board a specific role that gives it no discretion over certification of a ballot title. Thus, under Amendment 7, a ballot title “shall be submitted to the State Board of Election Commissioners, *who shall certify such title to the Secretary of State.*” Ark. Const. Art. V, § 1 (emphasis added). Amendment 7 gives the Board no other role or authority.

The Court thus must determine whether that language permits the legislature to expand the Board’s authority over ballot titles into a gatekeeping function like the one provided in Ark. Code Ann. § 7-9-111(i). The Arkansas Constitution, of course, must be interpreted “precisely as it reads.” *Bd. of Trustees of Univ. of Ark. v. Andrews*, 2018



Ark. 12, 10, 535 S.W.3d 616, 622. And when the Constitution’s text requires something, the legislature has no authority “to override” that requirement. *Id.* at 11, 535 S.W.3d at 622. In the particular context of Amendment 7, while the legislature may enact laws to “facilitate its operation,” the legislature has no authority to “restrict, hamper or impair the exercise of the rights herein reserved to the people.” *Id.* Ark. Code Ann. § 7-9-111(i) is unconstitutional because it restricts, hampers, or impairs the right to initiative.

**II.A. Ark. Code Ann. § 7-9-111 imposes an unwarranted restriction on the initiative process by unconstitutionally creating a new role for the Board that departs from Amendment 7’s text.**

Ark. Code Ann. § 7-9-111(i) restricts, hampers, and impairs the people’s right to initiative by transforming the Board’s mandatory constitutional role into a permissive statutory power that allows it to block access to the ballot. Amendment 7 says that “all its provisions shall be treated as mandatory.” Ark. Const. Art. V, § 1. Beyond that general provision, the specific language at issue is also cast in mandatory terms requiring that the Board “shall certify” ballot titles to the Secretary of State. And “shall means shall.” *Benca v. Martin*, 2016 Ark. 359, 16, 500 S.W.3d 742, 752 (internal quotation marks omitted).

So “shall” as used in that part of Amendment 7 mandates that the Board certify ballot titles, not reject them.

Nothing in Amendment 7 gives the Board discretion to ignore the “shall certify” language and refuse to certify a ballot title. Nor does Amendment 7 give the legislature authority to broaden the Board’s role from certifying ballot titles to rejecting them. The lack of provisions giving the Board and the General Assembly that authority should conclude the issue because this Court does “not, under the guise of construction, read into the constitution and statutes something that the framers thereof did not see fit to place there.” *Drennen v. Wheatley*, 210 Ark. 222, 224, 195 S.W.2d 43, 44 (1946). The framers of Amendment 7 did not see fit to place language in the amendment giving the Board a veto over ballot titles or giving the legislature the authority to create that role. Such authority simply does not exist under Amendment 7.

The legislature’s creation of this new authority also contradicts Amendment 7’s provisions distributing the authority to determine a state-wide petition’s sufficiency. That issue “shall be decided in the first instance by the Secretary of State.” Ark. Const. Art. V, § 1. That decision is subject to review by this Court, “which shall have original

and exclusive jurisdiction over all such causes.” *Id.* Sufficiency of the ballot title under Amendment 7 is thus ultimately “a matter of law to be decided by this Court.” *Bailey*, 318 Ark. at 284, 884 S.W.2d at 942. Again, the Board has no role in that process, and the legislature cannot expand the Board’s largely ministerial role into a gatekeeping one.

The constitutionality of this new statutory approval process was at issue in *Arkansas Voters First v. Thurston*, 2020 Ark. 265 (not reported in *South Western Reporter*), but the issue was moot because the initiative petition failed for other reasons. Justice Hart dissented from the mootness determination and analyzed the merits of the issue. That dissent determined that Ark. Code Ann. § 7-9-111(i) “allows a non-elected board of political appointees to annul the first power retained by the citizens of this state in our constitution.” *Id.* at 3 (Hart, J., dissenting). The statute effects that annulment by contradicting “the plain language of Amendment 7 provid[ing] that the ballot title approval process is ministerial in nature subject to a decision by the Arkansas Supreme Court if it is challenged in an original action.” *Id.* “Amendment 7 does not give [the Board] the authority to review a ballot title for sufficiency” but gives that authority to the Court. *Id.* And “the

legislature does not have authority to cede [the Court's] authority to decide such issues to a quasi-executive agency acting in a quasi-judicial capacity.” *Id.* This dissent persuasively argues that Ark. Code Ann. § 7-9-111(i) violates Amendment 7.

Beyond the lack of authority for expanding the Board's constitutional role, the approval process restricts, hampers, and impairs the people's right to initiative by adding a hurdle to the initiative process higher and harder to surmount than the standard that this Court has applied in exercising its role under Amendment 7. This Court's “most significant rule in determining the sufficiency of the title is that it be given a liberal construction and interpretation in order that it secure the purposes of reserving to the people the right to adopt, reject, approve, or disapprove legislation.” *Rose*, 2016 Ark. 339 at 5, 500 S.W.3d at 152. The Board never mentioned that rule in its rejection of the Amendment's ballot title, opting instead to apply a standard that effectively requires a ballot title to describe changes in existing law in detail, a requirement that this Court has rejected many times. As discussed above, the Board's creation of its own standard unfairly hampers the initiative process by penalizing sponsors who draft ballot

titles in reliance on this Court's precedent. The Board's new role in the process thus imposes an unconstitutional restriction on the right to initiative.

**II.B. Ark. Code Ann. § 7-9-111 differs substantially from the former procedure in which the attorney general helped sponsors prepare sufficient ballot titles.**

Nor does Ark. Code Ann. § 7-9-111, as the Board claimed in its preliminary injunction response, simply reconstitute the old procedure in which the attorney general certified ballot titles. The two procedures differ fundamentally. The old procedure under Ark. Code Ann. § 7-9-107 (Repl. 2018) aided the people in exercising their right to petition by helping them get the ballot title right on the front end, before they circulated the petition. The sponsor of a petition would submit the ballot title to the attorney general at the start of the initiative process. The attorney general would then analyze the ballot title using this Court's standards and either certify it, substitute and certify a more suitable ballot title, or identify any flaws and require the sponsor to resubmit. Ark. Code Ann. § 7-9-107(a)–(c) (Repl. 2018).

The final product of that procedure was a ballot title that had undergone rigorous legal analysis and was thus more likely to survive review of its sufficiency in this Court. When this Court considered the

validity of the procedure, it approved it because “the safer method” for ensuring ballot title sufficiency “would be to first submit the proposed popular name and ballot title to the Attorney General of the State for his approval and, if he did not approve that which was submitted, he should substitute and certify more suitable ones.” *Washburn v. Hall*, 225 Ark. 868, 872, 286 S.W.2d 494, 497 (1956). In other words, the attorney general’s rejection of the ballot title was not fatal to the proposed initiative—the certification procedure ensured that any problems with the ballot title would be fixed before the sponsor circulated the petition. The old statute thus “in no way curtail[ed] the operation of Amendment No. 7 but is in aid of the amendment” by insuring that petition signers had the aid of a sufficient ballot title. *Id.*

Compared to that helpful procedure, Ark. Code Ann. § 7-9-111 restricts and hampers the right to initiative because it offers no assistance to sponsors and dispenses no forgiveness for inadequacies in the ballot title. Unlike the old procedure’s consideration of the ballot title’s sufficiency at the start of the initiative process, Ark. Code Ann. § 7-9-111 allows the Board to chloroform an initiative after sponsors have spent much time and money collecting signatures. That decision comes

mere weeks before the ballot certification deadline, forcing sponsors and this Court to take expedited action to correct the Board's rejection of a ballot title. Unlike the old procedure's curative provisions that provided assistance by an elected constitutional officer charged with enforcing state law, the new procedure offers nothing but an up-or-down—almost always down—vote by an unelected board deciding a question of law despite having no legal training. That vote is final, with no hope of reviving the proposed initiative without this Court's intervention at the end of the long initiative process.

Nothing in this restrictive new procedure aids the initiative process like the old procedure did—Ark. Code Ann. § 7-9-111 only erects obstacles to reaching the ballot. Those obstacles are unconstitutional because Amendment 7 does not allow the Board to rule over ballot titles and does not allow legislation that restricts the initiative process.

**II.C. Because the Board exceeded its constitutional authority, the Court should vacate the Board's rejection of the Amendment's ballot title and order certification of the Amendment for the November general election ballot.**

Unconstitutional statutes are void from their enactment and are thus treated as if they never existed. *Bob Hankins Distrib. Co. v. May*, 305 Ark. 56, 60, 805 S.W.2d 625, 627 (1991). And actions taken under

unconstitutional statutes are also void. *See McCarty v. Ark. State Plant Bd.*, 2021 Ark. 105, 6, 622 S.W.3d 162, 165 (holding that statute governing appointments to an administrative board was unconstitutional and that appointments under the statute were therefore void).


Here, Ark. Code Ann. § 7-9-111 unconstitutionally expanded the Board's role under Amendment 7 and unconstitutionally restricted the people's rights under Amendment 7, so the Board's rejection of the ballot title is void. Because the rejection was void, the Court should vacate the Board's decision and direct Board and Secretary Thurston to certify the Amendment for the November general election ballot.



## **REQUEST FOR RELIEF**

The Court should vacate the Board's ruling rejecting the ballot title for the Amendment because (1) the Board erred in finding the ballot title insufficient; (2) the ballot title is sufficient; and (3) the Board's ruling is unconstitutional. The Court should then direct the Board and Secretary Thurston to certify the Amendment for inclusion on the November 2022 general election ballot and direct Secretary Thurston to canvass and certify returns on the Amendment following the election.


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*Attorneys for Petitioners*


**CERTIFICATE OF SERVICE**

I certify that on August 23, 2022, I filed this brief using the Court's eFlex filing system, which will serve a copy on all counsel of record.

  
\_\_\_\_\_  
Gary D. Marts, Jr.

**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with Administrative Order No. 19 and that it conforms to the word-count limitations in Rule 4-2(d) of this court's rules on electronic filings. The relevant sections altogether contain 6,554 words.

  
\_\_\_\_\_  
Gary D. Marts, Jr.

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IN THE ARKANSAS SUPREME COURT

EDDIE ARMSTRONG and LANCE HUEY,  
individually and on behalf  
of RESPONSIBLE GROWTH ARKANSAS,  
a ballot question committee

PETITIONERS

v. No. \_\_\_\_\_

JOHN THURSTON, in his official capacities  
as Secretary of State and Chair of the State Board  
of Election Commissioners; STATE BOARD  
OF ELECTION COMMISSIONERS

RESPONDENTS

**ORIGINAL ACTION COMPLAINT**

For their original action complaint, petitioners state:

1. Petitioners file this original action to challenge the State Board of Election Commissioners’ (“Board”) thwarting of the will of the people and their right to adopt laws by initiative. That “power lies at the heart of our democratic institutions.” *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

2. The Board has attacked that heart through its incorrect rejection of the ballot title for a proposed initiated amendment to the

Arkansas Constitution with the popular name “An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of Those Facilities” (“Amendment”).

3. That rejection was incorrect. First, the Board’s action violated Amendment 7 by unduly restricting the right to use the initiative process. Second, the Board ignored this Court’s precedents, under which the “most significant rule in determining the sufficiency of the title is that it be given a liberal construction and interpretation in order that it secure the purposes of reserving to the people the right to adopt, reject, approve, or disapprove” the amendment. *Rose v. Martin*, 2016 Ark. 339, 500 S.W.3d 148. The Board failed to do that, choosing instead to apply an overly stringent approach that denied the wishes of hundreds of thousands of Arkansans to have the opportunity to vote on the Amendment. This Court should correct the Board’s error and let the people decide.

## **Jurisdiction and Parties**

4. This is an original action under Amendment 7 to the Arkansas Constitution and Rule 6-5 of the Rules of the Arkansas Supreme Court.

5. This Court has original and exclusive jurisdiction and venue to review the sufficiency of statewide initial petitions, including the sufficiency of a proposed ballot title.

6. Petitioner Eddie Armstrong is an Arkansas citizen, resident, and registered voter.

7. Petitioner Lance Huey is an Arkansas citizen, resident, and registered voter.

8. Petitioner Responsible Growth Arkansas is an Arkansas ballot question committee registered with the Arkansas Ethics Commission. Ex. 1, Statement of Organization. Responsible Growth Arkansas is the sponsor of the Amendment.

9. Respondent John Thurston is the Arkansas Secretary of State, a position in which Secretary Thurston is charged with certifying the sufficiency of statewide measures to appear on the election ballot. Ark. Const., Amend. 7; Ark. Code Ann. § 7-9-126.

10. Secretary Thurston is also the chair and secretary of respondent State Board of Election Commissioners (“Board”), which is charged with certifying the legal sufficiency of the ballot title for statewide measures. Ark. Code Ann. §§ 7-4-101(b); 7-9-111(i). Secretary Thurston is the agent for service of process for the Board. Ark. R. Civ. P. 4(f)(12).

### **Factual Allegations**

11. In compliance with Ark. Code Ann. § 7-9-101 et seq., Responsible Growth Arkansas submitted valid initiative petitions to Secretary Thurston on July 8, 2022, in support of the Amendment. Ex. 2, Receipt. Responsible Growth Arkansas’s petitions contained over 190,000 signatures of registered voters, more than doubling the requirement of 89,151 signatures.

12. On July 11, 2022, Secretary Thurston submitted the popular name and ballot title to the Board for certification under Ark. Code Ann. § 7-9-111.

13. On July 29, 2022, Secretary Thurston announced that Responsible Growth Arkansas had submitted a sufficient number of valid signatures to satisfy the signature requirement. On August 2,

2022, Secretary Thurston issued a Certification of Sufficiency that the Amendment met the signature requirements to appear on the November 2022 general election ballot. Ex. 3, Certification of Sufficiency.

14. Under Ark. Code Ann. § 7-9-111, the Board must determine whether to certify the popular name and ballot title within 30 days after they are submitted by Secretary Thurston. The statute requires the Board to certify the popular name and ballot title of a proposed measure if they are “presented in a manner that is not misleading and not 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 to be casting a vote for, or, conversely, that a vote ‘AGAINST’ an issue would be a vote for a viewpoint that the voter is against.” Ark. Code Ann. § 7-9-111(i)(3).

15. Consistent with the Board’s rules and procedures, Responsible Growth Arkansas submitted a brief in support of the popular name and ballot title on July 12, 2022. Despite provisions in the Board’s rules allowing submission of briefs contesting the



Amendment's popular name and ballot title, the Board received no competing briefs.

16. On August 3, 2022, the Board met to consider the popular name and ballot title of the Amendment. The Board refused to certify the sufficiency of the popular name and ballot title for the Amendment. The Board issued a written decision the next day. Ex. 4, Written Notice.

17. The deadline for Secretary Thurston to certify any proposed constitutional amendments to the County Boards of Election Commissioners is August 25, 2022.

### **Count I—Sufficiency of the Ballot Title and Popular Name**

18. Petitioners incorporate by reference all preceding allegations in this complaint into this count.

19. Under Amendment 7, Secretary Thurston was required to submit “the exact title to be used on the ballot” to the Board, “who shall certify such title to the Secretary of State, to be placed upon the ballot.”

20. Ark. Code Ann. § 7-9-111 requires the Board to make its certification decision within 30 days after receiving the submission of the popular name and ballot title from the Secretary of State. The

statute requires the Board to certify the popular name and ballot title to the Secretary of State to be placed on the ballot if they are “not misleading and not 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 to be casting a vote for, or, conversely, that a vote ‘AGAINST’ an issue would be a vote for a viewpoint that the voter is against.” Otherwise, the Board shall not certify the popular name and ballot title.

21. If the Board refuses to certify the popular name or ballot title, the Board must notify the measure’s sponsor “in writing, that the ballot title and popular name were not certified and set forth its reasons for so finding” and must also notify the Secretary of State. Ark. Code Ann. § 7-9-111(i)(4)(a)(ii)–(iii). Once the Secretary of State receives notice that the Board has refused certification, the Secretary of State is required to declare the measure insufficient for the ballot. Ark. Code Ann. § 7-9-111(i)(4)(b).

22. At its August 3, 2022, meeting the Board considered the popular name and ballot title for the Amendment and refused to certify the popular name and ballot title.

23. The following day, the Board provided written notice to Responsible Growth Arkansas that it had declined certification of the popular name and ballot title. Ex. 3, Written Notice. On information and belief, the Board has also notified the Secretary of its decision.

24. The popular name, ballot title, and text of the Amendment are attached to this complaint as Ex. 5.

25. The provision of Ark. Code Ann. § 7-9-111 giving the Board the authority to reject popular names and ballot titles is unconstitutional because it violates Amendment 7, which requires that the Board “shall certify such title to the Secretary of State, to be placed upon the ballot” without giving the Board discretion to reject it. The statute thus unduly restricts the exercise of the right to the initiative process and is unconstitutional. The Board simply lacks the authority to reject popular names and ballot titles. The Court should therefore vacate the Board’s decision as unconstitutional and order Secretary Thurston to certify the Amendment for the November 2022 general election ballot.

26. The Court should also vacate the Board’s decision because its refusal to certify the popular name and ballot title for the

Amendment contradicts the precedents of this Court governing the legal sufficiency of popular names and ballot titles. And the Board's decision is entitled to no deference from this Court in any event.

27. The popular name and ballot title are legally sufficient under this Court's precedent because they give voters an impartial summary of the Amendment that provides a fair understanding of the issues presented and of the scope and significance of the proposed changes to the law. Nothing is omitted that would give voters serious grounds for reflection, and nothing in the popular name and ballot title is misleading in any way. The Board thus erred in denying certification.


28. Because the Board's action is unconstitutional and because the popular name and ballot title are sufficient, the Court should vacate the Board's denial of certification and issue a permanent injunction ordering Secretary Thurston to certify the Amendment to appear on the ballot for the November 2022 general election.

29. Because it is unlikely that the Court will decide this action before the August 25 deadline for certification for the Amendment to appear on the November 2022 ballot, the Court should enter a

preliminary injunction ordering the Secretary of State to certify the Amendment to appear on the ballot pending resolution of this action.

WHEREFORE, Eddie Armstrong and Lance Huey, individually and on behalf of Responsible Growth Arkansas, a ballot question committee, request that the Court vacate the Board's denial of certification, order Secretary of State Thurston to certify the Amendment to appear on the November 2022 general election ballot, grant preliminary and permanent injunctive relief, and grant all other relief to which petitioners are entitled.

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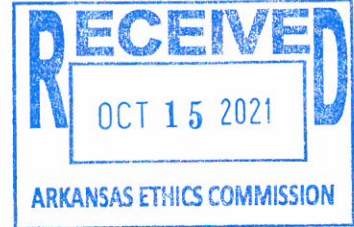
By   
Stephen R. Lancaster (93061)  
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Erika Gee (2001196)

Attorneys for Petitioners

### BALLOT QUESTION COMMITTEE (BQC)\* STATEMENT OF ORGANIZATION

To be filed with:  
Arkansas Ethics Commission  
Post Office Box 1917  
Little Rock, AR 72203  
Phone (501) 324-9600  
Fax (501) 324-9606

(Arkansas Ethics Commission File Stamp)



Check if this is an amendment to a previously filed statement of organization

**Section One: BQC Name**

Name of BQC (in full): Responsible Growth Arkansas

**Section Two: BQC Address & Phone Number**

If BQC has no office address, use the address of the BQC officer authorized to receive notices on behalf of the BQC.

Address: 400 W. Capitol Ave., Ste. 2500

City: Little Rock State AR Zip 72201 Telephone Number 501-414-5067

**Section Three: BQC Officers and Directors**

Provide the name, title, address, and telephone number of the treasurer and other principal officers and directors of the BQC.

Name: Eddie Armstrong Title: Chair

Address: 400 W. Capitol Ave., Ste. 2500 City: Little Rock State: AR Zip: 72201

Telephone Number: 501-414-5067

Name: T. J. Boyle Title: Treasurer

Address: 425 W. Capitol Ave., Ste. 3300 City: Little Rock State: AR Zip: 72201

Telephone Number: 501-376-9241

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

\* The term "ballot question committee" is defined in Ark. Code Ann. § 7-9-402(2)(A) and (B) and § 600(c)(1) and (2) of the Ethics Commission's Rules on Ballot and Legislative Question Committees.

Revised 12/2017



**Section Four: Financial Information**

Provide the name and address of each financial institution in which the BQC deposits money or anything else of monetary value.

Name of Financial Institution: Central Bank

Address: 5000 W. Markham City: Little Rock State: AR Zip: 72205

Name of Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Section Five: Members**

Provide the name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any.

Eddie Armstrong, T. J. Boyle

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section Six: Brief Statement**

Provide a brief statement identifying the substance of each ballot question as to which the BQC will expressly advocate the qualification, disqualification, passage, or defeat, and, if known, the date each ballot question shall be presented to a popular vote at an election.

Responsible Growth Arkansas will advocate for the passage of an amendment to the Arkansas Constitution to allow the regulated

sale of adult use cannabis in the state.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.15.21

Date

  
Signature of BQC Officer



JOHN THURSTON  
ARKANSAS SECRETARY OF STATE

FILED  
JUL 08 2022  
Arkansas  
Secretary of State

Receipt for Initiative or Referendum Petition

Name of Petition:

AN AMENDMENT TO AUTHORIZE THE POSSESSION, PERSONAL USE, AND CONSUMPTION OF CANNABIS BY ADULTS, TO AUTHORIZE THE CULTIVATION AND SALE OF CANNABIS BY LICENSED COMMERCIAL FACILITIES, AND TO PROVIDE FOR THE REGULATION OF THOSE FACILITIES

Petition Sponsor:

RESPONSIBLE GROWTH ARKANSAS

Person Designated to Receive Information from the Secretary of State:

Name: STEPHEN R. LANCASTER

Phone Number: 501/212-1238

Address: 200 WEST CAPITOL AVE., STE. 2300  
LITTLE ROCK, ARKANSAS 72201

Email Address: SLANCASTER@WLJ.COM

Date Petition Text was Published: JUNE 5, 2022

Name of Newspaper: ARKANSAS DEMOCRAT GAZETTE

List of the 15 counties designated/chosen by the Petition Sponsor:

Greene, Van Buren, Carroll, Cleveland, Pulaski, Faulkner, Saline, Lonoke, White, Garland,

Jefferson, Pope, Grant, Perry, Conway, Hot Spring, Washington, Benton, Crawford, Madison,

Craighead, Poinsett, Sebastian, Jackson, Drew, Cleburne, Sharp, Franklin, Polk

This petition submitted to the Arkansas Secretary of State on the 8th day of July, 2022, at \_\_\_\_\_ (time).

Petition Representative

Secretary of State Representative





**STATE OF ARKANSAS**



**Certification of Sufficiency**

I, John Thurston, Secretary of State of the State of Arkansas, do hereby certify that the petition submitted for the proposed constitutional amendment popularly known as

**An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of those Facilities**

has met the signature requirements set forth in Article 5, Section 1 of the Arkansas Constitution, in order to place the proposed constitutional amendment on the Arkansas General Election ballot of November 8, 2022.

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the city of Little Rock, this 2<sup>nd</sup> day of August, 2022.



*John Thurston*

John Thurston  
Secretary of State





# STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street – Suite 122 South  
Little Rock, Arkansas 72201  
(501)682-1834 or (800)411-6996

Secretary of State  
**John Thurston**  
Chairman

**Wendy Brandon**  
**Sharon Brooks**  
**Jamie Clemmer**  
**Bilenda Harris-Ritter**  
**William Luther**  
**J. Harmon Smith**  
Commissioners



**Daniel J. Shults**  
Director

**Chris Madison**  
Legal Counsel

**Jon Davidson**  
Educational Services Manager

**Tena Arnold**  
Business Operations Manager

August 4, 2022

Mr. Stephen R. Lancaster  
200 West Capitol Ave., Ste. 2300  
Little Rock, Arkansas, 72201

*Sent Via Email:* slancaster@wlj.com

## NOTICE OF NON-CERTIFICATION IN THE MATTER OF THE BALLOT TITLE:

*An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of those Facilities.*

Sponsor, Responsible Growth Arkansas

This Notice is provided pursuant to Ark. Code Ann. § 7-9-111(i)(4)(A)(ii)(a) which requires the State Board of Election Commissioners (SBEC) to “[n]otify the sponsors in writing, through their designated agent, that the ballot title and popular name were not certified and set forth its reasons for so finding.” Further, as described by the Arkansas State Board of Election Commissioners’ *Rules of Practice and Procedure* § 1112(d)(1)(B), this written statement is provided to explain why the ballot title and popular name were not certified.

At a duly called public meeting of the SBEC on August 3, 2022, the above Title came before the Board for consideration whether to Certify or to Decline to Certify the proposed Popular Name and Ballot Title. The Board voted to Decline to Certify your proposed Ballot Title.

The Board provides the following reasons for its finding:

1. The SBEC found the Ballot Title and Popular Name is misleading due to the omission of material information that would give the voter serious ground for reflection.” See *Stiritz v. Martin*, 2018 Ark. 281, at 4, 556 S.W.3d 523, 527 (citing *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996)). The Board found that omitting from the Ballot Title the fact that Measure is repealing Ark. Const. Amend 98 § 8(e)(5)(A)’s limitation on the maximum dosage of 10 mg of “tetrahydrocannabinol per portion” (THC) is material information that is not included in the Title.

**EXHIBIT**

**4**

The Board recognized that the Ballot Title stated the Measure was repealing Amend. 98 § 8(e)(5)(A), but does not include that the section set a maximum dosage amount of THC per dose, and if a dose could not be ascertained, then by weight of the product. Omission of this information from the Title as compared to the Measure causes the Title to be misleading.

2. The Board found that removing the concentration limit from edible products is a material omission that voters would need to know when voting For or Against the measure. The Board reasoned that setting a limitation on concentration per dose or by weight of edible product protects children and others who may unknowingly access consumable products that contain THC. By failing to describe or include in the Title that the Proposal sought to remove the dosage protection for consumable products, causes the Title to be misleading in the way it describes the Measure.

3. The Board also found that the clause which repealed Amend. 98 § 8(e)(5)(A) described its replacement with “requirements for child proof packaging and restrictions on advertising that appeals to children.” On the one side, the Title says it is repealing a portion of Amend 98 §(e)(5)(A), without describing what that section did, and replaces it with a sentence regarding “child-resistant packaging and not designed to appeal to children.” A voter could well agree that packaging should not appeal to children, but may not agree that the per dose limitation on THC should be removed. By generically describing the repeal of a subsection of Amendment 98 and replacing it with a phrase regarding child-resistant packaging, the Title places emphasis on the new clause in such a way that obscures the removal of a protective measure regarding dosage.

The SBEC found that these reasons, taken together or separately, cause the ballot title to be misleading. Based on this finding, the Board concluded that it was required under A.C.A. §7-9-111 to Decline to Certify this Ballot Title and Popular Name to the Secretary of State for inclusion on the General Election Ballot on November 8, 2022.

If you have any further questions regarding this matter, please contact this office.

Sincerely,



Daniel J. Shults  
Director

Encl. Notice to Secretary of State – Decline Certification.

cc: The Honorable John Thurston, Secretary of State

# STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street – Suite 122 South  
Little Rock, Arkansas 72201  
(501)682-1834 or (800)411-6996

Secretary of State  
**John Thurston**  
Chairman

Wendy Brandon  
Sharon Brooks  
Jamie Clemmer  
Bilenda Harris-Ritter  
William Luther  
J. Harmon Smith  
Commissioners



**Daniel J. Shults**  
Director

**Chris Madison**  
Legal Counsel

**Jon Davidson**  
Educational Services Manager

**Tena Arnold**  
Business Operations Manager

August 4, 2022

The Honorable John Thurston  
Secretary of State  
State Capitol, Suite 256  
Little Rock, Arkansas 72201

*Hand Delivered*

## **RE: NOTICE OF NON-CERTIFICATION IN THE MATTER OF THE BALLOT TITLE:**

*An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of those Facilities.*

Mr. Secretary:

Please find the enclosed Notice of Non-Certification regarding the popular name and ballot title for the initiative petition: “*An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of those Facilities.*” The attached Notice of Non-Certification was provided to the initiative’s sponsor.

The State Board of Election Commissioners met on August 3, 2022, and during the public meeting voted to Decline to Certify the Ballot Title and Popular Name. The State Board of Election Commissioner hereby notifies you that it has voted to NOT CERTIFY the referenced initiative’s popular name and ballot title that was submitted by your office on July 11, 2022. Consequently, pursuant to A.C.A. § 7-9-111(i)(4)(B) the initiative is not eligible to be placed on the ballot for the November 8<sup>th</sup> General Election.

Sincerely,

A blue ink handwritten signature of Daniel J. Shults.

Daniel J. Shults  
Director

**Enclosures:**



## Popular Name

AN AMENDMENT TO AUTHORIZE THE POSSESSION, PERSONAL USE, AND CONSUMPTION OF CANNABIS BY ADULTS, TO AUTHORIZE THE CULTIVATION AND SALE OF CANNABIS BY LICENSED COMMERCIAL FACILITIES, AND TO PROVIDE FOR THE REGULATION OF THOSE FACILITIES

## Ballot Title

An amendment to the Arkansas Constitution authorizing possession and use of cannabis (i.e., marijuana) by adults, but acknowledging that possession and sale of cannabis remain illegal under federal law; authorizing licensed adult use dispensaries to sell adult use cannabis produced by licensed medical and adult use cultivation facilities, including cannabis produced under Amendment 98, beginning March 8, 2023 and amending Amendment 98 concerning medical marijuana in pertinent part, including: amending Amendment 98, § 3(e) to allow licensed medical or adult use dispensaries to receive, transfer, or sell marijuana to and from medical and adult use cultivation facilities, or other medical or adult use dispensaries, and to accept marijuana seeds from individuals legally authorized to possess them; repealing Amendment 98, § 8(c) regarding residency requirements; repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children; amending Amendment 98, § 8(k) to exempt individuals owning less than 5% of dispensary or cultivation licensees from criminal background checks; amending Amendment 98, § 8(m)(1)(A) to remove a prohibition on dispensaries supplying, possessing, manufacturing, delivering, transferring, or selling paraphernalia that requires the combustion of marijuana; amending Amendment 98, § 8(m)(3)(A)(i) to increase the marijuana plants that a dispensary licensed under that amendment may grow or possess at one time from 50 to 100 plus seedlings; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana to dispensaries, adult use dispensaries, processors, or other cultivation facilities; amending Amendment 98, §§ 10(b)(8)(A) and 10(b)(8)(G) to provide that limits on the amount of medical marijuana dispensed shall not include adult use cannabis purchases; amending Amendment 98, §§ 12(a)(1) and 12(b)(1) to provide that dispensaries and dispensary agents may dispense marijuana for adult use; amending Amendment 98, § 13(a) to allow medical and adult use cultivation facilities to sell marijuana to adult use dispensaries; repealing Amendment 98, § 17 and prohibiting state or local taxes on the cultivation, manufacturing, sale, use, or possession of medical marijuana; repealing Amendment 98, § 23 and prohibiting legislative amendment, alteration, or repeal of Amendment 98 without voter approval; amending Amendment 98, § 24(f)(1)(A)(i) to allow transporters or distributors licensed under Amendment 98 to

deliver marijuana to adult use dispensaries and cultivation facilities licensed under this amendment; requiring the Alcoholic Beverage Control Division of the Department of Finance and Administration (“ABC”) to regulate issuance and renewal of licenses for cultivation facilities and adult use dispensaries and to regulate licensees; requiring adult use dispensaries to purchase cannabis only from licensed medical or adult use cultivation facilities and dispensaries; requiring issuance of Tier One adult use cultivation facility licenses to cultivation facility licensees under Amendment 98 as of November 8, 2022, to operate on the same premises as their existing facilities and forbidding issuance of additional Tier One adult use cultivation licenses; requiring issuance of adult use dispensary licenses to dispensary licensees under Amendment 98 as of November 8, 2022, for dispensaries on their existing premises and at another location licensed only for adult use cannabis sales; requiring issuance by lottery of 40 additional adult use dispensary licenses and 12 Tier Two adult use cultivation facility licenses; prohibiting cultivation facilities and dispensaries near schools, churches, day cares, or facilities serving the developmentally disabled that existed before the earlier of the initial license application or license issuance; requiring all adult use only dispensaries to be located at least five miles from dispensaries licensed under Amendment 98; prohibiting individuals from holding ownership interests in more than 18 adult use dispensaries; requiring ABC adoption of rules governing licensing, renewal, ownership transfers, location, and operation of cultivation facilities and adult use dispensaries licensed under this amendment, as well as other rules necessary to administer this amendment; prohibiting political subdivisions from using zoning to restrict the location of cultivation facilities and dispensaries in areas not zoned residential-use only when this amendment is adopted; allowing political subdivisions to hold local option elections to prohibit retail sales of cannabis; allowing a state supplemental sales tax of up to 10% on retail cannabis sales for adult use, directing a portion of such tax proceeds to be used for an annual stipend for certified law enforcement officers, the University of Arkansas for Medical Sciences and drug court programs authorized by the Arkansas Drug Court Act, § 16-98-301 with the remainder going into general revenues, and requiring the General Assembly to appropriate funds from licensing fees and sales taxes on cannabis to fund agencies regulating cannabis; providing that cultivation facilities and adult use dispensaries are otherwise subject to the same taxation as other for-profit businesses; prohibiting excise or privilege taxes on retail sales of cannabis for adult use; providing that this amendment does not limit employer cannabis policies, limit restrictions on cannabis combustion on private property, affect existing laws regarding driving under the influence of cannabis, permit minors to buy, possess, or consume cannabis, or permit cultivation, production, distribution, or sale of cannabis not expressly authorized by law; and prohibiting legislative amendment, alteration, or repeal of this amendment without voter approval.

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS.**

**§1 Short Title**

This amendment to the Arkansas Constitution shall be known as the “Arkansas Adult Use Cannabis Amendment.”

**§2 Effective Date; Intent**

This amendment shall be effective on and after November 18, 2022. The intent of this amendment is to authorize the possession, personal use, and consumption of cannabis by adults and to authorize the cultivation and sale of cannabis by licensed commercial facilities under the limitations provided in this amendment.

**§3 Definitions**

- a) “Adult” means a person who is twenty-one (21) years of age or older.
- b) “Adult use cannabis” means usable cannabis authorized for possession, personal use, and consumption by adults under this amendment, without regard to any possession and use of medical cannabis that may be authorized by Amendment 98.
- c) “ABC” means the Alcoholic Beverage Control Division of the Arkansas Department of Finance and Administration, the Alcoholic Beverage Control Board, or a successor agency of state government.
- d) “Tier One adult use cultivation facility” means a commercial establishment licensed under this amendment to cultivate, prepare, manufacture, process, package, sell to and deliver cannabis to another commercial establishment for retail sale by any licensed adult use dispensary.
- e) “Adult use dispensary” means a commercial establishment licensed under this amendment to purchase, package, sell, and deliver cannabis for adult use.
- f) “Amendment 98” means the Arkansas Medical Marijuana Amendment of 2016, Amendment 98 to the Arkansas Constitution.
- g) “Cannabis” means marijuana and other substances including any parts of the plant *Cannabis sativa*, whether growing or not, its seeds and the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, whether produced directly or indirectly by extraction.

h) “Commercial establishment” means a Tier One cultivation facility, Tier Two cultivation facility, or adult use dispensary licensed under this amendment.

i) “Tier Two adult use cultivation facility” means a commercial establishment licensed under this amendment to cultivate, prepare, manufacture, package, sell to and deliver cannabis to adult use dispensaries for retail sale, which may grow no more than 250 mature cannabis plants at any one time.

j) “Usable cannabis” means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the cannabis plant, and any mixture or preparation thereof, but does not include the weight of any other ingredient that may be combined with cannabis. This term may be used interchangeably with “usable marijuana.”

#### **§4 Possession; Retail Sales**

a) Adults are authorized under Arkansas state law to possess up to 1 ounce of adult use cannabis acknowledging that as of January 24, 2022, possession and sale of cannabis is illegal under federal law.

b) Beginning on March 8, 2023, all types of usable cannabis, including the inventory of usable cannabis which was produced pursuant to Amendment 98, shall be authorized for immediate wholesale and retail sale for adult use by commercial establishments licensed under this amendment.

#### **§5 Effect on Amendment 98**

This amendment shall amend Amendment 98 as follows:

a) §3(e) of Amendment 98 is amended to read: “A medical or adult use dispensary may receive, transfer, or sell marijuana seedlings, plants or usable marijuana to and from medical, Tier One and Tier Two adult use cultivation facilities, or other medical or adult use dispensaries in Arkansas, and may accept marijuana seeds from any individual authorized under applicable state law to possess marijuana seeds.”

b) §4(b)(2) of Amendment 98 is amended to read: “Testing standards for marijuana distributed to qualifying patients. Labeling standards shall be established and enforced by the Alcoholic Beverage Control Board; and”

c) §8(c) of Amendment 98, concerning residency of cultivation facility and dispensary owners, is repealed in its entirety.



d) §8(e)(5)(A)-(B) of Amendment 98, regarding the maximum dosage limit per portion, is repealed in its entirety and replaced with the following: “Standards to ensure that marijuana must be sold at retail in child-resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment or other applicable state laws.”

e) §8(e)(8)(A)-(F) of Amendment 98, regarding advertising restrictions, is repealed in its entirety and replaced with the following: “Advertising restrictions for dispensaries and cultivation facilities which are narrowly tailored to ensure that advertising is not designed to appeal to children.”

f) §8(k) of Amendment 98 is amended to add an additional subsection (6): “Individuals with less than 5% ownership in an entity with a dispensary or cultivation license are exempt from the criminal background check requirements.”

g) §8(m)(1)(A) of Amendment 98 is amended to read: “A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver.”

h) §8(m)(3)(A)(i) of Amendment 98 is amended to read: “One hundred (100) mature marijuana plants at any one (1) time plus seedlings; and”

i) §8(m)(4)(A)(ii) of Amendment 98 is amended to read: “A medical or Tier One cultivation facility may sell marijuana in any form to a dispensary, adult use dispensary, processor or other cultivation facility.”

j) §10(b)(8)(A) of Amendment 98 is amended to read: “A qualifying patient, designated caregiver acting on behalf of a qualifying patient shall not be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable medical marijuana during a fourteen-day period; this total shall not include any purchases of adult use cannabis as authorized by state law.”

k) §10(b)(8)(G) of Amendment 98 is amended to read: “It is the specific intent of this Amendment that no qualifying patient, designated caregiver acting on behalf of a qualifying patient be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana during a fourteen-day period whether the usable marijuana is dispensed from one or any combination of dispensaries; this total shall not include any purchases of adult use cannabis as authorized by state law.”

l) §12(a)(1) of Amendment 98 is amended to read: “Except as provided in §3 of this amendment and subdivision (a)(2) of this section, a dispensary may not dispense, deliver, or otherwise transfer marijuana to a person other than a qualifying patient, designated caregiver or for adult use as authorized by state law.”

m) §12(b)(1) of Amendment 98 is amended to read: “Except as provided in § 3 of this amendment, the Alcoholic Beverage Control Division shall immediately revoke the registry identification card of a dispensary agent who has dispensed, delivered, or otherwise transferred marijuana to a person other than a qualifying patient, designated caregiver or for adult use as authorized by state law, and that dispensary agent shall be disqualified from serving as a dispensary agent.”

n) §13(a) of Amendment 98 is amended to read: “A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary, an adult use dispensary, other cultivation facility, or processor.”

o) §17 of Amendment 98, concerning sales and special privilege tax and its distribution, is repealed in its entirety and replaced with the following: “No state or political subdivision may impose a sales, use, excise, special privilege or other tax of any kind upon the cultivation, manufacturing, sale, use or possession of medical marijuana.”

p) §23 of Amendment 98, concerning amendment by the General Assembly, is repealed in its entirety and replaced with the following: “Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment.”

q) §24(f)(1)(A)(i) of Amendment 98 is hereby amended to read: “A transporter or distributor licensed under this section may: (i) Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, adult use dispensary, medical, Tier One or Tier Two adult use cultivation facility, or processor; and”.

## **§6 Tier One and Tier Two Cultivation Facility and Adult Use Dispensary Licensing and Regulation**

a) ABC shall administer and regulate Tier One adult use cultivation facility, Tier Two adult use cultivation facility, and adult use dispensary licenses, including their issuance and renewal, and shall administer and enforce the provisions of this amendment relating to all licensees.

b) A Tier One adult use cultivation facility license or a Tier Two adult use cultivation facility license is authorized to produce and sell usable cannabis as provided in §3(d) and §3(i).

c) An adult use dispensary is authorized to purchase cannabis from a commercial facility licensed under this amendment or from a cultivation facility or dispensary licensed under Amendment 98 and to package, sell and deliver cannabis for adult use.

d) On or before March 7, 2023, ABC shall issue a Tier One adult use cultivation facility license to each entity or individual holding a cultivation facility license under Amendment 98 on November 8, 2022. The Tier One license will be issued for the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises. No more than eight (8) Tier One adult use cultivation licenses shall be issued.

e) On or before March 7, 2023, ABC shall issue an adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022 for an establishment to be located on the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises. On or before March 7, 2023, ABC shall issue a second adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022, for an establishment located at least 5 miles from a dispensary licensed under Amendment 98, which shall be licensed only for sales of adult use cannabis under this amendment.

f) On or before July 5, 2023, ABC shall issue 40 additional adult use dispensary licenses which shall be chosen by lottery in compliance with procedures established by rules enacted under section 6(j) of this amendment and shall be located at least 5 miles from a dispensary licensed under Amendment 98. No more than one hundred twenty (120) adult use dispensary licenses shall be issued.

g) On or before November 8, 2023, ABC shall issue 12 Tier Two adult use cultivation facility licenses. All of the licenses issued pursuant to this section shall be chosen by lottery in compliance with procedures established by rules enacted under section 6(j) of this amendment. No more than twelve (12) Tier Two adult use cultivation licenses shall be issued.

h) All Tier One and Tier Two adult use cultivation facilities licensed under this amendment must be located at least three thousand (3,000) feet from a public or

private school, church, daycare center, or facility for individuals with developmental disabilities pre-existing the facility's date of initial application or licensure under this amendment or Amendment 98, whichever is earliest. All adult use dispensaries licensed under this amendment must be located at least one thousand five hundred (1,500) feet from a public or private school, church, daycare center, or facility for individuals with developmental disabilities pre-existing the earliest of the facility's date of initial application or licensure.

i) No individual or entity may have an ownership interest in more than 18 adult use dispensaries.

j) On or before March 7, 2023, the Arkansas Beverage Control Board shall enact rules establishing the following:

1) Security and inventory requirements for cannabis on the premises of licensed Tier One and Tier Two adult use cultivation facilities and adult use dispensaries, including procedures for management of Amendment 98 and adult use inventory by a Tier One adult use cultivation facility and dispensaries licensed under Amendment 98 and this amendment, which shall not require separate physical or electronic inventories;

2) Standards and procedures for packaging and labeling of cannabis for retail sale;

3) Licensing, renewal, and ownership transfer procedures for Tier One and Tier Two adult use cultivation facility licenses and adult use dispensary licenses, which shall not include residency requirements or criminal background checks for individuals holding less than 5% ownership interest;

4) Standards and procedures for the location of each new commercial establishment license and for transfer of the license to a different location;

5) Standards to ensure that cannabis for adult use must be sold at retail in child-resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment;

6) Oversight requirements for commercial establishments;

7) Record keeping requirements for commercial establishments;

- 8) Personnel requirements for commercial establishments;
- 9) Procedures for suspending or terminating licenses for commercial establishments that violate the provisions of this amendment or the rules adopted under this amendment;
- 10) A schedule of penalties and procedures for appealing penalties;
- 11) Procedures for inspection and investigations of commercial establishments; and
- 12) Other rules necessary for the stringent and impartial administration of the intent of this amendment.

## **§7 Local Option Elections**

a) Political subdivisions of this state are prohibited from creating or modifying existing zoning ordinances to restrict or impede commercial establishments from locating in any area not zoned for residential-use only on the date of the passage of this amendment.

b) A political subdivision may prohibit cannabis retail sales for adult use by a majority vote in accordance with Article 5, §1 of the Arkansas Constitution.

## **§8 Tax Revenue**

a) In addition to the state and local sales taxes levied upon tangible personal property, the state of Arkansas shall levy a 10% supplemental sales tax on retail sales of cannabis for adult use under this amendment. No excise or privilege taxes may be levied on sales of cannabis for adult use.

b) Except as provided in section 8(a), each commercial establishment shall be subject to the same income, property, sales, gross receipts, use, employment, and other taxation as any for-profit business located in the county and city or town in which the commercial establishment is located.

c) 15% of the revenues derived from the supplemental sales tax on adult use sales shall be used to fund an annual stipend to all full-time law enforcement officers certified by the Commission on Law Enforcement Standards and Training and in good standing. The General Assembly shall appropriate the revenue for this purpose to a fund administered by the Department of Finance and Administration, which shall enact rules establishing eligibility and distribute available funds annually in equal shares to all eligible officers.

d) 10% of the revenues derived from the supplemental sales tax on adult use sales shall be used to fund the operations of the University of Arkansas for Medical Sciences and 5% of the revenues shall be used to fund drug court programs authorized by the Arkansas Drug Court Act, § 16-98-301 *et seq* or a successor program.

e) Effective January 1, 2023, the General Assembly shall appropriate sufficient funds from the licensing fees paid by commercial facilities and the revenue from sales taxes for the personnel and operating expenses necessary for the cannabis regulatory responsibilities of ABC, the Department of Health and the Medical Marijuana Commission or their successor agencies.

f) Remaining revenue shall be directed to general revenue.

## **§9 Limitations**

a) Nothing in this amendment shall limit the ability of employers to establish drug-free workplace policies restricting the adult use of cannabis.

b) Nothing in this amendment shall limit the ability of property owners to restrict or prohibit the combustion of cannabis on private property.

c) Nothing in this amendment affects existing laws regarding operation of a motorized vehicle while under the influence of cannabis.

d) Nothing in this amendment permits the transfer of adult use cannabis to minors.

e) Nothing in this amendment permits a minor to buy, possess or consume adult use cannabis.

f) Nothing in this amendment permits the cultivation, production, distribution, or sale of cannabis by individuals or entities except as authorized under this amendment or under Amendment 98.

## **§10 Severability; Inconsistent Provisions Inapplicable**

a) If any part or subpart of this amendment or the application to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the amendment that can be given effect without the invalid provisions or applications, and to this end the provisions of this amendment are declared to be severable.

b) All provisions of the Constitution, statutes, regulations, and common law of this state, including without limitation laws forbidding the possession, cultivation, and use of cannabis and cannabis paraphernalia by adults, to the extent inconsistent or in conflict with any provision of this amendment, are expressly declared null and void as to, and do not apply to, any activities allowed under this amendment.

**§11 Self-Executing.**

This amendment shall be self-executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted nor rules promulgated to restrict, hamper, or impair the intent of this amendment.

**§12 No Amendments.**

Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment.

**IN THE ARKANSAS SUPREME COURT**

**EDDIE ARMSTRONG** and **LANCE HUEY**,  
individually and on behalf of  
**RESPONSIBLE GROWTH ARKANSAS**, a  
ballot questions committee

**PETITIONERS**

v.

**CASE NO. CV 22-482**

**JOHN THURSTON**, in his official  
capacities as Secretary of State and Chair of  
the State Board of Election Commissioners;  
**STATE BOARD OF ELECTION  
COMMISSIONERS**

**RESPONDENTS**

**ANSWER**

Respondents John Thurston, in his official capacity as Secretary of State and Chair of the State Board of Election Commissioners, and the Commissioners of the State Board of Election, in their official capacities, for their Answer to Petitioners’ Original Complaint, state as follows:

1. Respondents admit that Petitioners filed their Original Complaint to challenge the Board of Election Commissioners’ (“Board”) decision to decline to certify the proposed initiated amendment to the Arkansas Constitution with the popular name “An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed



Commercial Facilities, and to Provide for the Regulation of Those Facilities” (“Proposed Amendment”). Respondents deny any and all remaining allegations contained in paragraph 1 of Petitioners’ Original Action Complaint (“Petitioners’ Complaint”).

2. Respondents deny the allegations contained in paragraph 2 of Petitioners’ Complaint.

3. Respondents deny the allegations contained in paragraph 3 of Petitioners’ Complaint.

### **Jurisdiction and Parties**

4. Respondents state that Amendment 7 to the Arkansas Constitution and Rule 6-5 of the Rules of the Arkansas Supreme Court speak for themselves. Respondents deny the remaining allegations contained in paragraph 4 of Petitioners’ Complaint.

5. Respondents admit the allegations contained in paragraph 5 of Petitioners’ Complaint.

6. Respondents lack sufficient information to admit or deny the allegations contained paragraph 6 of Petitioners’ Complaint, and therefore, they are denied.

7. Respondents lack sufficient information to admit or deny the allegations contained paragraph 7 of Petitioners' Complaint, and therefore, they are denied.

8. Respondents state that Exhibit 1 to Petitioners' Complaint speaks for itself. Respondents deny the remaining allegations contained in paragraph 8 of Petitioners' Complaint.

9. Respondents state that Amendment 7 to the Arkansas Constitution and Ark. Code Ann. § 7-9-126 speak for themselves. Respondents deny the remaining allegations contained in paragraph 9 of Petitioners' Complaint.

10. Respondents state that Ark. Code Ann. § 7-4-101(b), Ark. Code Ann. § 7-9-111(i), and Ark. R. Civ. P. 4(f)(12) speak for themselves. Respondents deny the remaining allegations contained in paragraph 10 of Petitioners' Complaint.

### **Factual Allegations**

11. Respondents state that Exhibit 2 to Petitioners' Complaint speaks for itself. Respondents deny the remaining allegations contained in paragraph 11 of Petitioners' Complaint.

12. Respondents admit that Secretary Thurston submitted the popular name and ballot title to the Board pursuant to Ark. Code Ann. § 7-9-111.

13. Respondents state that Exhibit 3 to Petitioners' Complaint speaks for itself. Respondent denies any remaining allegations contained in paragraph 13 of Petitioners' Complaint.

14. Respondents state that Ark. Code Ann. § 7-9-111 speaks for itself. Respondent denies any remaining allegations contained in paragraph 14 of Petitioners' Complaint.

15. Respondents admit the allegations contained in paragraph 15 of Petitioners' Complaint.

16. Respondents state that Exhibit 4 of Petitioners' Complaint speaks for itself. Respondents admit that the Board declined to certify the Proposed Amendment. Respondents deny any remaining allegations contained in paragraph 16 of Petitioners' Complaint.

17. Respondents admit the allegations contained in paragraph 17 of Petitioners' Complaint.

## **Count I – Sufficiency of the Ballot Title and Popular Name**

18. Paragraph 18 of Petitioners' Complaint contains no allegations and merely repeats the allegations contained in paragraphs 1 through 17 of the Petitioners' Complaint. Therefore, no further response is necessary to paragraph 18 of Petitioners' Complaint.

19. Respondents state that Amendment 7 to the Arkansas Constitution speaks for itself. Respondents deny any remaining allegations contained in paragraph 19 of Petitioners' Complaint.

20. Respondents state that Ark. Code Ann. § 7-9-111 speaks for itself. Respondents deny any remaining allegations contained in paragraph 20 of Petitioners' Complaint.

21. Respondents state that Ark. Code Ann. § 7-9-111 speaks for itself. Respondents deny any remaining allegations contained in paragraph 21 of Petitioners' Complaint.

22. Respondents admit that at the Board's August 3, 2022, meeting the Board declined to certify the Proposed Amendment for the reasons set forth in Exhibit 4 to Petitioners' Complaint. Respondents deny any remaining allegations contained in paragraph 22 of Petitioners'

Complaint.

23. Respondents state that Exhibit 3 to Petitioners' Complaint is the Certification of Sufficiency of the signature requirement set forth in Article 5, Section 1 of the Arkansas Constitution. Respondents state that Exhibit 4 to Petitioners' Complaint is the Board's written notice to Responsible Growth Arkansas that it declined to certify the Proposed Amendment which speaks for itself. Respondents deny any remaining allegations contained in paragraph 23 of Petitioners' Complaint.

24. Respondents state that Exhibit 5 to Petitioners' Complaint speaks for itself.

25. Respondents deny the allegations contained in paragraph 25 of Petitioners' Complaint.

26. Respondents deny the allegations contained in paragraph 26 of Petitioners' Complaint.

27. Respondents deny the allegations contained in paragraph 27 of Petitioners' Complaint.

28. Respondents deny the allegations contained in paragraph 28 of Petitioners' Complaint.

29. Respondents deny that Petitioners' are entitled to a preliminary injunction ordering the Secretary of State to certify the Amendment to appear on the ballot pending resolution of this action. Respondents deny the remaining allegations contained in paragraph 29 of Petitioners' Complaint.

30. Respondents deny any and all allegations contained in Petitioners' "WHEREFORE" clause of Petitioners' Complaint.

### **Affirmative Defenses**

31. Respondents state that Petitioners' Complaint should be dismissed pursuant to Ark. R. Civ. P. 12(b)(6) for failure to state facts upon which relief can be granted.

WHEREFORE, Respondents respectfully request that Petitioners' Original Complaint be dismissed with prejudice, and for all other just and proper relief to which they may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE  
Attorney General

By: /s/ Kate Donovan  
Kate Donovan  
Ark Bar No. 98189  
Senior Assistant Attorney General  
Carl F. "Trey" Cooper, III  
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*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I Kate Donovan, hereby certify that on August 16, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

Stephen R. Lancaster  
Gary D. Marts, Jr.  
Erika Gee  
Wright Lindsey & Jennings LLP  
200 West Capital Ave, Ste 2300  
Little Rock, AR 371-0808

/s/ Kate Donovan  
Kate Donovan