POPULAR NAME: **The Arkansas Ballot Measure Rights Amendment**

BALLOT TITLE:

This measure amends the Arkansas Constitution. It gives the people the fundamental right to make and repeal laws by petition. It gives Arkansas registered voters the fundamental right to sign a petition. It gives U.S. citizens the fundamental right to collect signatures on a petition unless the citizen has been convicted of certain crimes or is on a sex offender registry. It makes "petition fraud" a crime. It allows the legislature to decide the penalty range for criminals who intentionally defraud the petition process. It prohibits the government from unduly burdening these fundamental rights. It requires the government to notify a registered voter before it disqualifies his or her signature on a petition. It requires the government to count the signature of a registered voter who timely corrects a problem with the signature. It prohibits the government from making the people collect signatures on petitions from more than fifteen counties. It clarifies that the legislature cannot amend or repeal constitutional amendments that were voted for by the people. It requires a two-thirds vote of the legislature, county quorum court, or city council to amend or repeal an initiated act. It requires the ballot title of a referendum to be "This referendum repeals…" followed by the exact title of the Act to be repealed by the referendum. It requires that if provisions of two or more measures conflict but both pass in the same election, the provision from the measure that received the most votes will be law. It requires lawsuits challenging the government's decision to approve or disqualify a petition or a ballot title to be filed no later than ten days after the government's decision. It requires the courts to expedite review of lawsuits challenging a petition or ballot title decision. It requires court challenges of petitions to be proven by clear and convincing evidence. It prohibits the government from disqualifying a measure, title, or petition for a filing error or scrivener's error that is timely corrected. It requires the government to accept a measure, title, or petition that substantially complies with the Constitution. It declares that current laws that conflict with this measure are null and void. It provides that the provisions of the measure are severable.

THE CONSTITUTIONAL AMENDMENT:

SECTION 1. Underlined language in SECTION 2 is new language to be added to the Arkansas Constitution, and the language that is stricken through in SECTION 2 should be removed from the Arkansas Constitution.

SECTION 2. Arkansas Constitution, Article 5, § 1 is amended to read as follows:

§ 1. Initiative and Referendum.

(a) The legislative power of the people of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but the people reserve to themselves the power and the fundamental right to propose legislative measures, laws and amendments to the Constitution, and to enact or reject the same at the polls independent of the General Assembly; and also reserve the power and the fundamental right, at their own option to approve or reject at the polls any entire act or any item of an appropriation bill.

(b)(1) Every qualified elector of this State has the fundamental rights to:

(A) Sign a petition under this section; and

(B) Have the qualified elector's signature counted once for each petition signed.

(2) A United States citizen has the fundamental right to solicit and obtain signatures on a petition under this section unless the citizen:

(i) Has been convicted of a criminal offense under this section;

(ii) Has been convicted of a criminal offense involving dishonesty or false statement;

(iii) Has been convicted of a felony criminal offense, and the citizen has not had his or her voting rights restored; or

(iv) Is required by law to register on the sex offender registry for any state.

(c) **Initiative.** The first power reserved by the people is the initiative. Eight per cent of the legal voters may propose any law and ten per cent may propose a constitutional amendment by initiative petition and every such petition shall include the full text of the measure so proposed. Initiative petitions for state-wide measures shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon; provided, that at least thirty days before the aforementioned filing, the proposed measure shall have been published once, at the expense of the petitioners, in some paper of general circulation.

(d)(1) **Referendum.** The second power reserved by the people is the referendum, and any number not less than six per cent of the legal voters may, by petition, order the referendum against any general Act, or any item of an appropriation bill, or measure passed by the General Assembly, but the filing of a referendum petition against one or more items, sections or parts of any such act or measure shall not delay the remainder from becoming operative. Such petition shall be filed with the Secretary of State not later than ninety days after the final adjournment of the session at which such Act was passed, except when a recess or adjournment shall be taken temporarily for a longer period than ninety days, in which case such petition shall be filed not later than ninety days after such recess or temporary adjournment. Any measure referred to the people by referendum petition shall remain in abeyance until such vote is taken.

(2) If the referendum is to repeal a general Act or a measure passed by the General Assembly in its entirety, the ballot title shall be the words "This referendum repeals…" followed by the exact title of the Act or measure to be repealed by the referendum.

(e)(1)The total number of votes cast for the office of Governor in the last preceding general election shall be the basis upon which the number of signatures of legal voters upon state-wide initiative and referendum petitions shall be computed.

(2) Upon all initiative or referendum petitions provided for in ~~any of the sections of~~ this ~~article~~ Article 5, Section 1, it shall be necessary to file from at least fifteen of the counties of the State, petitions bearing the signature of not less than one-half of the designated percentage of the electors of such county.

(3) Initiative or referendum petitions provided for under this Article 5, Section 1 shall not be required to be filed from more than fifteen (15) counties.

(f) **Emergency.** If it shall be necessary for the preservation of the public peace, health and safety that a measure shall become effective without delay, such necessity

shall be stated in one section, and if upon a yea and nay vote two-thirds of all the members elected to each house, or two-thirds of all the members elected to city or town councils, shall vote upon separate roll call in favor of the measure going into immediate operation, such emergency measure shall become effective without delay. It shall be necessary, however, to state the fact which constitutes such emergency. Provided, however, that an emergency shall not be declared on any franchise or special privilege or act creating any vested right or interest or alienating any property of the State. If a referendum is filed against any emergency measure such measure shall be a law until it is voted upon by the people, and if it is then rejected by a majority of the electors voting thereon, it shall be thereby repealed. The provision of this sub-section shall apply to city or town councils.

(g)(1) **Local for Municipalities and Counties.** The initiative and referendum powers of the people are hereby further reserved to the legal voters of each municipality and county as to all local, special and municipal legislation of every character in and for their respective municipalities and counties, but no local legislation shall be enacted contrary to the Constitution or any general law of the State, and any general law shall have the effect of repealing any local legislation which is in conflict therewith.

(2) Municipalities may provide for the exercise of the initiative and referendum as to their local legislation. General laws shall be enacted providing for the exercise of the initiative and referendum as to counties. Fifteen per cent of the legal voters of any municipality or county may order the referendum, or invoke the initiative upon any local measure. In municipalities the number of signatures required upon any petition shall be computed upon the total vote cast for the office of mayor at the last preceding general election; in counties upon the office of circuit clerk. In municipalities and counties the time for filing an initiative petition shall not be fixed at less than sixty days nor more than ninety days before the election at which it is to be voted upon; for a referendum petition at not less than thirty days nor more than ninety days after the passage of such measure by a municipal council; nor less than ninety days when filed against a local or special measure passed by the General Assembly.

(3) Every extension, enlargement, grant, or conveyance of a franchise or any rights, property, easement, lease, or occupation of or in any road, street, alley or any part thereof in real property or interest in real property owned by municipalities, exceeding in value three hundred dollars, whether the same be by statute, ordinance, resolution, or otherwise, shall be subject to referendum and shall not be subject to emergency legislation.

(h) **General Provisions.**

(1) **Definition.** The word “measure” as used herein includes any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character.

(2) **No Veto.** The veto power of the Governor or mayor shall not extend to measures initiated by or referred to the people.

(3)(A) **Amendment and Repeal.** ~~No measure~~ The General Assembly, county quorum court, or city council shall only amend or repeal an initiated act approved by a vote of the people ~~shall be amended or repealed by the General Assembly or by any city council, except upon a yea and nay vote on roll call of~~ by a vote of at least two-

thirds of all the members elected to each house of the General Assembly, county quorum court, or of the city council, as the case may be.

(B) The General Assembly shall not amend or repeal a constitutional amendment approved by a vote of the people.

(4) **Election.** All measures initiated by the people whether for the State, county, city or town, shall be submitted only at the regular elections, either State, congressional or municipal, but referendum petitions may be referred to the people at special elections to be called by the proper official, and such special elections shall be called when fifteen per cent of the legal voters shall petition for such special election, and if the referendum is invoked as to any measure passed by a city or town council, such city or town council may order a special election.

(5)(A) **Majority.** Any measure submitted to the people as herein provided shall take effect and become a law when approved by a majority of the votes cast upon such measure, and not otherwise, and shall not be required to receive a majority of the electors voting at such election. Such measures shall be operative on and after the thirtieth day after the election at which it is approved, unless otherwise specified in the Act.

(B) This section shall not be construed to deprive any member of the General Assembly of the right to introduce any measure, but no measure shall be submitted to the people by the General Assembly, except a proposed constitutional amendment or amendments as provided for in this Constitution.

(6) **Canvass and Declaration of Results.** The result of the vote upon any State measure shall be canvassed and declared by the State Board of Election Commissioners (or legal substitute therefor); upon a municipal or county measure, by the county election commissioners (or legal substitute therefor).

(7) **Conflicting Measures.** If ~~conflicting~~ two or more measures initiated or referred to the people shall be approved by a majority of the votes severally cast for and against the same at the same election, and provisions of the measures are in irreconcilable conflict, the ~~one receiving~~ provision of the measure that received the highest number of affirmative votes shall become law.

(i) **The Petition and Review of Measures or Titles.**

(1) **Title.** At the time of filing petitions the exact title to be used on the ballot shall by the petitioners be submitted with the petition, and on state-wide measures, shall be submitted to the State Board of Election Commissioners, who shall certify such title to the Secretary of State, to be placed upon the ballot; on county and municipal measures such title shall be submitted to the county election board and shall by said board be placed upon the ballot in such county or municipal election.

(2) **Limitation.** No limitation shall be placed upon the number of constitutional amendments, laws, or other measures which may be proposed and submitted to the people by either initiative or referendum petition as provided in this section. No petition shall be held invalid if it shall contain a greater number of signatures than required herein.

(3)(A) **Verification.** Only ~~legal votes~~ the signatures of qualified electors shall be counted upon petitions. Petitions may be circulated and presented in parts, but each part of any petition shall have attached thereto the affidavit of the person circulating the same, that all signatures thereon were made in the presence of the

affiant, and that to the best of the affiant's knowledge and belief each signature is genuine, and that the person signing is a ~~legal voter~~ qualified elector and no other affidavit or verification shall be required to establish the genuineness of such signatures.

(B) **Voter Cure**.

(i) The Secretary of State, the county clerk, and city clerk shall not disqualify the signature of a qualified elector before providing to the qualified elector whose name is signed on the petition:

(a) Notice that the qualified elector's signature will be disqualified and will not be counted; and

(b) An opportunity for the qualified elector whose name is signed to correct any identified insufficiency.

(ii) Notice under this subdivision (i)(3)(B) shall be sent to the qualified elector by mailing to the qualified elector's last known residential address, by telephone call, if available, and by email or other electronic notification system, if available.

(iii) Notice under this subdivision (i)(3)(B) shall be provided immediately after the insufficiency is discovered by the Secretary of State, county clerk, or city clerk and shall advise the qualified elector:

(a) Of how to correct any identified insufficiency; and

(b) That failure to correct any identified insufficiency will result in the qualified elector's signature not being counted.

(iv) The Secretary of State, county clerk, or city clerk shall give the voter no less than ten (10) business days to correct any identified insufficiency in person or electronically before disqualification.

(v) The qualified elector shall have no less than ten (10) business days after the Secretary of State, county clerk, or city clerk delivers notice under this section to correct any identified insufficiency.

(vi) If a qualified elector timely corrects an identified insufficiency, the signature shall be counted once.

(4)(A) **Sufficiency.** The sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the State, which shall have original and exclusive jurisdiction over all such causes.

(B) The sufficiency of all local petitions shall be decided in the first instance by the county clerk or the city clerk as the case may be, subject to review by the chancery court.

(C) A government actor reviewing a measure, ballot title, or petition for sufficiency shall determine it to be sufficient if the measure, ballot title, or petition substantially complies with the requirements of this Article 5, Section 1.

(5) **Court Decisions.**

(A) If the sufficiency of any petition is challenged such cause shall be ~~a~~:

(i) Filed with the court of jurisdiction no later than ten (10) business days after approval or denial of the sufficiency of the petition; and

(ii) A preference cause and shall be tried at once, but the failure of the courts to decide prior to the election as to the sufficiency of any such

petition, shall not prevent the question from being placed upon the ballot at the election named in such petition, nor militate against the validity of such measure, if it shall have been approved by a vote of the people.

(B) If the sufficiency of a ballot title is challenged such cause shall be:

(i) Filed with the court of jurisdiction no later than ten (10) business days after the designated governmental entity gives notice to the sponsor that the ballot title is approved;

(ii) A preference cause; and

(iii) Tried at once with expedited review if appealed.

(6)(A)(i) **Amendment of Petition, Measure, or Title.** ~~(a)(1)~~ If the Secretary of State, county clerk or city clerk, as the case may be, shall decide any petition to be insufficient, he or she shall without delay notify the sponsors of such petition, and permit at least thirty (30) days from the date of such notification, in the instance of a state-wide petition, or ten (10) days in the instance of a municipal or county petition, for correction or amendment.

~~(2)~~(ii) For a state-wide petition, correction or amendment of an insufficient petition shall be permitted only if the petition contains valid signatures of ~~legal voters~~ qualified electors equal to:

~~(A)~~(a) At least seventy-five percent (75%) of the number of state-wide signatures of ~~legal voters~~ qualified electors required; and

~~(B)~~(b) At least seventy-five percent (75%) of the required number of signatures of ~~legal voters~~ qualified electors from each of at least fifteen (15) counties of the state, but shall require signatures of qualified electors from no more than fifteen (15) counties.

~~(b)~~(B) In the event of legal proceedings to prevent giving legal effect to any petition upon any grounds, the burden of proof shall be ~~upon~~ clear and convincing evidence presented by the person or persons attacking the validity of the petition.

(C) If a government actor discovers a scrivener's or filing error concerning the measure, ballot title, or petition, the government actor:

(i) Shall immediately notify the sponsor of the scrivener's or filing error;

(ii) Shall allow the sponsor ten (10) business days after delivery of notice to the sponsor to correct the scrivener's or filing error; and

(iii) Shall not disqualify a measure, ballot title, or petition that has been timely corrected.

(7) **Unwarranted Restrictions and Petition Fraud Prohibited.**

(A) No law shall be passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions; but laws shall be enacted ~~prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions~~ designating the classification of and penalty range for the criminal offenses of petition fraud under this subdivision (i)(7).

(B) Petition fraud is a criminal offense.

(C) It is petition fraud if a person:

(i) With the purpose to have an invalid signature counted, knowingly signs another person's name to a petition;

(ii) Knowingly pays a person anything of value in exchange for his or her signature on a petition;

(iii) Purposely and materially misrepresents the content of a measure with the intent to deceive another person, and the other person signed the petition or declined to sign the petition in reliance on that misrepresentation; or

(iv) Who is the sponsor of the measure or the designated representative of the sponsor submits invalid signatures to the Secretary of State, county clerk, or city clerk for verification with actual knowledge that the signatures were obtained in violation of this Article 5, Section 1, and without advising the Secretary of State, county clerk, or city clerk that those signatures may be invalid.

(E) The Secretary of State, county clerk, or city clerk shall not invalidate a signature for a criminal violation under this subdivision (i)(7) unless the Secretary of State, county clerk, or city clerk provided notice to the qualified elector under subdivision (i)(3)(B) of this section, and the qualified elector did not correct an identified insufficiency.

(F) If a procedural practice, rule, or law is adopted or enacted by a government actor concerning the administration of the provisions of this section, the practice, rule, or law shall be ministerial in nature, and shall not unduly burden the rights guaranteed under this Article 5, Section 1.

(8) **Publication.** All measures submitted to a vote of the people by petition under the provisions of this section shall be published as is now, or hereafter may be provided by law.

(9) **Enacting Clause.** The style of all bills initiated and submitted under the provisions of this section shall be, "Be It Enacted by the People of the State of Arkansas, (municipality or county, as the case may be)." In submitting measures to the people, the Secretary of State and all other officials shall be guided by the general election laws or municipal laws as the case may be until additional legislation is provided therefor.

(10) **Self-Executing.** This section 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 to restrict, hamper or impair the exercise of the rights herein reserved to the people.

SECTION 3. Inconsistent provisions inapplicable. All provisions of the Constitution, statutes, and common law of this State to the extent inconsistent or in conflict with any provision of this Amendment are expressly declared null and void.

SECTION 4. Severability. If any provision or section of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the amendment that can be given effect without the invalid provision or application, and to this end the provisions of this amendment are declared to be severable.