TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-037

February 29, 2024

Stephen R. Lancaster, Attorney
Wright Lindsey & Jennings LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201

Dear Mr. Lancaster:

I am writing in response to your request, made under A.C.A. § 7-9-107, that I certify the popular name and ballot title for a proposed constitutional amendment. In Opinion Nos. 2024-014 and 2024-028, I addressed prior versions of your proposed constitutional amendment. You have now revised the text of your proposed measure and submitted it with a poplar name and ballot title. You ask that I certify.

My decision to certify or reject a popular name and ballot title is unrelated to my view of the proposed measure's merits. I am not authorized to consider the measure's merits when considering certification.

**1. Request.** Under A.C.A. § 7-9-107, you have asked me to certify the following popular name and ballot title for a proposed initiated amendment to the Arkansas Constitution:

Popular Name

Arkansas Medical Marijuana Amendment of 2024

Ballot Title

> This amendment to the Arkansas Constitution expands access to medical marijuana by qualified patients under the Arkansas Medical Marijuana Amendment of 2016, Amendment 98 and ratifies and affirms that amendment as originally adopted and as amended by any legislative act, except as specified; amending Amendment 98, § 2(4)(B) to define "cultivation facility" as including sale and delivery of usable marijuana to a processor; amending Amendment 98, § 2(12) to replace the definition of "physician" with "health care practitioner," which includes medical and

osteopathic doctors, nurse practitioners, physicians' assistants, and pharmacists and to remove requirements for federal controlled-substances registration; amending Amendment 98, §§ 4(f), 5(a)(l), 5(f)(1), 5(h), and 15 to replace references to physicians with references to health care practitioners; amending Amendment 98, § 2(13)(C) to add language to the definition of "qualifying medical condition" to include any condition not otherwise specified in Amendment 98 that a health care practitioner considers debilitating to a patient that might be alleviated by the use of usable marijuana; amending Amendment 98, § 2(14)(A) to allow non-Arkansas residents to apply for and receive registry identification cards in the same way as Arkansas residents; amending Amendment 98, § 2(17) to define "usable marijuana" as cannabis and other substances including all parts of the plant *Cannabis sativa*, whether growing or not, including any seeds, resin, compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, and to exclude hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; amending Amendment 98, § 2(19) to remove language requiring a physician-patient relationship from the definition of "written certification" and to allow assessments in person or by telemedicine; amending Amendment 98, § 3(e) to allow licensed dispensaries to receive, transfer, or sell marijuana seedlings, plants, or usable marijuana to and from Arkansas-licensed cultivation facilities, processors, or other dispensaries, to accept marijuana seeds, seedlings, or clones from any individual or entity authorized by law to possess them, and to sell usable marijuana, marijuana seedlings, plants or seeds to qualifying patients and designated caregivers; amending Amendment 98, § 3(h) to remove language allowing professional licensing boards to sanction a physician for improper evaluation of a patient's medical condition or for violating the standard of care; amending Amendment 98, §3(1) to remove authorization for Department of Health rules concerning visiting qualifying patients obtaining marijuana from a dispensary; amending Amendment 98, § 4(a)(4)(A) to require criminal background checks for all applicants seeking to serve as designated caregivers, with the exception of parents or guardians of minors who are qualifying patients applying to serve as designated caregivers for those minors; amending Amendment 98, § 5(a)(2) to remove language requiring reasonable registry identification card application fees or renewal fees; amending Amendment 98, § 5(d) to extend the expiration date of registry identification cards from one to three years and to add two additional years to the expiration date of existing cards; amending Amendment 98, § 8(e)(8) to remove and replace advertising restrictions with restrictions for dispensaries, processors, and cultivation facilities narrowly tailored to prevent advertising and packaging from appealing to children and to require the Alcoholic Beverage Control to make rules that require packaging that cannot be opened by a child or that prevents ready access to toxic or harmful

> amounts of the product; amending Amendment 98, § 8(m)(l)(A) to remove prohibitions on dispensary-provided paraphernalia requiring combustion of marijuana; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana in any form to dispensaries, processors, or other cultivation facilities; amending Amendment 98, § 16 to replace its current language with a waiver of state sovereign immunity so that a licensed person or entity may seek injunctive relief in the event the state fails to follow Amendment 98; amending Amendment 98, § 21 to remove a prohibition on the growing of marijuana by qualifying patients and designated caregivers and to allow such growing under Amendment 98; repealing Amendment 98, §§ 23 and 26 in their entirety; amending Amendment 98 to allow qualifying patients or caregivers at least 21 years old and in possession of a valid registry identification card to possess, plant, dry, and process marijuana plants in limited quantities and sizes at their domicile solely for the personal use of the qualifying patient, to prohibit sale, bartering, and trade of such marijuana plants, and to provide for regulation of such activities by the Alcoholic Beverage Control Division; amending Amendment 98 to allow possession by adults of up to one ounce of usable marijuana, to allow sale of marijuana by licensed cultivation facilities and dispensaries for adult use if current federal law prohibiting such activities changes, and to provide for the regulation of the wholesale and retail of marijuana by licensed cultivation facilities and dispensaries by the Alcoholic Beverage Control Division; amending Arkansas Constitution, Article 5, § 1, to provide that unless provided in such constitutional amendment, no constitutional amendment shall be amended or repealed unless approved by the people under the Constitution; providing that this amendment's provisions are severable, nullifying any provision of state law in conflict with this amendment; and providing that the amendment is self-executing.

**2. Rules governing my review.** In Opinion No. 2024-028, issued in response to your most recent submission for review and certification, I explained the rules and legal standards that govern my review of popular names and ballot titles. I rely on those same rules and legal standards here and incorporate them by reference.

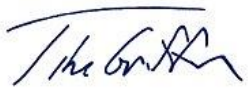
**3. Application.** Having reviewed the text of your proposed measure, as well as your proposed popular name and ballot title, I must certify your popular name and ballot title as submitted.

In Opinion No. 2024-028, I cautioned you concerning the length and complexity of initiated measures and ballot titles and their susceptibility to a successful ballot-title challenge. I rely on those same warnings and legal standards and incorporate them by reference.

Under A.C.A. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Arkansas Constitution and the associated penalties for violations. I have included a copy of the instructions that should be incorporated into your petition before circulation.

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,



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Attorney General