TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-046

March 20, 2024

Elizabeth Robben Murray, Attorney
Friday, Eldredge & Clark LLP
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201

Dear Ms. Murray:

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 No. 2024-034, I rejected a prior version of your proposed initiated amendment to the Arkansas Constitution. You have now revised the language of your proposal and submitted it for certification.

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

> An amendment requiring local voter approval in a countywide special election for any new casino licenses and repealing authority to issue a casino license in Pope County, Arkansas.

Ballot Title

> An amendment to the Arkansas Constitution, Amendment 100, § 4, subsection (i) to reduce the number of casino licenses that the Arkansas Racing Commission is required to issue from four to three; amending Amendment 100, § 4, subsections (k) through (n) to repeal authorization for a casino in Pope County, Arkansas and to repeal the authority of the Arkansas Racing Commission to issue a casino license for Pope County,

> Arkansas; amending Amendment 100 § 4, to add subsection (s), providing that if the Arkansas Racing Commission, or other governing body, issues a casino license for a casino in Pope County, Arkansas prior to the effective date of this Amendment, then said license is revoked on the effective date of this Amendment; amending Amendment 100 § 4, to add subsection (t), providing that if a future constitutional amendment authorizes the issuance of a casino license in any county other than those issued now or hereafter for Crittenden County (to Southland Racing Corporation), Garland County (to Oaklawn Jockey Club, Inc.) and Jefferson County (to Downstream Development Authority of the Quapaw Tribe of Oklahoma and later transferred to Saracen Development, LLC), then the quorum court of each county where a casino is to be located shall call a special election by ordinance to submit the question of whether to approve of a casino in the county; amending Amendment 100 § 4, to add subsection (t)(1)-(3), setting the date for the special election and requiring the ordinance calling the special election to state the election date and to specify the format of the question on the ballot as "FOR a casino in [ ] County" and "AGAINST a casino in [ ] County," and, "The question presented to voters must include whether or not a casino may be located in the county"—"A casino is defined as a facility where casino gaming is conducted"; amending Amendment 100 § 4, to add subsection (t)(4), requiring the county board of election commissioners to publish the ordinance calling the special election as soon as practicable in a newspaper of general circulation in the county in which the special election is held; amending Amendment 100 § 4, to add subsection (t)(5), requiring a majority of the voters in any county where any future casino is proposed to be located to approve of the casino at the special election before the Arkansas Racing Commission, or other governing body, may accept any applications for a casino license in that county; making this Amendment effective on and after November 13, 2024; providing that the provisions of this Amendment are severable in that 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 that can be given effect without the invalid provision or application; and repealing all laws or parts of laws in conflict with this Amendment.

2. Rules governing my review. In Opinion No. 2024-034, issued in response to your first 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 to your popular name. Although the popular name need not contain detailed information or include exceptions that might be required of a ballot title, the

popular name must not be misleading.[1] And, as I noted in Opinion 2024-034, the popular name's length itself is not misleading.[2] But a word used in the popular name does not accurately reflect the proposed measure or the ballot title (emphasis added): it requires "voter approval in a countywide special election for **any** new casino licenses." The proposed measure itself is narrower (emphases added): it requires voter approval in a countywide special election "[i]f a constitutional amendment authorizes or otherwise allows the issuance of a casino license in **any** county **other than those issued now or hereafter** for Crittenden County (to Southland Racing Corporation), Garland County (to Oaklawn Jockey Club, Inc.) and Jefferson County (to Downstream Development Authority of the Quapaw Tribe of Oklahoma and later transferred to Saracen Development, LLC)."[3] Therefore, I am substituting and certifying a "more suitable" popular name.[4] The popular name provided below is substituted and certified for your proposed constitutional amendment.

4. Application to your ballot title. Having reviewed the text of your proposed constitutional amendment and ballot title, I believe the following changes to your ballot title are necessary to ensure that your ballot title clearly and accurately sets forth the purpose of your proposed initiated amendment to the Arkansas Constitution:[5]

- ***"Majority of the voters."*** Section 3 of the measure's text adds subsection (t)(5) to Amendment 100, § 4 (emphasis added): "**A majority of the voters in the county** where the casino is proposed to be located must approve of a casino at the special election." While you may intend that phrase to mean "registered voters," the Arkansas Supreme Court has long defined "a majority of the voters" to mean the majority of those who actually vote on an issue, not those that could have voted.[6]

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[1] *E.g.*, *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 414–15, 316 S.W.2d 207, 208–09 (1958); see also Ark. Att'y Gen. Op. 2024-034 (articulating this rule in the opinion issued for your original submission for certification).

[2] Although I did note in that same opinion that you may wish to shorten the popular name to better the meet the purpose of popular names. Here, your popular name is one word shorter than it was previously.

[3] To ensure the popular name is not misleading, and to adequately apprise the voters of the licenses following the "other than" language, approximately fifty-five words would need to be added to the popular name—currently at twenty-eight words.

[4] *See* A.C.A. § 7-9-107(d)(1) (authorizing the Attorney General to "substitute and certify a more suitable and correct ballot title and popular name for each amendment or act").

[5] In the measure's text, you recite Amendment 100, § 4(i)–(n), striking language to indicate what you intend to remove from Amendment 100 and underlining language to indicate what you intend to add to Amendment 100. But when reciting Amendment 100, § 4(n), the measure's text contains the phrase "quorum county in the court" instead of "quorum court in the county." While that is not a reason for rejection here, the measure's text contains a scrivener's error that you may wish to correct.

[6] *E.g.*, *Vance v. Johnson*, 238 Ark. 1009, 1013, 386 S.W.2d 240, 243 (1965); *Glover v. Hot Springs Kennel Club, Inc.*, 230 Ark. 544, 548–53, 323 S.W.2d 902, 904–07 (1959); *Browning v. Waldrip*, 169 Ark. 261, 273 S.W. 1032, 1032–33 (1925); *Graves v. McConnell*, 162 Ark. 167, 257 S.W. 1041, 1043 (1924); *Watts v.*

In *Glover v. Hot Springs Kennel Club, Inc.*, the Arkansas Supreme Court reviewed a state statute that required "a majority of the qualified electors" of a county to approve a greyhound racing franchise.[7] There, the legal question was whether "it was necessary for the greyhound racing proposition submitted to the voters of Garland County to receive *merely a majority of those voting* on the proposition at the election, or was it necessary for the proposition to receive the vote of the *majority of all of the 17,245 poll tax holders* of Garland County."[8]

Affirming and noting "an impressive line" of "on point" decisions stretching back to 1885,[9] the *Glover* Court held that "a majority of the qualified electors of the county" has "a fixed legal meaning, to-wit: a majority of those who voted."[10] And while that case concerned certain statutory language—"majority of the qualified electors of the county"—the Court cited Arkansas Supreme Court cases that held the same based on different statutory language.[11] For instance, the *Glover* Court cites *Browning v. Waldrip*, which held that "majority of the landowners in a district" means "a majority of the landowners in the district voting at the election."[12] The Arkansas Supreme Court holdings over the last 138 years recognize that the language "majority of" those voting in a particular voting district or jurisdiction has a fixed legal meaning: those who actually voted at the particular election.

So, in the ballot title, I have changed "majority of the voters in the county" to "majority of those in the county who vote at the election." If instead you intend to vary from the "fixed legal meaning" that the Arkansas Supreme Court cases cited herein describe, you may make those changes and resubmit your popular name, ballot title, and full text of the proposed measure for certification.

- ***Ballot title summary.*** The Arkansas Supreme Court has interpreted the Arkansas Constitution to require that sponsors include all material in the ballot title that qualifies as an "essential fact which would give the voter serious ground for reflection."[13] But your proposed constitutional amendment contains a material provision that does not appear in your ballot title, which would likely give voters

Bryan, 153 Ark. 313, 240 S.W. 405, 406 (1922); *Vance v. Austell*, 45 Ark. 400, 406–07 (1885); Ark. Att'y Gen. Op. 2004-195.

[7] 230 Ark. at 548–53, 323 S.W.2d at 904–07.

[8] *Id.*, 230 Ark. at 548, 323 S.W.2d at 904.

[9] *Id.*, 230 Ark. at 548–52, 323 S.W.2d at 904–07.

[10] *Id.*, 230 Ark. at 553, 323 S.W.2d at 907.

[11] *Id.*, 230 Ark. at 548–52, 323 S.W.2d at 904–07.

[12] 169 Ark. at 261, 273 S.W. at 1032–33.

[13] *Bailey*, 318 Ark. at 285, 884 S.W.2d at 942.

"serious ground for reflection" and would render the ballot tile misleading by omission. The ballot title inaccurately and incompletely summarizes the measure's text by stating it requires "a majority of the voters in **any** county where **any** future casino is proposed to be located to approve of the casino at the special election." So I have replaced the first instance of "any" with "certain" and the second instance of "any" with "a" to better summarize the measure's text.

- ***Grammatical changes.*** I also made a few minor grammatical changes and clarifications to your ballot title to ensure it is not misleading or confusing to voters. A comma has been added after each of the following phrases: "subsection (i)" and "subsections (k) through (n)." I also expanded the space between the brackets used in the ballot title.

5. Substitution and certification. With the above changes incorporated, the following popular name and ballot title are substituted and certified:

Popular Name

An amendment requiring local voter approval in a countywide special election for certain new casino licenses and repealing authority to issue a casino license in Pope County, Arkansas.

Ballot Title

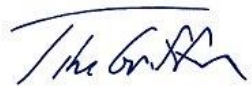
An amendment to the Arkansas Constitution, Amendment 100, § 4, subsection (i), to reduce the number of casino licenses that the Arkansas Racing Commission is required to issue from four to three; amending Amendment 100, § 4, subsections (k) through (n), to repeal authorization for a casino in Pope County, Arkansas and to repeal the authority of the Arkansas Racing Commission to issue a casino license for Pope County, Arkansas; amending Amendment 100 § 4, to add subsection (s), providing that if the Arkansas Racing Commission, or other governing body, issues a casino license for a casino in Pope County, Arkansas prior to the effective date of this Amendment, then said license is revoked on the effective date of this Amendment; amending Amendment 100 § 4, to add subsection (t), providing that if a future constitutional amendment authorizes the issuance of a casino license in any county other than those issued now or hereafter for Crittenden County (to Southland Racing Corporation), Garland County (to Oaklawn Jockey Club, Inc.) and Jefferson County (to Downstream Development Authority of the Quapaw Tribe of Oklahoma and later transferred to Saracen Development, LLC), then the quorum court of each county where a casino is to be located shall call a special election by ordinance to submit the question of whether to approve of a casino in the county; amending Amendment 100 § 4, to add subsection (t)(1)-(3), setting the date for the special election and requiring the ordinance calling the

> special election to state the election date and to specify the format of the question on the ballot as "FOR a casino in [ ] County" and "AGAINST a casino in [ ] County," and, "The question presented to voters must include whether or not a casino may be located in the county"—"A casino is defined as a facility where casino gaming is conducted"; amending Amendment 100 § 4, to add subsection (t)(4), requiring the county board of election commissioners to publish the ordinance calling the special election as soon as practicable in a newspaper of general circulation in the county in which the special election is held; amending Amendment 100 § 4, to add subsection (t)(5), requiring a majority of those in the county who vote at the election in certain counties where a future casino is proposed to be located to approve of the casino at the special election before the Arkansas Racing Commission, or other governing body, may accept any applications for a casino license in that county; making this Amendment effective on and after November 13, 2024; providing that the provisions of this Amendment are severable in that 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 that can be given effect without the invalid provision or application; and repealing all laws or parts of laws in conflict with this Amendment.

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