

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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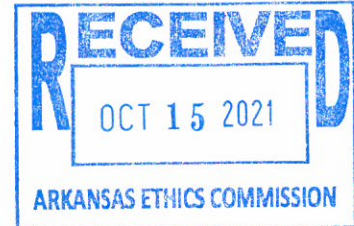
By   
Stephen R. Lancaster (93061)  
Gary D. Marts, Jr. (2004116)  
Erika Gee (2001196)

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

EXHIBIT

1

**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

EXHIBIT

3

# 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  
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**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 signature of Daniel J. Shults, written in a cursive style.

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 be 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.