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Recent Developments

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RECENT DEVELOPMENTS

*ARMSTRONG V. THURSTON*¹

Petitioners submitted a proposed state constitutional amendment to the Secretary of State of Arkansas with the required signatures and following 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.”²

The State Board of Election Commissioners did not certify the popular name and ballot title of the proposed amendment, stating that the ballot title was misleading. The Arkansas Supreme Court considered two questions: the ability of the Board to deny certification and whether the ballot title was misleading.

First, the court held that Article 5, Section 1 of the Arkansas State Constitution required the Board to certify the ballot title to the Secretary of State. Second, the court found that the ballot title was not fatally misleading. The petition was granted and the Secretary of State was ordered to certify the proposed amendment.

In deciding whether the ballot title was misleading, the court considered five arguments made by the respondents:

- (1) the ballot title is misleading because it omits that the proposed amendment would repeal [A]mendment 98’s THC dosage limits in food and drink containing usable marijuana;
- (2) the ballot title is misleading because it does not explain that requirements for child-resistant packaging and restrictions on advertising that appeals to children are already found in [A]mendment 98 and gives the false impression that the proposed amendment will strengthen those protections;
- (3) the ballot title is misleading because it does not explain the effects of the proposed amendment on the industrial-hemp industry;
- (4) the ballot title omits

1. *Armstrong v. Thurston*, 2022 Ark. 167, 652 S.W.3d 167 (2022).

2. *Id.* at 2, 652 S.W.3d at 171.

material information about the proposed amendment’s creation of Tier One and Tier Two facilities; and (5) the ballot title omits the proposed amendment’s definition of an adult as a person twenty-one years of age or older.³

Ultimately, the court concluded that (1) “a ballot title need not summarize existing law”⁴ but “must accurately reflect the general purposes and fundamental provisions of the proposed amendment”;⁵ (2) “[t]he ballot title need not contain a synopsis of the proposed amendment or cover every detail of it”;⁶ (3) speculative effects of a proposed amendment are outside of ballot title review because “[a] ballot title does not need to include every possible consequence or impact of a proposed measure, and it does not need to address or anticipate every possible legal issue”;⁷ (4) “[t]he ballot title adequately describes Tier One and Tier Two facilities as created by the proposed amendment”;⁸ and (5) “[n]ot every term must be defined in the ballot title[,]”⁹ and the definition of “adult” is “not a fundamental provision of the proposed amendment.”¹⁰

The court ordered the Secretary of State to include the proposed amendment on the November 2022 general election ballot.

*GIBSON V. BUONAUITO*¹¹

In a previous appeal, the Arkansas Supreme Court “held that tax funds levied from Amendment 91 to the Arkansas Constitution could only be used for constructing or improving four-lane highways and that the use of Amendment 91 funds for two projects . . . constituted an illegal exaction.”¹² As a result, \$121,109,391.84 was to be reimbursed to the Amendment 91 fund.

3. *Id.* at 7-8, 652 S.W.3d at 174.

4. *Id.* at 10, 652 S.W.3d at 175.

5. *Id.* at 11, 652 S.W.3d at 176.

6. *Armstrong*, 2022 Ark. 167, at 13, 652 S.W.3d at 176.

7. *Id.* at 13, 652 S.W.3d at 177.

8. *Id.* at 14, 652 S.W.3d at 177.

9. *Id.* at 15, 652 S.W.3d at 177.

10. *Id.* at 15, 652 S.W.3d at 178.

11. *Gibson v. Buonaiuto*, 2022 Ark. 206, 655 S.W.3d 59 (2022).

12. *Id.* at 2, 655 S.W.3d at 62.

On remand, the circuit court awarded the appellant's attorneys \$18,160,000.00 in attorney's fees (approximately a 15% contingency fees) and \$6,896.70 in costs. The state appealed this award for abuse of discretion.

The court held that this award was an abuse of discretion because attorney's fees were not authorized by statute¹³ or warranted under the common-fund exception or the substantial-benefit exception.

Justices Baker, Hudson, and Wynne dissented, noting that a substantial benefit was realized by Arkansas citizens. The dissent specifically cited one expert's claim that a total of \$448,191,448.45 would have been improperly allocated in absence of the lawsuit.

***BLACKBURN V. LONOKE COUNTY BOARD OF
ELECTION COMMISSIONERS***¹⁴

Appellant ran as an independent candidate for Lonoke County Judge. An employee of the County Clerk's office told Appellant that he was required to furnish 367 signatures by May 1, 2022, to appear on the ballot. Appellant furnished exactly 367 signatures to the County Clerk's office before the deadline. The County Clerk's office employee later informed Appellant that an error was made and 618 signatures were required to appear on the ballot. This placed the Appellant below the signature threshold. Appellant filed a lawsuit in Lonoke County Circuit Court on June 13, 2022, seeking fourteen additional days to furnish the signatures.

Lonoke County Circuit Court dismissed Appellant's claims with prejudice. On appeal, the Arkansas Supreme Court upheld the dismissals but modified them to be without prejudice.

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13. Specifically, the court stated that ARK. CODE ANN. § 26-35-902(a) was not applicable to this case. That provision permits an award of attorney's fees in certain illegal exaction cases.

14. *Blackburn v. Lonoke Cnty. Bd. of Election Comm'rs*, 2022 Ark. 176, 652 S.W.3d 574 (2022).