STATE BOARD OF ELECTION COMMISSIONERS
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July 24, 2020

Open Primaries Arkansas
Attn: Stephanie R. Matthews
31 East Center Street, Suite 300
Fayetteville, Arkansas 72701

NOTICE OF NON-CERTIFICATION
IN THE MATTER OF THE BALLOT TITLE:
A CONSTITUTIONAL AMENDMENT ESTABLISHING TOP FOUR OPEN PRIMARY ELECTIONS AND MAJORITY WINNER GENERAL ELECTIONS WITH INSTANT RUNOFFS IF NECESSARY

Sponsor, Open Primaries 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."

At a duly called public meeting of the SBEC on July 22, 2020, the above Title came before the Board for consideration whether to Certify or Not Certify the proposed Popular Name and Ballot Title. The Board voted to Not 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 use of the phrase "Open Primary" which is misleading in that it suggests the failure to adopt the proposed amendment would result in Arkansans voting under a closed primary system. Arkansas Law currently allows any registered voter to vote in the preferential primary of any party in the state which holds a primary. This system is commonly referred to as an Open Primary System and the effect of this proposed amendment would be to dismantle Arkansas's current Open Primary system.

Add 4 Defendant's Exhibit 14

EXHIBIT
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2. The SBEC further found the Ballot Title is misleading because it omits any reference to the federal court order prohibiting the State of Arkansas from changing any existing election law that required a plurality of votes to win an office to requiring a majority of votes to win that office without pre-clearance required by *Jeffers v. Clinton*. 740 F. Supp. 585 (E.D. Ark. 1990)(enforcing Section 3(c) of the Voting Rights Act of 1965). The proposed amendment changes current law which requires a plurality of votes to win the following offices to requiring a majority of votes: United States Senator, United States Representative, Governor, Lt. Governor, Attorney General, Secretary of State, State Treasure, State Auditor, Commissioner of State Lands, State Senator, and State Representative. The Board considered the logic of *Lange v. Martin* which found a ballot title that failed to disclose the proposed measure violated federal law was misleading. 2016 Ark. 337. The Board found that this was an omission of material information that would give the voters serious grounds for reflection.

3. The SBEC found the Ballot Title is misleading because the ballot title omitted any reference to the proposed amendment's elimination of a political party's ability to petition a court for the removal of candidates on the ballot which are identified with that political party but which fail to meet the standards of that party. Currently, a political party can petition a court to remove its nominee which is the only candidate currently identified with a party on the ballot. The ballot title does state parties will be able to indicate preferred candidates but is silent as to the elimination of a party's ability to have its name separated from a candidate the party opposes. The Board found that this was an omission of material information that would give the voters serious grounds for reflection.

4. The SBEC found the Ballot Title misleading because it omitted any reference to the fact Arkansas's current voting system is not capable of implementing the proposed amendment. Further, the Board found that the proposal amendment would likely require the State to procure new voting equipment at a significant expense, if such equipment could even be found, that would be capable of marking and tabulating rank choice voting in the instant runoff process. The Board found that this was an omission of material information that would give the voters serious grounds for reflection.

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 Not Certify this Ballot Title and Popular Name to the Secretary of State for inclusion on the General Election Ballot on November 3, 2020.

If you have any further questions regarding this matter, please contact this office.

Sincerely,

Daniel J. Shults
Director

Encl. SBEC Resolution No. 2 of 2020

cc: The Honorable John Thurston, Secretary of State