

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

LEAGUE OF WOMEN VOTERS OF ARKANSAS,
SAVE AR DEMOCRACY, BONNIE HEATHER
MILLER, and DANIELLE QUESNELL

Plaintiffs

and

PROTECT AR RIGHTS and FOR AR KIDS

Intervenor-Plaintiffs

v.

Case No. 5:25-cv-05087-TLB

COLE JESTER, Arkansas Secretary of State,
in his official capacity

Defendant

and

TIM GRIFFIN, Arkansas Attorney General,
in his official capacity

Intervenor-Defendant

**DECLARATION OF JENNIFER WAYMACK STANDERFER IN SUPPORT OF
INTERVENOR-PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Jennifer Annette Waymack Standerfer, pursuant to 28 U.S.C. § 1746,
declare as follows:

1. I am an attorney licensed to practice in the State of Arkansas and the United States District Court for the Western District of Arkansas. I have been licensed and practicing law for 21 years.

2. I am the primary drafter of the “Arkansas Ballot Measure Rights Amendment” on behalf of a coalition of organizations collectively organized as Protect AR Rights. I am providing this declaration with the permission of my client.

3. From 2012 to 2016, I was employed as a legislative attorney for the Bureau of Legislative Research (“BLR”). From 2016 to 2018, I was employed by the City of Rogers as their Senior Staff Attorney. In that role, I drafted ordinances daily. I returned to the BLR on a contract basis in 2018 and assisted the General Assembly through the 2019 session as I transitioned to my private firm, Waymack Standerfer Law. Through my firm, I have continued legislative drafting for private clients and in a pro bono capacity on various efforts.

4. In my time at the BLR, I drafted both bills and constitutional amendments, many of which have become law. While serving the members of the General Assembly, my elections work included research, drafting, and advice concerning Article 5, § 1, ballot measure laws, and the policies and procedures concerning ballot measure processes.

5. I have received extensive training specific to writing. In addition to my undergraduate training in English, the BLR provided individual training immediately upon hiring through mentorship by seasoned legal writers and editors and direct instruction on and study of the “Legislative Drafting Manual” adopted and issued by the BLR.¹ I also attended training at the National Conference of State Legislatures.

6. The laws governing the drafting of bills for the General Assembly, Ark. Code Ann. § 1-2-101 *et seq.*, do not apply to the drafting of ballot measures, and there are no constitutional requirements concerning grammar, form, syntax, or

¹ *Legislative Drafting Manual*, STATE OF ARKANSAS BUREAU OF LEGISLATIVE RESEARCH, <https://tinyurl.com/y83kds6r> (last visited July 22, 2025).

structure of measures. Typically, to promote clarity through consistency of legal standards, I try to follow the guidance of the bill-drafting process when drafting ballot measures. However, Act 602 of 2025 has required me to abandon my standard drafting practices for the drafting of Protect AR Rights' ballot title. As I detail below, I have engaged in an exhaustive drafting and editing process, but am still unable to satisfy Act 602 while satisfying other imperatives of the law.

7. Act 602 provides that the “Attorney General shall not certify a proposed ballot title with a reading level above eighth grade as determined by the Flesch-Kincaid Grade Level formula as it existed on January 1, 2025.”

8. The “Flesch-Kincaid Grade Level” is determined by the following mathematical equation: $0.39 (\text{total words} / \text{total sentences}) + 11.8 (\text{total syllables} / \text{total words}) - 15.59$.²

9. The term “grade level” in this formula is a misnomer, in that it does not produce a score that pertains to a K–12 grade level. Rather, the Flesch-Kincaid Grade Level formula produces a number that can go well beyond twelve. For example, the first draft of this ballot title, drafted using standard drafting practices, generated a 144.9 grade level.

10. There is another formula—the Flesch Reading Ease score—that reflects whether a piece of writing is readable at a specific educational level.³ Under this formula, you first enter the following calculation: $206.835 - 1.015 \times$

² *Flesch Kincaid Calculator*, GOODCALCULATORS.COM, <https://goodcalculators.com/flesch-kincaid-calculator/> (last visited July 22, 2025).

³ *Id.*

(total words / total sentences) – 84.6 x (total syllables / total words). The sum of this calculation is called the “ease score.” That ease score is then compared against this table to determine what is commonly referred to as the “reading level” or “school level:”

Score	School level (US)	Notes
100.00–90.00	5th grade	Very easy to read. Easily understood by an average 11-year-old student.
90.0–80.0	6th grade	Easy to read. Conversational English for consumers.
80.0–70.0	7th grade	Fairly easy to read.
70.0–60.0	8th & 9th grade	Plain English. Easily understood by 13- to 15-year-old students.
60.0–50.0	10th to 12th grade	Fairly difficult to read.
50.0–30.0	College	Difficult to read.
30.0–10.0	College graduate	Very difficult to read. Best understood by university graduates.
10.0–0.0	Professional	Extremely difficult to read. Best understood by university graduates.

11. The Attorney General’s Office has declined to meet or discuss any substantive topics concerning our measure outside of its official opinions. Therefore, I have tried to draft a ballot title that reaches a grade level of 8, a readability score

between 60 and 100, and a reading level of eighth grade in an attempt to comply with Act 602 regardless of how it may be interpreted.

12. In addition to hitting the readability target of Act 602, the drafter also has to comply with other legal obligations. Meeting the requirements of Act 602 requires line-by-line, word-by-word analysis of sentence, word, and syllabic length. Word by word, the drafter has to consider synonyms and phrasing seeking shorter, simpler ways to say the same thing. But if the shorter, simpler language fails to give voters “a fair understanding of the issues presented,”⁴ the ballot title violates the law. If the shorter, simpler language “omit[s] material information that would give the voters serious grounds for reflection,”⁵ if it is misleading,⁶ if it is so conversational that it has “partisan coloring,”⁷ if it is dishonest,⁸ or if it does not give an idea of the scope and significance of the proposed change to the law,⁹ the ballot title violates the law. “The ultimate issue is whether the voter, while inside the voting booth, is able to reach an intelligent and informed decision for or against the proposal and understands the consequences of his or her vote based on the

⁴ *Becker v. Riviere*, 270 Ark. 219, 226 (1980).

⁵ *Cox v. Daniels*, 374 Ark. 437, 443 (2008).

⁶ *Bailey v. McCuen*, 318 Ark. 277, 284 (1994).

⁷ *Id.*

⁸ *Becker v. McCuen*, 303 Ark. 482, 489 (1990).

⁹ *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250 (1994).

ballot title.”¹⁰ So, while brevity is important for readability, giving the voters a full, impartial, and honest understanding of the issues so they can make an informed decision is also critically important, and required under Arkansas law.

13. I first drafted Protect AR Rights’ ballot title for submission according to standard legislative drafting standards, consistent with my training and experience. Using a widely available Flesch-Kincaid calculator,¹¹ I discovered that the readability numbers were off the charts: Flesch-Kincaid Grade Level 144.9; Flesch Reading Ease Score: 0; Reading Level College Graduate (Very difficult to read).

14. A cursory review of straightforward sentences suggests how difficult it is to satisfy the formula that Act 602 demands. For example, “I hope the Arkansas Razorbacks make the college football playoffs this season.” produces a “Flesch-Kincaid Grade Level of 9.2, a Flesch Reading Ease Score of 50.8, and a Reading Level of 10th to 12th grade. “I hope the Arkansas Razorbacks beat the Vanderbilt Commodores.” produces a “Flesch-Kincaid Grade Level of 10.3, a Flesch Reading Ease Score of 37 and a Reading Level of College. Presumably most Arkansans could understand these sentences, but they fail the Act 602 standard.

15. Even relatively simple amendments that the General Assembly has recently submitted to the people flunk the Act 602 requirement. For example, the ballot title of Amendment 88, approved by the voters in 2010, reads as follows:

¹⁰ *Wilson v. Martin*, 2016 Ark. 334, *7 (2016).

¹¹ *Flesch Kincaid Calculator*, GOODCALCULATORS.COM, <https://goodcalculators.com/flesch-kincaid-calculator/> (last visited July 22, 2025).

“Amending the Arkansas Constitution to provide for a constitutional right to hunt, fish, trap, and harvest wildlife.”¹² This sentence produces a Flesch-Kincaid Grade Level of 12.3, a Flesch Reading Ease Score of 37.3, and a Reading Level of College. The ballot title of Amendment 96, approved by voters in 2016, reads as follows: “An amendment to the Arkansas Constitution to allow the governor to retain his or her powers and duties when absent from the state.”¹³ This sentence produces a Flesch-Kincaid Grade Level of 12.3, a Flesch Reading Ease Score of 48.1, and a Reading Level of College.

16. I began to experiment with the Flesch-Kincaid formulas to determine what it would take to get the ballot title to reach the requisite reading-level targets. My first effort was to run an over-simplified ballot title that did not fully reflect our measure through the Flesch-Kincaid calculators to explore what form could be used. It was immediately clear that we cannot use standard bill-drafting language where clauses are separated by semicolons. Compound sentences should be avoided where possible. Smaller words with fewer syllables are preferred.

17. Initially, these adjustments felt easy enough to make, but they still weren’t reaching either a grade level of eight under the Flesch-Kincaid Grade Level formula or a reading level of eighth grade under the Flesch Reading Ease test. For

¹² S.J. Res. 3, 87th Gen. Assemb., Reg. Sess. (Ark. 2009), <https://arkleg.state.ar.us/Home/FTPDocument?path=%2FBills%2F2009%2FPublic%2FSJR3.pdf> (last visited July 22, 2025).

¹³ S.J. Res. 3, 90th Gen. Assemb., Reg. Sess. (Ark. 2015), <https://arkleg.state.ar.us/Home/FTPDocument?path=%2FBills%2F2015%2FPublic%2FSJR3.pdf> (last visited July 22, 2025).

example, the proposed measure includes critical words that must be used in the title, such as “fundamental” and “constitution,” that inflate the scores.

18. I then tried running simpler sentences through the calculator to see what syntax the model was designed to prefer:

- a. I ran the sentence, “**I like dogs.**” This produced a Flesch-Kincaid Grade Level of 0, a Flesch Reading Ease Score of 100 and a Reading Level: 5th Grade (Very easy to read).
- b. Next, I ran the sentence, “**I like golden retrievers.**” This produced a Flesch-Kincaid Grade Level of 7.2, a Flesch Reading Ease Score of 50.5, and a Reading Level of 10th to 12th grade (Fairly difficult to read).
- c. Next, I ran the sentence, “**I like retrievers.**” This produced a Flesch-Kincaid Grade Level of 5.6, a Flesch Reading Ease Score of 60, and a Reading Level of 10th to 12th grade (Fairly difficult to read). Note that this is not synonymous with the previous sentence because it does not capture the specific type of retriever I like.
- d. Finally, I ran the sentence, “**I like Labrador retrievers.**” This produced a Flesch-Kincaid Grade Level of 9.6, a Flesch Reading Ease Score of 33.6, and a Reading Level of College (Difficult to read). Notice that a simple sentence concerning golden retrievers comes in at under 8 on the Flesch-Kincaid Grade Level formula, while a sentence with the same structure concerning Labrador retrievers does not—presumably

because “Labrador” has one more syllable than “golden.” If I were to propose a ballot measure about Labrador retrievers, I would have to use the term “Labrador retriever” rather than “retriever” because, as discussed above, inaccuracies are constitutionally misleading. But I would be increasing the readability score and making it more difficult (if not impossible) to comply with Act 602.

19. I also ran the entirety of the Dr. Suess book *One Fish, Two Fish, Red Fish, Blue Fish* through the calculator. It received a perfect score: Flesch-Kincaid Grade Level: 0; Flesch Reading Ease Score: 100; Reading Level: 5th Grade (Very easy to read). Though it is not surprising that a children’s book received a high readability score, I find this revealing because the book is nonsense and filled with incomplete sentences. That is, a piece of reading can pass the Act 602 standard even if it fails to convey any meaning at all, as long as it does so in simple terms. The Flesch-Kincaid model does not include assessments for effective communication by the author or reading comprehension by the reader.

20. Turning to the most pertinent language I tested while trying to determine how to draft the measure in compliance with Act 602, I ran the following sentence: **“This measure amends the Arkansas Constitution.”** This produced a Flesch-Kincaid Grade Level of 12.7, a Flesch Reading Ease Score of 14.6, and a Reading Level of College Graduate. Thus, the most fundamentally true description of what the measure does starts the ballot title at a college-graduate reading level and fails Act 602.

21. After this trial-and-error approach, and after significant research, reflection and discussion with colleagues, I developed a rationale with which to consistently apply the law while attempting to simplify the language to meet the Flesch-Kincaid scores. In drafting this ballot title, I prioritized readability through simplification of grammar and syntax unless: 1) to do so would violate any laws requiring the title to follow specific drafting standards; or 2) the simplification would result in a title that was misleading, dishonest, or that would otherwise fail to provide the voters with a fair understanding of the issues presented by the amendment.

22. I submitted the first version of the measure, ballot title, and popular name on behalf of Protect AR Rights on Sunday, May 18, 2025; the Attorney General's office received it the following morning, Monday, May 19, 2025. The Flesch-Kincaid calculators I used to assess this version of the ballot title computed a Flesch-Kincaid Grade Level of 10.7, a Reading Ease Score of 46.7, and Reading Level of College.

23. On June 2, 2025, the Attorney General rejected the ballot title via Attorney General Opinion No. 2025-037. In his opinion rejecting the ballot title, the Attorney General asserted that the ballot title "ranks at grade 11.5", which is inconsistent with my calculations. I cannot identify which formula the Attorney General's Office used to make that determination. It is possible that the Attorney General's Office used a different method of calculating the Flesch-Kincaid scores, as there are multiple calculators available that produce different scores.

24. In response to the concerns raised in the Attorney General's opinion letter, I spent many hours working through a line-by-line analysis of the ballot title seeking to simplify the language without losing content or violating other laws. Reducing sentence length, number of words, and number of syllables would reduce the Flesch-Kincaid scores incrementally with negligible results, but I continued to chip away at those scores little by little until I reached a point where edits would, in my judgment, require me to violate the other legal requirements discussed above.

25. I submitted the second version of the draft measure to the Attorney General on June 17, 2025. This second version had a Flesch-Kincaid Grade Level of 9, a Reading Ease Score of 51.1, and a Reading Level of 10th to 12th grade. I submitted this version alongside an email that explained the difficulty of meeting the Act 602 requirements while abiding by other laws. The Attorney General's Office did not respond to the points I raised in this email.

26. On July 1, 2025, the Attorney General's Office rejected our second proposal via Attorney General Opinion No. 2025-046. The opinion states that the ballot title "ranks at 9.3 on the Flesch-Kincaid Grade Level formula." Again, I cannot identify which formula the Attorney General's Office used to make that determination.

27. I submitted the third version of the draft measure to the Attorney General after hours on Monday, July 14, 2025, and the Attorney General's Office received it on Tuesday, July 15, 2025. Like the second version, this third version has a Flesch-Kincaid Grade Level of 9, a Reading Ease Score of 51.1, and a Reading

Level of 10th to 12th grade. With this version of the measure, I believe that I have corrected all issues the Attorney General has identified except for compliance with Act 602. Because the Attorney General is required to respond within ten business days, I expect a response on July 29, 2025.

28. Despite my best efforts to simplify the language of the ballot title as much as possible, there are some words that we simply can't dispense with. Doing so would improve the ballot title's readability score but would sacrifice essential language needed to describe the measure with necessary specificity. For example, the measure is intended to create a fundamental right to make and repeal laws by petition, a fundamental right to sign a petition, and a fundamental right to collect signatures on a petition. The word "fundamental" is an essential aspect of the measure. Protect AR Rights cannot delete that word from the ballot title to satisfy the Flesh-Kincaid scores without omitting a key description of the measure.

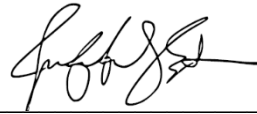
29. I believe that at this point I have deleted every extraneous sentence from the ballot title while also retaining necessary description of the measure.

30. After much thought, many attempts to pare down the language of Protect AR Rights' ballot title, and three submissions to the Attorney General's office, I have determined that the only way that I can draft a ballot title that meets the Flesch-Kincaid scores, is to sacrifice one or more of the following objectives: (1) fairly, impartially, and adequately advising the voter of what the measure does; (2) meeting all legal requirements of ballot titles; (3) preserving the substantive proposal that Protect AR Rights has directed their measure to address; and (4)

insulating the measure from future legal challenge. While it is *possible* to write a ballot title that satisfies Act 602, it is not possible to do so without sacrificing essential policy content or ignoring other legal requirements. Were I to draft a measure that satisfies Act 602, it would no longer be the measure that the coalition represented by Protect AR Rights has determined is necessary to preserve the rights and desires of the people of Arkansas.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2025



Jennifer Waymack Standerfer