

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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A Bill

HOUSE BILL 1705

By: Representatives Gazaway, Capp, Dalby, Hillman, Jett, Burch, D. Whitaker
By: Senators J. Dismang, Maloch

For An Act To Be Entitled

AN ACT TO PROTECT THE PUBLIC CONFIDENCE IN THE INTEGRITY OF APPELLATE JUDICIAL ELECTIONS; TO REQUIRE ADDITIONAL REPORTING CONCERNING INDEPENDENT EXPENDITURES FOR APPELLATE JUDICIAL ELECTIONS; TO EMPOWER CITIZENS TO COMPEL TRANSPARENCY FROM PERSONS MAKING THOSE INDEPENDENT EXPENDITURES; TO AMEND THE LAW CONCERNING APPELLATE JUDICIAL CAMPAIGNS; TO AMEND PORTIONS OF THE ARKANSAS CODE RESULTING FROM INITIATED ACT 1 OF 1990 AND INITIATED ACT 1 OF 1996; AND FOR OTHER PURPOSES.

Subtitle

TO PROTECT THE PUBLIC CONFIDENCE IN THE INTEGRITY OF JUDICIAL ELECTIONS; AND TO REQUIRE ADDITIONAL REPORTING AND TRANSPARENCY OF INDEPENDENT EXPENDITURES IN RELATED CAMPAIGNS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 7-6-201(11), concerning the definition of "independent expenditure" and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

(11) "Independent expenditure" means an expenditure ~~which~~ that is not a contribution and:

(A) Is made for one (1) of the following purposes:



(i) Expressly If the expenditure is made for an office other than Court of Appeals Judge or Supreme Court Justice, expressly advocates the election or defeat of a clearly identified candidate for office; or

(ii) Except as provided under § 7-6-232(a), if the expenditure is made for the office of Court of Appeals Judge or Supreme Court Justice:

(a) Expressly advocates the election or defeat of a clearly identified candidate for office; or

(b) Attempts to influence a vote for or against a specific candidate or specific set of candidates or the public's perception of a specific candidate or specific set of candidates;

(B) Is made without arrangement, cooperation, or consultation between a candidate or an authorized committee or agent of the candidate and the person making the expenditure or an authorized agent of that person; and

(C) Is not made in concert with or at the request or suggestion of a candidate or an authorized committee or agent of the candidate;

SECTION 2. Arkansas Code § 7-6-213 is amended to read as follows:

7-6-213. Verification of reports.

All reports required to be filed by the provisions of this subchapter shall be verified by affidavit by the candidate, ~~or~~ a person acting in the candidate's behalf, an independent expenditure committee, or a person acting on behalf of the independent expenditure committee stating that to the best of his, ~~or~~ her, or its knowledge and belief the information so disclosed is a complete, true, and accurate financial statement of the candidate's or independent expenditure committee's campaign contributions or expenditures.

SECTION 3. Arkansas Code § 7-6-220 is amended to read as follows:

7-6-220. ~~Reporting of~~ Contributions to independent expenditure committees and independent expenditures – Reports.

(a) A person who or an independent expenditure committee which makes independent expenditures in an aggregate amount or value in excess of five hundred dollars (\$500) in a calendar year shall file reports with the

Secretary of State:

(1) No later than thirty (30) days ~~prior to~~ before preferential primary elections, general elections, and special elections covering the period ending thirty-five (35) days ~~prior to~~ before such elections;

(2) No later than seven (7) days ~~prior to~~ before preferential primary elections, runoff elections, general elections, and special elections covering the period ending ten (10) days ~~prior to~~ before such elections; and

(3) As for a final report, no later than thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination or election.

(b) ~~Such reports~~ A report under subsection (a) of this section shall include:

(1) In the case of an individual making such an expenditure, the name, address, telephone number, principal place of business, employer, and occupation of the individual;

(2) In the case of a committee, the name, address, employer, and occupation of its officers;

(3) In the case of a person who is not an individual, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers; ~~and~~

(4) The same information required of candidates for office other than school district, township, municipal, or county office as set forth in § 7-6-207(b)(1); and

(5) If the independent expenditure is made for the office of Court of Appeals Judge or Supreme Court Justice:

(A) The name and address of each person who made a contribution or contributions that:

(i) Were used for the independent expenditure; and

(ii) In the aggregate exceeded fifty dollars

(\$50.00);

(B) The contributor's principal place of business, employer, and occupation, the amount contributed, the date the contribution was accepted by the person or independent expenditure committee, and the aggregate contributed for the expenditure;

(C) The name and address of each person that contributed an item other than money that was used in furtherance of the independent

expenditures, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(D) The current balance of independent expenditure funds that may be used for independent expenditures for the office of Court of Appeals Judge or Supreme Court Justice;

(E) If the contributor received the funds by transfer from another person, the information requested in subdivision (b)(5)(A) through (D) of this section concerning the other person and any other contributor to the other person; and

(F) Any other information required by rule of the Arkansas Ethics Commission adopted before the date the contribution is accepted.

(c) The information required in § 7-6-207(b)(1) may be provided in the form of a schedule or schedules attached to the report.

(d) The report shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(e)(1) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

(2)(A) The Secretary of State shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

(B) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of independent expenditure reports in electronic form to ensure that all required information is requested.

(C) The official website of the Secretary of State shall allow for searches of independent expenditure report information filed in electronic form.

(3) A person or independent expenditure committee under this section may file reports in paper form under this section if:

(A) The person or independent expenditure committee does not have access to the technology necessary to submit reports in electronic form; and

(B) Submitting reports in electronic form would constitute

a substantial hardship for the person or independent expenditure.

(f)(1) With respect to independent expenditures pertaining to a candidate for the office of Court of Appeals Judge or Supreme Court Justice, the Arkansas Ethics Commission shall adopt rules requiring an independent expenditure committee to disclose the source of funds transferred from a person to a person to make a contribution to an independent expenditure committee.

(2)(A) When adopting the initial rules to implement subdivision (f)(1) of this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before January 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The Arkansas Ethics Commission shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020 so that the Legislative Council may consider the rule for approval before January 1, 2020.

SECTION 4. Arkansas Code § 7-6-227(a)(1)(A), concerning registration of independent expenditure committees with the Secretary of State, is amended to read as follows:

(a)(1)(A) An independent expenditure committee shall register with the Secretary of State ~~within:~~

(i) Within fifteen (15) days after accepting contributions that exceed five hundred dollars (\$500) in the aggregate during a calendar year; and

(ii) Before making an independent expenditure pertaining to a candidate for the office of Court of Appeals Judge or Supreme Court Justice.

SECTION 5. Arkansas Code Title 7, Chapter 6, Subchapter 2, is amended to add additional sections to read as follows:

7-6-231. Independent expenditures pertaining to candidates for the office of Court of Appeals Judge or Supreme Court Justice – Rules and additional requirements.

(a) An "independent expenditure" made for the office of Court of

Appeals Judge or Supreme Court Justice under § 7-6-201(11)(A)(ii) does not include:

(1) A news, editorial, or opinion article printed, broadcast, or otherwise posted for viewing by a media source for which no person has paid money to purchase or influence the news, editorial, or opinion article;

(2) A communication between an organization and a member of the organization as reflected by the organization's membership records; or

(3) A communication between two (2) or more members of an organization as reflected by the organization's membership records;

(b)(1) The Arkansas Ethics Commission shall promulgate rules that establish the factors to consider in determining whether an independent expenditure made meets the criteria for an independent expenditure or the restrictions of an independent expenditure under:

(A) This section;

(B) § 7-6-201(11)(A)(ii)(b), which shall include without limitation:

(i) The messaging of content that asks a voter or other person to contact a candidate about the candidate's actions or positions;

(ii) The timing of the expenditure in relation to the date of the election; and

(iii) The distribution of the communication to a significant number of registered voters for that candidate's election; and

(C) § 7-6-201(11)(B) and (11)(C) as the subdivisions pertain to candidates for the office of Court of Appeals Judge or Supreme Court Justice.

(2)(A) When adopting the initial rules to implement subdivision (b)(1) of this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before January 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The commission shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

(c) An independent expenditure committee that makes an independent expenditure pertaining to a candidate for the office of Court of Appeals Judge or Supreme Court Justice shall maintain any funds contributed for the purpose of an expenditure pertaining to a candidate for the office of Court of Appeals Judge or Supreme Court Justice in a segregated account.

(d)(1) An independent expenditure committee that makes an independent expenditure pertaining to a candidate for the office of Court of Appeals Judge or Supreme Court Justice shall keep records of all contributions and expenditures in a manner sufficient to demonstrate compliance with this subchapter.

(2) The records shall:

(A) Be made available to the commission and the prosecuting attorney in the district in which the candidate resides, who are delegated the responsibility of enforcing this subchapter; and

(B) Be maintained for a period of four (4) years.

7-6-232. Independent expenditures pertaining to a candidate for the office of Court of Appeals Judge or Supreme Court Justice – Cause of action for violation.

(a)(1) A registered voter in this state may bring an action against an independent expenditure committee in circuit court to force compliance with § 7-6-201(11), § 7-6-201(12), § 7-6-220, § 7-6-227, and § 7-6-231.

(2) The registered voter may bring an action in circuit court pursuant to the Arkansas Rules of Civil Procedure to force compliance with this subchapter

(b) If the registered voter prevails in the action under this section, he or she shall be entitled to reimbursement of expenses and reasonable attorney's fees from the person whose action is enjoined.

SECTION 6. DO NOT CODIFY. Legislative purpose and findings.

(a) The General Assembly finds and determines that unrestricted and undisclosed independent expenditures made to influence races for appellate judicial offices in Arkansas have eroded public confidence in the integrity of the state's judicial elections. Safeguarding the public's confidence in the State's judicial elections extends beyond the state's interest in preventing the appearance of corruption in legislative and executive

elections.

(b) Therefore, it is necessary and proper for the state to:

(1) Require comprehensive disclosure of contributors in races for offices in the Court of Appeals and Supreme Court;

(2) Empower the Arkansas Ethics Commission through rulemaking authority to implement the purposes of this act; and

(3) Enhance enforcement of the law of independent expenditures as they pertain to races for appellate judicial offices.