

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

State of Arkansas  
93rd General Assembly  
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As Engrossed: H4/14/21  
**A Bill**

HOUSE BILL 1899

By: Representative A. Collins

By: Senator C. Tucker

### **For An Act To Be Entitled**

AN ACT TO PROTECT PUBLIC CONFIDENCE IN THE INTEGRITY OF APPELLATE JUDICIAL ELECTIONS; TO REQUIRE DISCLOSURE AND REPORTING OF NONCANDIDATE EXPENDITURES PERTAINING TO APPELLATE JUDICIAL ELECTIONS; TO EMPOWER CITIZENS TO COMPEL TRANSPARENCY FROM PERSONS MAKING NONCANDIDATE EXPENDITURES; TO ADOPT NEW LAWS CONCERNING APPELLATE JUDICIAL CAMPAIGNS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO REQUIRE THE DISCLOSURE AND REPORTING OF NONCANDIDATE EXPENDITURES PERTAINING TO APPELLATE JUDICIAL ELECTIONS; AND TO ADOPT NEW LAWS CONCERNING APPELLATE JUDICIAL CAMPAIGNS.

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

SECTION 1. 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, a noncandidate expenditure committee, or a person acting on behalf of the noncandidate 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~~ campaign



contributions or expenditures of the candidate or the noncandidate expenditure committee.

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

7-6-232. Legislative findings and intent.

To protect public confidence in the integrity of appellate judicial elections, it is necessary and proper for the State of Arkansas to:

(1) Require comprehensive disclosure of noncandidate contributions and noncandidate expenditures in races for the offices of Judge of the Court of Appeals or Justice of the Supreme Court;

(2) Empower the Arkansas Ethics Commission, through its rulemaking authority, to implement rules to govern noncandidate expenditures; and

(3) Enhance enforcement of the law concerning noncandidate expenditures that pertain to races for appellate judicial offices.

7-6-233. Noncandidate expenditures – Definitions.

As used in this section and §§ 7-6-213 and § 7-6-234 – 7-6-238:

(1) “Noncandidate expenditure”:

(A) Means an expenditure for an election that is:

(i) Not a contribution to a candidate’s campaign;

and

(ii) Not reported as an independent expenditure

under § 7-6-220;

(B) Pertains to a communication that:

(i) Names or provides a photograph or other image of a specific candidate or specific set of candidates for the office of Court of Appeals Judge or Supreme Court Justice within one hundred twenty (120) days before an election for the office of Court of Appeals Judge or Supreme Court Justice; and

(ii) Is targeted to or otherwise expected to be received by one thousand (1,000) or more voters;

(C) Does not include:

(i) A news article, editorial, or opinion article or statement;

(a) That is printed, broadcasted, presented electronically, or otherwise distributed by a newspaper, radio or television broadcaster, or other for-profit media source; and

(b) For which no person other than the media source has funded, purchased, or otherwise paid consideration for the article or statement to be printed, broadcasted, presented electronically, or otherwise distributed;

(ii) A communication between an organization and a member of the organization as reflected in the organization's membership records;

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

(iv) An informational guide to candidates disseminated in printed form or on the internet that does not:

(a) Ask a voter or other person to contact a candidate about the candidate's actions or positions, other than a candidate's lack of response to a questionnaire; or

(b) Communicate an opinion on a specific candidate or specific set of candidates; and

(2) "Noncandidate expenditure committee" means a person that:

(A) Accepts contributions from one (1) or more persons in order to make a noncandidate expenditure for an appellate judicial election; and

(B) Is registered as a noncandidate expenditure committee under § 7-6-235 prior to making a noncandidate expenditure.

7-6-234. Contributions to noncandidate expenditure committees – Noncandidate expenditures for appellate judicial elections expenditures – Reports.

(a) A person, including a noncandidate expenditure committee, that accepts contributions or makes noncandidate expenditures in a calendar year that exceed an aggregate amount or value of one thousand dollars (\$1,000) shall file a report with the Secretary of State no later than:

(1) Sixty (60) days before a preferential primary election, general election, or special election, for the period ending sixty-five (65)

days before the preferential primary election, general election, or special election;

(2) Thirty (30) days before a preferential primary election, general election, or special election, covering the period ending thirty-five (35) days before the preferential primary election, general election, or special election;

(3) Seven (7) days before a preferential primary election, general election, or special election covering the period ending ten (10) days before the preferential primary election, general election, or special election; and

(4)(A) 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) The report under subdivision (a)(4)(A) of this section shall be the final report filed under this subsection.

(b) A report required by subsection (a) of this section shall include:

(1) The same information pertaining to expenditures that is required of candidates for office other than school district, township, municipal, or county office as set forth in subdivisions § 7-6-207(b)(1)(E)-(H);

(2) In the case of an individual making a noncandidate expenditure:

(A) The name of the individual; and

(B)(i) The individual's principal place of business and the postal zip code of principal residence.

(ii) If the individual has no principal place of business or employer address, the individual's current occupation and home address;

(3) In the case of a noncandidate expenditure committee, the name, address, employer, and occupation of the officers of the committee;

(4) In the case of a person that is not an individual or a noncandidate expenditure committee, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers; and

(5) For noncandidate expenditures made for the office of Judge of the Court of Appeals or Justice of the Supreme Court:

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

(i) Were used for noncandidate expenditures; and  
(ii) In the aggregate exceeded two hundred fifty  
dollars (\$250);

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

(C)(i) The name and address of each person that  
contributed an item other than money that was used in furtherance of the  
noncandidate expenditures, together with a description of the item, the date  
of receipt, and the value.

(ii) This subdivision (b)(5)(C) does not apply to an  
individual providing volunteer service;

(D) If a person makes a contribution for a purpose  
other than a noncandidate expenditure to an organization that contributed to  
a noncandidate expenditure committee, the name and address of the person is  
not required;

(E) The current balance of noncandidate expenditure  
committee funds; and

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

(c) The report shall be verified by an affidavit of the person  
submitting the report 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 contributions received and made.

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

(2)(A) Reports shall be submitted to the Secretary of State in a  
readable electronic format that is acceptable to the Secretary of State and  
approved by the commission.

(B) The commission shall approve the format used by the  
Secretary of State for the filing of noncandidate expenditure reports in  
electronic form to ensure that all required information is captured.

(C) The website of the Secretary of State shall allow for

searches of noncandidate expenditure report information filed in electronic form.

(3) A person, including a noncandidate expenditure committee, may file reports in paper form under this section if all requirements are met for alternative filing of reports by candidates under § 7-6-230.

7-6-235. Noncandidate expenditure committee – Registration.

(a)(1)(A) A noncandidate expenditure committee shall register with the Secretary of State:

(i) Within fifteen (15) days after accepting contributions that exceed one thousand dollars (\$1,000) in the aggregate during a calendar year; and

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

(B) Registration shall be:

(i) Annually renewed by January 15 unless the noncandidate expenditure committee has ceased to exist; and

(ii) On a form provided by the Secretary of State, and the contents of the form shall be verified by an affidavit of an officer of the noncandidate expenditure committee.

(2) The noncandidate expenditure committee shall maintain for a period of four (4) years records evidencing:

(A) The name, address, and place of employment of each person that contributed to the noncandidate expenditure committee, along with the amount contributed; and

(B) Each noncandidate expenditure made by the noncandidate expenditure committee, along with the amount of each noncandidate expenditure.

(3) The noncandidate expenditure committee:

(A) Shall designate a resident agent who shall be an individual who resides in this state; and

(B) Shall not accept a contribution or make a noncandidate expenditure unless the noncandidate expenditure committee has designated a resident agent and registered under this section.

(4) An out-of-state noncandidate expenditure committee shall

comply with the registration and reporting requirements of this section if the noncandidate expenditure committee makes one (1) noncandidate expenditure or more than one (1) noncandidate expenditure within the State of Arkansas that in the aggregate exceed one thousand dollars (\$1,000) during a calendar year.

(b) The registration form of a noncandidate expenditure committee shall be completed with the following information:

(1)(A) The name, address, and, when available, phone number of the noncandidate expenditure committee and the name, address, phone number, and place of employment of each of the officers of the noncandidate expenditure committee.

(B) If the name of the noncandidate expenditure committee is an acronym, then both the acronym and the words forming the acronym shall be disclosed;

(2) The full name and street address, city, state, and zip code of each financial institution the noncandidate expenditure committee uses for purposes of receiving contributions or making noncandidate expenditures within this state;

(3) A written acceptance of designation as resident agent from the individual designated under subdivision (a)(3) of this section;

(4) A certification by an officer of the noncandidate expenditure committee, under penalty of false swearing, that the information provided on the registration form is correct; and

(5) A clause submitting the noncandidate expenditure committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with this subchapter.

(c)(1) If a noncandidate expenditure committee makes a change to any information required by subsection (b) of this section, an amendment shall be filed with the Secretary of State within ten (10) days of the change.

(2) A noncandidate expenditure committee that fails to file an amendment under subdivision (c)(1) of this section shall be subject to a late filing fee of ten dollars (\$10.00) for each day the amendment is not filed.

7-6-236. Noncandidate expenditures – Requirements.

(a) A noncandidate expenditure shall not be made:

(1) In 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 the person making the expenditure; or

(2) In concert with or at the request or suggestion of a candidate or an authorized committee or agent of the candidate.

(b)(1) A contributor to a noncandidate expenditure committee shall not contribute funds received by transfer from another person.

(2) No person shall solicit and receive contributions for the purpose of transferring the contributions or a portion of them to a noncandidate expenditure committee.

(3) Contributions to a noncandidate expenditure committee shall comply with the limitations imposed on contributions to candidates and independent expenditure committees under § 7-6-205.

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

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

(2) The records shall be:

(A) Made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides; and

(B) Maintained for a period of four (4) years.

(e) The commission and the prosecuting attorney in the district in which the candidate resides are delegated the responsibility of enforcing this subchapter.

7-6-237. Noncandidate expenditures – Cause of action for violation.

(a)(1) A registered voter in this state may bring an action against a noncandidate expenditure committee in circuit court to force compliance with §§ 7-6-213 and 7-6-231 – 7-6-234.

(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 an 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 3. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

(a) The Arkansas Ethics Commission shall promulgate rules to implement §§ 7-6-232-236.

(b) The commission shall file the initial rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2022; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(c) The commission shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.

SECTION 4. DO NOT CODIFY. Temporary language.

(a) The General Assembly finds that it is necessary to give sufficient notice of the rules adopted by the Arkansas Ethics Commission in furtherance of this act to noncandidate expenditure committees and other persons required to register and report noncandidate contributions and noncandidate expenditures under this act.

(b)(1) Therefore, the registration and reporting requirements created by this act are not required for the 2022 nonpartisan judicial general election held on the date of the preferential primary for other offices.

(2) The registration and reporting requirements created by this act shall be required for the 2022 November nonpartisan judicial runoff election, with registration and reporting to begin on July 1, 2022.

*/s/A. Collins*