

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 714

By: Senator C. Tucker

For An Act To Be Entitled

AN ACT TO REQUIRE REPORTING AND DISCLOSURE OF
ELECTIONEERING COMMUNICATIONS; TO RESTRICT THE AMOUNT
OF MONEY SPENT ON CAMPAIGN COMMUNICATIONS PRODUCED IN
COORDINATION WITH A CANDIDATE FOR OFFICE; TO AMEND
THE LAW CONCERNING CAMPAIGN FINANCE CONTRIBUTIONS;
AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE REPORTING AND DISCLOSURE OF
ELECTIONEERING COMMUNICATIONS; AND TO
RESTRICT THE AMOUNT OF MONEY SPENT ON
CAMPAIGN COMMUNICATIONS PRODUCED IN
COORDINATION WITH A CANDIDATE FOR OFFICE.

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

SECTION 1. Arkansas Code Title 7, Chapter 6, Subchapter 2, is amended to add an additional section to read as follows:

7-6-230. Coordinated communications.

(a)(1) A coordinated communication is an in-kind contribution to the candidate, political party, ballot question committee, or independent expenditure committee who or to the candidate, political party, ballot question committee, or independent expenditure committee whose authorized committee or agent cooperated, consulted, requested, suggested, or acted in concert with:

(A) The person making the coordinated communication or his or her authorized agent; or



(B) The person making the expenditure for the coordinated communication or his or her authorized agent.

(2) The in-kind contribution under subdivision (a)(1) of this section shall be subject to the contribution limits set forth under § 7-6-203.

(b)(1) As used in this section, "coordinated communication" means a political advertisement or communication funded by expenditures that contain express advocacy or the functional equivalent of express advocacy made:

(A) In cooperation or consultation between:

(i)(a) A candidate or his or her authorized committee or agent;

(b) A political party or its authorized agent;

(c) A ballot question committee; or

(d) An independent expenditure committee; and

(ii) The person making the:

(a) Communication or his or her authorized agent; or

(b) Expenditure for the communication or his or her authorized agent;

(B) In concert with or at the request or suggestion of:

(i) A candidate or his or her authorized committee or agent;

(ii) A political party or its authorized agent;

(iii) A ballot question committee; or

(iv) An independent expenditure committee.

(2) "Coordinated communication" does not include:

(A) A candidate's, a political party committee's, ballot question committee's, or independent expenditure committee's response to an inquiry about that candidate's, political party committee's, ballot question committee's, or independent expenditure committee's positions on legislative or policy issues unless the response or the inquiry concerns the plans, projects, activities, or needs of the campaign;

(B) Unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate who seeks election to the same office the endorsing candidate is seeking, a public communication;

(i) In which a candidate endorses another candidate;
and

(ii) That is made by the endorsing candidate;

(C) Unless the public communication promotes, supports, attacks, or opposes the soliciting candidate or another candidate who seeks election to the same office the soliciting candidate is seeking, a public communication:

(i) In which a candidate solicits funds:

(a) For another candidate;

(b) For a political committee; or

(c) On behalf of an organization concerning a state or local election in a manner corresponding to the circumstances set forth in 11 C.F.R. § 300.65; and

(ii) That is made by the soliciting candidate; or

(D) A public communication in which a candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy if:

(i) The medium, timing, content, and geographic distribution of the public communication are consistent with public communications made prior to the candidacy; and

(ii) The public communication does not promote, support, attack, or oppose the communicating candidate or another candidate who seeks election to the same office the communicating candidate is seeking.

(c)(1) In making a determination as to whether a communication is a coordinated communication, the Arkansas Ethics Commission shall consider the following without limitation:

(A) Whether the coordinated communication was paid for, in whole or in part, by a person other than the candidate or his or her agent, the candidate's authorized committee or its agent, or a political party or its agent;

(B) Whether the content of the coordinated communication is a public communication that republishes, disseminates, or distributes, in whole or in part, campaign materials prepared by a candidate or a candidate's campaign committee other than a photograph or other likeness of the candidate obtained from a publicly available source; and

(C) Whether the conduct of the coordinated communication

meets one (1) or more of the following standards:

(i) The coordinated communication was created, produced, or distributed at the request or suggestion of the candidate or his or her agent, the candidate's committee or its agent, or the political party or its agent;

(ii) The coordinated communication was created, produced, or distributed at the request or suggestion of the person paying for the communication, and the candidate or his or her agent, the candidate's committee or its agent, or the political party or its agent approves the request or suggestion;

(iii) The candidate or his or her agent, the candidate's committee or its agent, or the political party or its agent was materially involved in decisions regarding the content, intended audience, means or mode of the coordinated communication, specific media outlet used, timing, frequency, size, or prominence of the coordinated communication; or

(iv) The coordinated communication was created, produced, or distributed after one (1) or more substantial discussions about the communication between the person paying for the communication or the employees or agents of that person and:

(a) The candidate or his or her agent;

(b) The candidate's committee or its agent;

(c) The political party or its agent;

(d) A ballot question committee; or

(e) An independent expenditure committee.

(2) As used in this subsection, the "candidate" means the candidate who is positioned to benefit from the coordinated communication, whether the coordinated communication promotes that candidate or criticizes his or her opponent.

(d)(1) A person or an entity is an authorized agent of a candidate, a candidate's committee, or a political party under this section if the person or entity:

(A) Has actual authorization, either expressed or implied, from a specific principal to engage in specific activities; and

(B) Engages in the activities on behalf of that specific principal.

(2) If the activities carried out by an authorized agent would

result in a coordinated communication if carried out directly by the candidate, authorized committee staff, or a political party official, the activities of the authorized agent result in a coordinated communication.

(e) As used in this section:

(1)(A) "Political advertisement" means any campaign communication:

(i) That is in any form, including without limitation the following medias:

- (a) Broadcast;
- (b) Satellite;
- (c) Cable;
- (d) Electronic;
- (e) Digital;
- (f) Written;
- (g) Print;
- (h) Graphic; and
- (i) Design;

(ii) That is publicly distributed;

(iii) Except as provided in subdivision (e)(1)(B) of this section, that the person or committee making the advertisement or communication pays money for the production or dissemination of the advertisement or communication;

(iv) That refers to a clearly identified candidate for public office;

(v) That is targeted to the relevant electorate for that candidate; and

(vi) For which the only reasonable interpretation of the advertisement or communication is that the advertisement or communication is an attempt to influence a vote for or against a specific candidate or specific set of candidates.

(B)(i) Payment of money under subdivision (e)(1)(A)(iii) of this section does not include:

(a) Utility payments for telephone or internet service made by the person or committee making the advertisement or communication; or

(b) The costs of producing copies of flyers,

handbills, or other documents to be distributed by hand by one (1) or more volunteers.

(ii) Payment of money under subdivision (e)(1)(A)(iii) of this section includes without limitation money paid to a person in exchange for the distribution by hand of printed advertisement or printed communication such as door hangers or push cards.

(C) In making a determination under subdivision (e)(1)(A)(vi) of this section, the Arkansas Ethics Commission shall consider:

(i) Whether the advertisement or communication offers preferential support for or criticism of a clearly identified candidate for office;

(ii) The proximity between the date of the advertisement or communication and the date of the election for the clearly identified candidate for office; and

(iii) Any other factor the commission deems relevant to its determination.

(D) "Political advertisement" does not include any communication that:

(i) Unless the facilities are owned or controlled by any political party, political committee, or candidate, appears in a news story, commentary, or editorial distributed through the facilities of any:

(a) Broadcast, cable, satellite radio, or television station; or

(b) Newspaper, magazine, print media, or internet media business;

(ii) Constitutes an independent expenditure that is reported as required under this subchapter;

(iii) Constitutes a candidate debate or forum conducted, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(iv) Is disseminated as a flyer, handbill, or other document distributed by hand by one (1) or more volunteers;

(v) Is disseminated by an organization to the organization's own membership as reflected in the organizations membership records or to persons who have requested to receive communications from the organization for the purpose of indicating candidates whom the organization

supports in an upcoming election; or

(vi) Is disseminated by a person or committee on the official website or social media account maintained by the person or committee making the advertisement or communication;

(2) "Refers to a clearly identified candidate" means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the Governor", "your county judge", or "the incumbent", or through an unambiguous reference to his or her status as a candidate such as "the Republican nominee for Governor" or "the Democratic candidate for Secretary of State in the State of Arkansas"; and

(3) "Targeted to the relevant electorate" means:

(A) If the advertisement or communication is publicly distributed by a broadcast, cable, satellite radio, or television station or by a newspaper, magazine, or other print media, the advertisement or communication can be seen, heard, or read:

(i) By at least twenty-five thousand (25,000) viewers, listeners, or readers in the state, in the case of a candidate for statewide office;

(ii) By at least ten percent (10%) of a county, municipality, or district population, in the case of a candidate for a county office, municipal office, school district board of directors, or other district office that is not the Senate or the House of Representatives; or

(iii) By at least two thousand five hundred (2,500) viewers, listeners, or readers in the district, in the case of a candidate for the Senate or the House of Representatives;

(B) If the advertisement or communication is publicly distributed by direct mail, electronic mail, telephone, or by hand by a person who has been paid to distribute the advertisement or communication, the advertisement or communication is sent to or distributed to:

(i) At least two thousand five hundred (2,500) individuals in the state, in the case of a candidate for statewide office;

(ii) At least one percent (1%) of a county, municipality, or district population, in the case of a candidate for a county office, municipal office, school district board of directors, or other district office that is not the Senate or the House of Representatives; or

(iii) At least two hundred and fifty (250) individuals, in the case of a candidate for the Senate or the House of Representatives; or

(C) If the advertisement or communication is publicly distributed by internet website, the advertisement or communication is intended to be viewed by:

(i) At least two thousand five hundred (2,500) individuals in the state, in the case of a candidate for statewide office;

(ii) At least one percent (1%) of a county, municipality, or district population, in the case of a candidate for a county office, municipal office, school district board of directors, or other district office that is not the Senate or the House of Representatives; or

(iii) At least two hundred and fifty (250) individuals, in the case of a candidate for the Senate or the House of Representatives.