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2 92nd General Assembly
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4

A Bill

HOUSE BILL 1705

5 By: Representatives Gazaway, Capp, Dalby, Hillman, Jett, Burch, D. Whitaker
6 By: Senators J. Dismang, Maloch
7

For An Act To Be Entitled

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

21 TO PROTECT THE PUBLIC CONFIDENCE IN THE
22 INTEGRITY OF JUDICIAL ELECTIONS; AND TO
23 REQUIRE ADDITIONAL REPORTING AND
24 TRANSPARENCY OF INDEPENDENT EXPENDITURES
25 IN RELATED CAMPAIGNS.
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

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

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

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



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

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

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

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

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

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

20
 21 SECTION 2. Arkansas Code § 7-6-213 is amended to read as follows:

22 7-6-213. Verification of reports.

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

30
 31 SECTION 3. Arkansas Code § 7-6-220 is amended to read as follows:

32 7-6-220. ~~Reporting of~~ Contributions to independent expenditure
 33 committees and independent expenditures - Reports.

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

1 Secretary of State:

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

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

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

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

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

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

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

21 (4) The same information required of candidates for office other
 22 than school district, township, municipal, or county office as set forth in §
 23 7-6-207(b)(1); and

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

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

28 (i) Were used for the independent expenditure; and

29 (ii) In the aggregate exceeded fifty dollars
 30 (\$50.00);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (B) Submitting reports in electronic form would constitute

1 a substantial hardship for the person or independent expenditure.

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

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

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

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

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

18
 19 SECTION 4. Arkansas Code § 7-6-227(a)(1)(A), concerning registration
 20 of independent expenditure committees with the Secretary of State, is amended
 21 to read as follows:

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

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

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

30
 31 SECTION 5. Arkansas Code Title 7, Chapter 6, Subchapter 2, is amended
 32 to add additional sections to read as follows:

33 7-6-231. Independent expenditures pertaining to candidates for the
 34 office of Court of Appeals Judge or Supreme Court Justice – Rules and
 35 additional requirements.

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

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

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

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

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

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

14 (A) This section;

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

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

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

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

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

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

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

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

33 (B) The commission shall file the proposed rule with the
34 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
35 2020, so that the Legislative Council may consider the rule for approval
36 before January 1, 2020.

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

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

11 (2) The records shall:

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

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

16
17 7-6-232. Independent expenditures pertaining to a candidate for the
18 office of Court of Appeals Judge or Supreme Court Justice – Cause of action
19 for violation.

20 (a)(1) A registered voter in this state may bring an action against an
21 independent expenditure committee in circuit court to force compliance with §
22 7-6-201(11), § 7-6-201(12), § 7-6-220, § 7-6-227, and § 7-6-231.

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

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

29
30 SECTION 6. DO NOT CODIFY. Legislative purpose and findings.

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

1 elections.

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

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

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

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

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