

2 State of Arkansas
3 93rd General Assembly
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A Bill

SENATE BILL 714

5
6 By: Senator C. Tucker

7 Filed with: Senate Committee on State Agencies and Governmental Affairs
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO REQUIRE REPORTING AND DISCLOSURE OF
11 ELECTIONEERING COMMUNICATIONS; TO RESTRICT THE AMOUNT
12 OF MONEY SPENT ON CAMPAIGN COMMUNICATIONS PRODUCED IN
13 COORDINATION WITH A CANDIDATE FOR OFFICE; TO AMEND
14 THE LAW CONCERNING CAMPAIGN FINANCE CONTRIBUTIONS;
15 AND FOR OTHER PURPOSES.

Subtitle

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

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

27
28 SECTION 1. Arkansas Code Title 7, Chapter 6, Subchapter 2, is amended
29 to add an additional section to read as follows:

30 7-6-230. Coordinated communications.

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

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

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

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

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

11 (A) In cooperation or consultation between:

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

14 (b) A political party or its authorized agent;

15 (c) A ballot question committee; or

16 (d) An independent expenditure committee; and

17 (ii) The person making the:

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

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

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

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

25 (ii) A political party or its authorized agent;

26 (iii) A ballot question committee; or

27 (iv) An independent expenditure committee.

28 (2) "Coordinated communication" does not include:

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

35 (B) Unless the public communication promotes, supports,
36 attacks, or opposes the endorsing candidate or another candidate who seeks

1 election to the same office the endorsing candidate is seeking, a public
2 communication:

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

5 (ii) That is made by the endorsing candidate;
6 (C) Unless the public communication promotes, supports,
7 attacks, or opposes the soliciting candidate or another candidate who seeks
8 election to the same office the soliciting candidate is seeking, a public
9 communication:

10 (i) In which a candidate solicits funds:
11 (a) For another candidate;
12 (b) For a political committee; or
13 (c) On behalf of an organization concerning a
14 state or local election in a manner corresponding to the circumstances set
15 forth in 11 C.F.R. § 300.65; and

16 (ii) That is made by the soliciting candidate; or
17 (D) A public communication in which a candidate is clearly
18 identified only in his or her capacity as the owner or operator of a business
19 that existed prior to the candidacy if:

20 (i) The medium, timing, content, and geographic
21 distribution of the public communication are consistent with public
22 communications made prior to the candidacy; and
23 (ii) The public communication does not promote,
24 support, attack, or oppose the communicating candidate or another candidate
25 who seeks election to the same office the communicating candidate is seeking.

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

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

33 (B) Whether the content of the coordinated communication
34 is a public communication that republishes, disseminates, or distributes, in
35 whole or in part, campaign materials prepared by a candidate or a candidate's

1 campaign committee other than a photograph or other likeness of the candidate
2 obtained from a publicly available source; and

3 (C) Whether the conduct of the coordinated communication
4 meets one (1) or more of the following standards:

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

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

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

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

23 (a) The candidate or his or her agent;

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

25 (c) The political party or its agent;

26 (d) A ballot question committee; or

27 (e) An independent expenditure committee.

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

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

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

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

3 (2) If the activities carried out by an authorized agent would
4 result in a coordinated communication if carried out directly by the
5 candidate, authorized committee staff, or a political party official, the
6 activities of the authorized agent result in a coordinated communication.

7 (e) As used in this section:

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

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

12 (a) Broadcast;

13 (b) Satellite;

14 (c) Cable;

15 (d) Electronic;

16 (e) Digital;

17 (f) Written;

18 (g) Print;

19 (h) Graphic; and

20 (i) Design;

21 (ii) That is publicly distributed;

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

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

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

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

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

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

4 (b) The costs of producing copies of flyers,
5 handbills, or other documents to be distributed by hand by one (1) or more
6 volunteers.

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

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

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

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

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

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

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

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

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

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

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

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

1 (v) Is disseminated by an organization to the
2 organization's own membership as reflected in the organizations membership
3 records or to persons who have requested to receive communications from the
4 organization for the purpose of indicating candidates whom the organization
5 supports in an upcoming election; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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21
22 Referred requested by the Arkansas Senate

23 Prepared by: MBM/KFW
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