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2 93rd General Assembly
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4

As Engrossed: H4/14/21

A Bill

HOUSE BILL 1899

5 By: Representative A. Collins
6 By: Senator C. Tucker
7

For An Act To Be Entitled

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

Subtitle

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20 TO REQUIRE THE DISCLOSURE AND REPORTING
21 OF NONCANDIDATE EXPENDITURES PERTAINING
22 TO APPELLATE JUDICIAL ELECTIONS; AND TO
23 ADOPT NEW LAWS CONCERNING APPELLATE
24 JUDICIAL CAMPAIGNS.
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26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 7-6-213 is amended to read as follows:
30 7-6-213. Verification of reports.

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



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

3
4 SECTION 2. Arkansas Code Title 7, Chapter 6, Subchapter 2, is amended
5 to add additional sections to read as follows:

6 7-6-232. Legislative findings and intent.

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

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

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

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

17
18 7-6-233. Noncandidate expenditures – Definitions.

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

20 (1) “Noncandidate expenditure”:

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

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

23 and

24 (ii) Not reported as an independent expenditure

25 under § 7-6-220;

26 (B) Pertains to a communication that:

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

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

34 (C) Does not include:

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

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

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

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

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

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

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

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

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

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

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

27
28 7-6-234. Contributions to noncandidate expenditure committees -
29 Noncandidate expenditures for appellate judicial elections expenditures -
30 Reports.

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

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

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

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

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

11 (4)(A) Thirty (30) days after the end of the month in which the
12 last election is held at which the candidate seeks nomination or election.

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

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

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

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

22 (A) The name of the individual; and

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) The report shall be verified by an affidavit of the person
24 submitting the report stating that to the best of his or her knowledge and
25 belief the information disclosed is a complete, true, and accurate financial
26 statement of the contributions received and made.

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

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

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

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

1 searches of noncandidate expenditure report information filed in electronic
2 form.

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

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

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

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

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

16 (B) Registration shall be:

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

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

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

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

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

30 (3) The noncandidate expenditure committee:

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

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

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

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

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

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

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

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

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

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

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

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

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

33
34 7-6-236. Noncandidate expenditures – Requirements.

35 (a) A noncandidate expenditure shall not be made:

36 (1) In arrangement, cooperation, or consultation between a

1 candidate or an authorized committee or agent of the candidate and the person
2 making the expenditure or an authorized agent of the person making the
3 expenditure; or

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

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

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

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

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

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

25 (2) The records shall be:

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

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

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

32
33 7-6-237. Noncandidate expenditures – Cause of action for violation.

34 (a)(1) A registered voter in this state may bring an action against a
35 noncandidate expenditure committee in circuit court to force compliance with
36 §§ 7-6-213 and 7-6-231 – 7-6-234.

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

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

7
8 SECTION 3. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

9 (a) The Arkansas Ethics Commission shall promulgate rules to implement
10 §§ 7-6-232-236.

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

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

14 (2) If approval under § 10-3-309 has not occurred by January 1,
15 2022, as soon as practicable after approval under § 10-3-309.

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

20
21 SECTION 4. DO NOT CODIFY. Temporary language.

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

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

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

33
34 */s/A. Collins*