

Summary of Proposed Amendment to the Arkansas Ethics Commission's Rules on Independent Expenditures

The Ethics Commission is revising the Rules on Independent Expenditures to bring them in conformity with Acts 341, 1039, and 1058 of 2019. The changes are summarized as follows:

- Act 341 increased the fine range from \$50-\$2,000 to \$50-\$3,500.
- Act 1039 amended the law to require that when the Secretary of State has not accepted a report in paper form because a notarized affidavit was not submitted with the first paper report in the election cycle, then it must provide written notice to the candidate within five (5) business days if the report in paper form was not filed or accepted; and provide the reason the report in paper form was not filed or accepted.
- Act 1039 addressed paper registration and reporting by Political Action Committees and Independent Expenditure Committees and requires the affidavit declaring an inability to file electronically, as was already required by candidates. It likewise required the Secretary of State to notify the filers in writing if their filing was rejected within five (5) days and telling them the reason it was rejected.
- Act 1039 provided that the AEC shall approve the forms and instructions used by the Secretary of State under this section to ensure that all required information is requested. Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included. It also adds the traditional timely filing elements of ten (10) days follow-up to fax, and that a pre-election report must be received by the due date. Furthermore, it makes it clear that the Secretary of State shall post the filings on its website.
- Act 1058 amended Ark. Code Ann. § 7-6-228(c)(2) to expand the types of persons who must include disclaimer language on printed campaign materials, so that printed campaign materials produced by Political Action Committees and Independent Expenditure Committees must also contain the phrase “paid for by” followed by who paid for it.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT/AGENCY Arkansas Ethics Commission

DIVISION _____

PERSON COMPLETING THIS STATEMENT Graham Sloan

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To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules on Independent Expenditures

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes _____ No X

- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes X No _____

- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
n/a

- (b) The reason for adoption of the more costly rule;
n/a

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
n/a

- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
n/a

- 4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

Next Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

Next Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
 Total	 <u>-0-</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

RULES ON INDEPENDENT EXPENDITURES

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§ 700 Definitions.

(a) **Contribution** – As used in these rules, the term “contribution” means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledge or promise of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office, made for the purpose of influencing the nomination or election of any candidate.

“Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television stations, radio stations, and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under these rules. The term “contribution” further includes any transfer of anything of value received by a committee from another committee. “Contribution” shall not include noncompensated, nonreimbursed, volunteer personal services or travel.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(b) **Expenditure** – As used in these rules, the term “expenditure” means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made for the purpose of influencing the nomination or election of any candidate.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(c) **Independent Expenditure** – As used in these rules, the term “independent expenditure” means any expenditure which is not a contribution and expressly advocates the election or defeat of a clearly identified candidate for office; is made without arrangement, cooperation, or consultation between any candidate or any authorized

committee or agent of the candidate and the person making the expenditure or any authorized agent of that person; and is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.

(d) Independent Expenditure Committee – As used in these rules, the term “independent expenditure committee” means any person who receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to Ark. Code Ann. § 7-6-227 prior to making expenditures.

(e) Person – As used in these rules, the term “person” means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. It shall also include a political party that meets the definition of a political party under Ark. Code Ann. § 7-1-101 or a political party that meets the requirements of Ark. Code Ann. § 7-7-205, county political party committees, and legislative caucus committees.

(f) Printed Campaign Materials –

(1) “Printed campaign materials” means:

(A) Literature mailed to an elector that is intended to or calculated to influence the vote of an elector in an election in this state, including without limitation signs, banners, flyers, and pamphlets; and

(B) Yard signs and push cards intended to or calculated to influence the vote of an elector in an election in this state.

(2) “Printed campaign materials” does not mean political paraphernalia, including without limitation stickers, buttons, pens, T-shirts, or other similar trinkets.

§ 701 Registration by Independent Expenditure Committees

(a)(1)(A) To qualify as an independent expenditure committee, the committee is required to register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five hundred dollars (\$500) in the aggregate.

(B) Registration shall be annually renewed by January 15, unless the committee has ceased to exist.

(C) Registration shall be on forms provided by the Secretary of State, and the contents therein shall be verified by an affidavit of an officer of the committee.

(2)(A) The committee shall designate a resident agent who shall be an individual who resides in the State of Arkansas.

(B) No contribution shall be accepted from a committee and no expenditure shall be made by a committee that has not registered and does not have a resident agent.

(3) An out-of-state committee shall be required to comply with the registration and reporting provisions of these rules if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

(b) The registration form of an independent expenditure committee shall contain the following information:

(1) The name, address, and, where available, phone number of the committee and the name, address, phone number, and place of employment of each of its officers, provided if the committee's name is an acronym, then both it 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 committee uses for purposes of receiving contributions or making expenditures within the State of Arkansas;

(3) A written acceptance of designation as a resident agent;

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

(5) A clause submitting the committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with the provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code.

(c)(1) When a committee makes a change to any of the information required in § 701(b) of these rules, an amendment is required to be filed within ten (10) days to reflect the change.

(2) A committee failing to file an amendment shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

§ 702 Reporting of Independent Expenditures

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

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

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

(3) As for a final report, no later than 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) Such reports shall include:

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

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

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

(4) The total amount of contributions received, with loans stated separately, and the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;

(5) The name and address of each person who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(6) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the committee, and the aggregate contributed for each election;

(7) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(8) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person to whom the expenditure was made and the date the expenditure was made;

(9) A list of all paid workers and the amount the workers were paid;

(10) A list of all expenditures by categories, including, but not limited to:

(A) Television, radio, print, and other advertising;

- (B) Direct mail;
- (C) Office supplies;
- (D) Rent;
- (E) Travel;
- (F) Expenses;
- (G) Entertainment; and
- (H) Telephone.

(11) The total amount of all nonitemized expenditures made during the filing period; and

(12) The current balance of committee funds.

(c) The information required in § 702(b)(4)-(10) of these rules may be provided in the form of schedules attached to the report.

(d) The report shall be verified by an affidavit of an officer of the committee 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 committee's contributions received and made.

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

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

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

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

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

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

~~(B) Submitting reports in electronic form would constitute a substantial hardship for the person or independent expenditure.~~

~~(4) A report submitted in paper form in accordance with §702(e)(3) is timely filed if it is delivered by hand or mailed to the Secretary of State, properly addressed,~~

~~postage prepaid, and bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.~~

(3)(A) A person required to file reports or register in paper form under Ark. Code Ann. § 7-6-220 may file reports or register in paper form if:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form; and

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person.

(B) A person filing reports or registration in paper form under subdivision (e)(3)(A) of this rule shall submit with its first report or registration a notarized affidavit on a form prepared by the Secretary of State declaring that:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form;

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person; and

(iii) The person agrees to file all other reports in paper form for the duration of the period of registration.

(4) The Secretary of State shall:

(A) Not accept a report or registration in paper form under subdivision (e)(3)(A) of this rule if a notarized affidavit was not submitted with the:

(i) Registration of a political action committee; or

(ii) First report of a person or independent expenditure committee;

(B) Provide written notice to the political action committee within five (5) business days if the registration in paper form was not filed or accepted;

(C) Provide written notice to a political action committee, person, or independent expenditure committee within five (5) business days if a report in paper form was not filed or accepted; and

(D) Provide the reason the registration or report in paper form was not filed or accepted.

(5) The Secretary of State shall make available to persons wishing to file reports in paper form under Ark. Code Ann. § 7-6-231:

(A) Information on the deadlines for filing required reports; and

(B) (i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State under Ark. Code Ann. § 7-6-231 to ensure that all required information is requested.

(6) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(7)(A) A report submitted in paper form under Ark. Code Ann. § 7-6-231 other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.

(B) A preelection report submitted in paper form under Ark. Code Ann. § 7-6-231 is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.

(C) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.

(8)(A) The Secretary of State shall make available reports submitted in paper form on a portion of the official website of the Secretary of State.

(B) The Secretary of State shall comply with the requirements of Ark. Code Ann. § 7-6-214(c) regarding the “paper filer” designation and publication requirements for all reports submitted in paper form.

§ 703 Out-of-State Independent Expenditure Committees

An out-of-state independent expenditure committee is required to comply with the registration and reporting provisions of §§ 701-702 and is subject to the jurisdiction of the State of Arkansas for all purposes related to compliance with the provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code, if the committee makes an independent

expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

§ 704 Paid For By Disclaimer

(a) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words “paid Political Advertisement”, “Paid Political Ad”, or “Paid for by” the candidate, committee, or person who paid for the message. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer. In addition, all articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words “Paid Political Advertisement” or “Paid Political Ad” or “Paid for by”, “Sponsored by”, or “Furnished by” the true sponsor of the advertisement. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(b)(1) Printed campaign materials as defined in § 700(f) of these rules, shall clearly contain the words “Paid for by” followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.

(2) Subdivision (b)(1) of this section applies only to campaign signs, campaign literature, and other printed campaign materials created by or sponsored by a political candidate, the campaign of a political candidate, a political action committee, or an independent expenditure committee.

§ 7045 Penalties

If the Arkansas Ethics Commission finds that a person or an independent expenditure committee has committed a violation of Ark. Code Ann. § 7-6-220 and/ or Ark. Code Ann. § 7-6-227, then it may impose a fine of not less than fifty dollars (\$50.00) and not more than ~~two thousand dollars (\$2,000)~~ three thousand, five hundred dollars (\$3,500.00) and/or issue a public letter of caution, warning, or reprimand. In addition, a committee failing to file an amendment within ten (10) days as required by § 701(c) shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

§ 7056 Records Retention

(a) An independent expenditure committee required to comply with the registration requirements of § 701 shall maintain for a period of four (4) years records evidencing the

name, address, and place of employment of each person that contributed to the independent expenditure committee, along with the amount contributed. Such a committee shall also maintain for a period of four (4) years records evidencing each independent expenditure made by the committee, along with the amount of each expenditure.

(b) A person required to comply with the reporting requirements of § 702 shall maintain for a period of four (4) years records evidencing each independent expenditure made by the person, along with the amount of each expenditure.

§ 7067 Administrative Expenses of Independent Expenditure Committees

It is permissible for an independent expenditure committee to pay reasonable administrative expenses out of the contributions it has received.