



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-051

May 11, 2016

David A. Couch
Attorney at Law
1501 North University, Suite 228
Little Rock, AR 72207

Dear Mr. Couch:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2015), of the popular name and ballot title for an initiated constitutional amendment. Before addressing the substance of your request, I feel it is important to address your letter dated April 27, 2016, which refers to a previous Attorney General Opinion (2016-041) rejecting your proposed popular name and ballot title.

Attorney General Opinion 2016-041, issued to you on April 26, 2016, explained why *both* the proposed popular name and ballot title for your measure were deficient under the standards established by the Arkansas Supreme Court for determining the sufficiency of popular names and ballot titles for a proposed constitutional amendment. In response to that opinion, you addressed the noted deficiencies regarding the popular name and submitted a new popular name with changes. But you did not change the proposed ballot title. Instead, you claim in your April 27 letter that Ark. Code Ann. § 7-9-107 requires the Attorney General to either approve and certify or substitute and certify a more suitable and correct ballot title and amendment. This is an incorrect understanding of the law.

You note that section 7-9-107(b) states the Attorney General “shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment or act” proposed. However, you ignore the rest of the statute and thereby violate an elementary rule of statutory construction: namely, specific statutory text must be read in the context of and consistently with

the rest of the statute.¹ When section 7-9-107(b) is read in conjunction with section 7-9-107(c), as it must be, the statute is perfectly clear that, in addition to certifying a ballot title and popular name or substituting a suitable ballot tile and popular name, the Attorney General may reject the entire submission if the ballot title (or nature of the issue) “is presented in such a manner that the ballot title would be misleading”:

(b) Within ten (10) days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment or act....

(c) *If, as a result of his or her review of the ballot title and popular name of a proposed initiated act or a proposed amendment to the Arkansas Constitution, the Attorney General determines that the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading....the Attorney General may reject the entire ballot title, popular name, and petition and state his or her reasons therefor and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.*²

To be clear, your contention that my office does not have the authority to reject a ballot title is wrong.

In your April 27, 2016 letter, you also demand my response within 10 calendar days (as opposed to 10 business days). You argue, in a *non sequitur*, that “the unambiguous and plain language of the statute is ten days” and this must mean calendar days. To the contrary, it has been the longstanding interpretation of this office that the 10-day requirement in section 7-9-107 means 10 business days. This decades-long interpretation has, to my knowledge, never been challenged by a requester and has certainly never been declared improper by any court. Support for this interpretation can be found, *inter alia*, in the way Rule 6(a) of the

¹ *E.g. Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d 493, 496 (1993) (noting that in construing statutes, the Court will “look to the language under discussion in the context of the statute as a whole.”) (internal citations omitted).

² Ark. Code Ann. § 7-9-107 (Supp. 2015) (emphases added). Especially in light of subsection (c), subsection (b) is clearly not restricting the Attorney General to only approval or substitution; rather, it is explaining the timing and process that occurs after the proposal is submitted to the Attorney General as described in subsection (a).

Arkansas Rules of Civil Procedure requires that due dates be calculated when the total time provided is less than 14 days.³

There is nothing in the statute that requires reading the “ten day” language as 10 calendar days. And such a reading would undermine one of the purposes of the statute, which is to give the Attorney General’s office enough time (in light of the varying demands of the office) to properly review the proposed name and ballot title, analyze the proposal under relevant case law, and draft a cogent opinion approving, substituting, or rejecting the popular name and ballot title.⁴ The far better reading of the statute, and the one that I believe appropriately represents legislative intent, is that the Attorney General’s office must certify, substitute, or reject a popular name and ballot title within 10 business days of the proposal being filed.

SUMMARY RESPONSE

It is my conclusion that a more grammatically correct popular name should be substituted for the one proposed. But I am unable to certify your ballot title as submitted. The proposed ballot title is identical to one you submitted on April 12, 2016, and I rejected in Attorney General Opinion 2016-041, dated April 26, 2016. In my opinion, the ballot title remains misleading because it fails to comply with the Arkansas Supreme Court’s requirement that the ballot title explain to the voter how the proposal would change current law. Your proposal—which is a complex and detailed attempt to amend the constitution—is likely to mislead voters because it uses standard campaign-finance jargon in unusual ways without highlighting this fact for the voter.

³ Rule 6(a) states that “[w]hen the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.”

⁴ When the text of a statute is ambiguous, which occurs when the statute is open to two or more plausible readings, it is appropriate to consider the object to be accomplished and the purpose to be served as aids in interpreting the statute. *See generally MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005); *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

LEGAL STANDARDS

Popular Name

The popular name is primarily a useful legislative device.⁵ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.⁶ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁷

Ballot Title

The ballot title must include an impartial summary of the proposed amendment that will give the voter a fair understanding of the issues presented.⁸ According to the Court, if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed."⁹ At the same time, however, a ballot title must be brief and concise;¹⁰ otherwise voters could run afoul of Ark. Code Ann. § 7-5-309's five-minute limit in voting booths when other voters are waiting in line.¹¹ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹² The title, however, must be "free of any misleading tendency whether by amplification, omission, or fallacy,

⁵ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁶ *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

⁷ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁸ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

⁹ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹⁰ See Ark. Code Ann. § 7-9-107(b).

¹¹ *Bailey* at 284, 884 S.W.2d at 944.

¹² *Id.* at 293, 844 S.W.2d at 946-47.

and it must not be tinged with partisan coloring.”¹³ The ballot title must be honest and impartial,¹⁴ **and it must convey an intelligible idea of the scope and significance of a proposed change in the law.**¹⁵

REQUEST

You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:

Popular Name

AN AMENDMENT TO PROHIBIT CERTAIN ADDITIONAL GIFTS FROM LOBBYISTS TO CERTAIN ELECTED AND APPOINTED OFFICIALS, PROHIBITING POLITICAL ACTION COMMITTEES THAT ACCEPT CONTRIBUTIONS FROM CORPORATIONS AND LIMITED LIABILITY COMPANIES FROM CONTRIBUTING TO CANDIDATES FOR STATE AND LOCAL ELECTIONS, REQUIRING DISCLOSURE OF SOURCES OF INDEPENDENT EXPENDITURES AND REDUCING THE AMOUNT OF CAMPAIGN CONTRIBUTIONS TO CANDIDATES FROM \$2,700 TO \$1,500 PER ELECTION.

Ballot Title

An amendment to the Arkansas Constitution prohibiting persons elected or appointed to certain offices from accepting certain gifts from lobbyists, specifically food or drink at a planned activity, payments by regional and national organizations for travel to regional or national conferences, and gifts that are not used and which are returned within thirty (30) days after receipt; removing the ability of the General Assembly to amend Article 19, Section 30 of

¹³ *Id.* at 284, 884 S.W.2d at 942. Language “tinged with partisan coloring” has been identified by the Arkansas Supreme Court as language that “creates a fatally misleading tendency” (*Crochet v. Priest*, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that “gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.” (*Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994)).

¹⁴ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁵ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

the Arkansas Constitution; prohibiting political action committees that accept contributions from corporations or limited liability companies from making contributions to candidates for public office; removing the ability of the General Assembly to amend Article 19, Section 28 of the Arkansas Constitution; requiring a person who makes an independent expenditure or covered transfer in the amount of two thousand dollars (\$2,000.00) or more in a calendar year to file a report with the secretary of state or county clerk (whichever is appropriate), providing that the report shall include the name of the person, the amount of the independent expenditure or covered transfer, the election to which the independent expenditure pertains and the name of the candidate identified and whether the independent expenditure was made in support or in opposition to the candidate; defining covered transfers, disbursements and independent expenditures; defining independent expenditure to mean an expenditure for a communication clearly identifying a candidate and either advocating the election or defeat of that candidate or being published within 60 days of an election; defining covered transfer to mean a payment of funds designated to be used for independent expenditures, made in response to a solicitation indicating the funds will be used for independent expenditures, or made under other specified circumstances indicating the funds would likely be used for independent expenditures; requiring informational disclaimers on political advertisements; providing that the Arkansas Ethics Commission shall have jurisdiction over independent expenditures and setting criminal and civil penalties for violations; and reducing the maximum amount a candidate for public office can accept from two thousand seven hundred dollars (\$2,700.00) to one thousand five hundred dollars (\$1,500.00)

APPLICATION

Popular Name

Applying the above precepts, it is my conclusion that a more grammatically correct popular name should be substituted for the one proposed. The following popular name is hereby substituted and certified:

Popular Name

AN AMENDMENT PROHIBITING CERTAIN ADDITIONAL GIFTS FROM LOBBYISTS TO CERTAIN ELECTED AND APPOINTED OFFICIALS, PROHIBITING POLITICAL ACTION COMMITTEES THAT ACCEPT CONTRIBUTIONS FROM CORPORATIONS AND LIMITED LIABILITY COMPANIES FROM CONTRIBUTING TO CANDIDATES FOR STATE AND LOCAL ELECTIONS, REQUIRING DISCLOSURE OF SOURCES OF INDEPENDENT EXPENDITURES AND REDUCING THE AMOUNT OF CAMPAIGN CONTRIBUTIONS TO CANDIDATES FROM \$2,700 TO \$1,500 PER ELECTION.

Ballot Title

If adopted, your proposed constitutional amendment would significantly change current Arkansas law relating to election spending. It proposes to create new categories of election-related spending by expanding the definition of what is currently called an “independent expenditure.”¹⁶ Currently, Arkansas law defines an “independent expenditure” as an expenditure that (a) is not a “contribution,” which current law separately defines (b) expressly advocates the election or defeat of a clearly identified candidate for office, and (c) is made without arranging, cooperating, or consulting with any candidate or that candidate’s authorized committee or agent.¹⁷ Your amendment would expand the definition of “independent expenditure” to also include additional kinds of election-related speech. Yet the ballot title you have submitted includes nothing about the current law on independent expenditures. As a consequence of this deficiency, voters will not be able to make an informed decision about what they are being asked to add to the Arkansas Constitution. Moreover, the ballot title will incorrectly suggest to the voters that there currently are no disclosure requirements for election-related speech called “independent expenditures.”

The Arkansas Supreme Court has elaborated on the duty to describe the changes in law a proposal is to make:

It is evident that before determining the sufficiency of the present ballot title we must first ascertain what changes in the law would be brought about by the adoption of the proposed amendment. For the

¹⁶ Ark. Code Ann. § 7-6-201(11) (Supp. 2015).

¹⁷ *Id.*

elector, in voting upon a constitutional amendment, is simply making a choice between retention of the existing law and the substitution of something new. It is the function of the ballot title to provide information concerning the choice that he is called upon to make. Hence the adequacy of the title is directly related to the degree to which it enlightens the voter with reference to the changes that he is given the opportunity of approving.¹⁸

Without information regarding the extent to which your proposal would change the current law on independent expenditures, it will be impossible for a voter to make an informed “choice between retention of the existing law and the substitution of something new.”¹⁹ The Court has held that “a ballot title is not insufficient merely because it fails to reflect the current state of the law.”²⁰ But a ballot title will be deemed insufficient if it does not give the voters a clear understanding of the “extent and import” of the proposal, particularly when they are being asked to amend the constitution:

If the voter knows the extent and import of such a proposal, it is the voter’s decision, not ours, as to the wisdom of the proposal. But at the same time the voters have placed on this court the duty and responsibility to see that when they vote that change, or decline to vote that change, especially one to alter their constitution, they are allowed to make an intelligent choice, fully aware of the consequences of their vote.²¹

In my opinion, your ballot title fails to adequately convey the proposed change(s) in law so that the voters will have a fair understanding of the issue(s).²² Specifically, while your proposal radically changes the meaning of the term “independent expenditure,” the ballot title does not adequately inform the voter of that change. Therefore, the ballot title is not compliant with the Court’s requirement that voters be fully apprised of a proposal’s “extent and import” and

¹⁸ *Bradley v. Hall*, 220 Ark. 925, 927, 251 S.W.2d 470, 471 (1952).

¹⁹ *Id.*

²⁰ *May*, 359 Ark. at 116, 194 S.W.3d at 783.

²¹ *Dust v. Riviere*, 277 Ark. 1, 4, 638 S.W.2d 663, 665 (1982).

²² *Cf. Scott v. Priest*, 326 Ark. 328, 332, 932 S.W.2d 746, 747 (1996).

that they be “allowed to make an intelligent choice, fully aware of the consequences of their vote.”²³

In sum, the proposed ballot title fails to give the voter a full understanding of how the proposed constitutional amendment relates to the current statutes that address election spending and that, as noted above, deal with matters that overlap your proposal. A more complete effort to summarize and explain to voters how the proposal would change current law in this respect must be undertaken. Without such, the ballot title is misleading and deficient.

The precise manner in which you acknowledge your proposal’s effects on existing law is a matter for you to determine and submit to this office in draft form. While I can modify a proposed ballot title to render it a more accurate summary of the measure, I am not legally required to rewrite a ballot title that amounts to an independent product. Where a proposed ballot title does not comply with the rules governing the initiative process—including the requirement to summarize the proposal and its effects in a fair, accurate, and complete manner—and the ballot title is therefore significantly misleading, this office may decline to prepare a substitute.²⁴

CONCLUSION

The decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not consider the merits, philosophy, or ideology of the measure when making my determination to certify or reject a popular name and ballot title. My review has been limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, of whether the popular name and ballot title you have submitted accurately, impartially, and intelligibly summarize the provisions of your proposal.

Based on what has been submitted, my statutory duty is to reject your proposed ballot title for the foregoing reasons and instruct you to redesign the proposed

²³ *Dust*, 277 Ark. at 4, 638 S.W.2d at 665.

²⁴ *See Op. Att’y Gen. 2012-033* (and opinions cited therein).

David A. Couch
Attorney at Law
Opinion No. 2016-051
Page 10

measure and ballot title.²⁵ You may resubmit your proposed amendment along with a proposed popular name and ballot title at your convenience.

Sincerely,



LESLIE RUTLEDGE
Attorney General

²⁵ Ark. Code Ann. § 7-9-107(c).

Popular Name:

An Amendment to Prohibit Certain Additional Gifts from Lobbyists to Certain Elected and Appointed Officials, Prohibiting Political Action Committees that Accept Contributions From Corporations and Limited Liability Companies from Contributing to Candidates for State and Local Elections, Requiring Disclosure of Sources of Independent Expenditures and Reducing the Amount of Campaign Contributions to Candidates from \$2,700 to \$1,500 per Election.

Ballot Title:

An Amendment to the Arkansas Constitution Prohibiting Persons Elected or Appointed to Certain Offices from Accepting Certain Gifts From Lobbyists, Specifically Food or Drink at a Planned Activity, Payments by Regional and National Organizations for Travel to Regional or National Conferences, and Gifts that are not used and which are Returned within Thirty (30) days after receipt; Removing the ability of the General Assembly to Amend Article 19, Section 30 of the Arkansas Constitution; Prohibiting Political Action Committees that Accept Contributions from Corporations or Limited Liability Companies from Making Contributions to Candidates for Public Office; Removing the Ability of the General Assembly to Amend Article 19, Section 28 of the Arkansas Constitution; Requiring a Person Who Makes an Independent Expenditure or Covered Transfer in the Amount of Two Thousand Dollars (\$2,000.00) or More in a Calendar Year to File a Report With the Secretary of State or County Clerk (whichever is appropriate), Providing that the Report Shall Include the Name of the Person, The Amount of the Independent Expenditure or Covered Transfer, the Election to Which the Independent Expenditure Pertains and the Name of the Candidate Identified and Whether the Independent Expenditure Was Made In Support or In Opposition to the Candidate; Defining Covered Transfers, Disbursements and Independent Expenditures; Defining independent expenditure to mean an Expenditure for a Communication Clearly Identifying a Candidate and Either Advocating the Election or Defeat of That Candidate or Being Published Within 60 Days of an Election; Defining Covered Transfer to Mean a Payment of Funds Designated to Be Used for Independent Expenditures, Made in Response to a Solicitation Indicating the Funds Will be Used for Independent Expenditures, or Made Under Other Specified Circumstances Indicating the Funds Would Likely Be Used for Independent Expenditures; Requiring Informational Disclaimers on Political Advertisements; Providing that The Arkansas Ethics Commission Shall have Jurisdiction Over Independent Expenditures and Setting Criminal and Civil Penalties for Violations; and Reducing the Maximum Amount a Candidate for Public Office Can Accept From Two Thousand Seven Hundred Dollars (\$2,700.00) to One Thousand Five Hundred Dollars (\$1,500.00)

Stricken language would be deleted from and underlined language would be added to the law as it existed.

Article 19, § 28, Arkansas Constitution, is amended to read as follows:

Contributions

(a)(1) It is unlawful for a candidate for public office or a person acting on the candidate's behalf to:

(A) Accept a contribution from other than:

(i) An individual;

(ii) A political party that meets the definition of a political party under Arkansas Code § 7-1-101;

(iii) A political party that meets the requirements of Arkansas Code § 7-7-205;

(iv) A county political party committee;

(v) A legislative caucus committee; or

(vi) An approved political action committee; or

(B) Accept a contribution in excess of ~~the maximum amount allowed by law~~ one thousand five hundred dollars (\$1,500.00) per election from:

(i) An individual;

(ii) A political party that meets the definition of a political party under Arkansas Code § 7-1-101;

(iii) A political party that meets the requirements of Arkansas Code § 7-7-205;

(iv) A county political party committee;

(v) A legislative caucus committee; or

(vi) An approved political action committee.

(2) A candidate may accept a contribution or contributions up to the maximum amount allowed by law from a prospective contributor for each election, whether opposed or unopposed.

(b)(1) It is unlawful for an individual, a political party that meets the definition of a

political party under Arkansas Code § 7-1-101, a political party that meets the requirements of Arkansas Code § 7-7-205, a county political party committee, a legislative caucus committee, or an approved political action committee to make a contribution to a candidate for public office, or to a person acting on the candidate's behalf, that in the aggregate exceeds the maximum amount allowed by law.

(2) The following entities may make a contribution or contributions up to the maximum amount allowed by law to a candidate, whether opposed or unopposed, for each election:

(A) An individual;

(B) A political party that meets the definition of a political party under Arkansas Code § 7-1-101;

(C) A political party that meets the requirements of Arkansas Code § 7-7-205;

(D) A county political party committee;

(E) A legislative caucus committee; or

(F) An approved political action committee.

(c) As used in this section:

(1)

(A) "Approved political action committee" means any person that:

(i) Receives contributions from one (1) or more persons, but not from any limited liability company or corporation, in order to make contributions to a candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee;

(ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(iii) Registers pursuant to Arkansas Code § 7-6-215 prior to making contributions.

(B) "Approved political action committee" does not include an organized political party as defined in § 7-1-101, a county political party committee, the candidate's own campaign committee, an exploratory committee, or a ballot question committee or legislative question committee as defined in § 7-9-402;

(2) "Candidate" means an individual who has knowingly and willingly taken affirmative

action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office;

(3)

(A) "Contribution" or "contributions" 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, or pledges or promises 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.

(B)

(i) "Contribution" or "contributions" includes the purchase of tickets for events such as dinners, luncheons, rallies, and

similar fundraising events; the granting of discounts or rebates by television and 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 Arkansas law.

(ii) "Contribution" or "contributions" further includes any transfer of anything of value received by a committee from another committee.

(C) "Contribution" or "contributions" does not include noncompensated, nonreimbursed, volunteer personal services or travel;

(4) "County political party committee" means a person that:

(A) Is organized at the county level for the purpose of supporting its affiliate party and making contributions;

(B) Is recognized by an organized political party, as defined in Arkansas Code § 7-1-101, as being affiliated with that political party;

(C) Receives contributions from one (1) or more persons in order to make contributions to a candidate, ballot question committee, legislative question committee, political party, political action committee, or other county political party committee;

(D) Does not accept any contribution or cumulative contributions in excess of five

thousand dollars (\$5,000) from any person in any calendar year; and

(E) Registers pursuant to Arkansas Code § 7-6-226 prior to making contributions;

(5)

(A) "Election" means each election held to nominate or elect a candidate to any public office, including school elections.

(B) For the purposes of this section, a preferential primary, a general primary, a special election, and a general election shall each constitute a separate election;

(6) "Expenditure" or "expenditures" 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;

(7)

(A) "Exploratory committee" means a person that receives contributions which are held to be transferred to the campaign of a single candidate in an election.

(B) "Exploratory committee" does not include:

(i) A political party:

(a) That meets the definition of a political party under Arkansas Code § 7-1-101; or

(b) A political party that meets the requirements of Arkansas Code § 7-7-205; or

(ii) The candidate's own campaign committee;

(8)

(A) "Legislative caucus committee" means a person that is composed exclusively of members of the General Assembly, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common.

(B) "Legislative caucus committee" includes, but is not limited to, a political party caucus of the General Assembly, the Senate, or the House of Representatives.

(C) An organization whose only nonlegislator members are the Lieutenant Governor or the Governor is a "legislative caucus committee" for the purposes of this section;

(9)

(A) "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.

(B) "Person" includes:

(i) A political party that meets the definition of a political party under Arkansas Code § 7-1-101 or a political party that meets the requirements of Arkansas Code § 7-7-205;

(ii) A county political party committee; and

(iii) A legislative caucus committee; and

(10) "Public office" means an office created by or under authority of the laws of the State of Arkansas or of a subdivision thereof that is filled by the voters, except a federal office.

(d)(1) A person who knowingly violates this section is guilty of a Class A misdemeanor.

(2) In addition to the penalty under subdivision (d)(1) of this section, the General Assembly shall provide by law for this section to be under the jurisdiction of the Arkansas Ethics Commission, including without limitation authorization of the following actions by the Arkansas Ethics Commission:

(A) Promulgating reasonable rules to implement and administer this section as necessary;

(B) Issuing advisory opinions and guidelines on the requirements of this section; and

(C) Investigating complaints of alleged violations of this section and rendering findings and disciplinary action for such complaints.

~~(e)(1) Except as provided in subdivision (e)(2) of this section, the General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend this section so long as such amendments are germane to this section and consistent with its policy and purposes. (2) The General Assembly may amend subsection (d) of this section by a majority vote of each house.~~

Article 19, § 30, Arkansas Constitution, Article 19, § 30, is amended to read as follows:

§ 30. Gifts from lobbyists.

(a) Persons elected or appointed to the following offices shall not knowingly or willfully solicit or accept a gift from a lobbyist, a person acting on behalf of a lobbyist, or a person

employing or contracting with a lobbyist:

- (1) Governor;
- (2) Lieutenant Governor;
- (3) Secretary of State;
- (4) Treasurer of State;
- (5) Auditor of State;
- (6) Attorney General;
- (7) Commissioner of State Lands;
- (8) Member of the General Assembly;
- (9) Chief Justice of the Supreme Court;
- (10) Justice of the Supreme Court;
- (11) Chief Judge of the Court of Appeals;
- (12) Judge of the Court of Appeals;
- (13) Circuit court judge;
- (14) District court judge;
- (15) Prosecuting attorney; and

(16) Member of the independent citizens commission for the purpose of setting salaries of elected constitutional officers of the executive department, members of the General Assembly, justices, and judges under Article 19, § 31, of this Constitution.

(b) As used in this section:

(1)(A) "Administrative action" means a decision on, or proposal, consideration, or making of a rule, regulation, ratemaking proceeding, or policy action by a governmental body.

(B) "Administrative action" does not include ministerial action;

(2)(A) "Gift" means any payment, entertainment, advance, services, or anything

of value, unless consideration of equal or greater value has been given therefor.

(B) "Gift" does not include:

(i)(a) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a person elected or appointed to an office under subsection (a) of this section regarding his or her official duties.

(b) Payments for travel or reimbursement for any expenses are not informational material;

~~(ii) Gifts that are not used and which, within thirty (30) days after receipt, are returned to the donor;~~

~~(iii) (i) Gifts from the spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin of a person elected or appointed to an office under subsection (a) of this section, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this subdivision (b)(2)(B)(iii);~~

~~(iv) (iii) Anything of value that is readily available to the general public at no cost;~~

~~(v)(a)(1) Food or drink available at a planned activity to which a specific governmental body is invited, including without limitation a governmental body to which a person elected or appointed to an office under subsection (a) of this section is not a member.~~

~~(2) If a committee of the General Assembly is invited to a planned activity under subdivision (b)(2)(B)(v)(a)(1) of this section, only members of the committee of the General Assembly may accept food or drink at the planned activity.~~

~~(b)(1) As used in this subdivision (b)(2)(B)(v), "planned activity" means an event for which a written invitation is distributed electronically or by other means by the lobbyist, person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist to the members of the specific governmental body at least twenty-four (24) hours before the event.~~

~~(2) As used in this subdivision (b)(2)(B)(v), "planned activity" does not include food or drink available at a meeting of a specific governmental body for which the person elected or appointed to an office under subsection (a) of this section is~~

entitled to receive per diem for attendance at the meeting.

~~_____ (e) A lobbyist, a person acting on behalf of a lobbyist, or a person employing or contracting with a lobbyist shall not offer or pay for food or drink at more than one (1) planned activity in a seven-day period;~~

~~_____ (vi)(a) Payments by regional or national organizations for travel to regional or national conferences at which the State of Arkansas is requested to be represented by a person or persons elected or appointed to an office under subsection (a) of this section;~~

~~_____ (b) As used in this subdivision (b)(2)(B)(vi), "travel" means transportation, lodging, and conference registration fees.~~

~~_____ (e) This section does not prohibit the acceptance of:~~

~~_____ (1) Food, drink, informational materials, or other items included in the conference registration fee; and~~

~~_____ (2) Food and drink at events coordinated through the regional or national conference and provided to persons registered to attend the regional or national conference;~~

~~(vii) (iv) Campaign contributions;~~

~~(viii) (v) Any devise or inheritance;~~

~~(ix) (vi) Salaries, benefits, services, fees, commissions, expenses, or anything of value in connection with:~~

(a) The employment or occupation of a person elected or appointed to an office under subsection (a) of this section or his or her spouse so long as the salary, benefit, service, fee, commission, expense, or anything of value is solely connected with the person's employment or occupation and is unrelated to and does not arise from the duties or responsibilities of the office to which the person has been elected or appointed; or

(b) Service as an officer, director, or board member of a corporation, a firm registered to do business in the state, or other organization that files a state and federal tax return or is an affiliate of an organization that files a state and federal tax return by a person elected or appointed to an office under subsection (a) of this section or his or her spouse so long as the salary, benefit, service, fee, commission, expense, or anything of value

is solely connected with the person's service as an officer, director, or board member and is unrelated to and does not arise from the duties or responsibilities of the office to which the person has been elected or appointed; and

~~(x)~~ (vii) A personalized award, plaque, or trophy with a value of one hundred fifty dollars (\$150) or less;

(3) "Governmental body" or "governmental bodies" means an office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof;

(4)(A) "Income" means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

(B) "Income" includes a payment made under obligation for services or other value received;

(5) "Legislative action" means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality;

(6) "Legislator" means a person who is a member of the General Assembly, a quorum court of a county, or the city council or board of directors of a municipality;

(7) "Lobbying" means communicating directly or soliciting others to communicate with a public servant with the purpose of influencing legislative action or administrative action;

(8) "Lobbyist" means a person who:

(A) Receives income or reimbursement in a combined amount of four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies;

(B) Expends four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies, excluding the cost of personal travel, lodging,

meals, or dues; or

(C) Expends four hundred dollars (\$400) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with a public servant to influence any legislative action or administrative action of one (1) or more governmental bodies unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients;

(9)(A) "Person" means a business, individual, union, association, firm, committee, club, or other organization or group of persons.

(B) As used in subdivision (b)(9)(A) of this section, "business" includes without limitation a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted;

(10)(A) "Public appointee" means an individual who is appointed to a governmental body.

(B) "Public appointee" does not include an individual appointed to an elective office;

(11)(A) "Public employee" means an individual who is employed by a governmental body or who is appointed to serve a governmental body.

(B) "Public employee" does not include a public official or a public appointee;

(12) "Public official" means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office; and

(13) "Public servant" means all public officials, public employees, and public appointees.

(c)(1) A person who knowingly violates this section is guilty of a Class B misdemeanor.

(2) In addition to the penalty under subdivision (c)(1) of this section, the General

Assembly shall provide by law for this section to be under the jurisdiction of the Arkansas Ethics Commission, including without limitation authorization of the following actions by the Arkansas Ethics Commission:

(A) Promulgating reasonable rules to implement and administer this section as necessary;

(B) Issuing advisory opinions and guidelines on the requirements of this section; and

(C) Investigating complaints of alleged violations of this section and rendering findings and disciplinary action for such complaints.

~~(3)(A) It is an affirmative defense to prosecution or disciplinary action under subdivisions (e)(1) and (2) of this section that a person elected or appointed to an office under subsection (a) of this section takes one (1) of the following actions within thirty (30) days of discovering or learning of an unintentional violation of this section:~~

~~_____ (i) Returns the gift to the donor; or~~

~~_____ (ii) If the gift is not returnable, pays the donor consideration that is equal to or greater than the value of the gift.~~

~~_____ (B)(i) The Arkansas Ethics Commission shall not proceed with an investigation of an alleged violation of this section if the Arkansas Ethics Commission determines that a person would be eligible to raise the affirmative defense under subdivision (e)(3)(A) of this section.~~

~~_____ (ii) If the Arkansas Ethics Commission does not proceed with an investigation of an alleged violation under subdivision (e)(3)(B)(i) of this section, the person shall not be considered to have committed a violation.~~

~~_____ (C) This subdivision (e)(3) shall not be construed to authorize a person to knowingly or willfully solicit or accept a gift in violation of this section.~~

~~(d)(1) Except as provided in subdivision (d)(2) of this section, the General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend this section so long as such amendments are germane to this section and consistent with its policy and purposes.~~

~~(2) The General Assembly may amend subsection (c) of this section by a majority vote of each house.~~

Article 19, § 32, is added to the Arkansas Constitution.

Independent Expenditures

Section 1. Definitions

(1) (A) "Covered transfer" means any transfer or payment of funds by a person other than an individual to another person if the first person:

(i) Designates, requests, or suggests that the amounts be used for:

(a) Independent expenditures; or

(b) Making a transfer to another person for the purpose of making or paying for independent expenditures;

(ii) Made such transfer or payment in response to a solicitation or other request for a donation or payment for:

(i) The making of or paying for independent expenditures; or

(ii) Making a transfer to another person for the purpose of making or paying for independent expenditures;

(iii) Engaged in discussions with the recipient of the transfer or payment regarding:

(i) The making of or paying for independent expenditures; or

(ii) Making a transfer to another person for the purpose of making or paying for independent expenditures;

(iv) Made independent expenditures in an aggregate amount of [two-thousand dollars (\$2,000)] or more during the 1-year period ending on the date of the transfer or payment, or knew or had reason to know that the person receiving the transfer or payment made such independent expenditures in such an aggregate amount during that 1-year period; or

(v) Knew or had reason to know that the person receiving the transfer or payment would make independent expenditures in an aggregate amount of [two-thousand dollars (\$2,000)] or more during the 1-year period beginning on the date of the transfer or payment.

(B) However, the term "covered transfer" does not include:

(i) a disbursement made by a person in a commercial transaction in the ordinary course of any trade or business conducted by that person or in the form of investments made by that person;

(ii) a disbursement made by a person if that person prohibited, in writing, the use of such disbursement for campaign-related disbursements and the recipient of the

disbursement followed the prohibition and deposited the disbursement in an account segregated from any account used to make campaign-related disbursements;

(iii) a disbursement made by a vendor or collecting agent to a recipient from an account established to collect contributions on behalf of such recipient, provided such funds are transferred to the recipient within 14 days and the recipient reports as a contribution the entire amount authorized by the original contributor as well as the name and address of the original contributor and the date on which the contribution was made by the original contributor.

(2) "Disbursement" means any purchase or payment.

(3)(A) "Independent expenditure" means any expenditure for a communication that is not a contribution and that:

(i) Refers to a clearly identified candidate for state or local elective office; and

(ii) Is made without arrangement, cooperation, or consultation between any candidate or any authorized committee or agent of a 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; and

(iii) Satisfies at least one of the following standards:

(a) Contains express advocacy, or its functional equivalent because it is suggestive of no reasonable meaning other than an exhortation to vote for or against a candidate, for the election or defeat of a clearly identified candidate for office; or

(b) Is disseminated, broadcast or otherwise published within 60 days of the election sought by a candidate and targets the clearly identified candidate's electorate. For purposes of this sub-paragraph, a communication "targets the clearly identified candidate's electorate" if it can be received by:

(i) For broadcast, cable, satellite or electronic communications: 15,000 or more individuals in the state for statewide office, or 5 percent of the jurisdiction's population or 3,000 or more individuals, whichever is less, for other offices; or

(ii) For mass mailing, print or telephone bank: 2,500 or more "households" in the state for statewide office, or 5 percent of the jurisdiction's "households" or 500 or more "households," whichever is less, for other offices.

(B) "Independent Expenditure" does not include—

(i) A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper,

magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) A communication that constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Arkansas Ethics Commission, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; and

(iii) Any other communication exempted under such regulations as the Arkansas Ethics Commission may promulgate consistent with this Article.

Section 2. Reporting of Independent expenditures and covered transfers.

(A) A person that makes independent expenditures or covered transfers in an aggregate amount of two-thousand dollars (\$2,000) or more in a calendar year shall file reports with the Secretary of State or County Clerk, whichever is appropriate,

(1) No later than sixty (60) days prior to preferential primary elections, general elections, and special elections covering the period beginning January 1 of the calendar year preceding the year in which the election is held and ending sixty-five (65) days prior to such elections;

(2) 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;

(3) 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;

(4) Within 24 hours for independent expenditures or covered transfers aggregating two-thousand dollars (\$2,000) or more during the ten (10) days preceding an election; 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) The name of the person and the principal place of business of such person.

(2) The amount of each independent expenditure and covered transfer made by such person during the period covered by the statement of two-thousand dollars (\$2,000) or more, and the name and address of the person to whom the independent expenditure or covered transfer was made.

(3) In the case of an independent expenditure, the election to which the independent expenditure pertains and if the expenditure is made for a public communication, the name of any candidate identified in such communication and whether such communication is in support of or in opposition to a candidate.

(4) A certification that the independent expenditure is not made in cooperation, consultation, or concert with or at the request or suggestion of a candidate, authorized committee, or agent of a candidate, political party, or agent of a political party.

(5) If the person makes independent expenditures or covered transfers using exclusively funds in a segregated bank account consisting of funds that were paid directly to such account by persons other than the person that controls the account, for each such payment to the account:

(A) the name and address of each person who made such payment or payments in the aggregate of five-hundred dollars (\$500) or more during the period covered by the report;

(B) the date and amount of such payment; and

(C) the aggregate amount of all such payments made by the person during the period beginning on the first day of the election reporting cycle and ending on the disclosure date.

(6) If the person makes independent expenditures or covered transfers using funds other than funds in a segregated bank account described in subparagraph (5), for each payment to the person:

(A) the name and address of each person who made such payment or payments in the aggregate of five-hundred dollars (\$500) or more during the period covered by the report;

(B) the date and amount of such payment; and

(C) the aggregate amount of all such payments made by the person during the period beginning on the first day of the election reporting cycle and ending on the disclosure date.

(7) Such reports shall include any additional information required of candidates for office other than school district, township, municipal, or county office as set forth in § 7-6-207(b)(1).

(8) Exceptions.

(a) AMOUNTS RECEIVED IN ORDINARY COURSE OF BUSINESS. The requirement to include in a report the information described in subparagraphs (5) and (6) shall not apply to amounts received by the person in commercial transactions in the ordinary course of any trade or business conducted by the person or in the form of investments (other than investments by the principal shareholder in a limited liability corporation) in the person.

(b) DONOR RESTRICTION ON USE OF FUNDS. The requirement to include in a report the information described in subparagraph (6) shall not apply if the person described in such subparagraph prohibited, in writing, the use of the payment made by such person for independent expenditures and covered

transfers and the receiving person in fact did not use the payment for independent expenditures or covered transfers and deposited the payment in an account that is segregated from any account used to make independent expenditures or covered transfers.

(9) For the purpose of this section, "payment" means any contribution, donation, transfer, payment of dues, or other gift of money or anything of value.

(C) The report shall be verified by an affidavit of the reporting individual or, in the case of a person other than an individual, an officer of the person 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 person's payments and contributions received and made.

(D) The report shall be filed using the Secretary of State's Online Filing system.

Section 3. Disclaimers on political advertisements

(A) Whenever any candidate or committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever any person other than a committee makes a disbursement for an independent expenditure or to solicit a contribution, such communication shall clearly contain the words "Paid for by," followed by the name, permanent street address, telephone number or World Wide Web address of the candidate, committee, or person who paid for the message.

(B) Both the person placing and the person publishing the communication shall be responsible for including the required disclaimer.

Section 4. Jurisdiction and Penalties

(A)(1) A person who knowingly violates this Article is guilty of a Class A misdemeanor.

(2) In addition to the criminal penalty, this Article shall be under the jurisdiction of the Arkansas Ethics Commission, including without limitation authorization of the following actions by the Arkansas Ethics Commission:

_____ (A) Promulgating reasonable rules to implement and administer this Article as necessary;

_____ (B) Issuing advisory opinions and guidelines on the requirements of this Article;
and

_____ (C) Investigating complaints of alleged violations of this Article and rendering findings and disciplinary action for such complaints.

(D) If the commission finds a violation then the commission shall do one

(1) or more of the following, unless good cause be shown for the violation:

_____ (a) Issue a public letter of caution or warning or reprimand; and

_____ (b) Impose a fine of not less than fifty dollars (\$50.00) nor more than ten thousand dollars (\$10,000) or three times the amount contributed, received or spent in violation of this Article whichever is greater.