

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: H3/6/15 H3/19/15

# A Bill

HOUSE BILL 1425

5 By: Representative Tucker  
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## For An Act To Be Entitled

8 AN ACT TO REQUIRE REPORTING AND DISCLOSURE OF  
9 ELECTIONEERING COMMUNICATIONS; AND FOR OTHER  
10 PURPOSES.  
11

## Subtitle

12 TO REQUIRE REPORTING AND DISCLOSURE OF  
13 ELECTIONEERING COMMUNICATIONS.  
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15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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18 SECTION 1. Arkansas Code § 7-6-201 is amended to add additional  
19 subdivisions to read as follows:

20 (19) "Broadcast, cable, or satellite communication" means a  
21 communication that is publicly distributed by a broadcast, cable, or  
22 satellite radio or television station;  
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24 (20)(A) "Electioneering communication" means any broadcast,  
25 cable, or satellite communication that:  
26

27 (i) Refers to a clearly identified candidate for  
28 public office;

29 (ii) Is publicly distributed within:

30 (a) Ninety (90) days before a general election  
31 for the office sought by the candidate; or

32 (b) Sixty (60) days before a primary election  
33 for the office sought by the candidate; and

34 (iii) Is targeted to the relevant electorate for  
35 that candidate.

36 (B) "Electioneering communication" does not include any



1 communication that:

2 (i) Is publicly disseminated through a means of  
3 communication other than a broadcast, cable, or satellite communication such  
4 as:

5 (a) Communications appearing in print media,  
6 including a newspaper, magazine, handbill, brochure, bumper sticker, yard  
7 sign, poster, billboard, and other written materials, including mailings;

8 (b) Communications over the Internet,  
9 including electronic mail; or

10 (c) Telephone communications;

11 (ii) Appears in a news story, commentary, or  
12 editorial distributed through the facilities of any broadcast, cable, or  
13 satellite communication, unless the facilities are owned or controlled by any  
14 political party, political committee, or candidate;

15 (iii) Constitutes an expenditure that is reported as  
16 required under this subchapter, including without limitation expenditures  
17 reported by candidates, political action committees, and political parties;

18 (iv) Constitutes an independent expenditure that is  
19 reported as required under this subchapter; or

20 (v) Constitutes a candidate debate or forum  
21 conducted, or that solely promotes such a debate or forum and is made by or  
22 on behalf of the person sponsoring the debate or forum;

23 (21) "Refers to a clearly identified candidate" means that the  
24 candidate's name, nickname, photograph, or drawing appears, or the identity  
25 of the candidate is otherwise apparent through an unambiguous reference such  
26 as "the Governor", "your county judge", or "the incumbent", or through an  
27 unambiguous reference to his or her status as a candidate such as "the  
28 Republican nominee for Governor" or "the Democratic candidate for Secretary  
29 of State in the State of Arkansas";

30 (22) "Publicly distributed" means aired, broadcast, cablecast,  
31 or otherwise disseminated through the facilities of a broadcast, cable, or  
32 satellite radio or television station; and

33 (23) "Targeted to the relevant electorate" means the  
34 communication can be seen or heard:

35 (A) By at least twenty-five thousand (25,000) viewers or  
36 listeners in the state, in the case of a candidate for statewide office;

1 (B) By at least ten percent (10%) of the county,  
2 municipality, or district population, in the case of a candidate for a county  
3 office, municipal office, school district board of directors, or other  
4 district office that is not the Senate or the House of Representatives; or

5 (C) By at least two thousand five hundred (2,500) viewers  
6 or listeners in the district, in the case of a candidate for the Senate or  
7 the House of Representatives.

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

11 7-6-228. Coordinated communications.

12 (a)(1) A coordinated communication is an in-kind contribution to the  
13 candidate or political party who or to the candidate or political party whose  
14 authorized committee or agent cooperated, consulted, requested, suggested, or  
15 acted in concert with:

16 (A) The person making the coordinated communication or his  
17 or her authorized agent; or

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

20 (2) The in-kind contribution under subdivision (a)(1) of this  
21 section shall be subject to the contribution limits set forth under § 7-6-  
22 203.

23 (b) As used in this section coordinated communication means an  
24 electioneering communication or communication funded by expenditures that  
25 contain express advocacy made:

26 (1) In cooperation or consultation between:

27 (A) A candidate or his or her authorized committee or  
28 agent; and

29 (B) The person making the:

30 (i) Communication or his or her authorized agent; or

31 (ii) Expenditure for the communication or his or her  
32 authorized agent.

33 (2) In cooperation or consultation between:

34 (A) A political party or its authorized agent; and

35 (B) The person making the:

36 (i) Communication or his or her authorized agent; or

1 (ii) Expenditure for the communication or his or her  
2 authorized agent.

3 (3) In concert with or at the request or suggestion of a  
4 candidate or his or her authorized committee or agent; or

5 (4) In concert with or at the request or suggestion of a  
6 political party or its authorized agent.

7 (c) In making a determination as to whether a communication is a  
8 coordinated communication, the Arkansas Ethics Commission shall consider:

9 (1) Whether the coordinated communication was paid for, in whole  
10 or in part, by someone other than the candidate or his or her agent, the  
11 candidate's authorized committee or its agent, or a political party or its  
12 agent;

13 (2) Whether the content of the coordinated communication:

14 (A) Expressly advocates the election or defeat of a  
15 clearly identified candidate for office;

16 (B) Meets the definition of electioneering communication;  
17 or

18 (C) Is a public communication that republishes,  
19 disseminates, or distributes, in whole or in part, campaign materials  
20 prepared by a candidate or a candidate's campaign committee; and

21 (3) Whether the conduct of the coordinated communication meets  
22 one of the following standards:

23 (A) The coordinated communication was created, produced,  
24 or distributed at the request or suggestion of the candidate or his or her  
25 agent, candidate's committee or its agent, or political party or its agent;

26 (B) The coordinated communication was created, produced,  
27 or distributed at the suggestion of the person paying for the communication,  
28 and the candidate or his or her agent, candidate's committee or its agent, or  
29 political party or its agent assents to the suggestion;

30 (C) The candidate or his or her agent, the candidate's  
31 committee or its agent, or the political party or its agent was materially  
32 involved in decisions regarding the content, intended audience, means or mode  
33 of the coordinated communication, specific media outlet used, timing or  
34 frequency, or size or prominence of the coordinated communication; or

35 (D) The coordinated communication was created, produced,  
36 or distributed after one or more substantial discussions about the

1 communication between the person paying for the communication or the  
2 employees or agents of that person and the candidate or his or her agent,  
3 candidate's committee or its agent, candidate's opponent or his or her agent,  
4 candidate's opponent's committee or its agent, or political party or its  
5 agent.

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

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

11 (B) Engages in the activities on behalf of that specific  
12 principal.

13 (2) If the activities carried out by an authorized agent would  
14 result in a coordinated communication if carried out directly by the  
15 candidate, authorized committee staff, or a political party official, the  
16 activities of the authorized agent result in a coordinated communication.

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18 7-6-229. Reporting and disclosure of electioneering communication.

19 (a)(1) A person who has made electioneering communications in an  
20 aggregate amount exceeding five thousand dollars (\$5,000) in one (1) calendar  
21 year shall file a statement with the Secretary of State within three (3) days  
22 of the disclosure date of each electioneering communication but no later than  
23 the close of business on the day before the election.

24 (2) The statement shall be filed under penalty of false swearing  
25 and shall disclose the following:

26 (A) The identification, including the name, address, and  
27 phone number, of the person who made the disbursement or who executed a  
28 contract to make a disbursement, and, if the person is not an individual, the  
29 person's principal place of business with name, address, and phone number;

30 (B) The identification, including the name, address, and  
31 phone number, of any person sharing or exercising direction or control over  
32 the activities of the person who made the disbursement or who executed a  
33 contract to make a disbursement;

34 (C) The identification, including the name, address, and  
35 phone number, of the custodian of the books and accounts from which the  
36 disbursements were made;

1                   (D)(i) The amount of each disbursement, or amount  
2 obligated, of more than one hundred dollars (\$100) during the period covered  
3 by the statement, the date the disbursement was made, or the contract was  
4 executed, and the identification of the person to whom that disbursement was  
5 made.

6                   (ii) The disclosure under subdivision (a)(2)(D)(i)  
7 of this section shall include without limitation the direct costs of  
8 producing or airing an electioneering communication;

9                   (E) All clearly identified candidates referred to in the  
10 electioneering communication and the elections in which they are candidates;

11                   (F) The disclosure date;

12                   (G) If the disbursements were paid exclusively from a  
13 segregated bank account established to pay for electioneering *communications*  
14 *or other communications required to be reported under this subchapter,*  
15 *including without limitation independent expenditures,* consisting of funds  
16 provided solely by individuals who are United States citizens, the name and  
17 address of and the amount contributed by each person who made a contribution  
18 or contributions which, in the aggregate, exceed one hundred dollars (\$100)  
19 or more to the person making the disbursement, aggregating since the first  
20 day of the preceding calendar year; and

21                   (H) If the disbursements were not paid exclusively from a  
22 segregated bank account established to pay for electioneering *communications*  
23 *or other communications required to be reported under this subchapter,*  
24 *including without limitation independent expenditures,* the name and address  
25 of and amount contributed by each person who made a contribution or  
26 contributions which, in the aggregate, exceed two hundred fifty dollars  
27 (\$250) or more to the person making the disbursement, *aggregating since the*  
28 *first day of the preceding calendar year.*

29                   (3) A written affirmation shall be filed with the statement that  
30 shall indicate:

31                   (A) Whether the electioneering communication is in support  
32 of or in opposition to a candidate;

33                   (B) The name and office sought by the candidate under  
34 subdivision (a)(2)(A) of this section; and

35                   (C) A certification sworn under penalty of false swearing  
36 whether the electioneering communication was made in cooperation,

1 consultation, or concert with or at the request or suggestion of a candidate  
2 or the candidate's authorized committee or agent.

3 (b) A person that makes an electioneering communication that otherwise  
4 qualifies as an independent expenditure:

5 (1) Shall file an independent expenditure report under § 7-6-  
6 220; and

7 (2) Shall not file an electioneering communication disclosure  
8 under this section.

9 (c) A person who makes an electioneering communication or who accepts  
10 a contribution for the purpose of making an electioneering communication must  
11 maintain records for a period of four (4) years.

12 (d) As used in this section:

13 (1) "Direct costs of producing or airing electioneering  
14 communications" means:

15 (A) Costs charged by a vendor, such as studio rental time,  
16 staff salaries, cost of video or audio recording media, and talent; or

17 (B) The cost of airtime on broadcast, cable, or satellite  
18 radio and television stations, studio time, material costs, and the charges  
19 for a broker to purchase the airtime;

20 (2) "Disclosure date" means:

21 (A) The first date on which an electioneering  
22 communication is publicly distributed provided that the person making the  
23 electioneering communication has made one (1) or more disbursements, or has  
24 executed one (1) or more contracts to make disbursements, for the direct  
25 costs of producing or airing one (1) or more electioneering communications  
26 using an aggregate amount in excess of five thousand dollars (\$5,000); or

27 (B) Any other date during the same calendar year on which  
28 an electioneering communication is publicly distributed provided that the  
29 person making the electioneering communication has made one (1) or more  
30 disbursements, or has executed one (1) or more contracts to make  
31 disbursements, for the direct costs of producing or airing one (1) or more  
32 electioneering communications using an aggregate amount in excess of five  
33 thousand dollars (\$5,000) since the most recent disclosure date during such  
34 calendar year; and

35 (3) "Persons sharing or exercising direction or control" means  
36 officers, directors, executive directors or their equivalent, partners, and,

1 in the case of unincorporated organizations, owners, of the entity or person  
2 making the disbursement for the electioneering communication."

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4 *SECTION 3. DO NOT CODIFY. Severability.*

5 If any provision of this act is held invalid, illegal, or  
6 unenforceable, the validity, legality, or enforceability of the remaining  
7 provisions shall not be affected or impaired.

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9 /s/Tucker

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