

**DRAFT**

# **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.

### **§ 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 ~~either hand-delivered or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier~~ filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

~~(2) The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.~~

~~(3)~~ **(2)(A)** The Secretary of State ~~may~~ 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.

### **§ 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 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) 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.

**§ 705 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.

**§ 706 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.