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February 27, 2015

Repeal 119

Attn: Travis W. Story, General Counsel
438 East Millsap Road, Suite 103
Fayetteville, Arkansas 72703

Re: Case No. 2014-CO-066

Dear Mr. Story:

On December 4, 2014, the Ethics Commission mailed the ballot question committee ("BQC") known as Repeal 119 a certified letter containing a copy of the citizen complaint filed against it in the above-referenced case. Service of the complaint was made upon Mr. Duncan Campbell in his capacity as Repeal 119's President.

In the December 4th letter, Repeal 119 was notified that an investigation was being commenced regarding the issue of whether or not it violated the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters (Ark. Code Ann. § 7-9-401 *et seq.*) in connection with its campaign to expressly advocate for the repeal of Fayetteville City Code Section 119 (*i.e.*, Ordinance 119) which was presented to voters in a special election held on December 9, 2014. The allegations contained in the complaint were set forth in the notice letter as follows:

1. Repeal 119 "has used its resources to publicly support local candidates for Fayetteville City Council as seen by their Facebook page: <https://www.facebook.com/RepealChapter119>."
2. With regard to Repeal 119's resources, "recorded telephone calls, known as robo calls, have been received by residents of Fayetteville from a group purportedly known as "SAVE FAYETTEVILLE" advocating against Ordinance 119 and advocating contacting members of the Fayetteville City Council."

Turning to the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, Ark. Code Ann. § 7-9-402 sets forth definitions of terms used in that Act. The financial reporting requirements for a BQC¹ are set forth in Ark. Code Ann. §§ 7-9-406, 7-9-407, and 7-9-409. In addition to those statutes, Ark. Code Ann. §§ 7-6-201, 7-6-215, 21-8-601, and 21-8-603 were identified as being potentially applicable to the instant complaint.

It is noted that the Commission has adopted a set of Rules on Ballot and Legislative Question Committees (the “Rules on BQCs/LQCs”) which implement and administer the statutes contained in the Disclosure Act.

BQC/LQC Reporting Requirements

Ark. Code Ann. § 7-9-402 provides, in pertinent part, as follows:

- (3)(A) ‘Contribution’ means, whether direct or indirect, advances, deposits, transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledges, or promises of money or anything of value, whether or not legally enforceable, to a person for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question....
 - (B) ‘Contribution’ includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events, and the granting of discounts or rebates by television and radio stations and newspapers, not extended on an equal basis to all persons seeking to expressly advocate the qualification, disqualification, passage, or defeat of a ballot question....
 - (C) ‘Contribution’ shall not include noncompensated, nonreimbursed volunteer personal services or travel[.]
- (4) ‘Contribution and expenditure’ shall not include activities designed solely to encourage individuals to register to vote or to vote, or any communication by a bona fide church or religious denomination to its own members or adherents for the sole purpose of protecting the right to practice the religious tenets of the church or religious denomination, and ‘expenditure’ shall not include one made for communication by a person strictly with the person’s paid members or shareholders[.]

¹ The term, “ballot question committee,” as defined in Ark. Code Ann. § 7-9-402(2)(A), means: “any person, located within or outside Arkansas, who receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question, or any person, other than an individual, located within or outside Arkansas, that makes expenditures for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question.”

* * *

- (6) '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, for goods, services, materials, or facilities for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question...[.]

In accordance with Ark. Code Ann. § 7-9-406 and § 607 of the Rules on BQCs/LQCs, a BQC/LQC is required to file reports with the Ethics Commission when it either receives contributions or makes expenditures in excess of \$500 for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot measure. The filing of the financial reports (monthly, preelection, and final) depends upon when the \$500 threshold has been met in connection with the election in question.

Once a BQC triggers the financial reporting requirements, the financial reports must be filed with the Commission in accordance with Ark. Code Ann. § 7-9-409 and §§ 608 – 610 of the Rules on BQCs/LQCs. Pursuant thereto, a BQC/LQC is required to file monthly financial reports by no later than fifteen (15) days following the month in which the \$500 threshold has been met. Thereafter, monthly financial reports must be filed no later than fifteen (15) days after the end of each month until the election is held.

A BQC/LQC is also required to file a ten (10) day preelection financial report no fewer than seven (7) days prior to any election on the ballot question and a final financial report must be filed no later than thirty (30) days after the election. A monthly report is not required for any month in which certain days of that month are included in a ten (10) day preelection financial report.

Ark. Code Ann. § 7-9-409(b) and § 610(b) of the Rules on BQCs/LQCs address the late filing of financial reports. Pursuant thereto, a BQC/LQC which files a late financial report shall be subject to a late filing fee not exceeding fifty dollars (\$50.00) for each day the report remains unfilled.

In addition to the registration and reporting requirements applicable to a BQC/LQC, Ark. Code Ann. § 7-9-405(a) and § 601(a) of the Rules on BQCs/LQCs places limits on the receipt of cash contributions. Pursuant thereto, a BQC/LQC is prohibited from accepting any contribution in cash, meaning currency or coin, that exceeds one hundred dollars (\$100).

PAC Reporting Requirements

Ark. Code Ann. § 7-6-201(1)(A) provides that the term “approved political action committee” is defined to mean any person that:

- (i) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees;
- (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 § 7-6-215 prior to making contributions.

Ark. Code Ann. § 7-6-201(1)(B) goes on to further define the term “approved political action committee” to not include the following: “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 or legislative question committee as defined in § 7-9-402.”

It is noted that the term “prohibited political action committee” is defined in Ark. Code Ann. § 7-6-201(15) as follows:

- (A) ‘Prohibited political action committee’ means any person that receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees but that does not meet the requirements of an approved political action committee.
- (B) ‘Prohibited political action committee’ shall not include: (i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205; (ii) The candidate’s own campaign committee; (iii) A county political party committee; (iv) An exploratory committee; or (v) A ballot or legislative question committee [.]

Ark. Code Ann. § 7-6-215 states that in order for a PAC to qualify as an approved PAC, it must 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. This statute also requires approved PACs to file quarterly reports with the Secretary of State which include the current balance of PAC funds, information concerning each contributor to the PAC that exceeded five hundred dollars (\$500) in the aggregate during the previous calendar year, and the name and address of each candidate, BQC, LQC, political party, county political party committee, or other

PAC to whom the PAC made a contribution or contributions that exceeded fifty dollars (\$50.00) in the aggregate during the filing period.

Lobbyist Reporting Requirements

Ark. Code Ann. § 21-8-601(a) provides, in pertinent part, that a lobbyist² shall register within five (5) days after beginning lobbying³.

Ark. Code Ann. § 21-8-603(a)(1) provides as follows:

Within fifteen (15) days after the end of each calendar quarter, each registered lobbyist shall file a complete and detailed statement, signed and sworn to, concerning his or her lobbying activities during the previous calendar quarter.

Please be advised that the preliminary results of staff's investigation were presented to the Commission at the meeting held on today's date. At that time, the Commission decided, by a vote of 3-0, with Commissioners Bray and Trusty not present, to **DISMISS** the complaint.

Evidence gathered during the course of the investigation reflected that Repeal 119 appears to have complied with the BQC registration and reporting requirements in connection with its campaign to have Ordinance 119 repealed by voters in a special election. It filed a Statement of Organization with the Ethics Commission on September 15, 2014. Repeal 119's financial statement filed on October 15, 2014, reflects that the group began receiving contributions and crossed the \$500 threshold on September 10, 2014.

According to records on file with the Ethics Commission, Repeal 119 timely filed monthly financial reports for September 2014 and October 2014. Repeal 119 filed a preelection financial report on December 2, 2014, which covered all of November, 2014 until December 2, 2014, which was the deadline for the group to have filed its preelection report. Repeal 119 filed its final

² The term "lobbyist", as defined by Ark. Code Ann. § 21-8-402(11), 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 any 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[.]

³ The term "lobbying", as defined by Ark Code Ann. § 21-8-402(10), means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.

financial report on January 8, 2014, which was the deadline for the group to have filed its final financial report.

The evidence reflected that Repeal 119 received a cumulative total of monetary contributions in the amount of \$33,287.52 and that it made a cumulative total of \$33,227.37 in expenditures. None of the expenditures reported appeared to be contributions to another BQC. You testified that members of Repeal 119 learned that robocalls were being placed to Fayetteville residents by a group calling itself "Save Fayetteville", but that Repeal 119 was not responsible and did not contribute its funds to "Save Fayetteville".

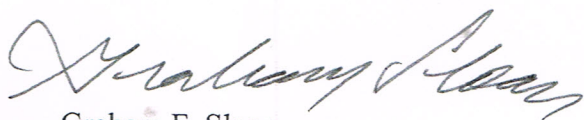
You further testified that Repeal 119 did arrange for robocalls that urged Fayetteville residents to sign the petitions needed to start the special election process. Repeal 119's October 2014 monthly financial report reflects an expenditure for robocall service. You also testified that Repeal 119 did not engage in lobbying members of the Fayetteville City Council because the City Council had voted to enact Ordinance 119 prior to Repeal 119's formation, so there was no further legislative or administrative action that the group was seeking from the City Council.

The evidence did not reflect that Repeal 119 supported or endorsed candidates on its website or its Facebook page. There was little to no mention at all of the general election on the group's website. There was a link on Repeal 119's Facebook page to another Facebook page for a free online radio show that hosted candidates for City Council who appeared to support Repeal 119's efforts, but there was no language endorsing the candidates or urging voters to vote for a particular candidate.

In accordance with Ark. Code Ann. § 7-6-218(b)(1)(C), this letter serves as notice of the Commission's final action together with the reasons for such action. This letter is a public document and a copy is being sent to the Complainant, Sonia Davis Gutierrez, to notify her of the outcome of these proceedings.

If you should have any questions or comments regarding this matter, please do not hesitate to contact us.

Sincerely,



Graham F. Sloan
Director

cc: Ms. Sonia Davis Gutierrez