



Arizona State Senate Issue Brief

December 19, 2016

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

CITIZENS CLEAN ELECTIONS ACT

The Citizens Clean Elections Act (Act), proposed by initiative petition, was approved in the November 1998 general election. The Act created a system to limit campaign spending and fundraising for political candidates in statewide and legislative elections.¹ Additionally, participating “Clean Elections candidates” receive public financing for their primary and general election campaigns.

In 2007, the Act was amended to include a non-severability clause so that if any of the 2007 provisions were invalidated by a court, the amendments in their entirety would be void.² In 2012, several amendments eliminated references to the matching fund provisions of the Act that were found to be unconstitutional and certain related reporting requirements were modified. In addition, tax credits and reductions for clean elections donations were eliminated. The 2012 amendments prohibited a candidate’s eligibility for clean elections funding if the Clean Elections Commission (Commission) removed them from office, or if the candidate was delinquent on a debt plan with the Commission.³

In 2013, the Act was amended to prohibit a participating candidate from using Clean Elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo that is owned by a business or other entity owned by the candidate, or in which the candidate has a controlling interest. Additionally, the 2013 amendments modified the formula utilized by the Secretary of State (SOS) to determine if a candidate qualifies for Clean Elections funding.⁴

COMMISSION STRUCTURE

The Act is administered by the Commission, which consists of five members with no more than two from the same political party or same county. Initially, the Commission on Appellate Court Appointments screened applicants and grouped them into “slates” for appointment by the Governor or other designated statewide officeholders.

¹ A.R.S. § 16-941

² [House Bill 2690](#), Laws 2007, Chapter 277

³ [House Bill 2779](#), Laws 2012, Chapter 257

⁴ [Senate Bill 1454](#), Laws 2013, Ch. 254, § 12

In 2000, the Arizona Supreme Court held in *Citizens Clean Elections Commission v. Myers (2000)* that the portions of the Act that expanded the duties of the Commission on Appellate Court Appointments beyond the scope of judicial appointments were unconstitutional. The 2007 amendments removed the authority of the Commission on Appellate Court Appointments to nominate candidates for vacant Commissioner positions and instead established that the Commission applicants were directly by the appointing officer. The Commissioners serve five-year staggered terms.⁵

Commissioners are required by statute to elect a chair to serve each calendar year. Members serve for no longer than one term and are not eligible for reappointment. During their tenure or for three subsequent years, no commissioner shall seek or hold any other public office, serve as an officer of any political committee or employ or be employed as a lobbyist.⁶

PRIMARY RESPONSIBILITIES

Education and Enforcement

The Act establishes that the Commission enforce its voter education duties. This includes publishing the *Citizens Clean Elections Commission Voter Education Guide* (Guide) <http://www.azcleelections.gov/en/votereducationguide> delivered to every household with a registered voter. The Guide contains the names of candidates for every statewide and legislative district office, for the respective primary or general election, regardless of whether the candidate is a participating or nonparticipating candidate.⁷

Additionally, the Commission sponsors debates among participating candidates and may permit nonparticipating candidates to take part in the debates. The Commission also prescribes forms for reports, statements, notices and other documents and is prohibited from requiring a candidate to use a reporting system other than

the system jointly approved by the Commission and the SOS.

Rule Making Authority

The Commission is required to adopt rules to govern and carry out its duties. Proposed rules must be filed with the SOS and heard in public meetings, with at least a 60-day comment period, before final adoption in an open meeting. The final rule must also be filed with the SOS for publication in the *Arizona Administrative Register* as prescribed in A.R.S. § 41-1022.⁸ Final rules may take effect immediately upon the unanimous vote of the Commission. Rules adopted by a less than unanimous vote become effective on January 1 in the year following adoption.⁹

Similarly, a unanimous vote by the Commission is required to enact any immediate change to a rule. If there is less than a unanimous vote by the Commission, the rule change will take effect the next election cycle.

CONTRIBUTION LIMITATIONS

All candidates running for election in Arizona are subject to statutory contribution limitations as shown in table 1. The limits are increased by \$100 in January of each odd-numbered year by the SOS.¹⁰ (Effective 11/5/16)

Table 1: Campaign Contribution Limits 2015-2016 Election Cycle¹¹ Effective July 3, 2015

	Statewide Candidate	Legislative Candidate	Local Candidate
Individual may give:	\$6,250	\$6,250	\$6,250
Candidate committee may give:	\$6,250	\$6,250	\$6,250
Corporation, LLC or union may give:	Prohibited	Prohibited	Prohibited

⁸ A.R.S. 16-956 § (C)

⁹ A.R.S. 16-956 § (D)

¹⁰ A.R.S. § 16-905 (G), § 16-931 (2)

¹¹

http://www.azsos.gov/sites/azsos.gov/files/campaign_contribution_limits_7-21-2015.pdf

⁵ A.R.S. 16-955 § (D) & (F)

⁶ A.R.S. 16-955 § (I)

⁷ A.R.S. 16-956 § (A)

Statewide Candidate	Legislative Candidate	Local Candidate	Statewide Candidate
“PAC” without Mega “PAC” status may give:	\$6,250	\$6,250	\$6,250
“PAC” with Mega “PAC” status may give:	\$12,500	\$12,500	\$12,500
Political Party/Party Organization may give:	\$100,000	\$10,000	\$10,000
Partnership	\$6,250	\$6,250	\$6,250

	PACs that give to candidates	PACS that do not give to candidates	Political Parties/ Political Organizations
Individual may give:	Unlimited	Unlimited	Unlimited
Candidate committee may give:	Unlimited	Unlimited	Unlimited
Corporation, LLC or union may give:	Prohibited	Unlimited	Unlimited
“PAC” without Mega “PAC” status may give:	Unlimited	Unlimited	Unlimited
“PAC” with Mega “PAC” status may give:	Unlimited	Unlimited	Unlimited
Political Party/Party Organization may give:	Only for nominees	Unlimited	Unlimited
Partnership	Prohibited	Unlimited	Unlimited

Candidates who do not receive public Clean Elections money, commonly called “nonparticipating” or “traditional” candidates, are prohibited from accepting contributions in

excess of an amount that is 20 percent less than the limits prescribed in A.R.S. § 16-905 as shown in table 1.¹²

Qualifications for a participating candidate

Candidates who agree to limit their fundraising and spending qualify as a participating candidate.¹³ These participating candidates must: 1) receive a specified number of \$5 contributions from registered voters; 2) limit spending of their personal monies for their candidacy; 3) limit campaign spending to the dollar amounts received from the Commission; and 4) comply with controls on their campaign account. Table 2 contains the Election spending limits.

Table 2: Adjusted Spending Limits for Participating Candidates in 2016 Elections A.R.S. §§ 16-959 (A), 16-961 (G) (H)¹⁴

	Primary	General
Governor	\$792,884	\$1,189,326
Secretary of State/ Attorney General	\$205,454	\$308,181
Treasurer		
Superintendent of Public Instruction	\$102,711	\$154,067
Corporation Commissioner		
Mine Inspector	\$51,371	\$77,057
Legislature	\$16,044	\$24,066

Certification as a participating candidate

To be a certified participating candidate, an individual must file an application with the SOS before the end of the qualifying period – the period beginning on the first day of August in a year preceding an election and ending one week before the primary election.¹⁵

¹² A.R.S. § 16-941 (B)

¹³ A.R.S. § 16-950 (D), 16-941 (A)

¹⁴

http://www.azsos.gov/sites/azsos.gov/files/2016_cccec_bien_nial_adjustment_chart_january_2015.pdf

¹⁵ A.R.S. § 16-961 (B) (3)

The application certifies that: 1) the candidate complies with specified limits on spending and contributions as outlined in A.R.S. § 16-941 (A); 2) the candidate's campaign committee and exploratory committee have filed all required campaign finance reports during the election cycle; and 3) the candidate will comply with contribution and expenditure limits as outlined in A.R.S. § 16-941 (A) during the election cycle and will not accept private contributions.¹⁶

Additionally, no later than one week after the qualifying period, a list containing the names of persons making qualified contributions must be submitted to the SOS. The SOS must verify the names of contributors who support a candidate for statewide or legislative office.¹⁷

A candidate is ineligible for certification if they were previously removed from office by the Commission or if they are delinquent on a debt plan with the Commission, except if the debt is paid in full or the candidate is current on a payment plan.

CLEAN ELECTIONS FUNDING

At the beginning of the primary election period, the Commission pays to the campaign account of each qualifying candidate an amount equal to the primary election spending limit in a primary election.¹⁸

The process is repeated at the beginning of the general election period with the participating candidate receiving an amount equal to the general election spending limit. However, the Act permits a participating candidate running for the Legislature in a one-party-dominant legislative district the option to reallocate a portion of funds from the general election period to the primary election period. Other specified amounts are available for a participating candidate who is independent or unopposed in the election.¹⁹

A participating candidate who fails to qualify for the ballot must return unspent public monies. This candidate must return monies above an amount sufficient to pay any unpaid expenditures made prior to the date the candidate failed to qualify for the ballot and repay any family member if a candidate is unable to confirm that the goods or services provided by the family member were at fair market value. Additionally, a disqualified participating candidate must return within 14 days all remaining assets purchased with public monies to the Commission.

The Act also establishes reporting requirements in additional campaign finance laws and provides various penalties, including forfeiture of office, for violations of its provisions for participating candidates.²⁰

REPORTING REQUIREMENTS

Any person making independent expenditures, exceeding a total of \$500 in an election cycle, related to a particular office must file reports with the SOS. These reports are required to: 1) identify the office; 2) the candidate or group of candidates whose election or defeat is being advocated; and 3) state whether the person is advocating election or defeat.²¹

Expenditures outlined in A.R.S. § 16-920 including communications by a corporation to its stockholders and executive or administrative personnel, or by a labor organization to its members and their families, are not considered political contributions prohibited by law. This also includes nonpartisan registration and get-out-the-vote campaigns, administration and solicitation of voluntary contributions or contributions to support or oppose an initiative or referendum measure.²²

FUNDING SOURCES

The Act is supported by various means including election-related civil penalties, a 10

¹⁶ A.R.S. § 16-947 (B)

¹⁷ A.R.S. § 16-950 (C)

¹⁸ A.R.S. § 16-951

¹⁹ A.R.S. § 16-952

²⁰ A.R.S. § 16-957 & 16-958

²¹ A.R.S. § 16-941 (D)

²² A.R.S. § 16-920 (A) 1-6

percent surcharge on certain civil and criminal fines and penalties and by any qualifying contributions to support public financing of candidates. The monies are deposited into a Clean Elections Fund (Fund) administered by the State Treasurer and audited at least once every four years by the Auditor General. According to the Joint Legislative Budget Committee, these revenue sources generated an estimated \$8,265,000 in FY 2016.²³

Prior to FY 2013, the Commission also generated revenues from a check-off box on state income tax forms and tax credits. Laws 2012, Chapter 257 repealed these provisions.

During a calendar year, the Commission cannot spend more than \$5 multiplied by the number of Arizona resident personal income tax returns filed during the previous calendar year. The Commission may use up to 10 percent of the monies for reasonable and necessary administration and enforcement expenses and may apply up to 10 percent of the monies for public education regarding participation as a candidate or contributor, or regarding the functions, purpose and technical aspects of the Act.²⁴

Lobbyist Fee

As originally enacted, the Act included additional funding through a \$100 annual fee on lobbyists representing for-profit entities, including trade groups of for-profit entities. In 2002, former State Representative Steve May was fined for violating a civil parking ordinance. On top of his \$27 fine, among other surcharges, there was a 10 percent surcharge to support Clean Elections, which he refused to pay. He and Rick Lavis, a lobbyist who had been assessed a \$100 fee under the Act, challenged the constitutionality of the Act as violating their free speech rights.

A federal court dismissed the original lawsuit for lack of subject matter jurisdiction under the **Tax Injunction Act**, 28 U.S.C. § 1341, because it determined that this action challenged

a state tax. Lavis and May then sought declaratory and injunctive relief in superior court. A superior court judge held the lobbyist fee was unconstitutional and severed that provision of the Act; it upheld the surcharge on civil and criminal fines.

On appeal, the Arizona Court of Appeals reversed the trial court decision and found that the portion of the law relating to fees and surcharges was an unconstitutional restraint on the exercise of free speech. On October 11, 2002, the Arizona Supreme Court unanimously upheld the funding system, ruling that it was constitutional, overturning the Court of Appeals decision. On March 24, 2003, the United States Supreme Court refused to hear an appeal of the Arizona Supreme Court decision. In 2007, the Legislature repealed the language requiring the \$100 annual fee from lobbyists.²⁵

PAST VIOLATIONS

Former Representative David Burnell Smith was elected to serve in the House of Representatives during the 47th Legislature. He ran as a publicly funded candidate and signed a form promising to adhere to the provisions of the Act and to the campaign finance rules established by the Commission.

The Commission investigated Smith's campaign expenditures and found that he violated campaign finance rules by spending approximately 17 percent more on his election than permitted by law. The Commission sanctioned his removal from office and Smith appealed this decision. There were many procedural aspects of the case, but the Arizona Supreme Court evaluated Smith's likelihood of success on the merits of his case. Smith claimed that he could only be impeached or recalled from office, and only for reasons set forth in the Arizona Constitution.

The Court had previously concluded that the Constitutional provisions providing for means of removal from office do not limit the power of the Legislature from creating additional ways or causes for removal from

²³ [JLBC FY 2017 Appropriations Report](#)

²⁴ A.R.S. § 16-949

²⁵ [Laws 2007, Chapter 277, H.B. 2690](#)

public office. On May 3, 2006, the Arizona Supreme Court found that the public, acting in its legislative capacity, authorized the removal from public office through the Act, which specifically authorizes removal from office as a sanction for serious violations of the campaign finance laws. The Court also found that Smith agreed to abide by those terms and nothing in the Arizona Constitution precluded his removal from office.²⁶ Smith was the first state legislator to be removed from office for violating a publicly financed campaign system.

Former Representative Doug Quelland was elected in November 2008 to serve in the House of Representatives during the 49th Legislature. He ran as a publicly funded candidate. Shortly after taking office, Quelland was investigated by the Commission for alleged violations to campaign finance law. The Commission concluded that Quelland violated the Clean Elections system when he hired a private consultant for his 2008 campaign and did not report the expenditures on campaign finance reports. As noted above in the Smith case, the Act authorizes removal from office as a sanction for serious violations to campaign finance laws. In May 2009, the Commission ordered that Quelland be removed from office.²⁷

Quelland subsequently brought the decision before an Administrative Law Judge (ALJ), who ruled in favor of the Commission. Quelland then brought that ruling before the Maricopa County Superior Court. The superior court found in favor of the ALJ and the Commission. Quelland vacated his House seat on May 27, 2010.

HISTORICAL CONSIDERATIONS

Proposition 106

In 2004, Proposition 106 qualified for the November ballot. If passed, Proposition 106 would have removed the dedicated funding source for the Commission. The de-funding of

²⁶ [David Burnell Smith v. Arizona Citizens Clean Elections Commission, 2006](#)

²⁷ Doug Quelland, November 9, 2009, Matter ID 08-0035-CCE
<https://portal.azoah.com/search1400/Default.aspx>

the Commission would have prevented it from regulating campaign finance laws, holding debates and publishing voter guides. Proposition 106 also stipulated that the surcharge, penalty and other money in the Clean Elections Fund on and after the effective date of the proposition would be deposited in the state General Fund.

In October 2004, in *Clean Elections et al v. Brewer/No Taxpayer et al* the Arizona Supreme Court upheld a superior court ruling to remove Proposition 106 from the ballot because it violated the “separate amendment rule.” According to Arizona’s Constitution, a ballot measure that further amends the Constitution may only contain one subject. The Arizona Supreme Court concurred with the lower court that a voter might reasonably agree with one part of the initiative, such as eliminating publicly financed political campaigns, but might support the Commission’s other duties.²⁸

No Taxpayer Money For Politicians v. Lang, et al. (2011)

In December 2011, a group of plaintiffs dedicated to repealing the Act brought an action against the Commissioners and staff members alleging that the Commission’s voter education activities violated state law.

The lawsuit sought to enjoin the Commission from conducting much of its voter education duties and to prevent the Commission from exercising its discretion in making expenditures pursuant to the Act and Arizona Supreme Court precedent. The Commissioners and staff filed a motion to dismiss all claims justifying their actions were consistent with state law and the purpose of the Act as enacted by the voters of Arizona.

Maricopa County Superior Court Judge Mark H. Brain dismissed the lawsuit. In his ruling, Judge Brain struck down every point raised by the plaintiffs and concluded: “Many of the plaintiffs’ requests are contrary to the statutory scheme and First Amendment

²⁸ [Clean Elections et al v. Brewer/No Taxpayer et al, 2014](#)

principles.” In one of their arguments, the plaintiffs asked the Court to prohibit the Commission from communicating with alleged “special interest groups” who favor Clean Elections. In his ruling, Judge Brain stated, “The Court is unaware of any other situation in which a person or entity has sought to preclude a government commission from communicating with the citizenry—that’s not how government works. Indeed, the criticism generally leveled at government is that it is not responsive to members of the public, not that it responds to them.” After telling members of the press that they intended to appeal, plaintiffs dropped their lawsuit and decided not to challenge Judge Brain’s ruling.²⁹

Legislation Impacting the Act

Laws 2012, Chapter 257 (House Bill 2779)

House Bill 2779, signed into law by Governor Brewer on April 12, 2012, made several modifications to the Act.

Initially, it eliminated matching fund reporting requirements for nonparticipating candidates as outlined in A.R.S. § 16-958.³⁰ It also increased the qualifying period for legislative candidates to six months beginning on the first day of August preceding an election year and ending one week before the primary election. Additionally, candidates were declared ineligible to become participating candidates if they were previously removed from office by the Commission or were delinquent in payment of debt to the Commission.

The legislation also placed a 10 percent cap on public education expenses excluding debates and candidate statement pamphlets. Finally, as stipulated in *Arizona Free Enterprise v. Bennett*, it removed the equalizing funding language.

There were also changes made to tax forms by removing the optional check-off boxes allowing taxpayer contributions to the Clean Elections Fund in addition to eliminating the dollar-for-dollar tax credit for donations made to the fund. Finally, there were also additional

²⁹ <http://www.azcleelections.gov/CmsItem/File/30>

³⁰ [Laws 2012, Chapter 257, House Bill 2779](#)

modifications affecting the verification process for qualifying contributions and how candidate statements are delivered to voters.³¹

Litigation

Arizona Citizens Clean Elections Commission v. Brain(2014)

The Commission, along with several other plaintiffs, including then Chairman Louis Hoffman, author of the Clean Elections Act, filed suit seeking to enjoin the implementation of 2013’s House Bill 2593.

The measure dramatically increased contribution limits applicable to state and legislative candidates and repealed other campaign finance limits all together. The Commission and others argued that this violated the language of the Act, which was passed by voters in 1998. The Act is subject to the Voter Protection Act as outlined in the Arizona Constitution that prohibits amendments of voter-approved measures except with a super-majority legislative vote and to further the underlying measure’s purposes.

After the Commission secured an injunction and a unanimous court of appeals opinion, the Arizona Supreme Court vacated the injunction. A final opinion from the Supreme Court remains pending as does this litigation.³²

McComish v. Brewer, 2010; McComish v. Bennett, 2010³³; Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett³⁴

On August 21, 2008, a lawsuit was filed in the United States District Court for Arizona

³¹ [2012 Citizens Clean Elections Commission Annual Report](#)

³² <http://www.azcleelections.gov/CmsItem/File/29>

³³ Jan Brewer was the Secretary of State when the lawsuit was initially filed. As the litigation progressed through the appellate process, Ken Bennett became the Secretary of State.

³⁴ *McComish v. Bennett* was consolidated with *Arizona Free Enterprise v. Bennett*.

asserting that the matching funds provisions of the Act impermissibly burden plaintiff's (non-participating candidates) First Amendment rights to freedom of speech. The losing party has challenged the courts decision at each step in the adjudicatory process.

On January 20, 2010, the District Court concluded that the matching funds provision of the Act violated the First Amendment to the U.S. Constitution. The District Court held that matching funds impermissibly burden non-participating candidates' First Amendment rights to freedom of speech.

On May 21, 2010, the United States Court of Appeals for the Ninth Circuit reversed and ruled that the matching funds provision of the Act imposes only a minimal burden on non-participating candidates' First Amendment rights. The Ninth Circuit concluded that the Act conforms to the requirements of freedom of speech in the First Amendment and, as such, must be upheld. On June 8, 2010, the United States Supreme Court issued an order in the pending case that had the effect of preventing participating candidates from receiving additional matching funds. On June 27, 2011, the Supreme Court held by a 5-4 vote that the matching funds provision is unconstitutional. According to the majority, Chief Justice John Roberts held that "Arizona's matching funds scheme substantially burdens political speech and is not sufficiently justified by a compelling interest to survive First Amendment scrutiny."³⁵

In a lengthy dissent, Justice Elena Kagan justified the rationale for the matching funds provision and promoting First Amendment values. The Court noted, however, that the First Amendment does not prohibit all public financing. Subsequently, Governor Brewer signed House Bill 2779 into law on April 12, 2012 removing the equalizing funding language in the Act.

Additional Resources

- Citizens Clean Elections Act Arizona Revised Statutes §§ 16-940-16-961
- Citizens Clean Elections Commission <http://www.azcleelections.gov/en/resources>
- 2016 Citizens Clean Elections Guide <http://www.azcleelections.gov/CmsItem/File/19>
- Arizona Secretary of State www.azsos.gov
- Arizona Campaign Finance Guide http://www.azsos.gov/sites/azsos.gov/files/campaign_finance_guide_7-21-2015.pdf
- Joint Legislative Budget Committee, *FY 2017 Appropriations Report, Citizens Clean Elections Commission* <http://www.azleg.gov/jlbc/17AR/cce.pdf>
- Supreme Court of the United States <https://www.supremecourt.gov/>
- 2007 Amendments: Laws 2007, Chapter 277 (H.B. 2690)
- 2012 Amendments: Laws 2012, Chapter 257 (H.B. 2779)
- 2013 Amendments: Laws 2013, Chapter 254 (H.B. 1454)

³⁵ U.S. Supreme Court Opinion: June 27, 2011
Arizona Free Enterprise Club's Freedom Club PAC
et al. v. Bennett, Secretary of State of Arizona, et al.