



Arizona State Senate Issue Brief

August 3, 2018

Note to Reader:

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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. Also, tax credits and reductions for clean elections donations were eliminated. A candidate was also prohibited from 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. The 2013 amendments also modified the formula utilized by the Secretary of State (SOS) to determine if a candidate qualifies for Clean Elections funding.⁴

COMMISSION STRUCTURE

A five-member non-partisan Commission administers the Act, 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

Since 2007, Commissioners are appointed by appointing offices to serve five-year staggered terms.⁵ Commissioners are required 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) 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 a 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 must 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.

Candidates who do not receive public Clean Elections money, commonly called “nonparticipating” or “traditional” candidates, are prohibited from accepting contributions in excess of the amounts shown in Table 1.¹⁰ These limits reflect a 20 percent reduction as prescribed by A.R.S. § 16-941 (B), but are increased by \$100 by the SOS in January of each odd-numbered year.¹¹

Table 1: Campaign Contribution Limits

2017-2018 Election Cycle¹² Effective Jan. 1, 2017

⁵A.R.S. 16-955 § (D) & (F)

⁶A.R.S. 16-955 § (I)

⁷A.R.S. 16-956 § (A)

⁹ A.R.S. 16-956 § (D)

¹⁰ A.R.S. § 16-941 (B)

¹¹ A.R.S. § 16-905 (G), § 16-931 (2)

¹² https://azsos.gov/sites/default/files/2017_0622_contribution_limit_chart.pdf

	Statewide Candidate	Legislative Candidate	Local Candidate
Individual may			
Candidate committee may give:	Prohibited (except donation of surplus funds)	Prohibited (except donation of surplus funds)	Prohibited (except donation of surplus funds)
Corporation, LLC or union may give:	Prohibited	Prohibited	Prohibited
“PAC” without Mega “PAC” status may give:	\$5,100	\$5,100	\$6,350
	Statewide Candidate	Legislative Candidate	Local Candidate

“PAC” with Mega “PAC” status may give:	\$10,200	\$10,200	\$12,700
Political Party may give:	\$80,100 (to a party nominee only)	\$8,100 (to a party nominee only)	\$10,100 (to a party nominee only)
Partnership may give:	\$5,100	\$5,100	\$6,350

	PAC	Political Party
Individual may		
Candidate committee may give:	Unlimited	Unlimited
Corporation, LLC or union may give:	Unlimited	Unlimited
“PAC” without Mega “PAC” status may give:	Unlimited	Unlimited
“PAC” with Mega “PAC” status may give:	Unlimited	Unlimited
Political Party/ Party Organization may give:	Unlimited	Unlimited
Partnership may give:	Unlimited	Unlimited

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: 2017-2018 Participating Candidate Expenditure Limits

¹³ A.R.S. § 16-950 (D), 16-941 (A)

	Primary	General
Governor	\$839,704	\$1,259,556
Secretary of State/ Attorney General	\$217,589	\$326,384
Treasurer Superintendent of Public Instruction Corporation Commissioner	\$108,779	\$163,169
Mine Inspector	\$54,405	\$81,608
Legislature	\$16,995	\$25,493

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

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 then verify the names of contributors who support a candidate for statewide or legislative office.¹⁷

A candidate is ineligible for certification if the Commission previously removed them from office 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 before the candidate failed to qualify for the ballot. They must also 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

¹⁴ <https://storage.googleapis.com/usgovcloudapi.net/public/docs/292-20172018-Clean-Elections-Act-Biennial-Adjustments.pdf>

¹⁵ A.R.S. § 16-961 (B) (3)

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

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 must: 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

Reportable expenditures do not include communications by an organization to its members, shareholder, employees, affiliated persons and subscribers.

FUNDING SOURCES

The Act is supported by various means including election-related civil penalties, a 10 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 \$14,711,600 in FY 2018.²²

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.²³

LOBBYIST FEE

As originally enacted, the Act generated additional funding with 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, 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

²⁰ A.R.S. § 16-957 & 16-958

²¹ A.R.S. § 16-941 (D)

²² [JLBC FY 2019 Baseline Report](#)

²³ A.R.S. § 16-949

the language requiring the \$100 annual fee from lobbyists.²⁴

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 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 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 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.²⁵ 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 of 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.²⁶

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 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.

Clean Elections et al v. Brewer/No Taxpayer, et al. (2014)

²⁴[Laws 2007, Chapter 277, H.B. 2690](#)

²⁵[David Burnell Smith v. Arizona Citizens Clean Elections Commission, 2006](#)

²⁶Doug Quelland, November 9, 2009, Matter ID 08-0035-CCE <https://portal.azoah.com/search1400/Default.aspx>

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.²⁷

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.

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 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.²⁸

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. 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 modifications affecting the verification process for qualifying

²⁷ [Clean Elections et al v. Brewer/No Taxpayer et al, 2014](#)

²⁸ <http://www.azcleanelections.gov/CmsItem/File/30>

contributions and how candidate statements are delivered to voters.

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.

*McComish v. Brewer, 2010; McComish v. Bennett, 2010*³⁰; *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*³¹

On August 21, 2008, a lawsuit was filed in the United States District Court for Arizona asserting that the matching funds provisions of the Act impermissibly burden plaintiff's (non-participating candidates) First Amendment rights. The losing party has challenged the courts decision at each step in the adjudicatory process.

³⁰ 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.

³¹ *McComish v. Bennett* was consolidated with *Arizona Free Enterprise v. Bennett*.

On January 20, 2010, the District Court concluded that the matching funds provision of the Act violated the First Amendment of the U.S. Constitution by impermissibly burdening non-participating candidates' 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 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."³²

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
<https://www.azcleelections.gov/en/what-we-do>

Arizona Secretary of State

<https://azsos.gov/>

Arizona Campaign Finance Guide

<https://azsos.gov/sites/default/files/2018%200606%20Campaign%20Finance%20Handbook%20-%20Candidates.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)