Arizona State Senate
Issue Brief

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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 modify contribution and spending limits for Clean Elections candidates and modify the powers and duties of the Clean Elections Commission (Commission). The legislation also included 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, which had allowed a participating Clean Elections candidate to receive additional funding based on the amounts spent by their privately-funded opponent, that were found to be unconstitutional. Tax credits and reductions for clean elections donations were also eliminated and a candidate was excluded from Clean Elections funding if the candidate was removed from office by the Commission or is 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 nonpartisan Commission administers the Act, with no more than members 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

[1] A.R.S. Title 16, Ch. 5, art. 2
[2] Laws 2007, Chapter 277
[3] Laws 2012, Chapter 257
[4] Laws 2013, Ch. 254

by the Governor or other designated statewide officeholders.

Since 2007, Commissioners have been appointed by designated appointing offices to serve five-year staggered terms. Commissioners are required to elect a chair to serve each calendar year. Members may only serve for one term and are not eligible for reappointment. During their tenure and the three subsequent years, a commissioner may not seek or hold any other public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.[5]

PRIMARY RESPONSIBILITIES

Education and Enforcement

The Act requires the Commission to perform certain voter education duties, including publishing and delivering a copy of the Citizens Clean Elections Commission Voter Education Guide (Voter Guide) to every household with a registered voter. The Voter 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.[6]

Additionally, the Commission sponsors debates among participating candidates and may allow nonparticipating candidates to take part in the debates. The Commission prescribes forms for reports, statements, notices and other documents and may not require a candidate to use a reporting system other than the system jointly approved by the Commission and the SOS.

Rulemaking Authority

When the Commission was established, it was required to adopt rules to govern and carry out is duties by filing a proposed rule with the SOS, allowing for 60 days of public comment and adopting the final rule at a public hearing. In 2018, voters approved Proposition 306, which subjects the Commission's rulemaking procedures to statutory rulemaking requirements pursuant to the Administrative Procedures Act.[7]

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.[8] These limits are increased by $100 by the SOS in January of each odd-numbered year.[9]

Table 1: Campaign Contribution Limits 2021-2022 Election Cycle (Effective Jan. 1, 2021)

Contributor	Statewide Candidate	Legislative Candidate	Local Candidate
Individual	$5,300	$5,300	$6,550
Candidate committee	Prohibited (except donation of surplus funds)	Prohibited (except donation of surplus funds)	Prohibited (except donation of surplus funds)
Corporation, LLC or union	Prohibited	Prohibited	Prohibited
PAC without Mega PAC status	$5,300	$5,300	$6,550
PAC with Mega PAC status	$10,600	$10,600	$13,100
Political Party	$80,300 (to a party nominee only)	$8,300 (to a party nominee only)	$10,300 (to a party nominee only)
Partnership	$5,300	$5,300	$6,550

Continued on next page.

[5] A.R.S. § 16-955
[6] A.R.S. § 16-956; Voter Guide
[7] SOS: Proposition 306 (2018)
[8] A.R.S. § 16-941
[9] A.R.S. §§ 16-905 and 16-931

Table 1 (Cont.): Campaign Contribution Limits 2021-2022 Election Cycle (Effective Jan. 1, 2021)		
Contributor	**PAC**	**Political Party**
Individual	Unlimited	Unlimited
Candidate committee	Unlimited	Unlimited
Corporation, LLC or union	Unlimited	Unlimited
PAC without Mega PAC status	Unlimited	Unlimited
PAC with Mega PAC status	Unlimited	Unlimited
Political Party/ Organization	Unlimited	Unlimited
Partnership	Unlimited	Unlimited

SOS 2021-2022 Contribution Limits Chart

Qualifications for a Participating Candidate

Candidates who agree to limit their fundraising and spending qualify as a participating candidate. 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.[10]

Table 2: Participating Candidate Expenditure Limits[11] 2021-2022 Election Cycle		
Office	**Primary**	**General**
Governor	$854,567	$1,281,851
Secretary of State	$21,442	$332,163
Attorney General		
Treasurer	$108,779	$163,169
Superintendent of Public Instruction		
Corporation Commissioner		
Mine Inspector	$53,367	$83,051
Legislature	$17,293	$25,940

SOS: 2021-2022 Expenditure Limits Chart

To be a certified participating candidate, an individual must file an application with the SOS before the end of the qualifying period, which is the begins the first day of August in a year preceding an election and ends one week before the primary election.[12]

The application certifies that: 1) the candidate complies with the statutorily specified limits on spending and contributions; 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 statutory contribution and expenditure limits for Clean Elections candidates during the election cycle and will not accept private contributions.[13]

Additionally, within one week of the end of the qualifying period, a candidate must submit a list containing the names of persons who made the $5 qualifying contributions to the SOS. The SOS must then verify the names of contributors who support a candidate for statewide or legislative office.[14]

A candidate is ineligible for certification if the Commission previously removed the candidate from office or if the candidate is 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.[15]

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 allows a participating candidate running for the Legislature in a one-party-dominant

[10] A.R.S. §§ 16-950 and 16-941
[11] A.R.S. §§ 16-959 and 16-961
[12] A.R.S. § 16-961
[13] A.R.S. § 16-947
[14] A.R.S. § 16-950
[15] A.R.S. § 16-951

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.[16]

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 all remaining assets purchased with public monies to the Commission within 14 days.

The Act also establishes reporting requirements in addition to campaign finance laws and provides various penalties, including forfeiture of office, for violations of its provisions for participating candidates.[17]

REPORTING REQUIREMENTS

Any person making independent expenditures over a total of $500 related to a particular office in an election cycle 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.[18]

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 $31,688,600 in FY 2021.[19]

Prior to FY 2013, the Commission also generated revenues from taxpayer contributions and donations designated on state income tax forms for which the taxpayer could receive a tax reduction or tax credits. The Legislature repealed these provisions in 2012.

During a calendar year, the Commission may not 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.[20]

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, this provision was challenged for an alleged violation of free speech rights.

A federal court dismissed the original lawsuit for lack of subject matter jurisdiction under the Tax Injunction Act because the action challenged a state tax.[21] Subsequently, 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.

[16] A.R.S. § 16-952
[17] A.R.S. §§ 16-957 and 16-958
[18] A.R.S. § 16-941
[19] JLBC FY 2022 Baseline Report
[20] A.R.S. § 16-949
[21] 28 U.S.C. § 1341

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 U.S. Supreme Court refused to hear an appeal of the Arizona Supreme Court decision. In 2007, the Legislature repealed the $100 annual fee from lobbyists. [22]

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 monies 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. (2004)

In October 2004, 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 the Arizona 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.[23]

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

In December 2011, an action was brought against the Commissioners and Commission staff members alleging that the Commission's voter education activities violated state law.

The lawsuit sought to enjoin the Commission from conducting many 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.

The Maricopa County Superior Court dismissed the lawsuit. The ruling 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."

McComish v. Brewer (2010); McComish v. Bennett (2010);[24] Arizona Free Enterprise Club's Freedom Club PAC v. Bennett (2011)[25]

On August 21, 2008, a lawsuit was filed in the U.S. District Court for Arizona asserting that the matching funds provisions of the Act, which allowed a participating Clean Elections candidate to receive additional funding based on the amounts spent by their privately-funded opponent, impermissibly burden non-participating candidates' First Amendment rights.

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

On May 21, 2010, the U.S. Court of Appeals for the Ninth Circuit reversed and ruled that the matching funds provision of the Act imposes only

[22] Laws 2007, Chapter 277
[23] *Clean Elections et al v. Brewer/No Taxpayer et al.* 209 (Ariz.) 241 (2004)
[24] 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.
[25] *McComish v. Bennett* (2010) was consolidated with *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett (2011)*

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 U.S. Supreme Court held by a 5-4 vote that the matching funds provision is unconstitutional. The majority, opinion, written by 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."[26]

Subsequently, Governor Brewer signed H.B. 2779 into law on April 12, 2012, removing the matching funding language in the Act.

ADDITIONAL RESOURCES

- Citizens Clean Elections Act:
  A.R.S. Title 16, Ch. 6 art. 2
- Citizens Clean Elections Commission
  https://www.azcleanelections.gov/
  Commission: What We Do
- Arizona Secretary of State
  https://azsos.gov/
  Arizona Campaign Finance Guide

[26] *Arizona Free Enterprise Club's Freedom Club PAC et al. v. Bennett, Secretary of State of Arizona, et al.* 564 U.S. 721 (2011)