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The Arizona "Unclean for Gene" Elections Act

Posted: 04/ 1/11 10:20 AM ET

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If you were running for office and you knew that for every dollar you spent the government would give a matching dollar to your opponents, would this affect your decisions on how, whether and when to spend money on getting your message out? And if you had three opponents who all receive matching funds to counter your solitary speech could those matching funds keep you from speaking at all?

These were the questions the Supreme Court heard on Monday in the case of [McComish v. Bennett](#), a First Amendment challenge to Arizona's "clean elections" act. The act gives funds, so-called "matching funds," to publicly funded candidates whenever privately funded opponents spend above a certain threshold.

Thankfully, the Court shows all indications that it will rule the clean elections act unconstitutional, striking a blow against increasingly innovative attempts to make elections "fair" by suppressing and chilling speech. Like so much campaign finance control, the Arizona clean elections act only sullies the First Amendment and hurts those who want to change the status quo the most.

Many Democrats fondly remember the tumultuous summer of '68 and the infamous Democratic National Convention in Chicago. It was a bellwether moment for the party, but it was a moment that may never have happened if a law like Arizona's clean election act was in effect.

Since those who forget history are doomed to repeat it, let us now recount the story of [Eugene McCarthy](#), a champion of traditionally left-wing causes, a vehement opponent of the Vietnam War when few Democrats would join him, and a lifelong critic of campaign finance reform. How are these compatible?

Eugene McCarthy was somewhat the Dennis Kucinich of his day. He was one of two Democrat Senators to vote against the Gulf of Tonkin Resolution, the resolution that helped escalate the Vietnam War. By 1968, the war had become one of those uniquely American wars: interminable, bipartisan, and aimless. McCarthy decided to run for president in order to end the war. Like all speakers who wish to reach a large audience, McCarthy needed the money to get his message out. An estimated one-third of McCarthy's money came from large contributors who would have been criminals under modern campaign finance regulations.

McCarthy's hippy supporters were told to "get clean for Gene." They cut their hair, shaved their ragged beards and unleashed a massive grassroots effort to unseat LBJ. In the crucial [New Hampshire primary](#) McCarthy took 42% of the vote to Johnson's 49%, not a victory but still a massive showing for a non-mainstream candidate against an incumbent. Seeing LBJ's vulnerability, Robert Kennedy entered the race four days later. With the growing revolution in the Democratic Party, LBJ did not run for a second term.

The Arizona clean elections act would have been unclean for Gene. If LBJ had decided to become a publicly financed candidate, McCarthy's success at private funding would have been penalized by taxpayer money given to his opponent. Moreover, if Robert Kennedy had joined the primary and also accepted public funds then both of McCarthy's opponents would have received funds to counter McCarthy's message. McCarthy, facing such odds, would've been wiser to remain quiet.

Supporters of the Arizona law say matching funds won't chill speech. They say this despite simultaneously arguing that the matching funds provision was intended to make public funding more attractive to potential candidates, in other words, to chill or eliminate privately funded speech.

Arguably, under a public financing system like Arizona's, McCarthy would have had the better option to take taxpayer funds rather than solicit contributions from wealthy donors. This, of course, would place him on an equal footing with LBJ, assuming Johnson also took public financing. But few candidates would want to be placed on an equal footing with their opponents, particularly an incumbent who already enjoys massive advantages.

And why should they? If a candidate can get more support from individual contributions than they would get in taxpayer funds, why shouldn't they opt out of the public financing? Obama made the same calculation in 2008, viewing it as his prerogative, if not duty, to use private donations to make his voice as loud as possible.

A matching funds provision, of course, would make a candidate think twice about this. Arizona's bill was specifically designed to make privately funded candidates fear the consequences of successful fundraising, something the First Amendment cannot tolerate.

At a time in which interminable, bipartisan and aimless wars are multiplying, we need more Gene McCarthies to stand up and speak truth to power. Giving "the power" -- i.e.

the government -- the ability to control speakers is dangerous. The Supreme Court should, and likely will, strike down this pernicious law.

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