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Amicus Briefs Filed in Arizona "Clean Elections" Case Debate How American Elections Should Be Funded

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WEB RELEASE: March 21, 2011

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[First Amendment]

Arlington, Va.—Next week, the U.S. Supreme Court will hear argument in the most important political-speech case since *Citizens United*: *Arizona Freedom Club PAC v. Bennett* and *McComish v. Bennett* are consolidated challenges brought by the Institute for Justice and the Goldwater Institute to Arizona's system of taxpayer-funded political campaigns. The Court has received more than two dozen *amicus curiae* ("friend of the court") briefs representing more than 100 different parties, including dozens of advocacy groups and current or former elected officials, five states, two municipalities, and the U.S. Solicitor General, all arguing that the Supreme Court's ruling will have national implications.

Arguments will be heard on Monday, March 28, 2011. The outcome of the case could well determine the future of government financing of political elections in states across the nation.

[Click Here](#) to watch a brief video explaining how Arizona's law works.

The amicus briefs supporting the Institute for Justice and the Goldwater Institute make clear that Arizona's system of "matching funds"—which gives taxpayer subsidies to publicly financed candidates whenever money is spent against them—discourages political speech and participation. The brief submitted by the libertarian Cato Institute, for example, demonstrates how, "Tying burdensome consequences to protected speech," as Arizona's law does, "is no more permissible than directly banning speech itself."

Additional briefs illustrate that "Clean Elections" systems failed to deliver on their lofty promises. The nonpartisan Center for Competitive Politics submitted a brief that surveyed government reports and social-science evidence to show that, despite "nearly 40 years of experience with direct government subsidies for candidates," there is still no solid evidence that such programs produce any measurable benefits.

Left unrefuted by any of the amici calling for government regulation of political speech are the findings of David Primo, Ph.D., of the Political Science Department of the University of Rochester, who found that the "Clean Elections" scheme alters the timing of speech because candidates delay political activity until the end of campaigns when matching funds are less likely to benefit opponents. In Arizona, fundraising and campaign spending on political speech by privately financed candidates tends to occur during the very end of the campaign and, in the general election, even after the campaign so that matching funds cannot affect the outcome. (Primo's research brief is available at: <http://www.ij.org/3466>.)

A ruling in favor of the Institute for Justice and the Goldwater Institute will have nationwide implications. Nine states (including Arizona) and three large municipalities currently have similar systems in place. Powerful special interest groups want to bring these laws to more states and the federal government. The national fight over the constitutionality of these systems is now coming to a head, and IJ's and Goldwater's challenges to Arizona's law are at the center of this fight.

These so-called "Clean Elections" systems replace traditionally funded political campaigns—those funded by voluntary citizen donations—with a government-directed funding system bankrolled by taxpayer dollars. Worse yet, in Arizona, every time a traditionally funded candidate receives a donation or spends above an arbitrary government-set limit on political speech, the government sends a check to each taxpayer-funded opponent. If a privately funded candidate faces more than one government-funded candidate, each of those candidates receives a check when the traditionally funded candidate raises or spends money to speak. Likewise, independent expenditure groups—those that support a candidate but by law do not coordinate any activities with that candidate—also trigger government subsidies to their political and ideological opponents, but only when they speak out in opposition to government-funded candidates or in favor of privately funded candidates. These laws have the obvious and intended effect of discouraging individuals and groups opposing government-funded candidates from speaking in the first place. Arizona's system is one of the nation's most far-reaching government-funded campaign systems and is the model for similar laws nationwide.

Although these cases raise questions that are vitally important to the right of Arizonans to speak freely about politics, they directly raise a larger national issue as well: Does the First Amendment permit the government to drive private spending from our political campaigns by burdening the speech of independent groups and candidates who refuse to take government money? Ultimately, government funding of campaigns means government control over campaign speech. Under our Constitution, though, it is the public—not the government—that decides whose political message is worth supporting.



100-plus Weigh In on the Biggest Campaign Finance Case since Citizens United



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
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