

AFECFC PAC, et al., v. Bennett; McComish v. Bennett Brief of CATO Institute As Amicus Curiae In Support Of Petitioners

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SUMMARY: The Supreme Court agreed to hear a challenge to Arizona's Clean Elections Act — brought by our friends at the Institute for Justice and the Goldwater Institute and supported by our brief at the cert petition stage — which law hoped to "clean up" state politics by creating a system for publicly funding campaigns. Recall that participation in the public funding is not mandatory, however, and those who do not participate are subject to rules that match their "excess" private funds with disbursements to their opponent from the public fund. That is, if a privately funded candidate spends more than their publicly funded opponent, then the publicly funded candidate receives public "matching funds." Whatever the motivations behind the Act, the effects have been to significantly chill political speech: privately funded candidates changed their spending — and thus their speaking — as a result of the matching funds provisions. In elections, where there is no effective speech without spending money, matching funds provisions such as those at issue here diminish the quality and quantity of political speech. In 2008, however, the Supreme Court struck down a similar part of the federal McCain-Feingold law in which individually wealthy candidates were penalized for spending their own money by triggering increased contribution limits for their opponents (*Davis v. FEC*, in which Cato also filed a brief). Even this modest opportunity for opponents to raise more money was found to be an unconstitutional burden on political speech. Cato's latest brief thus asks the following question: Whether Arizona may give a publicly funded candidate extra money because a privately funded opponent or his supporters have, in the state's judgment, spoken too much. We highlight *Davis* and numerous other cases that point to a clear answer: if the mere possibility of your opponent getting more money is unconstitutional then the guarantee that your opponent will get more money is even more so. Allowing the government to abridge political speech in this fashion not only diminishes the quality of political debate, but ignores the fundamental principle upon which the First Amendment is premised: that the government cannot be trusted to regulate political speech for the public benefit. Moreover, the state cannot condition the exercise of the right to speak on the promotion of a viewpoint contrary to the speaker's.

Please see full Amici Brief below for more information.