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Campaign Promises: A Six-year Review of Arizona's Experiment with Taxpayer-financed Campaigns

by Allison R. Hayward, Campaign Finance Attorney

EXECUTIVE SUMMARY

When Arizona's Clean Elections Act was passed in 1998, proponents hoped it would mark the beginning of a new era in elections: one of improved voter turnout, increased candidate participation, and less special interest influence. But just how has the Clean Elections Act changed Arizona campaigns? This policy report finds Arizona's Clean Elections system has largely failed to live up to its stated goals.

Clean Elections was trumpeted as a means to improve citizen participation. However, since the law was passed in 1998, voter turnout has not improved. Likewise, Clean Elections promised to increase the number of candidates in each election and help reduce the incumbency reelection rate. A review of election cycles shows that since 1998, incumbency reelection rates have remained near 100 percent, and in the most recent primaries, the number of candidates fell substantially. In fact, from 2002 to 2004, the number of primary candidates for office fell from 247 to 195. Moreover, the law has not increased minor or third-party participation in politics, and Arizona campaigns remain every bit as hard-edged under Clean Elections as they were when traditionally funded.

Clean Elections comes at a cost. The state loses ten dollars every time a taxpayer marks the \$5 tax check-off. Additionally, the program requires a confusing and frustrating regulatory regime that threatens constitutional liberties. The obligation to monitor abuse of public funds requires a level of invasive investigation that is simply not necessary in traditionally funded systems.

There is little evidence that the Clean Elections law has fulfilled its goals. Instead, it imposes real burdens on political speech and on the ability to run for office. This study concludes that Arizona's Clean Elections system may actually harm the political process while imposing significant costs on the public.

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Introduction

With the recent passage of a “clean elections” law in Connecticut, public financing reforms are enjoying a renaissance of attention and commentary. The idea that the government should subsidize campaigns with taxpayer money—rather than allow voluntary private funding to run a campaign—has a long pedigree. President Theodore Roosevelt called for public financing of elections in 1907, proposing a congressional appropriation to defray political party expenses coupled with a contribution limit and publicity of party accounts.¹ In 1909, Colorado enacted a program to subsidize parties based on their success at the polls, but the Colorado Supreme Court declared the law unconstitutional only one year later, albeit without a written opinion explaining its reasoning.² Puerto Rico enacted the next public funding law in 1957, which paid party expenses out of a commonwealth Election Fund.³

Almost from the first, the challenges posed by public funding were evident. On what basis should funds be granted?⁴ Will the law discourage new or “third” parties?⁵ If everyone is funded, would there be a way to avoid having the program swamped by “political faddists?”⁶ How do we know how much spending is right? Are we spending too much or not enough? How can program funding be maintained? Can the law be sufficiently supple to respond to changing circumstances, yet sufficiently

rigorous to resist unscrupulous manipulation?⁷ What spending activity is “political” enough to count? Will there be exemptions, and, if so, can they be fair—for instance, would the media and their owners be at an advantage?⁸ What remedies are appropriate to deal with cheating? Moreover, is there democratic value to political fundraising—in requiring politicians to appeal to the people for support—that is lost when campaigns are publicly funded?⁹

Today, Connecticut, Maine, New Mexico (for corporate regulators), North Carolina (for judicial candidates), and Vermont, as well as Arizona, provide full public financing to candidates who agree to abide by spending limits and forgo private contributions.¹⁰ Vermont’s law contains a mandatory spending limit and is currently before the U.S. Supreme Court in a First Amendment challenge.¹¹ A number of other states subsidize politics in other ways—by providing financial support to candidates or parties, for instance.¹²

How the Clean Elections Act Operates

Arizona’s Citizens Clean Elections Act created a Clean Elections Fund.¹³ Candidates for statewide and legislative offices may participate in the program and receive funding for their campaigns from this Fund, or they may raise campaign funds privately. The 2000

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election was the first election cycle in which legislative and statewide office candidates could use the Clean Elections law to finance a candidacy. Clean Elections funding is available only to “participating candidates.” Participating candidates qualify by gathering \$5 contributions from in-district registered voters and observe strict spending and contribution limits.¹⁴

For example, in the 2006 election, a qualifying candidate for governor will need 4,200 “qualifying contributions” of \$5 from in-district voters (who themselves must file reporting slips in triplicate for the money to count); a legislative candidate must collect 210.¹⁵ During the “exploratory” and “qualifying” periods, candidates can raise private money for their efforts to qualify—the individual contribution limit is \$120 per donor, and the overall limit for outside private contributions is \$46,440 for governor and \$2,980 for the legislature.¹⁶ The Act also limits the amount of personal money a candidate can use at this time to \$1,160 for gubernatorial candidates and \$580 for legislative candidates.¹⁷

The 2006 primary election spending limit is \$453,849 for gubernatorial candidates and \$11,945 for legislative candidates.¹⁸ The general election spending limits will be \$680,774 and \$17,918, respectively.¹⁹ These limits work out to about \$0.25 per active Arizona voter statewide, but given the vast differences in registration and turnout among legislative districts, the money-per-active-voter ratio varies

widely from one legislative district to another. Under the Act, if a legislative candidate is running in a district dominated by one political party—where the election may well be resolved in the primary—the candidate can reallocate some general election funding to that race.

The Act does not allow candidates to carry forward money from one period to the next. At the end of each of the three periods—the privately funded qualifying period, the primary election period, and the general election period—candidates must return unspent money to the Fund.²⁰ Participating candidates may also receive additional “matching funds” of up to three times the relevant spending limit if a nonparticipating opponent spends over a certain threshold.²¹

The Act also restricts “nonparticipating candidates,” or those candidates who are funding their campaigns the traditional way by raising their own campaign money. It requires nonparticipating candidates to observe campaign contribution limits and prohibitions on contributions by corporations and unions, and to adhere to reporting requirements. The 2006 contribution limits to statewide offices are \$760 per individual or political action committee (PAC); \$3,784 per certain “super-PACs” and political party committees, with a combined cap of \$75,624 from all PACs; and a separate \$75,624 from all political parties and political organizations.²² The limits for legislative offices are \$296 per individual

or PAC, \$1,512 per super-PAC, and the overall cap from PACs and parties is \$7,568. Arizona law also limits the total an individual can give to candidates and to committees that give to candidates—an individual cap that is presently \$3,530 per year.²³

The Citizens Clean Elections Commission may impose civil penalties for violations of the limits and reporting requirements. If a candidate exceeds the applicable spending limit by over 10 percent, the penalty is disqualification as a candidate or forfeiture of office, if elected.²⁴ As of this writing, one legislator who allegedly overspent his primary campaign limit by \$6,000 has been removed from office.²⁵

The Clean Elections Fund obtains its revenue from several sources. It receives a surcharge of 10 percent imposed on all civil and criminal fines and penalties.²⁶ It also receives a \$5 voluntary contribution per taxpayer when filers mark an optional check-off box on the first page of their tax return. Through the check-off, the taxpayer's taxes are reduced by \$5, and \$5 goes to the Clean Elections Fund.²⁷ The Fund also receives tax-preferred donations from individuals or business filers. Donors receive a dollar-for-dollar tax credit of up to 20 percent of the tax amount on the return or \$550 per taxpayer, whichever is higher. The Fund also receives the excess qualifying contributions of participating candidates (i.e., those private funds raised but not used during the qualifying period) and civil penalties assessed against violators

of the Clean Elections Act.²⁸

Originally, the Clean Elections Act imposed a \$100 fee on certain classes of registered lobbyists.²⁹ An Arizona trial court declared that section unconstitutional because it violated the First Amendment.³⁰ The court later severed it from the remainder of the Clean Elections Act.

Goals of the Clean Elections Act: Fulfilling the Promise?

This paper will consider how successful the Arizona Clean Elections law has been at achieving its goals as expressed by the Act's supporters. What was Arizona's Clean Elections law intended to accomplish? Because the law passed by initiative, there are no legislative committee reports or floor statements to consult. However, the Act does contain a "declaration," reading:

The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.³¹

In the words of the Clean Elections Institute, an organization dedicated to promoting the Clean Elections law, “Arizonans promoted and passed the Clean Elections law to increase participation in the electoral process, reduce the influence of big money in campaigns and government and increase competition among candidates.”³²

Admittedly, some of these aspirations are more easily measured than others. This paper separates the Act’s goals into three broad categories:

- Participation: Since the passage of the Clean Elections Act in 1998, are there indications of greater citizen participation in the political process?
- Competition: Clean Elections claims to make it easier for citizens to become candidates, thereby encouraging more competitive elections. Is there evidence that the Clean Elections law has made candidacy more accessible and elections more competitive?
- Tone: Has the tone of campaigns improved? Are they less negative and more “issue-oriented”?

The paper then considers the burdens created by the Clean Elections law. Has the law’s complexity created additional burdens for candidates running for office? Has it chilled the political speech of candidates and other groups?

In brief, we find little evidence to support any argument that the Clean

Elections law has fulfilled its stated goals. Moreover, it imposes real burdens on political speech and on the ability to run for office. Since Arizona’s Clean Elections system has not reached its goals, reformers should be advised to seriously reconsider fundamental aspects of the law.

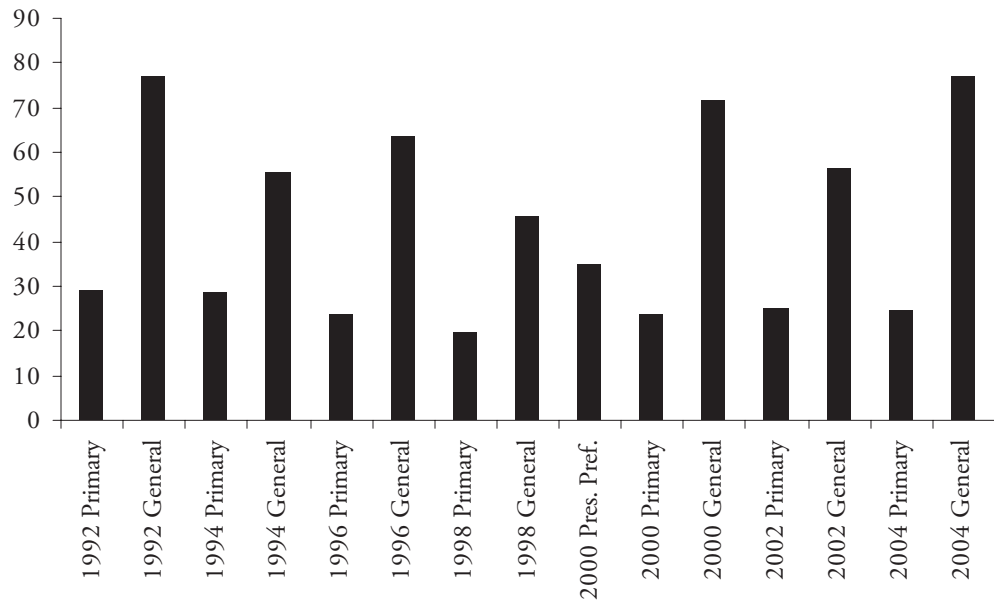
Participation

One claim made by supporters of the Clean Elections Act is that it will increase political participation. We might measure “citizen participation” in the political process in a variety of ways. The most common indicator of participation is voting: we can observe whether voter turnout rates have increased since the passage of the Clean Elections law. Another form of participation is providing financial support to political activity. Since one purpose of the law is to *reduce* reliance on private contributions, it would not make much sense to measure the law’s participatory success in that way. Rather, we can look at Arizona Department of Revenue statistics to observe whether there are improvements in participation in Arizona’s various check-off programs, both for the Clean Elections Fund itself and for other political beneficiaries. Finally, we can also see whether more people participate in politics by running for office, although this is a much narrower path of participation open only to those with the time and temperament to be a candidate.

Figure 1 depicts the turnout for elections from 1992 to 2004.

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Figure 1: Voter Turnout Percentages, 1992-2004



These numbers indicate little beyond the fact that turnout improves in presidential election years; they show no voter turnout improvement that can be attributed to Clean Elections.

Candidates were able to use Clean Elections funds starting in the 2000 election. As the chart shows, the highest recent turnout election year in Arizona was in 1992 for both the primary election (29%) and the general election (77.2%), unless one counts the 2000 presidential preference primary as a “primary” (35%). The next highest turnout for a general election was in 2004 (77.1%), and for a primary, in 1994 (28.6%).³³ Turnout statistics show no effect from the 1998 passage of the Clean Elections law.

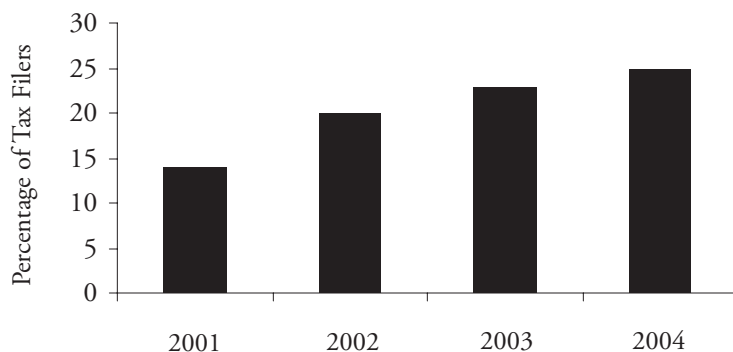
The way most people participate in elections is by voting. Yet nothing in the voter turnout trends in Arizona elections suggests that the Clean Elections law has an effect here.

The Public Interest Research Group (PIRG) compiled its own Arizona voting statistics, measuring voter turnout as a percentage of voting age population

(VAP). These statistics show that in 1998, turnout as a percentage of VAP was 28 percent; in 2000, 40.2 percent; in 2002, 30.7 percent; and in 2004, 39.2 percent.³⁴ These numbers indicate little beyond the fact that turnout improves in presidential election years; they show no voter turnout improvement that can be attributed to Clean Elections.

Another form of citizen participation is providing financial support to various candidates and political groups. The law encourages taxpayers to make a \$5 contribution to the Clean Elections Fund in exchange for a \$5 reduction in tax liability. In 2001, out of 2,210,747 returns, 315,395, or 14 percent, made the \$5 check-off contribution.³⁵ This percentage has been growing, as Figure 2 indicates, so that by the end of the 2004 tax year, out of 2,368,223 tax returns, 583,719, or 25 percent, marked the

Figure 2: Clean Elections Check-off Participation



check-off.³⁶ Yet, tax return check-offs may be more an illustration of taxpayers acting on economic interests than any degree of increased political participation. The \$5 reduction in tax liability provides a sufficient financial incentive for citizens to “participate.”

The experience in other states has been that check-off systems become less popular and yield fewer dollars as the programs mature.³⁷ Political scientists Michael Malbin and Thomas Gais noted in their study of check-off programs that from 1980 to 1994 the “typical check-off state went from 20 percent participation to 11 percent participation.”³⁸ If Malbin and Gais’s analysis holds, it suggests that Arizonans’ participation in the Clean Elections check-off program may drop as well.

To judge whether the check-off’s cost is justified, it might be useful to know whether other indications of participation have improved. Arizona tax forms also allow taxpayers to contribute to other causes. In particular, taxpayers can designate contributions to political parties.

Revenue records show that the number of returns in which taxpayers designate contributions to the Republican and Democratic parties have grown recently by a greater percentage than the number of returns generally. The total number of returns designating party contributions grew from 1,511 in 2001 to 1,922 in 2004, an increase of 27 percent. The bulk of this increase was in returns designating contributions to the Democratic Party.³⁹ At the same time, the number of total individual returns increased by only seven percent. To be sure, this period overlaps with the approach of the 2004 presidential election, an event that typically captures more public attention than other elections, and would be of particular interest to Democrats, who lacked an incumbent standard-bearer or even a presumptive nominee. Scholars have also observed that there is a partisan effect in public funding programs. Simply put, Democrats are more congenial to public funding, as policymakers and as participants, than Republicans are.⁴⁰

The participation trend for party-designated contributions appears to be

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doing better than contributions to other causes. From 2001 to 2004, returns designating contributions to what has been the most popular charitable cause listed on the Arizona return—child abuse prevention—*fell* from 12,302 in 2001 to 10,502 in 2004, a 17 percent decrease.⁴¹ The tax form designation for parties is admittedly a form of political activity very few Arizonans use—only about 2,000. So, whatever participation trends we might see, they involve a tiny number of people and may not be reflective of political participation by Arizonans as a whole.

From 2002 to 2004, the number of statewide candidates dropped from 39 to 7, and legislative candidates from 208 to 188.

Another measure of participation that necessarily involves a small fraction of the state’s citizens is the number of people who decide to become candidates. In Arizona statewide and legislative primary elections held after the passage of the Clean Elections law, 223 candidates total ran in 2000, 247 in 2002, and 195 in 2004. From 2002 to

2004, the number of statewide candidates dropped from 39 to 7, and legislative candidates from 208 to 188. The numbers of both Democrat and Republican candidates declined during this period. However, the number of candidates participating in the Clean Elections program remained stable, so the percentage of participating candidates in primaries rose from 56 percent to 61 percent and in legislative races from 54 percent to 58 percent, even though the number of candidates fell in absolute terms.⁴²

One explanation for the decline in the number of primary candidates in 2004 may be the uncertainty of the state’s legislative district lines. According to the Clean Elections Institute, a number of candidates dropped out of primary races after courts ruled that the state had to use a precleared 2002 legislative map for the 2004 elections instead of a more “competitive” 2004 map.⁴³

Table 1: Numbers of Primary Election Candidates, 2002 and 2004

	2002 (Clean Elections participants)	2004 (Clean Elections participants)
Primary candidates	247 (139)	195 (118)
Legislative primary candidates	208 (113)	188 (111)
Democrats	110 (71)	82 (57)
Republicans	124 (60)	101 (58)
Other	13 (8)	12 (2)

Since the candidate drop-off occurred before nominating petitions were due, and rarely do all purported candidates file their papers, it is not clear whether the change in redistricting plans in fact suppressed candidates who might have otherwise gone forward or whether the uncertainty might have inflated the number of tentative candidacies of people who might not otherwise have explored running in a more stable environment. Whichever the case, the 2004 situation makes it difficult to say anything definitive about the effect of the Clean Elections law on the number of candidates in primary elections, but there is certainly no evidence to support the contention that more candidacies will necessarily occur under Clean Elections. Data supporting the goal of increased participation remain unconvincing in this regard.

In general elections there is, as would be expected, less fluctuation in the number of candidates since their

numbers are largely determined by the number of seats up for election and relatively few races include libertarians or independent candidates.

An important subsidiary aspect of the law is the partisan breakdown of Clean Elections candidates. Democrats remain more likely to use the program, but the difference between Democrat and Republican participation is narrowing. Figure 3 shows the percentage of candidates from both parties who participated in the Clean Elections Fund from 2000 to 2004.

When looking at these percentages, it is useful to remember that Arizona remains a Republican state: Republicans lead Democrats in statewide registration by 5.5 percent and have a 6-to-2 advantage in the U.S. Congress, a 17-to-13 advantage in the State Senate, and a 39-to-21 advantage in the State House.⁴⁴

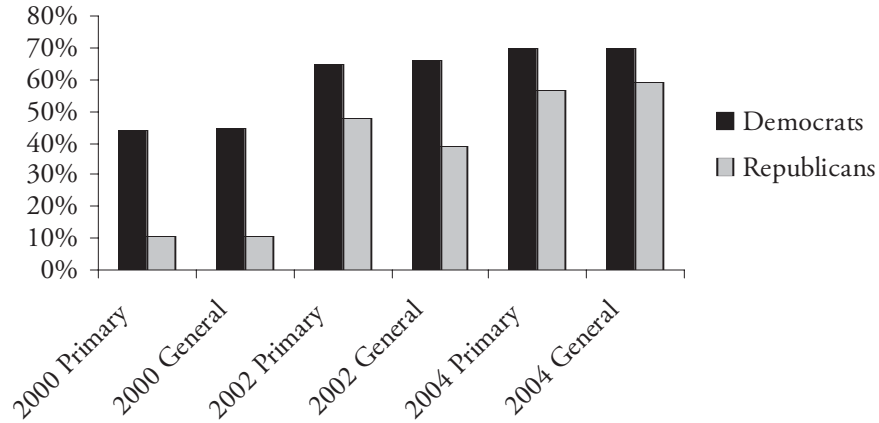
In summary, most indicators reveal

Most indicators reveal no changes in political participation as a result of the Clean Elections program.

Table 2: Numbers of General Election Candidates, 2002 and 2004

	2002 (Clean Elections participants)	2004 (Clean Elections participants)
General election candidates	170 (89)	156 (88)
Legislative candidates	147 (73)	149 (82)
Republicans	76 (30)	74 (44)
Democrats	77 (51)	66 (46)
Other	17 (8)	16 (2)

Figure 3: Percentage of Democrats and Republicans Participating in Clean Elections, 2002 and 2004



The most direct form of participation—turning out to actually cast a vote—shows no improvement from the law’s passage.

no changes in political participation as a result of the Clean Elections program. While the funding of Clean Elections itself has increased, it is not clear that this is an accurate measurement of political participation since taxpayers receive a financial incentive to reduce their tax liability under the program. Likewise, larger portions of candidates are participating in the Clean Elections program. Other measures of broader political participation seem unaffected—most significantly, voter turnout.

Advocates of clean elections reforms assert that the system will “encourage citizen participation in the political process,” but the most direct form of participation—turning out to actually cast a vote—shows no improvement from the law’s passage. One of the other articulated goals of the Act is to encourage more people to run for office. Achievement of that goal remains elusive, too, as the number of primary candidates—the key point of entry into any campaign for office—fell

substantially in the last cycle. In short, the data do not reveal any trend of greater political participation by Arizonans since the passage of Clean Elections.

Competition

Success for the Clean Elections program cannot be claimed merely because it has been able to perpetuate itself by attracting funding and participants. The program should have a salutary effect on other aspects of politics. As we have seen, the data do not reveal an overall improvement in political participation. Yet another stated promise of the Clean Elections law is increased electoral competition. As one prominent researcher described this goal: “It is difficult to argue with the position that, other things being equal, more competition is preferable to less. Our view is that in a state with truly competitive elections, many other problems—whether corruption, insulation, or undue interest group influence—will take care of them-

selves.”⁴⁵ Competitiveness, while difficult to measure, seems on the wane in Arizona.

Two factors complicate our ability to evaluate the effect of the Clean Elections law on electoral competition. First, Arizona’s 30 legislative districts each send one state senator and two state representatives to the Capitol. At the House level, “competitiveness” in terms of election vote margins is difficult to evaluate, since candidates do not run head-to-head. Instead, each party nominates up to two candidates for the general election race, and the top two general election vote-getters serve in the House. So, a House district might be represented by two Republicans or split between the parties, assuming that the two major parties are fielding the successful contenders.

Second, as noted briefly above, Arizona’s legislative district map remains a work in progress. As provided in Proposition 106, passed in November 2000, an Independent Redistricting Commission (IRC) draws Arizona’s legislative boundaries.⁴⁶ However, challengers attacked the initial map drafted by the IRC, and the Department of Justice denied preclearance of the legislative plan under Section 5 of the Voting Rights Act.⁴⁷ The IRC crafted an interim plan for use in the 2002 election. It crafted another plan based on the 2002 map that was successfully pre-cleared by the federal government for the 2004 election.⁴⁸

The year 2000 was also the first year

term limits on legislators affected the ability of some incumbents to run for reelection. While it may be that this effect has now stabilized, the term limits law should be kept in mind when comparing data from the last three election cycles with pre-2000 races.

Incumbent Reelection Rates

In May 2003, the U.S. General Accounting Office (now the Government Accountability Office) released a study of clean elections programs, including Arizona’s.⁴⁹ According to the GAO, access to public funding in 2000 and 2002 did not affect incumbent reelection rates, and extending the GAO’s approach to 2004, it would seem incumbent reelection rates actually *rose* for House seats.⁵⁰

The GAO’s calculations were called into question in a paper authored by Kenneth R. Mayer, Timothy Werner and Amanda Williams, political scientists from the University of Wisconsin affiliated with the Wisconsin Campaign Finance Project.⁵¹ They noted that the GAO only looked at incumbents who lost in general elections, and did not include incumbents who lost in primaries.⁵² Had the GAO altered its methods, the Mayer team contends that the numbers would have shown a drop in incumbent reelection rates in 2002 to 70 percent for House races and 81.3 percent for Senate races, after having been in the mid-ninetieth percentile from 1994 to 2000. The Mayer group’s analysis also recalculated the reelection rates after

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Table 3: Incumbent Reelection Rates, 1996 to 2004

	Senate incumbents retained (%)	House incumbents retained (%)
1996	100	95
1998	96	98
2000 (term limits effective)	100	94
2002	100	90
2004 (calculations by author)	100	92

Another important measure of competitiveness is whether incumbent victory margins have narrowed under the Clean Elections Act. Looking independently at the numbers for 2004, we see that only two of 24 incumbent election contests in the Arizona Senate made the GAO’s “competitive” criteria of a margin of 15 percent or less.

removing incumbents who were running against each other because of redistricting, and the reelection rates increased but slightly.⁵³

Looking independently at 2004 results through the Mayer prism, of the 48 incumbents running in the House, eight lost either in the primary or in the general election, for a reelection rate of 83.3 percent. Out of 25 Senate incumbents running, one lost (in a primary, no less), for a reelection rate of 96 percent. Using the Mayer formula, it appears that both these retention rates are substantially higher than those in 2002, indicating that incumbent reelection rates are increasing again even under the Clean Elections Act.⁵⁴

Incumbent Victory Margins

Another important measure of competitiveness is whether incumbent victory margins have narrowed under the Clean Elections Act. The GAO studied Arizona Senate races only, thus avoiding the issue of how to evaluate multimember House districts. Defining

“competitive” districts as those with a margin of 15 percent or less between the winner and the next runner-up, the GAO determined that 10 percent of the Senate races were competitive in 1996, 29 percent in 1998, and 40 percent in 2000, but only 33 percent were competitive in 2002.⁵⁵

Looking independently at the numbers for 2004, we see that only two of 24 incumbent election contests in the Arizona Senate made the GAO’s “competitive” criteria of a margin of 15 percent or less between the winner and the next runner-up (when there was one). The incumbent in District 12 won with 54.1 percent of the vote, and an incumbent in District 25 won with 56 percent of the vote. Meanwhile, 10 incumbents were uncontested in the 2004 general election. Two out of 24 seats would lead to a competitiveness percentage of about 8 percent, seemingly back to 1996 levels.⁵⁶

In their analysis, Mayer, Werner, and Williams disputed whether the GAO’s approach was appropriate. They

concluded that only studying the Senate “jettison[ed] valuable data.” In their study, they created “pseudo-pairs” to simulate single-member contests out of multimember Arizona House seats. They paired the top vote-getter of one party with the weakest of the other, and the second best with the highest vote-getter of the opposite party. They also defined competitive as a winning total of under 60 percent, rather than the 15 percent margin the GAO used. With this different approach, the Mayer team determined that 36 percent of incumbents were in competitive races in 2000 and 47 percent in 2002, but then only 36 percent in 2004.⁵⁷

Whichever method one adopts, clean elections reforms do not seem to have a lasting effect on competitiveness. Under both measurement approaches, competitiveness appears to be on the retreat after peaking in 2000 and 2002. Given the abundance of other factors that would affect the hardiness of incumbents—from the shakeout following the term limits law to the passage of a redistricting act that mandates “competitiveness” as a factor in redistricting—it is hard to see how the clean elections law could have affected competitiveness in a manner measurable in these circumstances. Even so, the incumbent retention and victory margin numbers are moving higher, indicating that competitiveness, however measured, may be on the wane.

One might argue that real competitiveness comes from having a rich variety of viewpoints represented in

campaigns by an array of political parties. Since the passage of the Clean Elections law, the Green Party is no longer officially recognized in Arizona and no longer fields candidates. The demise of the Greens probably has more to do with the rise and fall of their presidential nominee Ralph Nader in 2000 than with any effect of the Clean Elections law. At the same time, the law does not appear to have assisted in the development of minor or third-party participation or success in Arizona elections.

Funding Adequacy

Some scholars argue that providing “adequate” funding of candidates is another element necessary for competitiveness. It may be that the one-size-fits-all spending limits under the Clean Elections law burdens some candidates more than others. Moreover, Arizona’s spending limits are lower than those of other states with similar laws. This may not be healthy in a fast-growing state where it is necessary for candidates to attract the attention of new residents who are unfamiliar with, and possibly apathetic to, local politics.

The Arizona Clean Elections law fails to account for the vast differences in voter registration among Arizona’s legislative districts. For instance, as of October 2005, District 4, a spacious district including portions of Maricopa and Yavapai counties, currently represented by Tom Boone and Judy Burges in the House and Jack W. Harper in the Senate, has 123,059 active

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registered voters. District 13, a more compact Tucson district represented by Steve Gallardo and Martha Garcia in the House and Richard Miranda in the Senate, has 49,061 active voters. Candidates in both districts run with the same expenditure limit—\$17,918 in 2006—so District 4 candidates who opt for the Clean Elections system have about \$0.14 to spend per active voter, while District 13 candidates have about \$0.36 per active voter.⁵⁸

One of the stated goals of the Clean Elections law was to increase competition among candidates. It would be ironic if, over time, the Clean Elections spending limits helped solidify the campaign finance advantages incumbents already enjoy in the form of staff, state office budgets, outside office accounts, and “free” media.

In defense of the current system, supporters might say that it is not appropriate to evaluate the expenditure limits based on “active voters.” Instead they should be evaluated based on resident population. Districts with many nonvoting residents should not be seen as unfairly advantaged—in fact, spending in such areas might be more necessary, for instance, to increase interest in Arizona politics among new (not yet voting) residents.

Looking at Arizona’s spending limits on a per-resident basis, however, calls into question their sufficiency. In a study released in 2005 by the Center for Governmental Studies (CGS), Arizona’s per-resident spending limit ranks at the bottom.⁵⁹ According to CGS, Arizona limits candidates for governor to \$0.08 per resident in the primary and \$0.11 in the general elections, and legislators to \$0.12 in the primary and \$0.18 in the general elections. Maine, overall the next lowest among states with spending limits in per-resident spending allowances, gives gubernatorial candidates \$0.16 per resident in the primary and \$0.31 in the

general, State Senate candidates \$0.18 in the primary and \$0.46 in the general, and State House candidates \$0.16 in the primary and \$0.48 in the general. Time will only exacerbate the gap between Arizona and Maine, since Arizona is one of the fastest growing states in the nation, expected to add 2.2 million people in the next three decades, while Maine is one of the nation’s slowest growing states.⁶⁰

Issues of sufficiency have implications for competitiveness. Noted one Arizona activist in October 2005, “The simple reality is that with any office that doesn’t have a pressing set of newsworthy issues, it’s going to be very hard to beat an incumbent on a Clean Elections budget.”⁶¹ If that is true, then only particularly controversial or vulnerable incumbents need fear their constituents at election time. Since we are already observing that the number of candidates has fallen, that incumbent retention rates are rising, and that incumbent reelection margins are ample and growing, perhaps we are witnessing a larger combination of effects correlating with the Clean Elections law that work together to insulate incumbents.

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Tone of Campaigns

The Clean Elections law was also intended to improve the tone of campaigns. The theory is that once candidates need not appeal to special interest donors, they will turn their attention to rank-and-file voters. This will, some say, lead to more substantive and less combative campaigns. Moreover, the Clean Elections law provides a voter guide for candidates to use to get their message to voters and requires candidates to participate in debates. These venues for voter communication are promoted as being more responsible and informative than privately funded advertising.

Clean Elections rules attempt to regulate indirectly that which may not be regulated directly. In 1993, Arizona's legislature attempted to remedy "negative campaigning" by requiring persons or groups making independent expenditures in the closing days of a campaign to provide an advance copy of the communication to the candidates named in it. The courts struck down the law, concluding that it impermissibly burdened political speech.⁶² The Clean Elections law attempts to improve the tone of campaigns in a more indirect, and legally sustainable, manner.

"Tone" and "negativity" are notoriously slippery concepts to measure.⁶³ But in general, there is no indication that the Clean Elections Act improved the tone of Arizona campaigns. In a study prepared for the Goldwater Institute in 2001, Robert

Franciosi observed:

Receiving clean elections money certainly did not make candidates clean campaigners. One challenger mailed several scathing and misleading flyers that distorted her opponent's record. One flyer contained several negative newspaper headlines that either had nothing to do with her opponent, or were completely made up . . . Such abuses led the Clean Elections Commission to contemplate asking candidates to take an oath swearing not to smear opponents . . .⁶⁴

In 2002, as the same analyst observed in a later study, some of the harshest election communications were made by participating candidates—among them mailers accusing a candidate of defending child molesters, another of sympathy with a radical homosexual agenda, and advertisements stating that a candidate was "soft" on polygamy.⁶⁵

Hard-edged campaigning has continued. Reportedly, in 2004 candidates for the first time used the Clean Elections statewide voter guide as a vehicle to attack opponents.⁶⁶ One veteran Arizona politician speculated that the Clean Elections law allowed more negative attacks to "prosper" because of the lack of accountability publicly funded candidates owed to donors. Former State Rep. Mike Gardner noted in a newspaper interview, "In traditional campaigns, the people who contribute to your campaign are

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like your regulators. If they don't like the message you're delivering, they will stop giving you money and your funding dries up."⁶⁷

Finally, it would seem naïve to expect that a move to public funding would result in kinder and gentler campaign messages. Why would the simple presence of "clean election" money change the dynamics of modern campaign advertising? Studies demonstrate that negative campaign messages work. Relevant negative information about a candidate used in advertising that identifies the risks associated with electing a specific opponent are among the most effective techniques for swaying public opinion.⁶⁸

Clean Elections money will not ameliorate the "tone" of campaigns. Candidates will use whatever resources they have to best serve the cause of winning. We should expect that "negative" messages will persist as part of the mix.

The Costs of Clean Elections

While there is some admitted ambiguity in measuring whether the Clean Elections Act has lived up to its promises, overall the evidence suggests that the Act has not led to increased participation or competitiveness and has not improved the tone of campaigns. Furthermore, the Clean Elections program is not without costs. The Act's implementation also requires a web of

complicated regulations, and complaints under the Act can lead to invasive enforcement matters that impose real costs on participants and their supporters.

First, the cost of the program takes funding away from the state's General Fund. In a state where the General Fund budget is over \$8 billion, the Clean Elections Fund's expenditures of just under \$8 million in 2004 might seem trivial. But recall that the Clean Elections funding mechanism has a double-edged impact on state finances. It takes \$5 from a taxpayer's taxes and credits each taxpayer another \$5.

Although the Clean Elections Fund's expenditures are a small part of overall state spending, they are not trivial. The more than \$4.3 million distributed to candidates in 2004 would almost cover the \$4.6 million operating budget for the Arizona Department of Health Services in that same year and would easily cover the department's vaccination and immunization spending (\$2,903,800 and \$406,700, respectively) or its Emergency Medical Services expenditures (\$4,020,300). The \$7,992,868 total Clean Elections Fund expenditures for 2004 (which includes the Clean Elections Commission's administration, enforcement, and voter education expenses as well as funds to campaigns) would have covered the "personal services" of the state's Department of Water Resources in 2004 (\$6,994,400).⁶⁹

The nonmonetary costs of the program are more difficult to quantify.

Clean Elections requires a web of complicated regulations, and complaints under the Act can lead to invasive enforcement matters that impose real costs on participants and their supporters.

One concern is the complexity of the program. Seemingly technical and picayune accounting details take on enormous significance when the law imposes an expenditure limit. Violations of seemingly trivial proportions, such as failing to report food and supplies purchased by family members of a candidate on the day they were made, become material for administrative investigations and enforcement.⁷⁰ In a world of spending limits, managing simple post-election refunds of deposits placed during the campaign becomes a matter requiring “informal settlement” with the state government.⁷¹

Some Clean Elections policies seem to lack adequate justification. For instance, although it is a common practice to hire a consultant to manage many of a campaign’s activities, under the Clean Elections law this vendor may not be the reported recipient of campaign payments; rather, the campaign must pay directly and report the subvendor or whomever is the final provider of services.⁷² The Clean Elections Commission’s stated rationale is that if campaigns are allowed to report “lumped” expenditures, this may hide the fact that the underlying goods or services in fact cost more than what was charged by the consultant, obscuring the existence of an illegal in-kind contribution.⁷³ Yet, this is information that the campaign may not have, and does not reflect the long-standing practice of using consultants to provide unified direction for campaigns. A number of recent enforcement matters have involved this very fact pattern: a

campaign would accurately report a payment to a consultant for “literature,” but by failing to track, pay directly, and report the expenses and final providers of all goods, services, postage, designers, graphic artists, etc., that were part of the “literature,” it had violated the Act.⁷⁴

In a publicly financed system, it also becomes necessary to evaluate whether candidates are squandering public money or enriching their friends and associates, or paying for frolicsome goods and services not related to the campaign. For example, three participating Libertarian Party candidates running in 2002 were ordered to repay \$104,237 in Clean Elections funding after the Clean Elections Commission found that those funds had been improperly spent on food, alcoholic beverages, and other goods and services arguably of a festive and personal nature.⁷⁵ This enforcement matter presents an extreme example, admittedly, but there are other, less extreme examples of “abuse.” For example, Democratic House candidate Ed Ableser received some \$7,000 in “matching funds” on election day, when it was too late to spend them on campaign ads. Instead, Ableser threw a party for campaign volunteers where he rented a \$287 frozen drink machine and reimbursed his father \$1,118 for food and drink costs. Ableser also made one of his campaign volunteers a paid consultant and paid her \$3,628.⁷⁶

Even in less colorful contexts the Commission’s obligation to monitor abuse of public funds requires a level of

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invasive investigation into campaigns that is simply not necessary in traditionally funded systems. When a candidate raises his own funds, squandering campaign dollars is its own punishment.

Strict compliance with the complicated limits and reporting requirements is necessary for the Clean Elections system to “work,” so penalties are stiff. Under the law, the civil penalty for a violation of a reporting requirement is \$110 a day, and the penalty for violation of an expenditure limit is 10 times the amount exceeding the limit.⁷⁷ In a system limiting legislative candidates to \$11,945 for a primary race and \$17,918 for a general election campaign, penalties so calculated can quickly dwarf the expense allotment for an entire election. Perhaps in light of this, the Commission has adopted a rule capping penalties at \$10,000, unless the violation is “knowing and willful,” in which case the cap is \$15,000, a figure that is still well over the primary limit and approaching the general election limit.⁷⁸

Yet, there is broad agreement that some of the law’s onerous requirements are not necessary. Even advocates of the Clean Elections law, and the Commission’s own executive director, have recommended that the rules requiring frequent, sometimes daily, filing of campaign reports by candidates in campaigns with *no* participating candidates are overly burdensome, unnecessary, and should be removed.⁷⁹

There are costs, too, in the interference the program imposes on politics. One more obvious case of this is the subsidy system’s bias toward participating candidates.⁸⁰ In a race featuring a participating candidate and a traditional candidate, independent expenditures supporting the participating candidate or opposing the traditional candidate provoke no matching payment. Since the nonparticipating candidate has chosen to fund his campaign with private money, the Fund will not step in and “compensate” for independent spending against him. Expenditures touting the traditional candidate or criticizing his subsidized opponent *will* result in a matching payment to the subsidized candidate. The Fund will “level” the field, but only for participants.

This imbalance might be defended by observing that a candidate knowingly accepts these rules when he chooses whether or not to participate and should not be heard to complain when he faces the consequences of that choice. Yet, this unequal treatment might actually push candidates to enter the system. Instead of freely choosing to participate, candidates may come to the realization that Clean Elections confers so many one-sided benefits that it is impracticable to run without its support. When this happens, candidates are coerced into participating in Clean Elections, forcing them to surrender their First Amendment right of free speech. But campaign finance spending limit systems must be *voluntary* under prevailing case law.⁸¹ A system that

provides additional money for participating candidates based on the independent political speech of unrelated outside groups could become unduly coercive.

In *Buckley v. Valeo*, the U.S. Supreme Court upheld the right of citizens under the First Amendment to spend unlimited amounts of money for political speech.⁸² As the Court noted, being “free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline.”⁸³ Maintaining a system of unequal treatment under Clean Elections that coerces candidates into participating in the program infringes on their protected First Amendment rights.

Clean Elections matching funds might also seem to invite manipulation. An ally of a publicly funded candidate could direct an outside group to spend funds on expensive but ineffective advertisements “against” the candidate with the intent that additional resources be directed to that candidate. Conversely, some outside groups may forgo political expression supporting a nonparticipating candidate because they do not want to indirectly fund the opposition candidate by increasing his state funding through matching funds.

Thus, Arizona’s Clean Elections system may burden constitutionally protected activity of candidates and citizens’ grassroots organizations. For candidates, the unequal treatment

afforded under the law may coerce candidates to surrender their First Amendment right to free speech by limiting their expenditures. For citizens, the system creates disincentives to speak, impairing their First Amendment rights.

Third-party candidates can invoke additional complexities. During the 2002 gubernatorial campaign, Richard Mahoney, an independent candidate participating in the Fund, requested matching funds to counter expenditures made by the Democratic Party for Janet Napolitano. His request was denied, despite the fact that the two candidates were both running for the same seat, on the grounds that the pro-Napolitano advertisement attacked the Republican challenger only.⁸⁴

History teaches us that any scheme of campaign regulation will encourage activists and partisans to use enforcement against political adversaries. In fact, the Clean Elections Institute in its 2002 report on the Arizona system recommended that “the process must be adjusted so that complaints cannot be used as campaign weapons.”⁸⁵ Yet, in October 2004, the same Institute filed a complaint asserting that six Republican candidates had illegally coordinated expenditures with the Club For Growth, a national political group dedicated to supporting conservative candidates. After considering the complaint and responses from the accused, the Commission concluded that there was no reason to believe the alleged violation had occurred. This resolution, naturally,

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came after the election, in April 2005.⁸⁶ The Clean Elections Institute, despite its avowed mission limiting it “to promoting, enhancing and defending Arizona’s unique Clean Elections law,” and despite the lack of any connection to the Arizona-specific questions, also felt moved to file a similar complaint against U.S. Rep. Trent Franks and the Club For Growth with the Federal Election Commission (FEC). In September 2005, the FEC similarly found no reason to believe that the respondents had violated the law.⁸⁷

Clean Elections and Democracy

Finally, moving beyond the specific data from Arizona, there may be reason for concern about the effect of public financing on public confidence in government. In a pathbreaking study, professors Jeffrey Milyo and David Primo examined a variety of state-level election laws, including those related to public financing and spending limits, and whether the presence of these laws enhances public views of political efficacy.

Their conclusion was that public funding laws have a statistically significant negative effect on public views about whether “people have a say” in their government or whether “officials care.”⁸⁸ By contrast, disclosure laws appear to have a positive effect on public views of political efficacy. The authors explain:

Disclosure laws probably do not reduce overall campaign spending, so they do not reduce the positive aspects of political advertising. On the other hand, public financing schemes are typically devised to limit overall expenditures, so they may have a greater negative impact on the beneficial aspects of political expenditures. In addition, public financing may be predicated on false promises for a better democratic process. When the smoke clears and “politics as usual” returns after reform, individuals may become even more disenchanted with their government. Therefore, the apparent counter-intuitive finding that disclosure and public financing work in opposite directions on political efficacy is quite plausible.⁸⁹

Despite the fact that campaign finance reform is assumed to improve public confidence in government, for many reforms the connection is lacking. Certain reforms, such as public financing and spending limits, may even do harm. In an era when reform is assumed by courts and policymakers to improve public confidence in government, the implications of this study are profound.⁹⁰ If Milyo and Primo’s theory holds true, Arizona’s Clean Elections system may do more to harm the electoral process in Arizona than to help it.

This study examined whether Arizona’s Clean Elections Act met its listed goals, such as increasing

competition, participation, and improving the tone of campaigns. None of these goals seems to be affected by the Clean Elections Act. Instead, the law imposes costs on the political process by making it more complicated and litigious. It also creates significant burdens on constitutionally protected rights of candidates and citizens. While the First Amendment fully protects the right to speak, and to spend money on speech, Arizona's Clean Elections system stands in direct contradiction to that guarantee, potentially dampening what otherwise could be a vibrant political exchange in Arizona.

Conclusion

As Milyo and Primo's "smoke" clears in Arizona, there may be reason to think that the Clean Elections system is not reaching its stated goals. The evidence today suggests that the system fails to deliver on its promises, while costing Arizonans more than just money. Data indicate that voter participation has been unaffected by the enactment of Clean Elections and that the number of candidates has actually fallen. Incumbent reelection rates are returning to previous levels, as are incumbent victory margins. More Arizonans are choosing to support Clean Elections in the tax check-off, but one has to wonder whether that will persist or, as in other states with check-off programs, will taper off with time.

We can expect that, as the Arizona

public comes to understand these trends, it will, as Milyo and Primo predict, become more disenchanted with its government, which could further suppress participation. No doubt a new set of "reformers" will say that the law is insufficiently rigorous, and will agitate for yet additional restrictions or programs to "level the playing field."

Instead, reduced competition in politics may be a result of overregulation. Eliminating Clean Elections funding and spending limits, liberalizing the complex matrix of state contribution limits, and opening up politics to more private financial participation would encourage participation and competition, and engage the public more effectively than the Clean Elections program.

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NOTES

1. John S. Bottomly, *Corrupt Practices in Political Campaigns*, 30 B.U. L. Rev. 331, 380 (1950) (citing Congressional Record, December 3, 1907, p. 78.)
2. Ibid. (citing Colorado session laws, 1909 c. 141, and *People v. Galligan*, no citation); see also James K. Pollock, *Party Campaign Funds* (New York: Alfred A. Knopf, 1926): 90, n. 48 (citing to an original writ of mandamus, no. 7323, and “the petition was dismissed on October 10, 1910”); Earl Sikes, *State and Federal Corrupt Practices Legislation* (Durham, NC: Duke University Press, 1928): 144-145.
3. Alexander Heard, *The Costs of Democracy* (Chapel Hill, NC: University of North Carolina Press, 1960): 433.
4. Sikes, 250.
5. Ibid. See also Pollock, 99.
6. Ibid.
7. Pollock, 92.
8. Pollock, 94, n. 49.
9. Pollock, 102.
10. Massachusetts had a clean elections system until its legislature rescinded it in 2004. New Jersey ran a clean elections pilot program in two state assembly districts in 2005. Connecticut’s system takes effect December 31, 2006, and will be available to candidates running for state office in 2008.
11. *Landell v. Sorrell*, No. 04-1528 (cert. granted September 27, 2005).
12. See Michael J. Malbin and Thomas L. Gais, *The Day after Reform: Sobering Campaign Finance Lessons from the American States* (Ithaca, NY: Rockefeller Institute Press, 1998): 52-62 (discussing different forms of public financing).
13. See Arizona’s Citizens Clean Elections Act, Ariz. Rev. Stat. §§ 16-940 to 16-961 (2004).
14. See Ariz. Rev. Stat. § 16-941.
15. Ariz. Rev. Stat. § 16-946. Different limits apply to intermediate offices, but these have been omitted in the interest of brevity.
16. Ariz. Rev. Stat. § 16-945.
17. Ariz. Rev. Stat. § 16-941(A). These limits are adjusted for inflation. See <http://www.azcleanelections.gov/cccecweb/ccceays/docs/2005-2006Limits.pdf>.
18. Arizona Citizens Clean Elections Commission, “Participating Candidates Expenditure & Contribution Limits for 2006 Elections,” <http://www.azcleanelections.gov/cccecweb/ccceays/docs/2005-2006Limits.pdf>
19. Ibid.

20. Ariz. Rev. Stat. § 16-953.
21. Ariz. Rev. Stat. § 16-952.
22. A “super-PAC” is any PAC that receives donations from 500 or more different individuals of at least \$10 in the year prior to applying for super-PAC status with the Arizona Secretary of State. See Ariz. Rev. Stat. § 16-905. Super-PACs so registered with the Secretary of State are listed at <http://www.azsos.gov/scripts/superpac.cgi>.
23. These limits are adjusted for inflation also. See <http://www.ccec.state.az.us/ccecweb/ccecays/docs/20052006limits.pdf>
24. Ariz. Rev. Stat. § 16-942(C).
25. David Burnell Smith, Office of Administrative Hearings decision (MUR 04-0023), <http://www.ccec.state.az.us/ccecweb/ccecays/docs/ItemXIDavidBurnellSmithOAHDecision.pdf>. Smith challenged this decision. See Paul Davenport, “Smith Cites Constitutional Immunity in Plea to Put Ouster Case on Hold,” *Arizona Republic*, January 1, 2006, <http://www.azcentral.com/arizona-republic/local/articles/0101campaignfinance01.html>. On January 26, 2006, the Arizona Supreme Court affirmed the decision that found Smith had violated the Act and thus should face ejection. See *Smith v. Arizona Citizens Clean Elections Commission*, No. CV-06-0021 (January 26, 2006) (Order), <http://www.supreme.state.az.us/clerk/smith%20order.pdf>. See also Thomas Ropp, “Arizona Supreme Court Tells Smith to Vacate Office,” *Arizona Republic*, January 27, 2006, <http://www.azcentral.com/community/scottsdale/articles/0127smith27.html>.
26. Ariz. Rev. Stat. § 12-116.01.
27. Ariz. Rev. Stat. § 16-954.
28. The Citizens Clean Elections Commission summary of its funding sources is available online at <http://www.ccec.state.az.us/ccecweb/ccecays/docs/CCECRenueSources.pdf>.
29. See Ariz. Rev. Stat. § 16-944.
30. *May v. Bayless*, No. CV 2001-006078 (Mar. Cnty. Super. Ct. April 2, 2002).
31. Ariz. Rev. Stat. § 16-940.
32. Clean Elections Institute, *The Road to Victory: Clean Elections Shapes 2002 Arizona Elections* (Phoenix, December 2002), Executive Summary, <http://www.azclean.org>.
33. The statistics are derived from data available online from the Arizona Secretary of State at <http://www.azsos.gov/election/PreviousYears.htm>.
34. See “State-By-State Turnout Rates 1998-2004 by Voting Age Population,” <http://www.nypirg.org/election04/VAP.pdf>.
35. Arizona Department of Revenue, December 2001 Tax Facts.

36. Arizona Department of Revenue, December 2004 Tax Facts. Data for the chart were also obtained from the Arizona Department of Revenue “Tax Facts” for December of each year. In addition, Arizona also offers taxpayers the opportunity to make tax-preferred gifts to the Fund. Gifts are reported month to month and are not cumulated by year, so we looked at figures from April of each year, since that is the heaviest month for tax filings. Arizona’s taxpayers donated about \$20,000 in April 2001 to the Fund—by comparison, in April 2004 it was \$12,633. As a percentage of total revenue collected by the state, April 2003 was the high point for this program at 0.01 percent of revenue, or \$18,078. There is no apparent trend—either up or down—for the voluntary donations made to the Fund, and in any event it is a small fraction of activity.
37. Malbin and Gais, 66-70.
38. *Ibid.*, 70.
39. In 2001, filers made 724 contributions to the Democratic Party and 524 to the Republican Party. In 2004, Democratic filers grew to 1,127, while Republican filers grew only to 709. Arizona Department of Revenue Tax Facts for December 2001 and December 2004.
40. Malbin and Gais, 72-73.
41. Arizona Department of Revenue Tax Facts for December 2001, 2002, 2003, and 2004.
42. Statistics from the Citizens Clean Elections Commission, <http://www.ccec.state.az.us/cccecweb/ccceays/docs/20002004DEMOGRAPHICS.pdf>.
43. Clean Elections Institute, 2004 Election Statistics, http://azclean.org/documents/2006WebPrimaryCandidateListing_022.doc.
44. Statistics available online from the Arizona Secretary of State at <http://www.azsos.gov>. A roster of the State Senate is available online at <http://www.azleg.state.az.us/MemberRoster.asp?Body=S>. A roster of the State House is available online at <http://www.azleg.state.az.us/MemberRoster.asp?Body=H>. Members of the U.S. House of Representatives are listed by state at <http://www.house.gov/house/MemStateSearch.shtml>.
45. Kenneth R. Mayer, Timothy Werner, and Amanda Williams, “Do Public Funding Programs Enhance Electoral Competition?” paper presented at the Fourth Annual Conference on State Politics and Policy Laboratories of Democracy: Public Policy in the American States, Kent State University (updated March 2005), <http://campfin.polisci.wisc.edu/Wisc%20Camp%20Fin%20Proj%20-%20Public%20Funding%20and%20Competition.pdf>.
46. Arizona Constitution, art. 4, pt. 2, sec. 1.
47. See *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent*

- Redistricting Commission*, 121 P.3d 843 (Az. Ct. App. October 21, 2005) (amended op.) (detailing history of Arizona redistricting).
48. As of this writing, it appears that the legislative plan used in 2002 and 2004 will be used in 2006. On January 4, 2006, the Arizona Supreme Court denied petitions to review the Court of Appeals decision of October 2005. See Paul Davenport, “‘06 Legislative Maps Likely Won’t Change,” *Arizona Daily Star*, January 5, 2006.
49. U.S. General Accounting Office, *Early Experiences of Two States That Offer Full Public Funding for Political Candidates*, GAO-03-452 (Washington, DC: May 2003).
50. In 2004, 42 incumbents were running for reelection in the general election and three were defeated.
51. Mayer, Werner, and Williams.
52. When losses in primaries are included, the numbers change: instead of three losses out of 42, there were nine losses out of 48 for House incumbents in 2004.
53. Data supplied by Wisconsin Campaign Finance Project, on file with the Goldwater Institute.
54. Arizona House and Senate data courtesy of the Wisconsin Campaign Finance Project, <http://campfin.polisci.wisc.edu/ArizonaData.asp>.
55. U.S. General Accounting Office, 42-43.
56. Arizona Secretary of State, “State of Arizona Official Canvas, 2004 General Election,” <http://www.azsos.gov/election/2004/General/Canvass2004General.pdf>.
57. Mayer, Werner, and Williams, 19.
58. Registered voter data from the Arizona Secretary of State, <http://www.azsos.gov/election/voterreg/>. Expenditure limit data from the Citizens Clean Elections Commission, <http://www.ccec.state.az.us/ccecweb/ccecays/docs/20052006limits.pdf>.
59. Center for Governmental Studies, *State Public Financing Laws* (Los Angeles, 2005): 13, <http://www.cgs.org>. There have been proposals to raise the baseline funding for legislators to \$35,000, which have been opposed by the League of Women Voters and the Clean Elections Institute. See Minutes of the Citizens Clean Elections Commission, November 30, 2004, Item V (Discussion and Public Comment for Proposed Legislative Changes).
60. U.S. Bureau of the Census, State Populations Rankings Summary.
61. Robbie Sherwood, “Yawn! There’s a State Election Next Year,” *Arizona Republic*, October 16, 2005, (quoting Fred DuVal).
62. *Arizona Right to Life PAC v. Bayless*, 320 F.3d 1022 (9th Cir. 2003).

63. See Lee Sigelman and Mark Kugler, “Why Is Research on the Effects of Negative Campaigning So Inconclusive?” *Journal of Politics* 65, no. 1 (February 2003), 142.
64. Robert Franciosi, “Is Cleanliness Political Godliness?” *Goldwater Institute Arizona Issue Analysis* 168 (November 2001): 11.
65. Robert Franciosi, “Elections in Arizona, Clean and Unclean,” in John Samples, ed. *Welfare for Politicians? Taxpayer Financing for Campaigns* (Washington, DC: Cato Institute, 2005): 63.
66. Chip Scutari, “‘Clean’ Cash Blamed for Mudslinging,” *Arizona Republic*, September 27, 2004.
67. *Ibid.*
68. Kim Leslie Fridkin and Patrick J. Kenney, “Do Negative Messages Work? The Impact of Negativity on Citizens’ Evaluations of Candidates,” *American Politics Research* 32, no. 5 (September 2004): 570, 591.
69. These figures are taken from the Commission’s 2004 Annual Report, issued March 2005. Other budget figures from the Arizona Joint Legislative Budget Committee. Department of Health Services figures available online at <http://www.azleg.gov/jlbc/06recbk/dhspub.pdf>. Department of Water Resources figures available online at <http://www.azleg.state.az.us/jlbc/06recbk/wat.pdf>.
70. See Jahna Berry, “ASU Instructor in Spending Inquiry over ‘04 House Bid,” *Arizona Republic*, December 9, 2005.
71. See Minutes of Citizens Clean Elections Commission, June 23, 2005, Item IV.E (Murchison), <http://www.ccec.state.az.us/ccecweb/ccecays/agmn/mn050623.pdf>.
72. Ariz. Rev. Stat. § 16-948(c).
73. See, e.g., MUR 04-0029 (Murphy), [http://www.ccec.state.az.us/ccecweb/ccecays/docs/ItemIV\(B\)Murphy.pdf](http://www.ccec.state.az.us/ccecweb/ccecays/docs/ItemIV(B)Murphy.pdf). If someone intended to hide an illegal contribution, he or she could simply charge the candidate less than the actual cost. While there would be no “lumping” in the report, it would be difficult for anyone, including the Clean Elections Commission, to detect from the report’s face that there is a violation. So it is not obvious how the “no-lump” rule will better allow for the detection of illegal activity. Meanwhile, it makes for additional compliance burdens and confusion among candidates who are not bent on violating the law, but who may have trouble obtaining the information from consultants.
74. See MUR 04-0025 (Mark Manoil and Nina Trasoff); MUR 04-0028/37 (Gorman). These matters were dismissed once the candidates corrected their reports. In MUR 04-0048 (Flora), the Clean Elections Commission found no “reason to believe” the law had been violated and thus did not pursue enforcement because the candidate

amended her reports on receiving the complaint.

75. David Pittman, “Arizona Clean Elections Law: Trio Is in Hot Water over Meaning of Political ‘Party,’” *Tucson Citizen*, July 31, 2003. In settlement, the candidates were ordered to repay less than this total due to their personal financial situations. See, e.g., Minutes of Citizens Clean Elections Commission, October 21, 2003, Item VII (Settlement of MUR 02-0058 [Clevenger]), (settlement of \$15,000), <http://www.ccec.state.az.us/ccecweb/ccecays/agmnHtm/mn031021.asp>.

76. See Robbie Sherwood and Chip Scutari, “A Toast to Questionable Campaign Expenditures,” *Arizona Republic*, January 1, 2006, <http://www.azcentral.com/arizonarepublic/local/articles/0101polinsider01.html>.

77. Ariz. Rev. Stat. § 16-942(B) (reporting penalty); § 16-942(A) (limit penalty).

78. Ariz. Admin. Code § R2-20-222.

79. Clean Elections Institute, *The Road to Victory*; see also Don Harris, “Lang on Clean Elections: ‘I Will Do My Part to Make It Work,’” *Arizona Capitol Times*, September 6, 2005.

80. See Chip Mellor, “Three Lessons from Arizona,” in Samples, 37; see also Franciosi, “Elections in Arizona, Clean and Unclean,” in Samples, 61.

81. *Buckley v. Valeo*, 424 U.S. 1, 19

(1976).

82. *Ibid.*

83. *Ibid.*, 19, n. 18.

84. Franciosi, “Elections in Arizona: Clean and Unclean,” in Samples, 61-62.

85. See Clean Elections Institute, *The Road to Victory*.

86. Minutes of the Citizens Clean Elections Commission, April 28, 2005, Item IV.F. (MUR 04-0027), <http://www.ccec.state.az.us/ccecweb/ccecays/agmn/mn050428.pdf>; see also Paul Davenport, “Panel Clears Six Arizona Republicans in Campaign Finance Case,” Associated Press, April 28, 2005.

87. Compliance Cases Made Public, Federal Election Commission, September 8, 2005 (MUR 5609).

88. David M. Primo and Jeffrey Milyo, “Campaign Finance Laws and Political Efficacy: Evidence from the States,” working paper 0413, University of Missouri, Department of Economics (June 2005): 17.

89. *Ibid.*, 19.

90. See *McConnell v. FEC*, 540 U.S. 93 (2003).

The Goldwater Institute was established in 1988 as an independent, nonpartisan research and educational organization dedicated to the study of public policy in Arizona. Through research papers, commentaries, and events, the Goldwater Institute works to broaden the parameters of public policy discussions to allow consideration of policies consistent with the principles championed by the late Senator Barry Goldwater and fundamental to free societies—limited government, economic freedom and individual responsibility. The Goldwater Institute adheres to its educational mission and does not retain lobbyists or engage in partisan political activity. Consistent with a belief in limited government, the Institute neither seeks nor accepts government funds and is supported entirely by the generosity of its members.

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