

Campaign Finance: The Clean Elections Quandary

Historically, the prominence of affluent groups and individuals among the contributors to state political campaigns has given rise to fear of a government of “checkbook democracy,” in which successful lawmakers are obligated to those who contribute large sums of money.

To reduce wealth’s influence, level the playing field, and address several other problems related to campaign finance, approximately a third of states have instituted some type of public financing program for political candidates. Most provide for partial funding but the “clean elections” type that Arizona has adopted is unique in that it requires candidates to depend almost entirely on taxpayer-provided funds. Besides Arizona, this system is found in Connecticut and Maine and in several cities, including New York City and Portland, Oregon.¹

This briefing describes the system as it has evolved in Arizona, the controversy around it, and how it might be revised.

Going Clean

Arizona was the second state in the nation, following Maine, to adopt a clean elections program. This action was preceded and influenced by a series of political scandals, the most important of which was a sting operation known as AzScam that the Phoenix Police Department conducted in 1991. The sting led to the indictment of seven Arizona state legislators, including the chair of the House Ethics Committee, for allegedly accepting bribes from an undercover agent posing as a Las Vegas mobster trying to get casino gambling in the state. Most of the lawmakers pled guilty to accepting bribes, ranging from \$660 to \$60,000, as part of a plea bargain.

Not surprisingly in public opinion polls following AzScam, more than 70% of Arizonans agreed that Arizona lawmakers were too close to special interest groups and that many legislators would accept a bribe if they thought they could get away with it.² A 1991 survey of legislators indicated that a majority or more members of that body felt that at least one out of five of their colleagues engaged in ethically questionable conduct, such as providing special access to those who contributed to their campaigns.³ A 1996 public survey found 60% of the respondents greatly concerned about the influence of lobbyists on legislation.⁴ Public concern in part may have reflected newspaper coverage. In January 1996, *The Arizona Republic* began a series lasting better than a year on “The Invisible Legislature,” which spotlighted lobbying activity.

A coalition of national and state groups under the banner of “Arizonans for Clean Elections” came together in 1996 to push for clean elections modeled on Maine’s choice two years earlier. Washington, D.C.-based reform organizations Public Campaign and Common Cause and local organizations Arizona Citizen Action, an environmental and consumer advocacy group, and the Arizona League of Women Voters joined the effort, as did many individuals.⁵

¹ Some states such as North Carolina and New Mexico have funds available for only a discrete number of offices. In June 2010 California voters will have their say on a pilot plan for public financing of campaigns. A ballot proposition called the “Fair Elections Act” would provide public funding for secretary of state candidates in the 2014 and 2018 elections if they agree to limit private contributions.

² Steve Yozwiak, “Politicians’ Standing Plummet,” *Arizona Republic*, 13 February 1991: A1, A7.

³ Steve Yozwiak, “Survey Says Opinions Vary on State Ethics,” *Arizona Republic*, 5 October 1991: B1, B4.

⁴ Michael Murphy, “Lawmakers Unknown to 95% of Citizens,” *Arizona Republic*, 16 June 1996: A1, A7.

⁵ Christian Palmer, “Has ‘Clean Elections’ changed Arizona’s political landscape?” *Arizona Capital Times*, 14 July 2006: B3.

Reformers raised close to \$1 million to campaign for the initiative. The proposition passed 51% to 49%. In 1999, the Clean Elections Institute, a private nonprofit finance reform advocacy group, was formed to support the system.

Although business groups were slow to organize in opposition (perhaps believing the measure had little chance), the Arizona Chamber of Commerce has long been an opponent of the public financing system. So too has been the conservative/libertarian Goldwater Institute. The Institute for Justice, a libertarian-oriented Washington based think-tank, has joined in lawsuits challenging various provisions of the finance program.

To a considerable extent the underlying dispute has been partisan. As *Arizona Capital Times* reporter Christian Palmer noted in 2006: “The local critics of Arizona’s system tend to believe the initiative’s founders, mostly Democrats, were most concerned with reshuffling the deck for the purpose of minimizing Republican political might and fundraising advantage.”⁶

Nature of the Program

Under the Clean Elections initiative approved by Arizona voters in 1998 and first used in the 2000 election, those who opt for public financing in their bids for legislative and statewide offices must first collect a number of \$5 donations to show some level of public support. The amount needed varies with the office sought. On one end of the scale, legislative candidates must collect 220 donations from individuals in the district from which they are running and, on the other end, gubernatorial candidates must collect 4,410 contributions. Candidates who qualify take a set amount of public funds for primary and general elections and agree to limit spending and refuse money from outside sources.

A five-member Citizens Clean Elections Commission administers the act. Members are appointed for five-year terms by statewide office holders of alternating parties, starting with the governor. No more than two commissioners may be of the same political party or from the same county.

Over half of the funding for the commission comes from a 10% surcharge on civil penalties and criminal fines. Approximately 47% comes from voluntary tax check-off and tax credit donation programs. Small sums are also raised from civil penalties paid by candidates and by the \$5 qualifying contributions collected by participants. In 2008, funding amounted to \$17 million.

Some critics of the program predicted that it would fail to attract candidates because the spending limits were too low, the \$5 donation requirement too difficult, and reporting requirements too burdensome. The public option, however, is popular, taken even by many who are philosophically opposed to publically funded campaigns. The number of participants has steadily increased. In the 2000 primary elections, 25% of the candidates for legislative and statewide offices ran on public money. In 2008, 65% did so.

Over the years, critics have been upset about the administration of the program; for example, the paper work involved and the complicated rules about how candidates can spend money. Complaints also have grown about what some see as overly rigorous enforcement of the laws. Charges of partisanship have been levied also. In 2002, Republicans noted that all 15 of the investigations launched by the commission’s staff were directed at their candidates. Several candidates have paid fines or entered into settlements with the Clean Elections Commission without admitting they had violated campaign finance laws.

⁶ Ibid, B5.

In January 2006, the Arizona Supreme Court upheld the commission's ruling that Representative David Burnell, R-Scottsdale, be removed from office for overspending during his 2004 primary campaign. Smith became the first legislator in the nation's history to be removed from office for violating campaign laws. In 2008, the commission made Representative Doug Quelland, R-Phoenix the second to be removed. Quelland was removed for spending private funds after he had agreed not to when accepting public money for his 2008 campaign.

In 2007, the Legislature made some significant changes in the program by reducing reporting requirements for nonparticipating candidates. Acting in response to complaints that the level of financing was too low, the Legislature also increased grants for statewide offices. In so doing, they achieved the three-fourths vote required to alter a voter-approved initiative.

Currently, gubernatorial candidates who qualify are scheduled to receive about \$700,000 for use in the 2010 primary and more than \$1 million for the general election. State legislative publicly funded candidates will receive about \$14,000 for the primary and \$21,000 for the general election.

Counting public and private funds, the nonpartisan National Institute on Money in State Politics reports that in 2008 the 135 candidates for the Arizona House raised an average of \$40,972 and the 60 state Senate candidates raised an average of \$53,092 for the primary and general elections.

Under a controversial provision in the law, the constitutionality of which is now in question, publicly funded candidates may receive matching funds up to three times the original amount to meet expenditures made by opposing nonparticipating candidates or independent expenditure groups working on their behalf.

In January 2010, a U.S. District Court judge voided this portion of the program, declaring it a substantial burden on the First Amendment right to use personal funds for campaign speech because it pressured nonparticipating candidates to limit spending to the ceiling set by the state. In effect by continuing to raise funds, nonparticipating candidates were raising funds for their publicly funded opponents. The judge found that the burden on the First Amendment was not offset by the only compelling state interest that supports restrictions of campaign spending: curtailing corruption or the appearance of corruption. The case is on appeal.

The ruling has created a dilemma for those planning to run in 2010. Candidates can still run "clean" and receive funding, but in doing so risk that matching grants will not be available if nonparticipating opponents pour large amounts of money into their campaigns.

Evaluation, Effects, and Impact

Some of the conflict between opponents and proponents of clean elections has played out over how to label the system. In 2007, legislative opponents of the Citizens Clean Elections Act tried but failed to have the name changed to the "Publicly Funded Elections Act." They suspected that use of the label "clean" had a halo effect that contributed to its adoption and continued to enhance the program's appeal. Looking to the future, they felt that voters would be less likely to embrace a "publicly funded" election system than they would a "clean election" system, if given the chance. Clean elections proponents like the title and see the effort to change the name as part of an effort to repeal the act.

Clean election critics continue to insist that the system has nothing to do with the word "clean," but is in fact a publicly funded campaign system, drawing on taxpayer money, and should be known and

evaluated as a “tax dollars for politicians” program. Defenders seek to deflect the “tax” issue by pointing out that the program does not rely on money appropriated from the state’s general fund, but on fines from people who break the law and on voluntary donations for which Arizonans receive a tax credit. When money flowing into the campaign fund exceeds projections for what will be needed, excess funds are shifted to the general fund. In 2008, for example, the program received \$17 million (which, together with existing funds, paid out \$7.7 million to candidates) and sent \$15 million to the general fund.

The system has enabled people to run for office who might not have done so because of financial considerations. Opponents contend, however, that too often relatively inept fringe candidates use the system, thereby contributing to gridlock in the Legislature. In rebuttal, one might reply that “fringe” is in the eye of the beholder. On the ideological charge, defenders counter that clean elections is not the cause of “extremist” candidates. Some labeled in this way were elected with private funds, some with public, and, in either case, their election had more to do with the way legislative districts are drawn in favor of one or the other major party. In addition, low turnouts in party primaries enhance the strength of the ideologically minded, because they are more likely to vote.

That the system has created opportunities for a broader range of candidates to participate (fringe or not) appears true, not only when it comes to candidates for office, but when it comes to those who make campaign contributions. There is some evidence, although somewhat questionable because of the methodology employed, that those who have made the \$5 qualifying contributions have been more economically, ethnically, and geographically diverse than the donors to privately financed candidates.⁷ To some extent the system has reduced the advantages normally enjoyed by incumbents – making them more vulnerable, especially in primary elections, because opponents share the same party affiliation – but for various reasons, including districting arrangements, incumbents continue to have an overall advantage in securing re-election.

The system may have helped reduce the influence of well-funded interest groups, but how much is not immediately apparent. A 2003 Government Accounting Office study, based on interviews with interest group leaders, suggested that private campaign contributions helped donors secure access to lawmakers, though they did not always get the help they wanted, whereas access to lawmakers reliant on public funding was more formal and professional in tone (based more on issues than on *quid pro quo* dealings.)⁸

Overall, lobbyists remain important and their influence may have little to do with whether a lawmaker has run a privately or publicly funded campaign. Lobbyists provide a variety of services for legislators: They draft bills, raise money, circulate nominating petitions, contribute funds, and even help run legislative campaigns. Some legislators rely on lobbyists to collect the \$5 dollar donations to qualify for public funding. Some nonparticipating candidates look to lobbyists to raise the full cost of their campaigns.

⁷ Government Accounting Office, “Campaign Finance Reform: Early Experiences of Two States That Offer Full Public Funding for Political Candidates.” Washington, D.C.: U.S. General Accounting Office, GAO-03-453, May 2003. See report on this and related studies in Marc Caplan and Amber French, “Clean Elections and Public Campaign Financing: New Strategies for a Healthy Democracy,” *National Civic Review* 97 No. 2, summer 2008: 57-60.

⁸ Government Accounting Office, “Campaign Finance Reform: Early Experiences of Two States That Offer Full Public Funding for Political Candidates.” Washington, D.C.: U.S. General Accounting Office, GAO-03-453, May 2003. See report on this and related studies in Marc Caplan and Amber French, “Clean Elections and Public Campaign Financing: New Strategies for a Healthy Democracy,” *National Civic Review* 97 No. 2, summer 2008: 57-60.

Where to From Here?

The politics driving the debate over clean elections in Arizona — scandals, charges of special influence, and partisan divisions — and the legal and administrative problems are not unique. Most efforts for state-level public campaign financing have been fueled by outrage over campaign finance, lobbying, and ethics problems. Most successful efforts have come through ballot initiatives. Connecticut was an exception, where a succession of scandals (the state was ridiculed as “Corrupticut”) prompted the legislature there to enact clean election laws in 2005. The law came a few months after Governor John G. Rowland, the object of a corruption scandal, resigned.

The system in Connecticut has recently run into legal difficulties. The U.S. Court of Appeals is reviewing a lower court decision that the Connecticut law is unconstitutional because it discriminates against minor political parties. The lower federal court judge was also critical of a matching fund provision similar to the one in the Arizona law.

In Maine, the system has come under attack by Democrats because two independents entered the race for governor with public funds and drew large numbers of voters away from the Democratic candidate. Cash shortages have also been a concern in Maine. Most of the money comes from state appropriations. The possibility of a shortage has prompted the Maine Ethics Commission, which administers the program, to recommend changes in the law so that candidates can raise some private money. This conflicts with the overall intent of the law, but is considered necessary to make up for the shortage of state funds caused by a large budget deficit.

Financial problems of this nature have not yet become crucial in Arizona, but are likely to, as lawmakers cope with a shrinking state budget, more candidates seek to take advantage of the program, and as campaigns become more expensive (there is already some sentiment that the spending levels for legislative races are too low).

Elimination of public funding in Arizona would create quite a hole to fill. Of the \$11.8 million contributed to candidates for statewide office and the Legislature in 2008, \$7.7 million – or 65% – came from Clean Elections funds. Elimination of funding for the commission would also reduce information by ending the voter guide sent to every home with registered voters and commission-sponsored candidate debates. Many people believe that the clean election system in Arizona will need to be strengthened if its basic goals are to be achieved in the future. This is in part because of the U.S Supreme Court’s January 2010 decision in *Citizens United vs. Federal Election Commission*, which in effect allows corporations, unions, and “shadow” corporations, which are formed to take advantage of the decision and for no other purpose. They could be created to take advantage of the decision and spend as much as they wish on campaign ads to influence elections. The ruling voiding the federal 2002 McCain Feingold Act on First Amendment grounds is likely to make it more difficult to level the playing field.

While the clean elections law has not been a cure for all campaign finance or electoral problems, with fine tuning, the system could be sustained effectively. An adjustment worth considering is a partial funding, or “hybrid funding system” that eliminates triggered matching funds. In its place, participating candidates could try to keep up with the fundraising of competitors by raising additional funds through small donations of \$100 or less, which are matched by clean election funds at a ratio of \$5 for every \$1 raised. The proposed system maintains the qualifying process and the existing caps on the amount of additional public funding a candidate can receive (these could be adjusted in the future). It would eliminate some reporting requirements on nonparticipating candidates and greatly ease the tracking workload and interventions of the Clean Elections Commission. The model is similar to that used in

several places, including the City of Tucson⁹ and the Fair Elections Act currently being considered in Congress.

Different Opinions about Clean Elections

Supporters Say Clean Elections Law:	Critics Say Clean Elections Law:
<ul style="list-style-type: none"> ✓ Increases public participation by raising the number of candidates running, increasing those making contributions, and encouraging supporters to work as campaign volunteers ✓ Encourages less-wealthy candidates to run ✓ Helps free candidates from time-consuming fund-raising activities so that they can better concentrate on issues and constituents' concerns ✓ Helps reduce dependence on large or special interest contributions that create real or apparent conflicts of interest ✓ Provides candidates with more neutral sources of funding ✓ Helps reign in campaign spending ✓ Helps reduce fund-raising disparities between candidates ✓ Gives voters more choice among candidates, and gives voters more information upon which to make decisions 	<ul style="list-style-type: none"> ✓ Burdens free speech ✓ Uses public money that could be better used elsewhere ✓ Forces taxpayers to fund candidates whose views they may not support ✓ Is a welfare act for politicians ✓ Is administered in an unfair and unprofessional way ✓ Does not meet expectations when it comes to increased representation for women and minorities ✓ Props up relatively fringe candidates who lack enough support to raise their own money ✓ Contributes to legislative gridlock by making it easier for candidates on the ideological extremes to secure election ✓ Has not, as promised, loosened the grip of lobbying groups on the political system



Morrison Institute for Public Policy is a leader in examining critical Arizona and regional issues, and is a catalyst for public dialogue. An Arizona State University resource, Morrison Institute uses nonpartisan research and communication outreach to help improve the state's quality of life.

David R. Berman, Ph.D.

Senior Research Fellow
Morrison Institute for Public Policy
College of Public Programs

David.Berman@asu.edu | MorrisonInstitute.asu.edu

⁹ Tucson's voluntary partial financing program was adopted by the voters as a charter amendment in 1985. Under the program a candidate for city council or mayor who accepts spending limits and raises a specified number of small contributions becomes eligible for public matching grants for private contributions made to his or her campaign. The public funding primarily comes from the city's general fund. An assessment made in 2003 suggests that the law was working well-- all candidates participated in the program, it had become part of the city's political culture, and it was popular with the public. The report also said it had reduced the candidates' reliance on TV advertising and created a more grassroots campaign orientation. It offered testimonial evidence that candidates valued the program for relieving them from the burden of raising revenues and, thus, giving them more time to communicate with voters and attend to their official duties. See: *Political Reform That Works: Public Campaign Financing Blooms in Tucson* (Los Angeles: Center for Governmental Studies, 2003).