

Supreme Court Strikes Down Arizona's Matching Funds Law; Ruling Will Impact Private Groups

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On June 27, 2011, the Supreme Court struck down, by a 5-4 vote, the Arizona Citizens Clean Elections Act in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*. The opinion is a victory for businesses and trade associations, which can now make independent expenditures in elections without fear of triggering government funds for candidates they oppose. Under the "clean elections" program struck down by the court, publicly financed candidates received an initial allotment of government funds. Once combined expenditures by a privately financed candidate and sympathetic independent groups surpassed that grant, publicly financed candidates received matching government funds.

The Court largely relied on its 2008 *Davis v. Federal Election Commission* opinion as precedent. *Davis* invalidated the federal "Millionaire's Amendment," which permitted opponents of candidates who spent over \$350,000 of their personal funds to collect multiples of the normal contribution limit while the candidates spending personal funds were bound by the original contribution limit. The court held, in *Davis*, that the Millionaire's Amendment substantially burdened a candidate's right to use personal funds for campaign speech and was not justified by a compelling state interest.

Chief Justice Roberts noted in *Arizona Free Enterprise* that the Clean Elections Act was even more burdensome than the Millionaire's Amendment. First, the penalty in *Davis* was the *possibility* of greater private campaign contributions to an opponent who would still have to raise those additional funds. The Clean Elections Act, in contrast, automatically released public funds to publicly financed candidates.

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Second, in a field with multiple publicly financed candidates, there could be multiplier effects—each dollar spent by a privately financed candidate could trigger an additional dollar for *each* publicly financed candidate. Third, unlike the law in *Davis*, personal spending by a candidate was not the only trigger. Independent groups' expenditures could also trigger matching funds.

It is worth mentioning, however, that Chief Justice Roberts explicitly noted that the majority opinion did not call all voluntary public financing schemes into question. He wrote that the use of public funds, in itself, was not constitutionally problematic. However, the use of public funds to effectively penalize private candidates and independent groups for financing speech was a violation of the First Amendment.