

Court Rulings in Other States Puts Maine's Clean Elections Law in Doubt 07/29/2010 05:51 PM ET Reported By: [A.J. Higgins](#)

Court challenges to campaign finance laws in Arizona and Connecticut have caught the attention of election officials here in Maine, who say the ultimate rulings could impact state's Clean Elections Act.

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The legal disputes focus on aspects of the law that permit the release of matching money to publicly funded candidates when privately financed opponents exceed certain spending limits. Matching funds for candidates in Arizona have been frozen pending a final ruling by the U.S. Supreme Court.

Maine's 14-year-old Clean Elections law has already withstood one constitutional challenge, but complaints about similarly-constructed laws that regulate publicly financed campaigns in Connecticut and Arizona have placed Maine officials on notice. At issue are matching money provisions of the laws that release additional state dollars for publicly-financed candidates when the spending of privately-funded candidates or groups exceeds established limits. In fact, the U.S. Supreme Court has granted a stay in the Arizona case that is preventing publicly funded Republican Gov. Jan Brewer from accessing any matching funds in her race until the court decides whether it plans to consider the challenge.

"It may mean that there are enough votes on the U.S. Supreme Court to overturn this part of our program," said Jonathan Wayne, executive director of the state ethics commission that oversees the state Clean Elections Act.

He says the challengers claim that the matching money aspect of the publicly funded campaigns in Arizona and Connecticut infringes on constitutionally guaranteed free speech protections.

"If they want to speak out against a candidate and then the state turns around and gives that candidate additional public funds, that's just, according to the challengers, an inappropriate role for government and it chills those independent groups from speaking," Wayne said.

But some observers are confident that Maine's law is sound.

"Well Maine's law as you know was challenged when it was passed going back 10 years and our law in the 1st Circuit Court of Appeals was found perfectly constitutional," said Ann Luther, co-chair of the Board of Directors for Maine Citizens for Clean Elections.

Luther is confident that if another challenge is made against Maine's public financing

law, the state will once again prevail.

"The idea that the matching fund system in any way chills the speech is disproved by our 10 years of experience here in Maine," she said. "We have plenty of independent spending, plenty of independent expenditures," Luther said. "That sort of thing goes on all the time. So there's very little evidence in our factual record, we think, that there's been a chill of any sort."

But Dan Billings isn't so sure. The Waterville-based attorney who frequently represents republicans on issues involving Maine election laws says the very fact that the high court has issued injunctive relief in Arizona should send a clear signal.

"It's a very unusual procedural move for the Supreme Court to make and a lot of people who follow these things take that as a clue that the Supreme Court is likely to grant certiorari on the underlying case and it's sort of a clue that possibly that the U.S. Supreme Court is going to say that matching funds provisions are unconstitutional," Billings said. "If the U.S. Supreme Court decides that, that would obviously apply here just as much as it does in Arizona."

Billings says that even if the matching money provision in Maine's Clean Elections system were to be struck down, participants in the system would still receive their initial distributions. But he adds that the matching money is a big incentive for many publicly-funded candidates who see it as an effective buffer against privately funded opponents in a competitive race.

"One of the selling points of the program -- one of the things from purely a strategic point of view in a campaign that makes the program worthwhile for a lot of candidates -- is the matching funds provisions," said Billings. "If we had a system where people just got an initial distribution and then were stuck with it no matter what happened, I think you'd see a lot less candidates participate in the system."

Maine Democratic gubernatorial nominee Elizabeth Mitchell is running as a Clean Elections candidate and has already received nearly \$90,000 in matching funds as the result of campaign spending by privately financed independent candidate Eliot Cutler. According to the ethics commission, there have been no complaints filed against the state that are based on the Arizona challenge.