

BANGOR DAILY NEWS

Public funding of elections works and it's constitutional

By Alison Smith, Special to the BDN
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In its final decision of the term, the United States Supreme Court [overturned the matching funds provisions of Arizona's Clean Election program](#). And just last week, [Maine's U.S. District Court followed suit](#), striking down the matching funds portion of Maine's Clean Election law.

Given the Roberts' court's generally hostile approach to campaign finance regulation, the 5-4 decision in *McComish v. Bennett* was not a surprise. This is the fifth case in as many years to roll back federal, and now state, campaign finance laws. *Citizens United*, which granted corporations the right to spend unlimited money in elections, is the best known of these decisions.

While the outcome of the recent case was disappointing, it is heartening that the decision was made on narrow grounds. The court affirmed that public financing systems such as Clean Elections are fundamentally constitutional; five justices objected only to the particulars of the matching funds system. Because matching funds are distributed in response to spending by opposing candidates or independent expenditures, the court declared this practice to be inconsistent with the First Amendment.

We at [Maine Citizens for Clean Elections](#) believe the five justices in the majority got it wrong. Arizona's Clean Election matching funds system, like Maine's, is a boon to First Amendment values, enabling a richer and more robust public dialogue during elections. Even though privately funded candidates and independent groups often spend big on advertising, Clean Election candidates are also able to get their message out to voters. As Justice Elena Kagan so aptly put it in her dissent, "Except in a world gone topsy-turvy, additional campaign speech and electoral competition is not a First Amendment injury."

There is no meeting of the minds on the court on this issue, and no compromise to be had. The majority opinion, written by Chief Justice John Roberts, and the dissent by Kagan, emphatically contradict each other point by point. In *The New York Times*, Yale professor [Heather Gerken](#) called [this](#) "a doctrinal death match between two incompatible world views." She continued, "The justices in these cases cannot agree on the basic premises undergirding campaign finance doctrine. Some think money is speech; others think money is money."

Our view is that money enables speech and that robust speech from diverse voices is an essential element of elections. Our democracy is not like other markets — we all have a stake in making sure that competing messages are heard when voters prepare to go to the polls.

We believe that our elections and our government belong to the people, and that's why our Clean Election system is so valuable. It has been the envy of reformers across the country for more than a decade. That's because it helps to empower qualified Maine people from all walks of life to run for office and serve. It has ended the era of large contributions fueling the races for state offices. It has prevented the kind of money-in-politics scandals that motivated Arizona and Connecticut to pass similar anti-corruption laws.

Now that the U.S. [Supreme Court](#) has damaged our system, we can and will repair it.

The 125th Maine Legislature has tasked the Ethics Commission with reviewing the Supreme Court decision and making recommendations to mend our law. The commission has embarked on an open, public process to do just that. Maine Citizens for Clean Elections will roll up its sleeves along with other stakeholders to explore alternatives to the matching funds system that has served so well through six election cycles. We will consider the other models for public funding that exist today and we will come up with some new configurations as well.

Our goal is to craft a system that will be a good fit for Maine: one that will comply with the Supreme Court decision, serve the goals of the Clean Election Act, work well in practice and be attractive to a broad swath of candidates and voters alike. Then we will work to build consensus around that solution so that we have a functioning Clean Election system in place as the 2012 elections get underway.

The Supreme Court dealt a blow to our citizen-initiated Clean Election system, but it was not fatal. Public financing of elections is constitutional. Revising our law to comport with the recent court rulings presents an opportunity to strengthen the Clean Election system so that it continues to serve Maine people well for decades to come.

Alison Smith is president of the board of Maine Citizens for Clean Elections.