



THE EFFECTS OF CLEAN ELECTION LAWS IN MAINE AND ARIZONA

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The clean election laws of Maine and Arizona were instituted to counteract the amount of time a candidate would spend on fundraising during his or her campaign. The idea was that if the state provided the funds, then the candidate would have less dependence on lobbyists and be able to devote more time to other portions of his or her campaign (Campion, 1996). It was also hoped that candidate dependence on corporations, and thus corruption as well, would be cut down in the process. Upon implementation, those in favor of the clean election laws also saw it as a chance to bring about competition by giving qualified candidates a way to enter the race without requiring them to take such massive out of pocket hits.

With this in mind, the drafters of the Clean Election Act went to work. In order to implement these laws, those writing them had to stay within the confines of the First Amendment, as laid out by *Buckley v. Valeo* (Campion, 1996). The Clean Election laws had to avoid the major pitfalls associated with the Federal Election Campaign Act of 1971 (FECA) if they had any hope of being upheld in the courts. Though FECA had been an attempt to institute public control over national elections, ultimately it ran into issues after it made amendments in 1974 regarding a candidate's rights to raise and spend money. These amendments were brought about by the public outrage over the Watergate scandal and were hoped to bring the democracy back to the voters. However, the United States Supreme Court ultimately ruled against a majority of the bill in *Buckley v. Valeo*. The Supreme Court made it clear that nearly every means of mass communication required money, and thus, a candidate had the right to exercise his or her free speech through the use of his or her money.

The Supreme Court did decide uphold the voluntary acceptance of funds. They determined that a system where candidates could voluntarily opt in did not violate any of their rights (Lazarus, 2000). Lazarus states that the Supreme Court noted the benefits of such a system, saying that it could reduce the influence of interest groups, increase candidate interaction with electorate, and "it frees candidates 'from the rigors of fundraising'", thus allowing them to spend more time in other portions of their campaigns. Thus, while other portions of FECA may have been struck down, by upholding the voluntary opt in system, those writing the Clean Election laws had a place to start.

Working from there, the Maine Clean Election Act needed to be very careful not to violate candidate's First Amendment Rights. In order to do this, the Clean Election laws allowed the program to be voluntary, where candidates could choose whether or not they wished to participate within the program. Because candidates had the option to opt out, they were free to spend their own money, and thus, their First Amendment rights were not infringed upon. In doing this, the Maine Clean Election Act succeeded where the Federal Election Campaign Act of 1971 failed. The Maine Clean Election Act was passed in 1996 by a public ballot. Arizona's clean election law was also passed by a public ballot in 1998, and it maintained a system very similar to Maine's (Miller, 2008). Because these laws had such similar systems, court decisions



affecting one very easily effected another, as we'll see later when it comes to the matching funds system.

In addition to complying with the Constitution, those writing the Maine Clean Election Act and Arizona's Clean Election Act also wanted to make sure that the candidates that participated were serious about running. Within the laws, there is a process which ensures the candidate must be committed to the program in order to receive public funding. First, he or she must declare that he or she intend to run for office while being supported by public funds, and then, he or she must also go out and collect a set amount of minor \$5 donations from voters (Maine Commission on Government Ethics and Election Practices; Citizens Clean Election Campaign). These donations are deposited into the Clean Election fund and serve as the money awarded to participating candidates. Arizona also collects a 10% surcharge from civil and criminal penalties and fines to supplement the \$5 donations collected by candidates.

The amount of minor donations that a candidate must obtain varies on what position the candidate is running for, with Maine specifying House candidates need 60, Senate 175, and Gubernatorial candidates 3,200. The candidate may also accept \$100 donations for campaign seed money any time before the candidate requests certification. However, there are limits to how much money each candidate can accept, once again depending on which position he or she is running for. Once the donations have been accepted and the candidate certified, the state determines the amount of money the candidate will receive based on whether the candidate is running in a primary or general election and whether or not the race is contested. In return for this money provided by the state, the candidate must agree not to accept private funds and not to spend more than the amount provided to him or her.

There have been some changes made since the laws were first used in 2000. When the Clean Election laws were first instituted, both Maine and Arizona had a system of matching funds. In the event that the candidate was drastically outspent by an opponent, there was a system in place that would match the amount spent, up to three times the initially provided amount. This portion of the Clean Election law was put in place to make sure that a privately funded candidate could not win simply by outspending the publicly funded candidate. The measure also encouraged both sides to become publicly funded, as being publicly funded would equalize out the amount of money both sides would have (Campion, 1997). However, in the 2011 court case, *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, the United States Supreme Court ruled that the matching funds system burdened free speech and was not justified enough to be upheld (Maine Commission on Government Ethics and Election Practices). *Arizona was forced to terminate the matching funds system, and Maine quickly followed suit after the U.S. District Court of Maine ordered it to be struck down.*



Despite this setback, on November 3rd of 2015, Maine citizens voted to restore the Clean Elections act by what the Maine Citizens for Clean Elections (2016) is calling a "landslide victory". However, despite this victory, the Maine Clean Elections Act is still having its problems. Recently, advocates of the Act have been pushing Maine

legislators to repay the money, totaling \$1.7 million, that they used from the Maine Clean Election Act fund to pay for other programs (Mistler, 2016). Mistler states in his article that if Maine lawmakers do not return the funding soon, the remaining funds will run out by November.

Even though 201 House candidates and 67 Senate candidates were publicly funded, Republicans in the Maine legislature have been delaying supplying the funds that the government has raided, as Clean Elections funding was not a part of the budget (Mistler, 2016). Many of these Republicans are unsure of the benefits provided by the program and thus, don't wish to fund it. Most of them dislike the continued use of PACs by candidates, as well as noting that spending by lobbyists and other groups has increased. One of the Republican members of the Maine Legislature, Senator Eric Brakey, has been very outspoken against the program. Brakey notes that the state is already having difficulty paying for welfare programs, there's no reason they should continue paying for politicians' "campaign signs and robocalls." So despite the Maine citizen's vote to keep the Clean Election Act, its future seems to be in a precarious position, nonetheless.

The Republicans do raise a good point, and there are several questions now that need answered in regards to the effectiveness of these laws. Do these laws actually reduce the amount of time and effort that candidates and campaigns spend on raising money? Have these laws increased access to state offices by more candidates? Have these laws affected the competitiveness of elections? And on a related note, do these laws reduce or increase the number and/or competitiveness of third party candidates? Both Maine and Arizona have had the system in place for a few election cycles now, and there has been research conducted on just how effective these clean election laws were. Through thorough examination of the research available, each of these questions will help to fill in the picture of what is happening with these laws.

To begin with, do these laws actually reduce the amount of time and effort that candidates and campaigns spend on raising money? One of the main goals of these laws was to be able to answer this question with a definitive yes, and thus, it's time important to examine this issue to address if whether or not these laws have cut down on the amount of time spent campaigning and the candidates; dependency on private money. Overall, the answer seems to be that these laws were successful in this area. While the GAO deemed the outcome inconclusive in their study, there are other researchers who believe that the GAO used a number of unorthodox indicators, as well as looking only at primaries (GAO, 2003; Mayer, K.R., Werner, T., & Williams, A., 2006)

In order to test whether or not candidates spent less time fundraising, Francia and Herrnson (2003) sent out a survey to a random sample of state legislative candidates. They then narrowed the responses down to major party candidates running against another major party candidate(s). This study was careful to control for various factors, such as incumbency, political experience, and whether or not the seat they were running for was open; all of these were variables that the researchers believed would affect the candidate's ease of pulling in campaign contributions. After several more controls and other data processes, the study provided their multivariate results. The study used the dependent variable of "The Percentage of Time State Legislative



Candidates Devote to Fundraising” and various independent variables that fell into categories: public finance laws, candidate characteristics, election conditions, and state level conditions. Francia and Herrnson found that candidates who accepted public funding spend 15% less time devoted to fundraising than candidates who did not accept public funds. This is a rather high correlation between the two variables and gives the researchers stronger footing to make their conclusion on. It is also important to note from the same study, the independent variable “Legislative professionalism”, used here to mean how much political experience the candidate has, had an unstandardized coefficient of 13.98 when controlling for other variables, which the study notes indicate that as a candidate gains more political experience, they spend more time raising finances.

Overall, the study comes to the conclusion that candidates participating in full public funding spend less time raising money for their campaigns. They do point out, however, that those candidates who only receive partial funding still spend just as much time campaigning as their privately funded competitors. The study indicates that there is a drop off in the effectiveness of clean election laws cutting down on fundraising time in states that provide only partial funding.

The next question that needs to be addressed is have these laws increased access to state offices by more candidates, and related to that, have these laws reduced the overall amount of spending on political campaigns? Briffault (1999) concludes in his research that there are two main factors that prevent candidate participation: legal constraints and resource constraints. It is the resource constraint that the clean election laws of Maine and Arizona seek to abolish, so as to provide increased access to the system for qualified candidates. The researcher concludes that the incumbent in an election generally starts out ahead of the challenger, as those donating money want access to the winner. In his article, Briffault states:

The real impact of campaign donations appears to be far subtler than the direct exchange of contributions for the votes of elected officials. Donors emphasize, and officeholders agree, that what contributions produce is "access"-the required entry ticket for getting something done. (1999, p. 580)

One of the major goals of the clean election laws was to give candidates without deep pockets access to the political arena, and while Briffault may conclude it a success, there are other researchers who think studies in this area are more guesswork than solid evidence to conclude its effectiveness (Mayer, Werner, & Williams, 2006).

Aside from providing access to candidates from the major parties, it’s also important to examine the effects that the clean election laws have on third party candidates, and ask do these laws reduce or increase the number and/or competitiveness of third party candidates? Lazarus (2000) concludes that though Maine’s system might be unfairly geared towards the candidates of the major parties, the system that triggers an increase in campaign funding highly encourages third party candidate’s participation. Because third parties do not compete in primaries, under the Maine Clean Election Law Act, they are unable to obtain funding until the general election. While this puts them at a disadvantage, Lazarus points out that the level of funding



they can obtain by using the public financing option “likely coerces third party candidates to accept public funding”.

In addition to candidates having access to the system, it’s also important to assess how voters have access to the candidates. In his research, Briffault (1999) delved further into this idea of voter access. He highlighted how voter access to these candidates changed based on whether or not they were accepting campaign contributions from larger donors. While those who donate large sums of money make up a high percentage of campaign funding, they are not representative of the constituents that the elected official is supposed to be representing. This creates an inequality in voter access based on wealth, where those with large sums of money can have more of a voice than those who are not able to make as large of a contribution. While Briffault does not claim that public funding will solve all of the problems faced by the current campaign system, it does give voters a more level playing field where they can have a more equal voice without regard to their wealth.

Have these laws affected the competitiveness of elections? While the other questions may have had a fairly one sided answer, the conclusion on increased competitiveness in these clean election states is a bit more mixed in result. Briffault states that “If an election is financially uncompetitive, it is usually politically uncompetitive too” (1999, p. 570). While financially these elections might give more access, it doesn’t necessarily mean that all of these elections have become more competitive. Briffault ultimately concludes that public funding promotes competitiveness, and Malhotra’s (2008) research would agree with this conclusion. However, there is some research that has examined the clean election laws and concluded that competitiveness does not come hand in hand with public funding.

When Malhotra looked at whether competitiveness was created by the clean election laws in Maine and Arizona, he started by determining how to measure this dependent variable. Because many common indicators can be misleading, Malhotra chose to use two dependent variables the inverse Herfindahl-Hirschman Index (HHI-1) and the margin of victory. Malhotra chose the HHI-1 in order to “assess the robustness of the findings” because he saw more commonly used indicator, margin of victory, as having limitations. After examining Maine and Arizona separately, Malhotra found that the two effects of the two systems parallel each other. He believes that when a challenger participates in the system, they are able to mount a viable campaign using the money provided through public financing. Brogan and Mendilow (2012) replicated Malhotra’s experiment using data from the Senate. While using the same system of randomly assigning candidates, Brogan and Mendilow achieved the same results. However, the researchers wished to also check for self-selection bias. They found after changing the original randomly assigned candidates to randomly assigned non-incumbents, that the results were not statistically significant in both estimates (they don’t state whether it was the Herfindahl-Hirschman Index or the margin of victory).

In the middle ground is Mayer, Werner, and Williams’ (2006) research, which came to the conclusion that clean election laws appear to increase competition, though perhaps it’s too soon to tell for sure. The researchers raised issues with the GAO’s study as perhaps missing data and using incorrect indicators. When examining their data from both Maine and Arizona and comparing it to partial public funding states



like Wisconsin and Hawaii, the researchers see the results of their study as “a mixed picture.” While the data seems to show that Maine and Arizona have become much more competitive states since the clean election laws were instituted, the researchers became more confident in their conclusions since the Maine 2004 elections' data remained at the same level.

Even if there might be a lack of competition in all districts, Mayer, Werner, and Williams point out that if the current candidate in a district is representing the voters properly, then competition might not be necessary. If the current candidate in office is adequately fulfilling the needs of the voters, then there is no reason for that district to receive an increase in competition. While not all agree that clean election laws of Maine and Arizona create competition, Mayer, Werner, and Williams believe that if there are good candidates that the voters are already happy with, the district might not need competition.

However, there are still those that hold a contradictory opinion. Mayer, Werner, and Williams (2006, p. 263) state a conflict of views with colleagues who were publishing in the same journal. According to their article, researchers Primo, Milyo, and Groseclose ‘argue that “the jury is very much still out on clean election laws”...’ pointing out that it’s entirely possible the changes noted by Mayer, Werner, and Williams may be a temporary result. In their own article, Primo and Milyo (2006) make the argument that there isn’t sufficient scientific finding to justify the adoption of these laws. They argue that there is no “systematic impact of existing funding programs”. Their argument is that there isn’t any scientific evidence that supports any claim regarding the effectiveness of these clean election laws, stating that Mayer, Werner, and Williams’ research had mixed results (p. 8-9). Though Primo and Milyo largely contradict many other research articles, it’s worth taking into account the findings of their paper.

Clean election laws seem to work as more candidates take advantage of the opportunity. This frees up time for them to pursue other methods of campaigning, as well as, it partly frees them from the control of lobbyists while also encouraging candidates to take more interest in the values of constituents. In its report, the GAO found that between 2000 and 2002, the number of candidates/legislative members funded by clean election laws increased in Maine and Arizona. However, overall, the GAO (2003) had inconclusive findings about whether or not the clean election laws were effective.

There were several issues raised with the findings of the GAO as many of the articles thought that the GAO significantly underestimated the amount of competitiveness created by the clean election laws, as well as using “unorthodox” indicators (Mayer, Werner, & Williams, 2004). The researchers also found that the GAO might have made an error in not evaluating both the primaries and the general elections, looking only at primary elections. On the other hand, Miller (2011), in his article *After the GAO Report: What Do We Know About Public Election Funding?*, thought that the GAO report was a good opportunity for researchers to compare notes, even though he agrees that the GAO inadequately evaluated the effectiveness of the clean election laws.

Ultimately, we have looked at the research that might answer the questions posed for



the research, but in the end, it is hard to know for certain whether the clean election laws in Maine and Arizona have had their intended effect. While the two laws have been in effect since 2000, there are still reports from the GAO, Primo and Milyo, and other political scientists who do not believe they can say with conviction if the data found by other researchers is solid. At the same time, many researchers believe that the clean election laws have been effective in many areas. Francia and Herrnson came to the conclusion that clean election laws allowed candidates to spend less time fundraising as long as they receive full, rather than partial, public funding.

Briffault believed that clean election laws gave candidates and voters alike increased access to the system. Because candidates were not held back by their lack of deep pockets, they were better able to enter the political arena. This access in turn is believed to also create competition within these states, as seen from the researcher conducted by Mayer, Werner, and Williams, as well as Malhotra.

Maine and Arizona have been the beginning of many changes in the campaign system, and there are those who would like to continue research into these laws. It's essential for states looking to follow in their footsteps that researchers make new findings in the areas discussed above to better flesh out the research and perhaps find flaws that can be improved upon. Two areas that could use this research to be better understood are candidate access to the system and the findings of the GAO. Both topics would benefit from more research in order to have more confidence about the effects of each area.

At this time and with the research currently available, it would seem reasonable to conclude the clean election laws have been successful in accomplishing their goals. Based on all of the research gathered, and despite the few issues raised, the clean election laws have seemed to be successful in their goals. While the laws may not be a perfect solution that completely solves all of the problems faced by the current system, they are a good start to begin solving the issues and brainstorming adjustments that would improve upon the United States' current process.

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