

June 22, 2009

Dear Senator:

Oh behalf of the Center for Competitive Politics (CCP), I am writing this letter in regards to NY S5814, which has recently been proposed in your state legislature and would provide taxpayer funding to a variety of candidates in your state.

CCP is an educational 501 (c)(3) organization that works to protect the First Amendment political rights of speech, assembly, and petition. Started by former Federal Election Commission (FEC) Chairman Brad Smith in 2005, CCP's mission is to educate the public and elected officials on the importance of First Amendment rights in elections and the actual effects of money in politics.

Advocates of so-called "clean elections" programs, such as the one proposed in NY S5814, typically make many promises about the supposed benefits of these programs, including: that it will increase the number of non-traditional candidates,¹ end or limit the influence of special interest groups and lobbyists,² save taxpayer dollars,³ and reduce corruption or the appearance of corruption.⁴

CCP has studied these claims extensively, primarily focusing our research on Maine and Arizona, where these programs have been operating since 2000, as well as the 2007 pilot project in New Jersey. To date, there is no evidence that tax-payer funded political campaigns in these states have fulfilled any of the promises made to both legislature and their constituents by advocates of these schemes.

For example, in New Jersey CCP surveyed donors to "clean" candidates to determine interest group affiliations, among other things. We found that nearly half of all donors to "clean" candidates were affiliated with organized interest groups, primarily from 2 unions, the National Rifle association, the Sierra Club, and the statewide pro-life and pro-choice groups.⁵

Experience in Arizona also shows that "clean elections" candidates routinely rely on organized interest groups for assistance in raising the required number of qualifying

¹ Public Citizen. "Fair Elections Action Week!" available at http://action.citizen.org/t/5489/content.jsp?content_KEY=4050

² Public Campaign, available at <http://www.publiccampaign.org/> on January 17, 2008

³ Common Cause, available at <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4104619>

⁴ Public Citizen: Press Room, February 7, 2001, available at <http://www.tradewatch.org/pressroom/release.cfm?ID=535>

⁵ Sean Parnell, Laura Renz, Sarah Falkenstein, *Special Interests, Partisan Pouts, and the Usual Suspects*, p. 3, Center for Competitive Politics, February 2009.

contributions,⁶ leaving candidates just as grateful to these groups as if they had simply contributed directly to their campaigns.

Promised savings to taxpayers have also failed to materialize. A recent CCP analysis of budgets and tax levels in Arizona and Maine discovered that since their adoption of taxpayer-funded political campaigns in 2000, both states have had budget growth greater than the national average. Prior to 2000, both states had below-average budget growth. Taxes in Maine are also currently at an all-time high, hardly indicative of the promised savings to taxpayers.

Additional research has found that the background of candidates has not changed under “clean elections,” and the number of women elected to serve in these two states has actually fallen slightly.

A simple failure to achieve the goals set out by proponents is only one major flaw in these programs. The unconstitutionality of a key provision of the plan is another problem.

The bill proposed in your state includes provisions that provide participating candidates with extra taxpayer money in the event that non-participating opponents outspend them, or if independent citizen groups run ads opposing them or aiding their opponent. This punishes the speech of non-participating candidates and independent groups alike by attempting to negate their speech and the speech of their contributors. This not only provides a substantial advantage to incumbents or participating candidates with backing from well-organized interest groups and the media, it is almost certainly an unconstitutional violation of the First Amendment.

Recently the U.S. Supreme Court ruled in *Davis v. FEC* that discrimination against and punishment of the constitutionally protected speech of self-financing candidates was unconstitutional. Specifically, the Court struck down a federal law that penalized, through asymmetrical contribution limits, any candidate “who robustly exercises” his First Amendment right to spend his own money for campaign speech. The Supreme Court held that campaign finance laws cannot discriminate against a candidate who chooses to exercise his free speech rights by providing the opposition a financial benefit as a consequence.⁷

In that ruling, the Court cited an earlier a federal appeals court decision that had previously struck down a Minnesota matching funds law, signaling that the High Court believes such enactments are unconstitutional.

Under this reasoning, the matching funds provision in NY S5814 is, likewise, almost certain to be found unconstitutional. Based upon the *Davis* decision, U.S. District Judge Roslyn Silver in Arizona issued a preliminary decision last fall in *McComish v. Brewer* indicating that the matching funds provision of the Arizona Clean Elections Law “violates the First Amendment of the U.S. Constitution.”

⁶ “Clean Elections Institute loses national money stream, seeks donations,” by Christian Palmer, *Arizona Capitol Times*, December 29, 2008, available at <http://www.azcapitoltimes.com/story.cfm?id=10095>

⁷ See *Davis v. Federal Election Comm’n*, 128 S. Ct. 2759, 2771-74 (2008).

Judge Silver's ruling prompted the state of New Jersey, which was considering an extension and expansion of their own experiment with taxpayer-funded political campaigns, to drop their program completely. I have enclosed with this letter a copy of the analysis by the New Jersey legislature's Office of Legislative Services that outlines why such matching fund provisions violate the First Amendment under the *Davis* ruling.

Campaigns financed by taxpayer dollars stifle free speech and effectively limit citizens' voices from political debate while doing nothing to address the problems of real or perceived corruption and supposed undue influence by organized interest groups. Moreover, citizens are forced to support candidates with whom they disagree. Thomas Jefferson once said, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical," and by any measure NY S5814 goes against Jefferson's admonition.

I hope you find this information useful as you consider NY S5814. Should you have any questions or if CCP can provide any further resources to you, please contact Kristi Meade, CCP's Director of Government and Coalition Relations at (703)894-6800 or kmeade@campaignfreedom.org.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Sean Parnell', written in a cursive style.

Sean Parnell
President

Enclosure: legal analysis by NJ Office of Legislative Services

Cc: Members of the New York Legislature, New York media and interested activists