

# CAMPAIGN FINANCE

1. *VOTEPAC, et al. v. Bayless, et al.* (Maricopa County Superior Court)

In July, 1999, the Plaintiffs including a political action committee and lobbyists filed an action in Maricopa County Superior Court alleging that the Citizens Clean Election Act violates several provisions of the Arizona Constitution and is therefore invalid. The Complaint alleges that the Clean Elections Act violates the separation of powers provision, unlawfully enlarges the duties of the Commission on Appellate Court Appointments and violates the provision that a law have a title which describes its contents. The Defendants in the case are Betsy Bayless as Secretary of State and Carolyn Springer as State Treasurer. The Center represents Arizonans for Clean Elections, the campaign committee that was organized to sponsor the Clean Elections Initiative. The Plaintiffs stipulated to the intervention of both Arizonans for Clean Elections and the Clean Elections Commission, the state agency created by the law to administer its operation.

The Plaintiffs moved for summary judgment and the Defendant-Intervenors filed a cross-motion for summary judgment.

On February 11, 2000, Judge Robert Myers issued his decision. He rejected the plaintiffs' claims that the Clean Elections Act constitutes an encroachment by the judicial branch upon the executive branch because of the possible involvement of a Supreme Court Justice making an appointment to the Clean Elections Commission. He also held that the Chief Justice's role as chairman of the Commission on Appellate Court Appointments which screens candidates and prepares slates for appointment to the Clean Elections Commission did not constitute a separation of powers violation.

However, Judge Myers ruled that the Act's provision requiring Senate concurrence in the removal of a Clean Elections Commission member by the Governor constituted an invasion of the executive branch's power and was unconstitutional. Judge Myers then ruled that the provision was severable from the remaining provisions of the Clean Elections Act.

Judge Myers also ruled that it was unconstitutional for the Clean Elections Act to expand the constitutional role of the Commission on Appellate Court Appointments. This provisions, he ruled, was integral

to the voters' approval of the Clean Elections Act. He held that voters would not have approved the Clean Elections Act initiative without the provisions relating to the Commission on Appellate Court Appointments' preparation of candidate slates for appointment to the Clean Elections Commission. As a result, he ruled that the provisions were not severable from the Clean Elections and that the whole act was therefore invalid.

On February 17, 2000, Arizonans for Clean Elections and the Clean Elections Commission filed petitions for special action in the Arizona Supreme Court seeking to reverse Judge Myers' decision. The Court has scheduled oral argument on the petitions on March 14, 2000.

*On June 16, 2000, the Arizona Supreme Court issued its Opinion reversing Judge Myers' decision. While the Court agreed with Judge Myers that the Act unconstitutionally expanded the role of the Commission on Appellate Court Appointments, the Court ruled that provision of the Act could be severed and the remaining provisions of the Act allowed to operate. The Court also reversed Judge Myers' decision and held that requiring Senate concurrence in the removal of a Clean Elections commissioner by the Governor was not unconstitutional. The Court held that the Legislature's veto power over renewal did not constitute an unlawful invasion of the Executive Branch's powers. The Court also held that a minor portion of the law that permitted Supreme Court Justices to make appointments to the Commission was unconstitutional but could be severed from the Act.*

*This case will be terminated once judgment is entered in Superior Court pursuant to the Supreme Court's mandate.*

2. *Lavis v. Bayless* (Federal District Court, Arizona)

In August, 1999, the Plaintiffs filed an action alleging that the method by which the Clean Elections Act is funded violates the First Amendment of the United States Constitution. The Plaintiffs are lobbyists and individuals upon whom a 10% surcharge has been levied as a result of civil or criminal penalties which is the principle method of funding the Clean Elections Act. The Plaintiffs allege that the 10% surcharge unlawfully compels them to support the political speech of others in violation of the First Amendment. They also allege that the \$100 lobbyist fee is an impermissible tax on speech.

Arizonans for Clean Elections, the campaign committee responsible for taking out and circulating the initiative, moved to intervene in the action. The plaintiffs opposed their intervention. In February, 2000, the court granted the motion for intervention.

*During the summer of 2000, the parties filed motions for summary judgment on the substantive issues in the case. The defendant Arizona Clean Elections Commission also filed a motion to dismiss based on the Tax Injunction Act in which the defendant-intervenor Arizonans for Clean Elections joined. The motions will be heard by Judge Rosenblatt on October 30, 2000.*