

1 INSTITUTE FOR JUSTICE
2 Timothy D. Keller (019844)
3 Jennifer M. Perkins (023087)
4 398 S. Mill Avenue, Suite 301
5 Tempe, AZ 85281
6 P: 480-557-8300/F: 480-557-8305

7 INSTITUTE FOR JUSTICE
8 William R. Maurer (WSBA 25451)¹
9 811 First Avenue, Suite 625
10 Seattle, WA 98104
11 P: 206-341-9300/F: 206-341-3911

12 Attorneys for Plaintiffs

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DEAN MARTIN, a citizen of the State)
of Arizona; and AZ FREE)
ENTERPRISE CLUB'S FREEDOM)
CLUB PAC, a candidate support or)
opposition committee; and ARIZONA)
TAXPAYER ACTION COMMITTEE,)
an independent expenditures)
committee,)
Plaintiffs,)

Civil Action No.

No. CV 04-0200-PHX-EHC

FIRST AMENDED COMPLAINT
(Declaratory and Injunctive Relief)

v.)

JAN BREWER, in her official capacity)
as Secretary of State of the State of)
Arizona; and GARY SCARAMAZZO,)
ROYANN J. PARKER, JEFFREY L.)
FAIRMAN, DONALD LINDHOLM and)
MARCIA BUSCHING, in their official)
capacity as members of the)
ARIZONA CITIZENS CLEAN)
ELECTIONS COMMISSION,)

¹ Admitted *pro hac vice*.

1)
2 Defendants.)
3 _____)

4 INTRODUCTION

5 1. This is a civil rights action seeking declaratory and injunctive relief
6 to vindicate the rights to freedom of speech and association in the conduct of
7 political campaigns in Arizona, as well as the right to enjoy the equal protection
8 of laws.

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10 2. Arizona's scheme of publicly funding elections, the Citizens Clean
11 Elections Act (the "Act"), A.R.S. § 16-901 et seq., violates the First and
12 Fourteenth Amendments to the United States Constitution by forcing candidates
13 and independent political groups to abide by arbitrary expenditure limits, thus
14 infringing on and chilling protected political speech and association without a
15 sufficiently compelling governmental reason for doing so and without being
16 narrowly tailored to achieve any legitimate governmental interest. Moreover,
17 the provisions of the Act are overly broad, sweep within the Act's provisions
18 constitutionally protected advocacy, and do so based on the content of the
19 communication in question.

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21 3. The Act also violates the guarantees of equal protection and due
22 process of the law contained in the Fourteenth Amendment to the U.S.
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1 choose to not receive government funding under the Act and by penalizing
2 independent groups wishing to participate in the political process.

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4 4. Plaintiffs thus seek to have the Act declared unconstitutional on its
5 face and as applied to them and to have this Court permanently enjoin
6 Defendants' enforcement of the Act.

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8 JURISDICTION AND VENUE

9 5. Plaintiffs bring this action pursuant to 42 U.S.C. §§ 1983 and 1988
10 to vindicate rights violated under color of state law, and seek relief under 28
11 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1988.

12
13 6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331
14 and 1343(a)(3) and (4).

15
16 7. Venue properly lies with this Court under 28 U.S.C. § 1391(b).

17 PARTIES

18 8. Plaintiff Dean Martin is a citizen of the United States, a resident of
19 the State of Arizona, the current Arizona State Treasurer, and a former member
20 of the Arizona State Senate. Attachment 1 (Dean Martin Declaration) at ¶¶ 2-3.
21 Treasurer Martin will run again for state office in 2010 and he will be subject
22 again to the application of the Act; thus, the restriction on his constitutional
23 rights that has occurred in the past will reoccur. *Id.* at ¶¶ 4-5. For his next
24 campaign for state office, Martin desires to run a traditional, privately
25 supported campaign, but may be forced to participate in the government funding
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1 system because of the penalties he has faced and would face under the Act for
2 choosing to run with private funds. *Id.* at ¶ 4.

3
4 9. Plaintiff AZ Free Enterprise Club’s Freedom Club PAC (the
5 “Freedom Club PAC”) is a Candidate Support or Opposition Committee
6 headquartered in the State of Arizona. Attachment 2 (Fife Symington
7 Declaration) at ¶ 2. The Freedom Club PAC has been funded consistently since
8 its establishment in 2006 and has received contributions for, and made
9 contributions to, an Independent Expenditures PAC, Arizonans for a Sound
10 Economy, to fund independent expenditures in the following 2006 state
11 elections: (1) In Legislative District 1, during the primary election, in
12 opposition to a sitting House Member, which triggered matching funds to the
13 government-funded candidate the Freedom Club PAC opposed; (2) In
14 Legislative District 1, during the primary election, in opposition to a sitting
15 Senator, which did not trigger any matching funds; (3) In Legislative District 17,
16 during the general election, in support of a House candidate that triggered
17 matching funds to the government-funded candidate the Freedom Club PAC
18 opposed; (4) In Legislative District 25, in the primary election, opposing two
19 House Members that triggered matching funds to government-funded
20 candidates opposed by the Freedom Club PAC; (5) In Legislative District 26, in
21 both the House and Senate races in the general election, which did not trigger
22 any matching funds. *Id.* at ¶¶ 4-13. The Freedom Club PAC has been a
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1 registered political committee under Arizona law, A.R.S. § 16-912, since 2006.
2 *Id.* at ¶ 4. The Freedom Club PAC is currently incorporated, currently
3 registered as a political committee, and currently makes independent
4 expenditures regarding state elections. *Id.* at ¶ 4, 14. The Freedom Club PAC
5 will remain a registered political committee under A.R.S. § 16-912 and will
6 accept contributions and make expenditures regarding candidates in all
7 upcoming state elections for the foreseeable future, including, but not limited to,
8 the 2008, 2010, and future state election cycles. *Id.* at ¶ 14.

11
12 10. Plaintiff Arizona Taxpayer Action Committee (“Arizona Taxpayer”)
13 is an Independent Expenditures Committee organized under the laws of the
14 State of Arizona. Attachment 3 (Chad Kirkpatrick Declaration) at ¶ 2. Arizona
15 Taxpayer has been funded consistently since its establishment in 2006 and
16 received contributions for, and made independent expenditures in 2006 in
17 Legislative District 8 and to advocate the defeat of two ballot measure
18 propositions. *Id.* at ¶ 4, 6. It has been a registered political committee under
19 Arizona law, A.R.S. § 16-912, since 2006. *Id.* at ¶ 4. Arizona Taxpayer is
20 currently incorporated, currently registered as a political committee, and
21 currently makes independent expenditures regarding state elections. *Id.* at ¶¶
22 4, 7. Arizona Taxpayer will remain a registered political committee under
23 A.R.S. § 16-912 and will accept contributions and make expenditures regarding
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1 candidates in all upcoming state elections for the foreseeable future, including,
2 but not limited to the 2008, 2010, and future state election cycles. *Id.* at ¶ 7-8.
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4 11. Defendant Jan Brewer is the Secretary of State of the State of
5 Arizona, and is sued in her official capacity. As Secretary of State, Brewer's
6 office is the repository for all campaign-finance reports filed pursuant to the
7 Arizona Citizens Clean Elections Act, and is responsible for setting campaign
8 contribution and spending limits. A.R.S. §§ 16-924, 16-941(B), 16-958, and
9 16-959.
10

11 12. Defendants Gary Scarmazzo, Royann J. Parker, Jeffrey L. Fairman,
12 Donald Lindholm, and Marcia Busching, and any individuals subsequently
13 appointed, are members of the Arizona Citizens Clean Elections Commission
14 (the "Commission"), and are sued in their official capacity. The Commission is
15 granted rulemaking and enforcement authority under the Act. A.R.S. §§16-955-
16 57.
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19 FACTUAL ALLEGATIONS

20 21. The Act, A.R.S. § 16-940 *et. seq.*, was a ballot initiative written and
22 sponsored by special-interest groups and was approved by a slim majority of
23 Arizona electors in the November 3, 1998 general election. On December 10,
24 1998, Governor Jane Dee Hull issued a proclamation declaring this measure to
25 be law.
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1 14. The Act creates a system of government campaign financing for
2 statewide and legislative elected offices within the State of Arizona, and creates
3 the Commission, a bureau of unelected individuals granted broad enforcement
4 and regulatory powers that extend not only to all candidates who choose to
5 participate in the government campaign financing system, but even to all
6 candidates who do not wish to run a government funded campaign.
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8
9 15. Under the Act, candidates seeking government funding obtain a
10 predetermined number of \$5 contributions from constituents in order to qualify
11 for funding. These \$5 contributions can be collected by individuals and, more
12 likely, by special-interest groups and organizations. Once qualified, the
13 government-funded candidate must follow strict contribution and spending
14 limits, as well as reporting requirements, and participate in primary and general
15 election debates.
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18 16. The Act does little to prevent corruption. For instance, one of the
19 Act's stated purposes is to diminish the "influence of special-interest money"
20 by removing the ability of such interests to make contributions to government-
21 funded candidates. However, the Act still permits those same special-interest
22 groups to garner the same type of influence over government-funded
23 candidates by providing other services, such as collecting the requisite number
24 of \$5 contributions to qualify for government funding.
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1 17. The Act is thus fatally under-inclusive: it acts to chill the speech
2 of privately funded candidates without preventing government-funded
3 candidates from receiving assistance from large, organized interest groups,
4 such as labor unions. Moreover, the Act permits this assistance without
5 requiring disclosure of which special-interest groups helped gather the \$5
6 contributions. Thus, government-funded candidates are not subject to the same
7 disclosure requirements as privately funded candidates, creating the worst of
8 all worlds. The Act permits government-funded candidates to be influenced by
9 and beholden to special-interest groups, but without requiring public disclosure
10 of such influence, and yet still be labeled as a “clean” candidate. In contrast,
11 privately financed candidates must disclose all contributors, and yet suffer the
12 implication of being “dirty” for refusing to accept government-funding.

13 18. Candidates who choose to fund their campaigns with private
14 donations and, correspondingly, receive no government funding, must
15 nonetheless adhere to specified contribution limits and extensive reporting
16 requirements.

17 19. The reporting requirements exist for the sole purpose of notifying
18 the Commission when to pay matching funds to government-funded candidates.
19 The triggering of matching funds punishes traditionally financed candidates and
20 results in privately funded candidates ceasing fundraising efforts, thus coercing
21 privately supported candidates to abide by the Act’s strict expenditure limits.

1 20. The Act punishes candidates for choosing not to accept
2 government funds and not agreeing to abide by the Act's spending limits.
3
4 Examples of the punitive aspects of the Act include, but are not limited to: (1)
5 The fact that the government spends hundreds of thousands dollars promoting
6 the benefits of the government-funded elections scheme through billboard,
7 radio, and television advertisements, thus making candidates labeled as
8 "nonparticipating" appear to the general public to be "dirty," not as trustworthy
9 and not as well-suited for office as candidates labeled "participating" in the
10 "clean" elections system by the Commission; (2) The fact that privately
11 financed candidates neither receive matching funds when their campaigns are
12 targeted by opposing independent expenditures, nor do independent
13 expenditures that support government-funded candidates count toward the
14 government-funded candidate's expenditure limit under the Act; and (3) The
15 fact that privately financed candidates receive only a 6% allowance for
16 fundraising costs when matching funds are calculated (even though the costs of
17 fundraising are easily identifiable and required to be disclosed in great detail
18 under other state campaign finance laws) ensures that their government-funded
19 opponents will always have more financial resources than privately financed
20 candidates.
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26 21. The Act has punished Martin in the past for refusing to accept
27 government subsidies and for refusing to promise to abide by the Act's
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1 expenditure limits. The Act will punish him in the future if he chooses to run a
2 privately financed campaign, or it will coerce him to accept government funding
3 and betray his principled stance in opposition to welfare for politicians.
4

5 22. Recently the Legislature significantly increased the initial lump sum
6 disbursements to government-funded candidates. Total government subsidies
7 are capped at three times the predetermined spending limit for the office
8 sought. For example, government-funded candidates for State Treasurer in the
9 2004 election had a spending limit of \$47,770 in the primary election and
10 \$71,655 in the general election. In the upcoming 2010 cycle, those limits have
11 been increased for State Treasurer to \$82,680 in the primary election and
12 \$124,020 in the general election. Attach. 1 (Martin Dec.) at ¶ 10. By statute,
13 these spending limits will be adjusted for inflation by the Secretary of State.
14
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16 23. The Act subjects privately supported candidates to a series of
17 stringent and punitive measures that have the effect of coercing participation in
18 the government funding scheme. The Act goes far beyond merely promoting
19 the use of government funding. In operation, the Act impermissibly tilts the
20 playing field sharply in favor of government-funded candidates by punishing
21 their privately supported opponents (such as Plaintiff Dean Martin) for having
22 refused government subsidies.
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26 24. A.R.S. § 16-952(C) requires the payment of matching funds to
27 government-funded candidates whenever an independent campaign expenditure
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1 is made that either i) opposes a government-funded candidate with a privately
2 funded opponent, or ii) supports a privately funded candidate with a
3 government-funded opponent. By comparison, independent expenditures made
4 on behalf of government-funded candidates are not restricted in any way, nor
5 counted against the maximum amount of government funds that the
6 government-funded candidate may receive. But when a privately supported
7 candidate is the beneficiary of independent expenditures made to counter such
8 unregulated independent expenditures, that independently and privately funded
9 speech is immediately neutralized by the state in the form of government
10 matching funds.
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14 25. Thus, A.R.S. § 16-952(C) protects and insulates government-
15 funded candidates from independent expenditures, but provides no such
16 protection or relief to privately financed candidates. In operation, this provision
17 does not equalize the relative financial resources of candidates, as it declares,
18 but rather it tilts the playing field sharply in favor of government-funded
19 candidates.
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22 26. A.R.S. § 16-952(C) punishes privately funded candidates for
23 receiving private support, improperly injects the state into the political process
24 by increasing the financial resources of government-funded candidates based
25 on the privately funded candidate's exercise of his or her speech rights, harms
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1 independent groups by drowning out and neutralizing their speech and placing a
2 chilling effect on the future exercise thereof.

3
4 27. A.R.S. § 16-952(C) crowds out private donations to both privately
5 funded candidates and independent groups because donors are reluctant to
6 support candidates or messages when their act of support will trigger
7 government funds to candidates with messages with which they disagree.
8

9 28. The system created by the Act treats independent expenditures
10 differently depending on whether they favor government-funded candidates (in
11 which case they are entirely free of regulation) or privately supported
12 candidates (in which case they are matched without a negative effect on the
13 government-funded candidate's spending limit). Privately supported candidates
14 like Martin would be better off rebuffing such potential benefactors.
15

16 Unfortunately for privately supported candidates this is not possible, because
17 independent expenditures are by definition not coordinated or solicited by the
18 candidate who benefits from them. Whenever privately supported candidates
19 receive unsolicited and uncoordinated support *that they do not control*, the
20 system showers their government-funded opponents with more taxpayer money
21 *that their opponents do control*.
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25 29. A.R.S. § 16-952(B), as amended, requires the payment of matching
26 funds to government-funded candidates based on gross contributions to
27 privately financed candidates during the general election cycle, minus 6%. This
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1 arbitrary cost allowance does not take into account the actual cost to privately
2 financed candidates of raising private donations. Because campaign costs are
3 itemized on campaign finance reports, the Act could take them into account
4 when awarding matching funds. However, using a small, arbitrary percentage
5 ensures that the government-funded candidate will have more funds to spend
6 on getting his or her message out to the public than will the privately financed
7 candidate.
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10 30. A.R.S. § 16-952(B) goes beyond mere promotion of the government
11 funding scheme and punishes privately supported candidates. By failing to
12 adequately account for the significant fundraising costs incurred by traditional,
13 privately supported candidates in the determination of matching funds, the
14 system places the government-funded opponent in the superior position of
15 getting all of the benefits of the traditional candidate's fundraising efforts while
16 absorbing almost none of the costs. In effect, this actively discourages the
17 private fundraising that is vital to the success of privately funded candidates.
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21 31. Further, the Act's reduction in the amount of permissible
22 contributions makes it even more difficult for unsubsidized candidates to raise
23 the amount that subsidized candidates automatically receive.
24

25 32. A.R.S. § 16-952(A) is designed to increase the financial resources
26 of government-funded candidates when privately financed candidates speak,
27 operates in a punitive and hence coercive manner against privately funded
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1 candidates, and will operate to penalize Martin in his forthcoming statewide
2 campaigns, especially when coupled with the new, nearly doubled, initial lump
3 sum disbursements.
4

5 33. In the next election cycle, Martin's only hope of ever having the
6 same amount of money as a government-funded candidate is to either accept
7 government funds or to raise the enormous sum of \$620,100, which is the sum
8 of the primary and general election maximum expenditure limits for
9 government-funded candidates. That enormous sum of money is more than any
10 candidate has ever raised in Arizona's history for the office of State Treasurer.
11 Failing that, a privately supported candidate will always be outspent by his or
12 her government-funded opponent.
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15 34. A.R. S. § 16-952, entitled "Equal funding of candidates," declares
16 on its face—and advances in operation—an improper state interest in equalizing
17 the relative financial resources of candidates for public office in Arizona in
18 violation of the First and Fourteenth Amendments to the U.S. Constitution.
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21 35. A.R.S. §§ 16-941(B)(2), 16-941(C), and 16-958, and Commission
22 rules promulgated to implement and enforce these statutes coerce participation
23 in the government financing scheme. While government-funded candidates are
24 required to submit only three additional reports over and above the six
25 regularly scheduled reports that all candidates for public office must file,
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1 privately supported candidates with government-funded opponents are subject
2 to stringent daily campaign-finance reporting requirements.

3
4 36. These daily reports are required for the sole purpose of facilitating
5 the Commission's payment of additional government money to their
6 government-funded opponents, and serve no purpose in combating corruption
7 or the appearance thereof. Thus, this reporting regime seeks not to promote
8 the use of government funding but rather to equalize the relative financial
9 resources of candidates, an improper state purpose that cannot justify the
10 deprivation of Plaintiffs' rights under the First and Fourteenth Amendments.
11 The reporting requirements also operate in an impermissibly coercive fashion
12 by punishing the acceptance of private funding. Thus, the Act places regulatory
13 burdens on privately financed candidates for the sole benefit of government-
14 funded candidates.
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18 37. The Commission enjoys sweeping powers to enforce these
19 disproportionately burdensome reporting requirements. Because the filing
20 requirements for privately funded candidates are so much more onerous than
21 for candidates taking government subsidies, the filing requirements have a
22 profoundly negative impact on the willingness of candidates to opt for private
23 financing. Moreover, the Commission's boundless discretionary power, and its
24 overt willingness to use it, creates a strong disincentive to the launching of
25 privately funded campaigns.
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1 38. A.R.S. § 16-941(B)(1) coerces candidates to accept public financing
2 by reducing by twenty percent the maximum individual contribution that a
3 privately funded candidate may accept. These reduced limits diminish the pool
4 of private resources available to candidates who choose to exercise their First
5 Amendment right to fund campaign speech through private contributions.
6

7
8 39. These reduced limits are not aimed at reducing the possibility or
9 the appearance of corruption and serve no purpose other than to punish
10 candidates who refuse to accept government funding of their political
11 campaigns.
12

13 40. Plaintiff Dean Martin will run a statewide election in 2010 and will
14 suffer imminent and irreparable injury to his rights under the First and
15 Fourteenth Amendments to the U.S. Constitution by virtue of the Act's
16 aforementioned provisions.
17

18 41. In 2006, Arizona's government financing scheme operated to
19 ensure that Martin's government-funded opponent received significantly more
20 funding than Martin. Martin's 2006 campaign was not funded by the
21 government, but rather by individuals who supported his message. He was
22 unopposed in his party's primary election. Martin's government-funded
23 Democratic general election opponent was also unopposed in her party's
24 primary. No other candidates sought the office of State Treasurer.
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1 42. Martin's opponent received \$47,700 for her unopposed primary,
2 which is equal to the Act's primary election expenditure limit for the office of
3 Treasurer. Attach. 1 (Martin Dec.) at ¶ 6. Following her primary, Martin's
4 opponent received an additional \$71,655 for the general election, which is equal
5 to the Act's general election expenditure limit. She thus received a total of
6 \$119,425 in lump sum disbursements for the entire 2006 election cycle, not
7 including any matching funds. *Id.*

10 43. Under the Act, at least prior to the recent legislative amendment,
11 once the general election cycle began, every dollar Martin raised over the
12 general election spending limit of \$75,655, including the funds that Martin had
13 raised and spent during the *primary* election, would have been matched to his
14 opponent. Attach. 1 (Martin Dec.) at ¶ 7. As a result, Martin's government-
15 funded opponent would always have a \$47,770 funding advantage unless or until
16 Martin could raise three times the general election spending limit of \$214,965,
17 plus the primary expenditure limit of \$47,770, for a total of \$262,735. *Id.* This
18 perverse funding disparity was the result of Martin's opponent's unopposed
19 primary. The only way to avoid being outspent on a grand scale by his
20 opponent was for Martin to abide by the Act's expenditure limits and avoid
21 triggering matching funds. *Id.* at ¶ 8. Martin was thus irreparably harmed by
22 the Act because he had to forego raising and spending money that he would
23 have used to engage in constitutionally protected political speech. *Id.* at ¶ 5.

1 44. Though it appears that this specific problem has been mitigated to
2 some extent by the recent legislative amendments to the Act, H.B. 2690, Ariz.
3 Sess. Laws, Ch. 277, § 5 (amending A.R.S. § 16-952(C)(4)), the significantly
4 increased lump sum disbursements coupled with the generous two-times
5 matching funds will operate to ensure that any government-funded candidate
6 for the Treasurer's office will have significantly more resources in 2010 than
7 Martin will be able to raise as a privately financed candidate, thus forcing him
8 to either abide by the Act's expenditure limits in order to avoid triggering
9 matching funds or to run a government financed election. Attach. 1 (Martin
10 Dec.) at ¶ 5, 8.

14 45. Plaintiffs Freedom Club PAC and Arizona Taxpayer have made
15 independent expenditures in Arizona political campaigns in the past, and will
16 make independent expenditures in Arizona in the future, but this exercise of
17 their fundamental rights under the First and Fourteenth Amendments to the U.S.
18 Constitution will be severely and negatively affected by the Act's
19 aforementioned provisions regarding the matching of independent expenditures.
20

21 46. The Act's matching funds provision has a chilling, neutralizing, and
22 punitive effect on the free speech rights of Plaintiffs and other individuals and
23 groups that would like to speak independently in political campaigns. The Act's
24 matching funds provision also crowds out private donations because donors are
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1 reluctant to give to independent groups when they know that the Commission
2 will provide government funds to candidates whom they oppose.
3

4 47. While the Freedom Club PAC will make independent expenditures
5 in the future, its ability to fully exercise the fundamental right to engage in
6 political advocacy is severely undermined by the operation of the Act, which
7 negates the Freedom Club PAC's speech and promotes political campaigns with
8 which its members and donors disagree, based solely on the Freedom Club
9 PAC's exercise of its free speech and free association rights. The Act also
10 makes it more difficult to raise funds with which to voice its opinions because
11 donors do not like to give money when their contributions trigger government
12 funds being given to candidates whom they oppose.
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16 48. While Arizona Taxpayer will continue to make independent
17 expenditures, its ability to fully exercise the fundamental right to engage in
18 political advocacy will be severely undermined by the operation of the Act if it
19 spends money to speak out against government-funded candidates because the
20 Act's matching funds provision will negate Arizona Taxpayer's speech and
21 promote political campaigns with which it and its donors disagree based solely
22 on Arizona Taxpayer's exercise of its free speech and free association rights.
23
24 Moreover, Arizona Taxpayer's donors have already expressed concern about
25 donating to Arizona Taxpayer if the contributed funds will ultimately trigger
26 government subsidies being paid to candidates whom Arizona Taxpayer and its
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28

1 donors desire to see defeated based on Arizona Taxpayer's speech. Attach. 2
2 (Kirkpatrick Dec.) at ¶ 10.
3

4 49. By driving private dollars out of the political arena, the Act limits
5 the amount of speech independent groups can engage in and limits the amount
6 of speech citizens hear during elections.
7

8 50. The foregoing provisions, individually and cumulatively, are
9 designed to advance the improper state purpose of equalizing the relative
10 financial resources of candidates, operate in a punitive and hence coercive
11 manner against privately supported candidates by ensuring their government-
12 funded opponents always have more funds, and will chill future political
13 participation by unsubsidized candidates and independent groups.
14
15

16 COUNT I
17 (FIRST AMENDMENT-INDEPENDENT EXPENDITURES)

18 51. Plaintiffs incorporate and reallege each and every allegation
19 contained in paragraphs 1-50 of this Complaint as if set forth fully herein.
20

21 52. Under the First Amendment to the U.S. Constitution, *Buckley v.*
22 *Valeo*, 424 U.S. 1 (1976), and its progeny, including *Randall v. Sorrell*, 126 S.
23 Ct. 2470 (2006), and *Federal Election Commission v. Wisconsin Right to Life,*
24 *Inc.*, 127 S. Ct. 2652 (2007), a state cannot place involuntary limits on
25 independent expenditures made in the course of political campaigns, and cannot
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1 regulate or otherwise chill individuals or groups from exercising their right to
2 freely speak.

3
4 53. A.R.S. § 16-952(C) provides a direct public subsidy to
5 government-funded candidates whenever an independent expenditure is made
6 that either i) opposes a government-funded candidate with a privately funded
7 opponent, or ii) supports a privately funded candidate with a government-
8 funded opponent. Therefore, this statute amounts to an unconstitutional
9 content-based regulation of political speech, in that it treats speech differently
10 depending on whether it opposes or favors a government-funded candidate.
11

12
13 54. Freedom Club PAC and Arizona Taxpayer face imminent injury to
14 their First Amendment rights to free political speech and free association as a
15 direct result of this statutory scheme. The state's payment of matching funds—
16 which, unlike an independent expenditure, is directly controlled by the
17 government-funded candidate—neutralizes independent speakers' voices and
18 punishes the making of independent expenditures. The knowledge that making
19 an independent expenditure opposing a government-funded candidate will
20 directly result in that candidate receiving a matching government subsidy
21 creates a chilling effect on the Plaintiffs' exercise of protected speech, and
22 imposes a climate of self-censorship that is inimical to our American heritage
23 of unfettered political discourse. The statute also violates the Plaintiffs' right
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1 to freedom of association by encroaching upon the ability of like-minded
2 persons to pool their resources in furtherance of common political goals.

3
4 55. These provisions of the Act are not narrowly tailored to serve a
5 substantial, significant, or compelling legitimate governmental interest; are
6 substantially overbroad because they discourage far more speech than is
7 necessary to advance any governmental interest; penalize and, thereby, chill
8 political speech; and constitute a content-based regulation of the fundamental
9 rights of free speech and association.
10

11
12 COUNT II
13 (FIRST AMENDMENT-CANDIDATE COERCION/EQUALIZATION)

14 56. Plaintiffs incorporate and reallege each and every allegation
15 contained in Paragraphs 1-55 of this Complaint as if set forth fully herein.

16 57. Under the First Amendment to the U.S. Constitution, *Buckley v.*
17 *Valeo*, 424 U.S. 1 (1976), and its progeny, including *Randall v. Sorrell*, 126 S.
18 Ct. 2479 (2006), and *Federal Election Commission v. Wisconsin Right to Life,*
19 *Inc.*, 127 S. Ct. 2652 (2007), a government campaign financing scheme violates
20 the right to free political speech where it goes beyond mere promotion of the
21 voluntary use of public funding, and improperly injects the state into the
22 political process by increasing the financial resources of government-funded
23 candidates based on the expenditures and contributions of privately financed
24 candidates. Under these cases, the state may not coerce involuntary
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1 participation in a government campaign financing scheme by punishing those
2 candidates who choose to run traditional, privately supported political
3 campaigns rather than accept taxpayer subsidies and abide by the Act's
4 arbitrary expenditure limits. Nor may the state coerce privately financed
5 candidates to abide by such a scheme's expenditure limits for fear of being
6 vastly outspent by their government-funded opponent or opponents.
7

8
9 58. A.R.S. § 16-952(C) expressly provides for the "equal funding of
10 candidates," and requires the payment of matching funds to government-funded
11 candidates whenever an independent campaign expenditure is made that either
12 i) opposes a government-funded candidate with a privately financed opponent,
13 or ii) supports a privately financed candidate with a government-funded
14 opponent.
15

16
17 59. A.R.S. § 16-952(B) expressly provides for the "equal funding of
18 candidates" in general elections, and requires the state to pay matching funds
19 to government-funded candidates based on the gross amount of contributions
20 received by their privately supported opponents after the primary election
21 period, but does not make adequate adjustments for fundraising or other
22 expenses incurred by the privately supported candidate. This provision is
23 designed for the sole purpose of equalizing the relative financial resources of
24 candidates, an improper state interest under *Buckley v. Valeo*, 424 U.S. 1
25 (1976). Moreover, this provision in its operation forces privately funded
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1 candidates to abide by the Act's expenditure limits by ensuring that
2 government-subsidized candidates who receive matching funds will be able to
3 vastly outspend the privately financed candidate. In operation, this provision
4 guarantees that candidates who accept taxpayer funding receive more money
5 than their privately financed opponents.
6

7
8 60. A.R.S. § 16-952(A) expressly provides for the "equal funding of
9 candidates" in primary elections, requiring the Commission to pay matching
10 funds to government-funded candidates based on expenditures made by their
11 privately supported opponents. On its face, this section declares an improper
12 state interest in equalizing the relative financial resources of candidates for
13 public office in Arizona. In its operation, it coerces participation in government
14 funding of political campaigns and forces privately funded candidates to abide
15 by the Act's expenditure limits for fear of being vastly outspent by their
16 government-funded opponent or opponents. Such bureaucratic intermeddling in
17 the political process violates the First Amendment to the U.S. Constitution, and
18 is contrary to the U.S. Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1
19 (1976), and its progeny, including *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), and
20 *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652
21 (2007).
22
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24
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26 61. A.R.S. §§ 16-941(B)(2), 16-941(C), and 16-958, and Commission
27 rules promulgated to implement and enforce these statutes coerce participation
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1 in the government financing scheme and forces candidates to abide by the Act's
2 strict expenditure limits by punishing privately supported candidates through
3 the enforcement of stringent daily campaign finance reporting requirements.
4
5 These reports are required for the sole purpose of facilitating the state's
6 payment of additional taxpayer money to the government-funded opponents of
7 privately funded candidates, and serve no purpose in combating corruption or
8 the appearance thereof. This improper purpose is demonstrated by the
9 Legislature's recent amendment to the Act, which eliminated any requirement to
10 disclose details concerning the contributions or expenditures to be matched,
11 instead requiring only that the dollar amount to be matched be disclosed. This
12 improper purpose is further demonstrated by the amendment exempting
13 privately financed candidates *without* a government-funded opponent from the
14 additional reporting requirements. *See* H.B. 2690, Ariz. Sess. Laws, Ch. 277, §
15 9 (amending A.R.S. § 16-958) and § 2 (amending A.R.S. § 16-941(B)(2)). By
16 comparison, government-funded candidates are required to submit only three
17 additional reports over and above the six regularly scheduled reports that all
18 candidates for public office must file. This reporting regime seeks to equalize
19 the relative financial resources of candidates, an improper state purpose that
20 cannot justify the deprivation of Plaintiffs' rights under the First and Fourteenth
21 Amendments. The reporting requirements operate in an impermissibly coercive
22 fashion by ensuring government-funded candidates will receive more funding
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1 than privately financed candidates, thus punishing the acceptance of private
2 funding and forcing privately funded candidates to abide by the Act's strict
3 expenditure limits.
4

5 62. A.R.S. § 16-941(B)(1) coerces candidates to accept public financing
6 by reducing by twenty percent the maximum individual contribution a privately
7 funded candidate may accept. The reduced limits do not combat corruption or
8 the appearance of corruption, but exist only to reduce the viability of running a
9 traditional campaign. These reduced limits do nothing but diminish the pool of
10 private resources available to candidates who choose to exercise their First
11 Amendment right to fund campaign speech through private contributions.
12
13

14 63. The foregoing provisions, individually and cumulatively, are
15 designed to equalize the relative financial resources of candidates, operate in a
16 punitive and coercive manner against privately funded candidates, and will chill
17 future political participation by unsubsidized candidates and independent
18 groups. The Act creates an involuntary government campaign financing system
19 that stacks the deck against privately funded candidates by increasing the
20 financial resources of government-funded candidates, thus sharply skewing the
21 balance in favor of government-funded candidates (*see, e.g.*, § 16-952(B)'s
22 near-gross contribution matching after the primary). The Act coerces rather
23 than promotes participation by actively and directly punishing privately funded
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1 candidates for having exercised their right under the First Amendment to
2 engage in political speech through a traditional, privately supported campaign.
3

4 64. These provisions of the Act are not narrowly tailored to serve a
5 substantial, significant, or compelling legitimate governmental interest; are
6 substantially overbroad because they discourage far more speech than is
7 necessary to advance any governmental interest; penalize and, thereby, chill
8 political speech; and constitute a content-based regulation of the fundamental
9 rights of free speech and association.
10

11
12 COUNT III
13 (EQUAL PROTECTION-INDEPENDENT EXPENDITURES)

14 65. Plaintiffs incorporate and reallege each and every allegation
15 contained in Paragraphs 1-64 of this Complaint as if set forth fully herein.

16 66. Under the Fourteenth Amendment to the U.S. Constitution,
17 Plaintiffs Freedom Club PAC and Arizona Taxpayer—and their contributors—
18 have the right to enjoy the equal protection of laws.
19

20 67. A.R.S. § 16-952 (C) sets up three classifications of independent
21 expenditures: (1) those statements brought forward to the voting public *against*
22 a government-funded candidate or in favor of the *privately funded opponent* of
23 a government-funded candidate; (2) those statements that *favor* a government-
24 funded candidate; and (3) those statements that *oppose a privately funded*
25 *candidate*. These three types of political messages receive radically different
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1 treatment under the Act. Political messages in the first category, independent
2 expenditures *against* a government-funded candidate or in favor of the
3
4 *privately funded opponent* of a government-funded candidate, are treated as
5 expenditures of the opponent during the primary election, and contributions to
6 the opponent during the general election. (This is because, under § 16-952(B),
7
8 contributions are matched without regard for expenditures made during the
9 general election.) In either the primary or general election period, then,
10 expenditures made *against a government-funded candidate or in favor of a*
11 *privately funded opponent* are matched by the state. This state action
12
13 neutralizes the exercise of fundamental rights of free speech of the independent
14 speaker who disfavors the government-funded candidate, and has a chilling
15 effect on the future exercise thereof. Political messages in the second
16 category, statements that *favor a government-funded candidate*, will only be
17
18 matched or neutralized when that candidate has a government-funded
19
20 opponent. But the third category of political messages, those brought forward
21 by independent speakers who *oppose a privately funded candidate*, are not
22 regulated, matched, neutralized, or limited in any way.
23

24 68. Moreover, in the event that supporters of the privately funded
25 candidate wish to exercise their First Amendment rights by responding to such
26 an attack, they will face two difficulties. First, they cannot coordinate their
27 activity with the privately funded candidate they support, because Arizona law
28

1 treats coordinated expenditures as contributions subject to limit. Second, their
2 speech will trigger the release of matching funds directly to the government-
3 funded candidate they oppose, who, unlike his privately funded counterpart, is
4 then free to control how that money is spent. This threatened harm has a
5 chilling effect on the fundamental free speech and free association rights of
6 independent speakers who favor privately funded candidates with government-
7 funded opponents.

10 69. The right of independent groups like Freedom Club PAC and
11 Arizona Taxpayer to speak during political campaigns is a fundamental right
12 under the First Amendment to the U.S. Constitution. Any regulation such as
13 A.R.S. § 16-952(C) that singles out their political speech for disparate treatment
14 must withstand strict scrutiny and the Act does not.

17 COUNT IV
18 (EQUAL PROTECTION-CANDIDATES)

19 70. Plaintiffs incorporate and reallege each and every allegation
20 contained in Paragraphs 1-69 of this Complaint as if set forth fully herein.

22 71. Under the Fourteenth Amendment to the U.S. Constitution, Plaintiff
23 Martin has the right to enjoy the equal protection of laws.

24 72. A.R.S. § 16-952 *et seq.* creates two classifications of candidates
25 for public office in Arizona: those who participate in the Clean Elections system
26 by accepting government financing, and those who do not participate in the
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28

1 system, choosing instead to run privately supported campaigns. These
2 provisions then treat candidates differently with respect to independent
3 expenditures or contributions made on their behalf, based solely on their status
4 as a government-funded or privately funded candidate.
5

6 73. A.R.S. § 16-941 et seq., § 16-958, and any and all Commission
7 rules promulgated in furtherance thereof, create two classifications of
8 candidates for public office in Arizona: those who participate in the Clean
9 Elections system by accepting government financing, and those who do not
10 participate in the system, choosing instead to run a privately supported
11 campaign. These provisions then treat these candidates differently with
12 respect to contribution limits and campaign finance reporting requirements,
13 based solely on their status as a government funded or privately funded
14 candidate. Moreover, the Commission's substantial expenditure of government
15 funds to promote the Clean Elections system, even during election years,
16 creates the perception that government-funded candidates are better suited to
17 elected office and more trustworthy than candidates who run privately financed
18 campaigns.
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24 74. The right of privately supported candidates for public office like
25 Martin to speak during political campaigns without having involuntary limitations
26 placed on their expenditures, without being coerced into participating in public
27 campaign financing, and without fear of being penalized for having refused
28

1 government subsidies, is a fundamental right under the First Amendment to the
2 U.S. Constitution. Any regulation such as A.R.S. § 16-952 *et seq.*, § 16-941 *et*
3 *seq.*, § 16-958, or any administrative rules promulgated in furtherance thereof
4 that singles out privately funded candidates for disparate treatment must
5 withstand strict scrutiny and the Act does not.
6

7
8 COUNT V
9 (ENTITLEMENT TO DECLARATORY RELIEF)

10 75. Plaintiffs incorporate and reallege each and every allegation
11 contained in Paragraphs 1-74 of this Complaint as if set forth fully herein.

12 76. For reasons including but not limited to those stated in this
13 Complaint, an actual dispute exists between Plaintiffs and Defendants, which
14 parties have genuine and opposing interests, which interests are direct and
15 substantial, and of which a judicial determination will be final and conclusive.
16

17 77. Plaintiffs are therefore entitled to a declaratory judgment that
18 Defendants' actions are unconstitutional, as well as such other and further relief
19 as may follow from entry of such a declaratory judgment.
20

21
22 COUNT VI
23 (ENTITLEMENT TO INJUNCTIVE RELIEF)

24 78. Plaintiffs incorporate and reallege each and every allegation
25 contained in Paragraphs 1-77 of this Complaint as if set forth fully herein.

26 79. For reasons including but not limited to those stated in this
27 Complaint, as a direct and proximate result of Defendants' actions against
28

1 Plaintiffs, Plaintiffs have no adequate legal, administrative, or other remedy by
2 which to prevent or minimize the continuing irreparable harm to their
3 constitutional rights.
4

5 80. Plaintiffs are, therefore, entitled to a preliminary and permanent
6 injunction prohibiting Defendants from committing the above-described
7 violations of their constitutional rights, as well as such other and further relief
8 as may follow from entry of such injunctive relief.
9

10 REQUEST FOR RELIEF

11 Plaintiffs pray for judgment and ask this Court for the following:
12

13 A. A declaration that §§ 16-941(B)(1) and (2), § 16-941(C), §§ 16-
14 952(A), (B) and (C), and § 16-958 of the Arizona Citizens Clean Elections Act,
15 and any Commission rules promulgated in furtherance thereof, violate the First
16 Amendment to the United States Constitution;
17

18 B. A declaration that §§ 16-941(B)(1) and (2), § 16-941(C), § 16-
19 952(A), (B) and (C), and § 16-958 of the Arizona Citizens Clean Elections Act,
20 and any Commission rules promulgated in furtherance thereof, violate the Equal
21 Protection Clause of the Fourteenth Amendment to the United States
22 Constitution;
23

24 C. A declaration that the Act as a whole is void and of no effect
25 should the remaining provisions be deemed unable to remain legally operational
26 absent the unconstitutional provisions;
27
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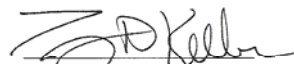
1 D. An Order that preliminarily and permanently enjoins Defendants
2 from further implementing and performing their duties in administering and
3 enforcing the above-referenced provisions;
4

5 E. An award for Plaintiffs' reasonable attorneys' fees and costs
6 pursuant to 42 U.S.C. § 1988; and
7

8 F. Such further relief as this Court deems equitable, just, and proper.

9 RESPECTFULLY SUBMITTED this 27th day of November, 2007.

10 INSTITUTE FOR JUSTICE

11 

12 s/Timothy D. Keller

13 Timothy D. Keller (019844)
14 Jennifer M. Perkins (023087)
15 398 S. Mill Avenue, Suite 301
16 Tempe, AZ 85281
17 P: 480-557-8300/F: 480-557-8305

18 INSTITUTE FOR JUSTICE

19 William R. Maurer (WSBA #25451)²
20 811 First Avenue, Suite 625
21 Seattle, WA 98104
22 P: 206-341-9300/F: 206-341-8311

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² Admitted *pro hac vice*.

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Certificate of Service

I hereby certify that on November 27, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Craig William Soland craig.soland@azag.gov, cadocket@azag.gov
- Joy E Herr-Cardillo jherrcardillo@aclpi.org
- Mary Ruth O'Grady mary.ogrady@azag.gov
- Timothy Michael Hogan thogan@aclpi.org, aronan@aclpi.org, jherrcardillo@aclpi.org
- Diana Leticia Varela diana.varela@azag.gov
- Timothy David Keller tkeller@ij.org, khiggins@ij.org
- Diana L Varela Diana.Varela@azag.gov
- William R Maurer wmaurer@ij.org, khiggins@ij.org

I hereby certify that on November 27, 2007, I serviced the attached document by US mail to the following, who is not a registered participant of the CM/ECF System:

Deborah Goldberg
New York University School of Law
Brennan Center for Justice
161 Ave of the Americas
12th Floor
New York, NY 10013

s/Timothy D. Keller