INFORMATION BRIEF
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Clean Elections Acts

In recent years there has been a national effort to pass state and federal campaign finance laws called "clean elections acts." Four states have enacted these laws. Others, including Minnesota, have considered bills. The details vary among proposals, but as a group they seek to reduce the influence of "special interests" in campaigns. This policy brief compares clean elections acts with the current Minnesota program of public funding for campaigns and identifies policy choices presented by clean elections act proposals.

Major Features of Clean Elections Acts

"Clean elections act" is the common name used by proponents of a certain kind of public funding for state and federal political campaigns. Four states have enacted clean elections acts. Others, including Minnesota, have considered them. Details of the acts vary, but the following features appear in all the laws enacted to date.

Clean elections acts are designed to reduce overall campaign spending and eliminate or greatly reduce the effect of "special interests" on campaigns. To reduce campaign spending, the acts set spending limits applicable to candidates who voluntarily accept limits in exchange for public campaign funding. To counter the effect of "special interests" on candidates, the acts provide public funding of the full amount a candidate is allowed to spend, after the candidate raises a qualifying amount from private donors. To encourage candidate participation, a candidate whose opponent declines to participate in the program receives additional public funding to match whatever the opponent spends in excess of the statutory limits for the office. To counter the negative effects of "special interest" campaign messages, a candidate who is the target of an independent expenditure receives added public funding.

Comparison of Clean Elections Acts with Minnesota Campaign Funding Program

	Clean Elections Act	Minnesota Law
Spending Limits	Voluntary agreement to spending limits	Same. Mandatory spending limits are not constitutional
Fundraising Limits	Candidate raises a qualifying amount Candidate may be allowed to raise additional limited funds but receives public funding of nearly all campaign costs	Same Candidate may accept up to 50 percent of spending limits from public funding and is allowed to accept up to 20 percent of spending limits from political committees, political funds, lobbyists, and individuals who give more than $100 (the "lobbyist, PAC, and large-giver limit"). Candidate may also give donors contribution refund receipts for contributions up to $50 that the state will reimburse through the political contribution refund (PCR) program
Public Funding	Candidate receives additional public funding if an opponent who declines spending limits spends over the limits[1] Candidate receives additional public funding if targeted by independent expenditures[3]	A broader Minnesota program to give a candidate a nonparticipating opponent's entire public subsidy was struck down by the federal court of appeals in 1996.[2] The decision left standing a provision that a candidate whose opponent does not accept spending limits is released from complying with limits but still gets the candidate's own share of public funding A similar program in Minnesota was struck down by the federal court of appeals in 1994[4]
Contribution Returns	Candidate returns all remaining campaign funds after the election	Candidate can carry forward funds in an amount up to 50 percent of spending limits for the office

Policy Issues Raised by Clean Elections Acts

Clean elections acts seek to get as many candidates as possible to agree to spending limits. Minnesota already has high participation rates. For elections from 1990 to 2000, between 96 percent and 99 percent of legislative candidates and 90 percent of candidates for constitutional office accepted spending limits.

The unique feature of a clean elections campaign finance program is the elimination of nearly all private contributions. It is a policy decision for legislators whether eliminating nearly all private contributions in Minnesota would improve the electoral process by eliminating the appearance or reality of "special interest" influences, or harm the process by making candidates more remote from legitimate societal interests.

At least in legislative races, Minnesota currently has a high rate of public funding in proportion to private contributions. Most legislative candidates now accept the maximum amount allowed under the so-called lobbyist, PAC, and large-giver limit, which equals 20 percent of the spending limits for the office. However, because Minnesota legislative candidates typically spend only around 60 percent of the statutory limits, a candidate who gets the maximum possible public funding (50 percent of spending limits)[5] is still almost entirely publicly funded now. Candidates for constitutional office usually spend a higher percentage of their statutory limits than legislative candidates do.[6] As a result, they typically get more private contributions than legislative candidates, but they are still subject to the 20 percent lobbyist, PAC, and large-giver limit.

The political contribution refund (PCR) is another feature of the Minnesota campaign finance program that increases the amount of public subsidy received by all candidates. The state will reimburse an individual donor for up to $50 of a contribution the individual makes to a candidate. The program, in effect, gives additional public subsidies to candidates beyond direct campaign fund payments, while also giving individual voters the power to choose individual candidates to support.

Carryforward of public funds is not allowed under clean elections acts that have been proposed or passed elsewhere. This has the advantage of returning all public funds to the public treasury and preventing the possibility of "war chests" for future campaigns. It has the likely disadvantage of encouraging higher spending so that a candidate need not return any funds. It is a policy decision for legislators whether the risk of encouraging higher spending is worth the benefit of returning all unspent public funds after an election.

Legislators should know that policy choices about two of the above features might be affected but not necessarily prohibited by constitutional considerations. Giving a candidate additional public funding to match spending over the limits by an opponent may be upheld if litigated in this federal circuit. Specifically, this approach may have constitutionally significant differences from the former, invalid Minnesota program that gave a candidate the entire public funding share of a nonparticipating opponent.[7] A match for independent expenditures, another clean elections act component upheld by the First Circuit Court of Appeals, would be unconstitutional under current controlling authority for this federal court circuit.[8] However, the split in authority

between two circuits on the issue would allow the state to legislate and relitigate the point in search of a favorable resolution by the Supreme Court.

Assuming legislators agree that it is desirable to replace most private campaign contributions or to match excess opponent spending or independent expenditures, another issue raised by clean elections act proposals is whether there is an increased cost. Legislators must examine specific clean elections act proposals to see whether or how much they increase either current spending limits or the percentage of spending limits to be provided by public funds. A separate policy question for legislators is whether any possible cost increase is outweighed by improvements in the campaign process.

Additional goals clean elections act proponents hope to achieve include reducing overall campaign spending, releasing candidates from time-consuming fundraising efforts, and putting all candidates on an equal financial footing.[9] For example, in the only year a clean elections act has operated in Maine, it promoted contested primaries and increased opportunities for minor party candidates.[10]

States with Clean Election Acts

Maine enacted this campaign finance system by initiative in 1996. The program applies to legislative and gubernatorial candidates. It was first used in the 2000 election and has been upheld against constitutional challenge by the federal court of appeals.[11]

Vermont's legislature passed a Clean Elections Act in 1997. The act applies only to candidates for governor. It was the subject of federal court litigation on some points but was used by two candidates in the 2000 election.

Arizona adopted a clean elections act by initiative in 1998. The act covers legislative and statewide offices and was first used in the 2000 elections.

Massachusetts voters passed an initiative for a clean elections act in 1998. The program applies to legislative and statewide offices. It has not yet been implemented because the legislature has not appropriated all necessary funding. The matter is in litigation at this time.

At the 2000 elections, voters in Missouri and Oregon rejected clean elections act initiatives. The same year the Connecticut Legislature passed a clean elections act, which was vetoed by the governor.

Bills have been proposed in other state legislatures, including Minnesota.

For more information about elections, visit the elections area of our web site, www.house.leg.state.mn.us/hrd/issinfo/elect.htm.

Endnotes

[1] A Maine provision that matches only the opponent's spending in excess of the statutory limits was upheld by a federal appeals court. *Daggett v. Devine*, 205 F.3d 445 (1st Cir., 2000).

[2] *Rosensteil v. Rodriguez*, 101 F.3d 1544 (8th Cir., 1996).

[3] The Maine provision was upheld by a federal court. *Daggett v. Devine*, 205 F.3d 445 (1st Cir., 2000).

[4] *Day v. Holohan*, 34 F.3d 1356 (8th Cir., 1994).

[5] Candidates in districts where taxpayer checkoff money is low for candidates of their party may not reach the 50 percent public funding limit.

[6] For example, in 1994 the winning candidate for governor spent over the limit. Winners in other races that year spent from 44 percent to 80 percent of the limit for their office. In 1998 the unique circumstance occurred that the winning governor candidate spent 29 percent of the limits while the major party losing candidates each spent 91 percent. Winning candidates in other constitutional offices in 1998 spent from 88 percent to 99 percent of their applicable limits.

[7] Compare *Rosensteil v. Rodriguez*, 101 F.3d 1544 (8th Cir., 1996) with *Daggett v. Devine*, 205 F.3d 445 (1st Cir., 2000).

[8] *Day v. Holohan*, 34 F.3d 1356 (8th Cir., 1994).

[9] Public Campaign at www.publiccampaign.org.

[10] Joshua Green, *American Prospect*, v. 11 no. 21 (2000), p.36-38.

[11] Daggett v. Devine, 205 F.3d 445 (1st Cir., 2000).