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Clean-elections fund match must go, federal judge told

By Howard Fischer

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PHOENIX — Foes of the state's system of public financing of campaigns made a last-ditch pitch Thursday to persuade a federal judge to stop giving candidates matching funds when their privately funded rivals spend more.

Judge Roslyn Silver has already concluded that provision in the state's Clean Elections Act is unconstitutional, noted Nick Dranias, an attorney for the Goldwater Institute, an organization that advocates and litigates on behalf of its views favoring limited government.

But Silver, in that ruling in late August, refused to stop the fund match because, she said, altering the system so close to the Sept. 2 primary could create electoral chaos.

That isn't the case now, Dranias said Thursday, with the general election not for another 3 1/2 weeks. Most of the candidates had not yet received matching funds, he said.

But attorney Bradley Phillips, representing the Clean Elections Institute, a private group that supports public funding of elections, said altering the system now still would create problems. Phillips said doing so actually could alter the outcome of the Nov. 4 election.

Silver said she will issue a ruling within days.

The 1998 voter-approved law allows candidates for legislative and statewide office who do not take private dollars to get a set amount of public funds. This year, for legislative races, candidates are entitled to \$19,382 for the general election.

The dispute is over the provision that provides additional cash if their privately financed opponents spend more. It also gives the publicly funded candidates additional cash if independent groups attack them in advertising.

Challengers said that infringes on the free-speech rights of those privately funded candidates because it means each time they spend money they effectively are giving more resources to their opponents.

A recent U.S. Supreme Court ruling bars the government from leveling the playing field with such restrictions, said attorney Bill Maurer of the Institute for Justice, a law firm that says it litigates for libertarian values.

Silver, in her August ruling, said the state is allowed to adopt public financing systems if the purpose is to reduce corruption. But she said the matching-fund provision allows candidates running as a team — one privately and one publicly financed — to "game" the system to get more money.

"The possibility of such gamesmanship mitigates any decrease in corruption or in the appearance of corruption," Silver wrote.

But that decision is not a final word, with defenders of the law able to seek a full-blown trial after the election.

Maurer said that, in the interim, Silver cannot allow the fund-match provision she has concluded is unconstitutional to operate as it continues to harm the privately financed candidates he represents.

But Assistant Attorney General Tanja Shipman said shutting off matching funds now would be unfair to those candidates who agreed to take public finances and live within the limits of what they were given.

Figures provided by the state show that publicly financed candidates received more than \$2.4 million in base-level funding. That includes not only the \$19,382 for legislative candidates who are participating in the system but \$124,020 to five of the six contenders for the Arizona Corporation Commission.

So far, the state also has handed out more than \$454,000 in matching funds for the general election.

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