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Judge orders Rep. Smith to vacate elected office

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PHOENIX — A judge ruled Wednesday that state Rep. David Burnell Smith must leave office because of a state commission's finding that the lawmaker overspent in his publicly funded 2004 primary election campaign.

If the state prevails on appeal, the Scottsdale Republican would be the first legislator removed for violations of a state's public-campaign-funding law.

Judge Mark Aceto of Maricopa County Superior Court granted a motion filed by Attorney General Terry Goddard to force Smith from office based on an order by the Citizens Clean Elections Commission. The panel said Smith's primary campaign overspent by approximately \$6,000 by incurring costs not paid until he received his general election funding.

Aceto also granted the commission's request to dismiss Smith's lawsuit challenging the order, and denied Smith's motion to dismiss the state's request to oust him.

"The court finds that Representative Smith has usurped, intruded into and unlawfully holds or exercises the office of District 7 state representative," Aceto's order stated.

At Smith's request and over the state's objection, Aceto later delayed implementation of his order for two weeks so Smith can ask the state Court of Appeals to review the case.

Smith said he was surprised by the judge's ruling and disappointed that he ruled as he did, without hearing testimony and without explaining his legal reasoning.

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