



Legislation Text

File #: Res 0646-2011, **Version:** *

Res. No. 646

Resolution authorizing the Council to join in an amicus brief to be filed with the United States Supreme Court in support of the Respondents in the litigation captioned *McComish v. Bennett*, for the purpose of supporting the Respondents' position that the Court should uphold the trigger funds provision of Arizona's campaign finance law.

By Council Member Brewer, The Speaker (Council Member Quinn) and Council Members Dromm, Cabrera, Ferreras, James, Koppell, Lander, Mendez, Williams, Rodriguez, Gennaro, Recchia Jr., Van Bramer, Jackson, Gonzalez, Reyna, Garodnick and Greenfield

Whereas, New York City's Campaign Finance Act (the "Act") constitutes one of the nation's most robust public campaign financing systems; and

Whereas, The Act amplifies the impact of New Yorkers' small contributions by matching them with public funds, reducing the possibility and the perception of corruption associated with large contributions; and

Whereas, The Act also contains trigger funds provisions, located in Administrative Code Sections 3-706 (3)(a) and (b), which provide for additional funds for participating candidates facing non-participating opponents who spend above a certain percentage of the participating candidates' expenditure limit; and

Whereas, By giving candidates assurance that they will, in competitive races, have enough funds to run viable campaigns, trigger funds encourage participation in the public-funding system, thereby reducing the potential for corruption while increasing the amount of speech in New York City campaigns; and

Whereas, In 1998, after seeing state legislators caught on tape exchanging campaign contributions for legislative votes, Arizona passed the Arizona Citizens Clean Elections Act; and

Whereas, Arizona's law also contains a trigger funds provision, A.R.S. § 16-952, which operates as follows: Initially, publicly-funded candidates receive a base grant equal to one-third of the maximum per-candidate funding; and, if a traditionally-funded opponent's expenditures exceed that amount, or if the publicly-

funded candidate is targeted by independent expenditures, the publicly-funded candidate receives additional funds up to 200% of the amount of the initial grant; and

Whereas, Section 16-952 was challenged by two lawsuits, *McComish v. Bennett* and *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, which have been consolidated into a single case; and

Whereas, The plaintiffs allege that Section 16-952 deters and penalizes free speech in violation of the First and Fourteenth Amendments to the U.S. Constitution; however the defendants argue that the provision does not burden the speech of non-participating candidates but rather, by encouraging candidates to participate in public financing, is substantially related to the State's important interest in reducing *quid pro quo* political corruption; and

Whereas, On January 20, 2010, U.S. District Court Judge Roslyn Silver struck down the provision and issued an injunction against it; and

Whereas, The Citizens Clean Elections Commission appealed this decision to the Ninth Circuit Court of Appeals, which reversed Judge Silver's decision in May 2010 and declared the trigger provision constitutional; and

Whereas, On November 29, 2010, the U.S. Supreme Court granted certiorari, agreeing to hear the appeal of the Ninth Circuit's decision; and

Whereas, The Supreme Court is scheduled to hear oral argument in *McComish v. Bennett* on March 28, 2011; and

Whereas, The Corporation Counsel for New York City is filing a brief as *amicus curiae* with the U.S. Supreme Court in support of Arizona's trigger funds provision; and

Whereas, While there are differences between Arizona's trigger funds provision and the trigger provisions of the New York City Campaign Finance Act, the Council supports Section 16-952 as reasonably advancing the government's interest in avoiding corruption in campaign finance activities; now, therefore, be it

Resolved, That the Council of the City of New York is authorized to join in an amicus brief to be filed

with the United States Supreme Court in support of the Respondents in the litigation captioned *McComish v. Bennett*, for the purpose of supporting the Respondents' position that the Court should uphold the trigger funds provision of Arizona's campaign finance law.

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