

## LEGAL VICTORY FOR CLEAN ELECTIONS IN MASSACHUSETTS

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In a landmark decision, the Massachusetts Supreme Judicial Court on February 25, 2002 awarded a money judgment to candidates who have been certified for public campaign funding under the Massachusetts Clean Elections Law. The Court awarded \$811,050 to Gubernatorial candidate Warren Tolman, and remanded the case to a Justice Martha B. Sosman to award similar relief to other candidates who become certified under the law.

This is a tremendous victory for the voters of Massachusetts, for the Massachusetts Constitution, for the campaign finance reform movement, and for democracy. Below are some excerpts from the opinion.

### ***On the constitutional requirement that laws passed by ballot initiative, and not repealed, must be funded:***

“The constitutional Command is clear. For as long as a law enacted by way of initiative has not been repealed, the Constitution requires that the Legislature appropriate the funds necessary to its operations. “

In adopting Article 48 of the Amendments to the Massachusetts Constitution, the delegates to the Massachusetts Constitutional Convention created a ballot initiative process “giving the people power to enact meaningful reform legislation in the face of legislative recalcitrance, even though such reforms would necessarily require the expenditure of public funds.”

Article 48 “preserves the people’s right, through the initiative process, to enact reform legislation, the implementation of which will require the appropriation and expenditure of public funds.”

### ***The “subject to appropriations” language in the statute does not give the legislature discretion to withhold funding:***

“The clean elections statute, as a law passed by way of initiative, merely requires that, while the statute remains on the books, the legislature must somehow provide the funds necessary to implement it.”

“Beyond doubt, the intent of the drafters of the Massachusetts clean elections law was to

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improve Massachusetts government by enacting a public finance scheme that would, among other things, allow potential public servants to eschew monied interests in financing electoral campaigns and to allow citizens who otherwise could not afford to run for public office the opportunity to do so.”

“Because the fundamental premise of the clean elections law is that government is more responsive to the people to the extent that its chosen representatives are free from the influence of those providing the financial largesse, it is clear that for the drafters of the clean elections law actual public financing of candidates is the heart and soul of the statute.”

“[W]here the Legislature’s opposition to such a program was so clearly announced, we may safely conclude that voters in favor of the clean elections law did not intend to give the Legislature the power to thwart the program by depriving it of all funding.”

“That the express language of G.L.c. 55A, 8 (a), makes distributions to clean elections candidates both mandatory and ‘subject to appropriation’ does not vitiate the Commonwealth’s payment obligations where a candidate has complied with the statute with the knowledge and approval of the director and has been certified by the director.”

***On the injury to certified candidates such as Warren Tolman:***

“The Commonwealth’s failure to honor Tolman’s voucher has caused him, and continues to cause him, harm that can only be redressed by payment to him of the funds the Commonwealth pledged.”

***On sovereign immunity:***

“The people, not the legislature, enacted the clean elections law, under the initiative provisions of art. 48. To the extent that we are required to ascertain whether there has been a waiver of sovereign immunity, it is to the wishes of the people, not the Legislature, that we must look.... We will not impute to the voters who enacted the clean elections law an ‘intention to pass an ineffective statute.... In short, we find that the statutory scheme of the clean elections law forecloses, the defense of sovereign immunity, and that Tolman is entitled to judgment in his favor in the amount to which he is entitled as a certified candidate.”

***On the possible unconstitutionality of a repeal of the Clean Elections Law:***

“We will not speculate about the legal impact, if any, that such a repeal might have on the 2002 elections or on any clean elections candidate. See *Bowe, supra* at 245 (“In many cases it would be difficult...to say abstractly and unconditionally that a statute is or is not unconstitutional”)

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*From Justice Greaney's concurrence:*

At this stage of the proceedings, the clean elections statute is basically self-executing. All certified candidates are entitled to the funds allotted by the statute to their candidacies.

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