



THE AMERICAN ANTI-CORRUPTION ACT

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# Constitutionality

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**Is the American Anti-Corruption Act constitutional? In short, yes.  
It was drafted by some of the nation's foremost constitutional attorneys.  
This document details each provision and why it passes constitutional muster.**

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# 1. STOP POLITICAL BRIBERY

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## **Prohibiting lobbyists from making and bundling contributions**

*The AACA prohibits lobbyists from making and bundling campaign contributions.*

### **Constitutionality**

The U.S. Court of Appeals for the Fourth Circuit upheld a state-level ban on campaign contributions from lobbyists, and the U.S. Court of Appeals for the Second Circuit issued a comparable opinion suggesting that such contributions could be banned. *Preston v. Leake*, 660 F. 3d 726 (2011); *Green Party of Connecticut v. Garfield*, 616 F. 3d 189, 206 (2d Cir. 2010). The AACA's

prohibition on lobbyist contributions would mirror the longstanding federal prohibition on contributions by government contractors, which has been in place since 1940, and which was recently upheld by the U.S. Court of Appeals for the District of Columbia in a unanimous decision. See *Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015).

## **Expanding revolving door restrictions**

*Members of the U.S. House of Representatives - along with employees of the House who are paid at least 75% of a member's salary - are currently prohibited from lobbying members of Congress for one year after leaving government service. This restriction also applies to U.S. Senators for a term of two years, to employees of the Senate who are paid at least 75% of a member's salary for one year, and - in a more limited fashion - to employees compensated at a lower level. Former members of the House and Senate, along with former employees, may freely aid or advise clients on how to lobby Congress in a "background role" or freely lobby the executive branch.*

*The AACA extends the existing revolving-door restrictions to 5 years for former members and employees, and brings all lobbying activities—including acting in a background role—within the prohibition.*

### **Constitutionality**

Restrictions on post-government employment have been upheld by a number of state and federal courts. See *U.S. v. Conlon*, 628 F.2d 150 (D.C. Cir. 1980); *General Motors*

*Corporation v. City of New York*, 501 F.2d 639 (2d Cir. 1974); *U.S. v. Nasser*, 476 F.2d 1111 (7th Cir. 1973); *Brown v. District of Columbia Board of Zoning*, 423 A.2d

## 2. END SECRET MONEY

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### **Immediately disclosing the true source of significant political fundraising and spending online**

*The AACA requires that the true source of all significant political spending and fundraising is immediately disclosed online and that this data is made available to the public in an open format. Additionally, it requires candidates to disclose the names of individuals who “bundle” contributions to their campaigns.*

*The AACA also requires any organization that spends \$10,000 or more on political ads that call for the election or defeat of a candidate to file a disclosure report within 24 hours of airing the ad. This report must include the names of each donor who gave \$10,000 or more to the organization for the purpose of running political ads.*

#### **Constitutionality**

Disclosure requirements have been upheld across a variety of contexts, see, e.g., *Citizens United v. FEC*, 558 U.S. 310 (2010).

## 3. FIX OUR BROKEN ELECTIONS

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### **Ending gerrymandering by using independent redistricting commissions**

*The AACA ends gerrymandering by creating independent, fully transparent redistricting commissions that work with the public and follow strict criteria guidelines to ensure fair representation for all voters, regardless of political party.*

#### **Constitutionality**

The U.S. Supreme Court upheld the constitutionality of transferring power over redistricting from legislatures to independent redistricting commissions in Arizona

*State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. \_\_\_\_ (2015).

### **Giving voters more voice with a credit for campaign contributions**

*The AACA empowers individual citizens to become the primary funders of elections through the creation of an annual \$100 credit that registered voters can use to make contributions to the candidates, political parties, and PACs of their choosing. In order to be eligible to receive such credits, candidates, political*

*parties, and PACs must agree to limit the contributions they accept to \$500 per person per calendar year, and/or they must agree to accept contributions from only those political parties and PACs that are exclusively funded by credits and/or contributions capped at \$500 per person per year.*

#### **Constitutionality**

The U.S. Supreme Court upheld the Presidential Public Financing System in *Buckley v. Valeo*, 424 U.S. 1, 108 (1976), and the AACA does not create “trigger” mechanisms or “rescue funds,” which the U.S. Supreme

Court has invalidated. See *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2816 (2011). See also *Davis v. FEC*, 554 U.S. 724 (2008).

### **Letting voters rank their candidates using ranked choice voting**

*The AACA applies ranked choice voting (also known as “instant runoff voting”) to federal, state, and local elections to allow voters to express their true candidates preferences without being incentivized to vote insincerely so as to avoid the “spoiler effect.”*

#### **Constitutionality**

The U.S. Court of Appeals for the Ninth Circuit, as well as the Minnesota and Massachusetts Supreme Courts, have upheld ranked choice voting against constitutional claims. *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011);

*Minn. Voters Alliance v. Minneapolis*, 766 N.W.2d 683 (Minn. 2009); *McSweeney v. City of Cambridge*, 422 Mass. 648, 665 N.E.2d 11 (Mass. 1996).

### **Letting all voters participate in open primaries with a nonpartisan blanket primary**

*The AACA uses a “top four nonpartisan blanket primary” for congressional, state, and local elections in which the top four vote-getters advance to the general election and candidates can state their party preference.*

#### **Constitutionality**

Under the United States Constitution, Art. I, §4, states have a broad power to determine the “manner” of holding their elections for both state and U.S. Congressional offices. And the U.S. Supreme Court upheld the constitutionality

of a “top two” nonpartisan blanket primary model against an associational rights challenge brought by political parties in *Washington State Grange v. Washington State Republican Party*, 552 US 442 (2008).

## 4. ENFORCE THE RULES

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### Prohibiting illegal super PAC coordination

*The Federal Election Commission's current regulations permit extensive collaboration between candidates and supposedly "independent" political action committees known as super PACs. The AACA would narrow the scope of permissible "coordination," closing the gap between how super PACs should operate and how they currently operate.*

#### Constitutionality

The U.S. Supreme Court has made clear that independent expenditures must be made "totally independently," "wholly independently," and "truly" independently from campaigns and political parties. See *Buckley v. Valeo*,

424 U.S. 1, 47 (1976); *McConnell v. FEC*, 540 U.S. 93, 221 (2003); and *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 442 (2001).

### Eliminating lobbyist registration loopholes

*The AACA expands the definition of "lobbyist" to include every person who, for compensation, (1) makes lobbying contacts or who provides strategic advice, or directs or supervises lobbying efforts, and (2) spends more than 12 hours on lobbying activities on behalf of a client. This definition adds the provision of strategic advice, which includes advice and assistance with earned media related to legislation or legislative issues, polling related to lobbying goals, and advice on the production of public communications related to lobbying goals.*

*The AACA also requires clients of lobbying firms to register as lobbyists, file regular disclosure reports, and identify the individuals or entities who fund their lobbying efforts. Finally, the AACA mandates that all lobbying disclosure reports include detailed information about lobbying activities, such as the specific congressional offices, committees, subcommittees, and members of Congress contacted.*

#### Constitutionality

Disclosure requirements have been upheld across a variety of contexts, see, e.g., *Citizens United v. FEC*, 558 U.S. 310 (2010), and the registration and disclosure requirements of the Lobbying Disclosure Act of 1995

were upheld by the U.S. Court of Appeals for the District of Columbia. See *Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1 (D.C. Cir. 2009).

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