SUPREME COURT OF THE UNITED STATES

Nos. 10–238 and 10–239

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, ET AL., PETITIONERS
10–238 *v.*
KEN BENNETT, IN HIS OFFICIAL CAPACITY AS ARIZONA SECRETARY OF STATE, ET AL.

JOHN MCCOMISH, ET AL., PETITIONERS
10–239 *v.*
KEN BENNETT, IN HIS OFFICIAL CAPACITY AS ARIZONA SECRETARY OF STATE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 27, 2011]

JUSTICE KAGAN, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, dissenting.

Imagine two States, each plagued by a corrupt political system. In both States, candidates for public office accept large campaign contributions in exchange for the promise that, after assuming office, they will rank the donors' interests ahead of all others. As a result of these bargains, politicians ignore the public interest, sound public policy languishes, and the citizens lose confidence in their government.

Recognizing the cancerous effect of this corruption, voters of the first State, acting through referendum, enact several campaign finance measures previously approved by this Court. They cap campaign contributions; require disclosure of substantial donations; and create an optional

public financing program that gives candidates a fixed public subsidy if they refrain from private fundraising. But these measures do not work. Individuals who "bundle" campaign contributions become indispensable to candidates in need of money. Simple disclosure fails to prevent shady dealing. And candidates choose not to participate in the public financing system because the sums provided do not make them competitive with their privately financed opponents. So the State remains afflicted with corruption.

Voters of the second State, having witnessed this failure, take an ever-so-slightly different tack to cleaning up their political system. They too enact contribution limits and disclosure requirements. But they believe that the greatest hope of eliminating corruption lies in creating an effective public financing program, which will break candidates' dependence on large donors and bundlers. These voters realize, based on the first State's experience, that such a program will not work unless candidates agree to participate in it. And candidates will participate only if they know that they will receive sufficient funding to run competitive races. So the voters enact a program that carefully adjusts the money given to would-be officeholders, through the use of a matching funds mechanism, in order to provide this assurance. The program does not discriminate against any candidate or point of view, and it does not restrict any person's ability to speak. In fact, by providing resources to many candidates, the program creates more speech and thereby broadens public debate. And just as the voters had hoped, the program accomplishes its mission of restoring integrity to the political system. The second State rids itself of corruption.

A person familiar with our country's core values—our devotion to democratic self-governance, as well as to "uninhibited, robust, and wide-open" debate, *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964)—might expect

this Court to celebrate, or at least not to interfere with, the second State's success. But today, the majority holds that the second State's system—the system that produces honest government, working on behalf of all the people—clashes with our Constitution. The First Amendment, the majority insists, requires us all to rely on the measures employed in the first State, even when they have failed to break the stranglehold of special interests on elected officials.

I disagree. The First Amendment's core purpose is to foster a healthy, vibrant political system full of robust discussion and debate. Nothing in Arizona's anti-corruption statute, the Arizona Citizens Clean Elections Act, violates this constitutional protection. To the contrary, the Act promotes the values underlying both the First Amendment and our entire Constitution by enhancing the "opportunity for free political discussion to the end that government may be responsive to the will of the people." *Id.*, at 269 (internal quotation marks omitted). I therefore respectfully dissent.

I

A

Campaign finance reform over the last century has focused on one key question: how to prevent massive pools of private money from corrupting our political system. If an officeholder owes his election to wealthy contributors, he may act for their benefit alone, rather than on behalf of all the people. As we recognized in *Buckley* v. *Valeo*, 424 U. S. 1, 26 (1976) *(per curiam)*, our seminal campaign finance case, large private contributions may result in "political *quid pro quo[s]*," which undermine the integrity of our democracy. And even if these contributions are not converted into corrupt bargains, they still may weaken confidence in our political system because the public perceives "the opportunities for abuse[s]." *Id.*, at 27. To

prevent both corruption and the appearance of corruption—and so to protect our democratic system of governance—citizens have implemented reforms designed to curb the power of special interests.

Among these measures, public financing of elections has emerged as a potentially potent mechanism to preserve elected officials' independence. President Theodore Roosevelt proposed the reform as early as 1907 in his State of the Union address. "The need for collecting large campaign funds would vanish," he said, if the government "provided an appropriation for the proper and legitimate expenses" of running a campaign, on the condition that a "party receiving campaign funds from the Treasury" would forgo private fundraising. 42 Cong. Rec. 78 (1907). The idea was—and remains—straightforward. Candidates who rely on public, rather than private, moneys are "beholden [to] no person and, if elected, should feel no post-election obligation toward any contributor." *Republican Nat. Comm.* v. *FEC*, 487 F. Supp. 280, 284 (SDNY), aff'd 445 U. S. 955 (1980). By supplanting private cash in elections, public financing eliminates the source of political corruption.

For this reason, public financing systems today dot the national landscape. Almost one-third of the States have adopted some form of public financing, and so too has the Federal Government for presidential elections. See R. Garrett, Congressional Research Service Report for Congress, Public Financing of Congressional Campaigns: Overview and Analysis 2, 32 (2009). The federal program—which offers presidential candidates a fixed public subsidy if they abstain from private fundraising—originated in the campaign finance law that Congress enacted in 1974 on the heels of the Watergate scandal. Congress explained at the time that the "potentia[l] for abuse" inherent in privately funded elections was "all too clear." S. Rep. No. 93–689, p. 4 (1974). In Congress's

view, public financing represented the "only way . . . [to] eliminate reliance on large private contributions" and its attendant danger of corruption, while still ensuring that a wide range of candidates had access to the ballot. *Id.*, at 5 (emphasis deleted).

We declared the presidential public financing system constitutional in *Buckley* v. *Valeo*. Congress, we stated, had created the program "for the 'general welfare'—to reduce the deleterious influence of large contributions on our political process," as well as to "facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising." 424 U. S., at 91. We reiterated "that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest." *Id.*, at 96. And finally, in rejecting a challenge based on the First Amendment, we held that the program did not "restrict[] or censor speech, but rather . . . use[d] public money to facilitate and enlarge public discussion and participation in the electoral process." *Id.*, at 92–93. We declared this result "vital to a self-governing people," and so concluded that the program "further[ed], not abridge[d], pertinent First Amendment values." *Id.*, at 93. We thus gave state and municipal governments the green light to adopt public financing systems along the presidential model.

But this model, which distributes a lump-sum grant at the beginning of an election cycle, has a significant weakness: It lacks a mechanism for setting the subsidy at a level that will give candidates sufficient incentive to participate, while also conserving public resources. Public financing can achieve its goals only if a meaningful number of candidates receive the state subsidy, rather than raise private funds. See 611 F. 3d 510, 527 (CA9 2010) ("A public financing system with no participants does nothing to reduce the existence or appearance of *quid pro quo* corruption"). But a public funding program must be vol-

untary to pass constitutional muster, because of its restrictions on contributions and expenditures. See *Buckley*, 424 U. S., at 57, n. 65, 95. And candidates will choose to sign up only if the subsidy provided enables them to run competitive races. If the grant is pegged too low, it puts the participating candidate at a disadvantage: Because he has agreed to spend no more than the amount of the subsidy, he will lack the means to respond if his privately funded opponent spends over that threshold. So when lump-sum grants do not keep up with campaign expenditures, more and more candidates will choose not to participate.[1] But if the subsidy is set too high, it may impose an unsustainable burden on the public fisc. See 611 F. 3d, at 527 (noting that large subsidies would make public funding "prohibitively expensive and spell its doom"). At the least, hefty grants will waste public resources in the many state races where lack of competition makes such funding unnecessary.

The difficulty, then, is in finding the Goldilocks solution—not too large, not too small, but just right. And this in a world of countless variables—where the amount of money needed to run a viable campaign against a pri-

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[1]The problem is apparent in the federal system. In recent years, the number of presidential candidates opting to receive public financing has declined because the subsidy has not kept pace with spending by privately financed candidates. See Corrado, Public Funding of Presidential Campaigns, in The New Campaign Finance Sourcebook 180, 200 (A. Corrado, T. Mann, D. Ortiz, & T. Potter eds. 2005). The last election cycle offers a stark example: Then-candidate Barack Obama raised $745.7 million in private funds in 2008, Federal Election Commission, 2008 Presidential Campaign Financial Activity Summarized, June 8, 2009, online at http://www.fec.gov/press/press2009/20090608PresStat.shtml, in contrast with the $105.4 million he could have received in public funds, see Federal Election Commission, Presidential Election Campaign Fund, online at http://www.fec.gov/press/bkgnd/fund.shtml (all Internet materials as visited June 24, 2011, and available in Clerk of Court's case file).

vately funded candidate depends on, among other things, the district, the office, and the election cycle. A state may set lump-sum grants district-by-district, based on spending in past elections; but even that approach leaves out many factors—including the resources of the privately funded candidate—that alter the competitiveness of a seat from one election to the next. See App. 714–716 (record evidence chronicling the history of variation in campaign spending levels in Arizona's legislative districts). In short, the dynamic nature of our electoral system makes *ex ante* predictions about campaign expenditures almost impossible. And that creates a chronic problem for lump-sum public financing programs, because inaccurate estimates produce subsidies that either dissuade candidates from participating or waste taxpayer money. And so States have made adjustments to the lump-sum scheme that we approved in *Buckley*, in attempts to more effectively reduce corruption.

B

The people of Arizona had every reason to try to develop effective anti-corruption measures. Before turning to public financing, Arizonans voted by referendum to establish campaign contribution limits. See Ariz. Rev. Stat. Ann. §16–905 (West Supp. 2010). But that effort to abate corruption, standing alone, proved unsuccessful. Five years after the enactment of these limits, the State suffered "the worst public corruption scandal in its history." Brief for State Respondents 1. In that scandal, known as "AzScam," nearly 10% of the State's legislators were caught accepting campaign contributions or bribes in exchange for supporting a piece of legislation. Following that incident, the voters of Arizona decided that further reform was necessary. Acting once again by referendum, they adopted the public funding system at issue here.

The hallmark of Arizona's program is its inventive

approach to the challenge that bedevils all public financing schemes: fixing the amount of the subsidy. For each electoral contest, the system calibrates the size of the grant automatically to provide sufficient—but no more than sufficient—funds to induce voluntary participation. In effect, the program's designers found the Goldilocks solution, which produces the "just right" grant to ensure that a participant in the system has the funds needed to run a competitive race.

As the Court explains, Arizona's matching funds arrangement responds to the shortcoming of the lump-sum model by adjusting the public subsidy in each race to reflect the expenditures of a privately financed candidate and the independent groups that support him. See Ariz. Rev. Stat. Ann. §16–940 *et seq*. (West 2006 and West Supp. 2010). A publicly financed candidate in Arizona receives an initial lump-sum to get his campaign off the ground. See §16–951 (West 2006). But for every dollar his privately funded opponent (or the opponent's supporters) spends over the initial subsidy, the publicly funded candidate will—to a point—get an additional 94 cents. See §16–952 (West Supp. 2010). Once the publicly financed candidate has received three times the amount of the initial disbursement, he gets no further public funding, see *ibid.*, and remains barred from receiving private contributions, no matter how much more his privately funded opponent spends, see §16–941(A).

This arrangement, like the lump-sum model, makes use of a pre-set amount to provide financial support to participants. For example, all publicly funded legislative candidates collect an initial grant of $21,479 for a general election race. And they can in no circumstances receive more than three times that amount ($64,437); after that, their privately funded competitors hold a marked advantage. But the Arizona system improves on the lump-sum model in a crucial respect. By tying public funding to private

spending, the State can afford to set a more generous upper limit—because it knows that in each campaign it will only have to disburse what is necessary to keep a participating candidate reasonably competitive. Arizona can therefore assure candidates that, if they accept public funds, they will have the resources to run a viable race against those who rely on private money. And at the same time, Arizona avoids wasting taxpayers' dollars. In this way, the Clean Elections Act creates an effective and sustainable public financing system.

The question here is whether this modest adjustment to the public financing program that we approved in *Buckley* makes the Arizona law unconstitutional. The majority contends that the matching funds provision "substantially burdens protected political speech" and does not "serv[e] a compelling state interest." *Ante*, at 2. But the Court is wrong on both counts.

II

Arizona's statute does not impose a "restriction," *ante,* at 15, or "substantia[l] burde[n]," *ante,* at 2, on expression. The law has quite the opposite effect: It subsidizes and so produces *more* political speech. We recognized in *Buckley* that, for this reason, public financing of elections "facilitate[s] and enlarge[s] public discussion," in support of First Amendment values. 424 U. S., at 92–93. And what we said then is just as true today. Except in a world gone topsy-turvy, additional campaign speech and electoral competition is not a First Amendment injury.

A

At every turn, the majority tries to convey the impression that Arizona's matching fund statute is of a piece with laws prohibiting electoral speech. The majority invokes the language of "limits," "bar[s]," and "restraints." *Ante*, at 8–9. It equates the law to a "restrictio[n] on the

amount of money a person or group can spend on political communication during a campaign." *Ante,* at 15 (internal quotation marks omitted). It insists that the statute "restrict[s] the speech of some elements of our society" to enhance the speech of others. *Ibid.* (internal quotation marks omitted). And it concludes by reminding us that the point of the First Amendment is to protect "against unjustified government restrictions on speech." *Ante*, at 29.

There is just one problem. Arizona's matching funds provision does not restrict, but instead subsidizes, speech. The law "impose[s] no ceiling on [speech] and do[es] not prevent anyone from speaking." *Citizens United* v. *Federal Election Comm'n*, 558 U. S. ___, ___ (2010) (slip op., at 51) (citation and internal quotation marks omitted); see *Buckley*, 424 U. S., at 92 (holding that a public financing law does not "abridge, restrict, or censor" expression). The statute does not tell candidates or their supporters how much money they can spend to convey their message, when they can spend it, or what they can spend it on. Rather, the Arizona law, like the public financing statute in *Buckley*, provides funding for political speech, thus "facilitat[ing] communication by candidates with the electorate." *Id.*, at 91. By enabling participating candidates to respond to their opponents' expression, the statute expands public debate, in adherence to "our tradition that more speech, not less, is the governing rule." *Citizens United*, 558 U. S., at ___ (slip op., at 45). What the law does—all the law does—is fund more speech.[2]

And under the First Amendment, that makes all the

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[2]And the law appears to do that job well. Between 1998 (when the statute was enacted) and 2006, overall candidate expenditures increased between 29% and 67%; overall independent expenditures rose by a whopping 253%; and average candidate expenditures grew by 12% to 40%. App. to Pet. for Cert. in No. 10–239, pp. 284–285; App. 916–917.

difference. In case after case, year upon year, we have distinguished between speech restrictions and speech subsidies. "'There is a basic difference,'" we have held, "'between direct state interference with [First Amendment] protected activity and state encouragement'" of other expression. *Rust* v. *Sullivan*, 500 U. S. 173, 193 (1991) (quoting *Maher* v. *Roe*, 432 U. S. 464, 475 (1977)); see also, *e.g., Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 256, n. 9 (1986); *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 550 (1983); *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 587–588 (1998); *id.*, at 599 (SCALIA, J., concurring in judgment) (noting the "fundamental divide" between "'abridging' speech and funding it"). Government subsidies of speech, designed "to stimulate . . . expression[,] . . . [are] consistent with the First Amendment," so long as they do not discriminate on the basis of viewpoint. *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 234 (2000); see, *e.g.*, *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 834 (1995); *Finley*, 524 U. S., at 587–588. That is because subsidies, by definition and contra the majority, do not restrict any speech.

No one can claim that Arizona's law discriminates against particular ideas, and so violates the First Amendment's sole limitation on speech subsidies. The State throws open the doors of its public financing program to all candidates who meet minimal eligibility requirements and agree not to raise private funds. Republicans and Democrats, conservatives and liberals may participate; so too, the law applies equally to independent expenditure groups across the political spectrum. Arizona disburses funds based not on a candidate's (or supporter's) ideas, but on the candidate's decision to sign up for public funding. So under our precedent, Arizona's subsidy statute should

easily survive First Amendment scrutiny.[3]

This suit, in fact, may merit less attention than any challenge to a speech subsidy ever seen in this Court. In the usual First Amendment subsidy case, a person complains that the government declined to finance his speech, while bankrolling someone else's; we must then decide whether the government differentiated between these speakers on a prohibited basis—because it preferred one speaker's ideas to another's. See, *e.g., id.*, at 577–578; *Regan*, 461 U. S., at 543–545. But the candidates bringing this challenge do not make that claim—because they were never denied a subsidy. Arizona, remember, offers to support any person running for state office. Petitioners here *refused* that assistance. So they are making a novel argument: that Arizona violated *their* First Amendment rights by disbursing funds to *other* speakers even though they could have received (but chose to spurn) the same financial assistance. Some people might call that *chutzpah*.

Indeed, what petitioners demand is essentially a right to

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[3]The majority claims that none of our subsidy cases involved the funding of "respons[ive]" expression. See *ante*, at 17. But the majority does not explain why this distinction, created to fit the facts of this case, should matter so long as the government is not discriminating on the basis of viewpoint. Indeed, the difference the majority highlights should cut in the opposite direction, because facilitating responsive speech fosters "uninhibited, robust, and wide-open" public debate. *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964). In any event, the majority is wrong to say that we have never approved funding to "allow the recipient to counter" someone else's political speech. *Ante*, at 17. That is *exactly* what we approved in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*. See *supra*, at 5. The majority notes that the public financing scheme in *Buckley* lacked the trigger mechanism used in the Arizona law. See *ante*, at 17, n. 9. But again, that is just to describe a difference, not to say why it matters. As I will show, the trigger is constitutionally irrelevant—as we made clear in the very case (*Davis* v. *Federal Election Comm'n*, 554 U. S. 724 (2008)) on which the majority principally relies. See *infra*, at 17–19, 21–22.

quash others' speech through the prohibition of a (universally available) subsidy program. Petitioners are able to convey their ideas without public financing—and they would prefer the field to themselves, so that they can speak free from response. To attain that goal, they ask this Court to prevent Arizona from funding electoral speech—even though that assistance is offered to every state candidate, on the same (entirely unobjectionable) basis. And this Court gladly obliges.

If an ordinary citizen, without the hindrance of a law degree, thought this result an upending of First Amendment values, he would be correct. That Amendment protects no person's, nor any candidate's, "right to be free from vigorous debate." *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 14 (1986) (plurality opinion). Indeed, the Amendment exists so that this debate can occur—robust, forceful, and contested. It is the theory of the Free Speech Clause that "falsehood and fallacies" are exposed through "discussion," "education," and "more speech." *Whitney* v. *California*, 274 U. S. 357, 377 (1927) (Brandeis, J., concurring). Or once again from *Citizens United:* "[M]ore speech, not less, is the governing rule." 558 U. S., at ___ (slip op., at 45). And this is no place more true than in elections, where voters' ability to choose the best representatives depends on debate—on charge and countercharge, call and response. So to invalidate a statute that restricts no one's speech and discriminates against no idea—that only provides more voices, wider discussion, and greater competition in elections—is to undermine, rather than to enforce, the First Amendment.[4]

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[4]The majority argues that more speech will quickly become "less speech," as candidates switch to public funding. *Ante*, at 15, n. 7. But that claim misunderstands how a voluntary public financing system works. Candidates with significant financial resources will likely decline public funds, so that they can spend in excess of the system's

We said all this in *Buckley*, when we upheld the presidential public financing system—a ruling this Court has never since questioned. The principal challenge to that system came from minor-party candidates not eligible for benefits—surely more compelling plaintiffs than petitioners, who could have received funding but refused it. Yet we rejected that attack in part because we understood the federal program as supporting, rather than interfering with, expression. See 424 U. S., at 90–108; see also *Regan*, 461 U. S., at 549 (relying on *Buckley* to hold that selective subsidies of expression comport with the First Amendment if they are viewpoint neutral). *Buckley* rejected any idea, along the lines the majority proposes, that a subsidy of electoral speech was in truth a restraint. And more: *Buckley* recognized that public financing of elections *fosters* First Amendment principles. "[T]he central purpose of the Speech and Press Clauses," we explained, "was to assure a society in which 'uninhibited, robust, and wide-open' public debate concerning matters of public interest would thrive, for only in such a society can a healthy representative democracy flourish." 424 U. S., at 93, n. 127 (quoting *New York Times*, 376 U. S., at 270). And we continued: "[L]aws providing financial assistance to the exercise of free speech"—including the campaign finance statute at issue—"enhance these First Amendment values." 424 U. S., at 93, n. 127. We should be saying the same today.

B

The majority has one, and only one, way of separating this case from *Buckley* and our other, many precedents

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expenditure caps. Other candidates accept public financing because they believe it will enhance their communication with voters. So the system continually pushes toward more speech. That is exactly what has happened in Arizona, see n. 2, *supra*, and the majority offers no counter-examples.

involving speech subsidies. According to the Court, the special problem here lies in Arizona's matching funds mechanism, which the majority claims imposes a "substantia[l] burde[n]" on a privately funded candidate's speech. *Ante*, at 2. Sometimes, the majority suggests that this "burden" lies in the way the mechanism "'diminish[es] the effectiveness'" of the privately funded candidate's expression by enabling his opponent to respond. *Ante*, at 10 (quoting *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 736 (2008)); see *ante*, at 21–22. At other times, the majority indicates that the "burden" resides in the deterrent effect of the mechanism: The privately funded candidate "might not spend money" because doing so will trigger matching funds. *Ante*, at 20. Either way, the majority is wrong to see a substantial burden on expression.[5]

Most important, and as just suggested, the very notion that additional speech constitutes a "burden" is odd and unsettling. Here is a simple fact: Arizona imposes nothing remotely resembling a coercive penalty on privately funded candidates. The State does not jail them, fine them, or subject them to any kind of lesser disability. (So the majority's analogies to a fine on speech, *ante*, at 19, 28, are inapposite.) The only "burden" in this case comes from the grant of a subsidy to another person, and the opportunity that subsidy allows for responsive speech. But that

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[5]The majority's error on this score extends both to candidates and to independent expenditure groups. Contrary to the majority's suggestion, see *ante*, at 14, n. 6, nearly all of my arguments showing that the Clean Elections Act does not impose a substantial burden apply to both sets of speakers (and apply regardless of whether independent or candidate expenditures trigger the matching funds). That is also true of every one of my arguments demonstrating the State's compelling interest in this legislation. See *infra*, at 22–26. But perhaps the best response to the majority's view that the Act inhibits independent expenditure groups lies in an empirical fact already noted: Expenditures by these groups have risen by 253% since Arizona's law was enacted. See n. 2, *supra*.

means the majority cannot get out from under our subsidy precedents. Once again: We have never, not once, understood a viewpoint-neutral subsidy given to one speaker to constitute a First Amendment burden on another. (And that is so even when the subsidy is not open to all, as it is here.) Yet in this case, the majority says that the prospect of more speech—responsive speech, competitive speech, the kind of speech that drives public debate—counts as a constitutional injury. That concept, for all the reasons previously given, is "wholly foreign to the First Amendment." *Buckley*, 424 U. S., at 49.

But put to one side this most fundamental objection to the majority's argument; even then, has the majority shown that the burden resulting from the Arizona statute is "substantial"? See *Clingman* v. *Beaver*, 544 U. S. 581, 592 (2005) (holding that stringent judicial review is "appropriate only if the burden is severe"). I will not quarrel with the majority's assertion that responsive speech by one candidate may make another candidate's speech less effective, see *ante*, at 21–22; that, after all, is the whole idea of the First Amendment, and a *benefit* of having more responsive speech. See *Abrams* v. *United States*, 250 U. S. 616, 630 (1919) (Holmes., J., dissenting) ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market"). And I will assume that the operation of this statute may on occasion deter a privately funded candidate from spending money, and conveying ideas by that means.[6] My guess is that this does

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[6] I will note, however, that the record evidence of this effect is spotty at best. The majority finds anecdotal evidence supporting its argument on just 6 pages of a 4500-page summary judgment record. See *ante*, at 18–19. (The majority also cites sections of petitioners' briefs, which cite the same 6 pages in the record. See *ante*, at 19.) That is consistent with the assessment of the District Court Judge who presided over the proceedings in this case: He stated that petitioners had presented only "vague" and "scattered" evidence of the law's deterrent impact. App. to

not happen often: Most political candidates, I suspect, have enough faith in the power of their ideas to prefer speech on both sides of an issue to speech on neither. But I will take on faith that the matching funds provision may lead one or another privately funded candidate to stop spending at one or another moment in an election. Still, does that effect count as a severe burden on expression? By the measure of our prior decisions—which have upheld campaign reforms with an equal or greater impact on speech—the answer is no.

Number one: *Any* system of public financing, including the lump-sum model upheld in *Buckley*, imposes a similar burden on privately funded candidates. Suppose Arizona were to do what all parties agree it could under *Buckley*—provide a single upfront payment (say, $150,000) to a participating candidate, rather than an initial payment (of $50,000) plus 94% of whatever his privately funded opponent spent, up to a ceiling (the same $150,000). That system would "diminis[h] the effectiveness" of a privately funded candidate's speech at least as much, and in the same way: It would give his opponent, who presumably would not be able to raise that sum on his own, more money to spend. And so too, a lump-sum system may deter speech. A person relying on private resources might well choose not to enter a race at all, because he knows he will face an adequately funded opponent. And even if he

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Pet. for Cert. in No. 10–239, p. 54. The appellate court discerned even less evidence of any deterrent effect. *Id.*, at 30 ("No Plaintiff . . . has pointed to any specific instance in which she or he has declined a contribution or failed to make an expenditure for fear of triggering matching funds"); see also *id.*, at 28, 31, 34. I understand the majority to essentially concede this point ("'it is never easy to prove a negative,'" *ante*, at 20) and to say it does not matter ("we do not need empirical evidence," *ibid.*). So I will not belabor the issue by detailing the substantial testimony (much more than 6 pages worth) that the matching funds provision has not put a dent in privately funded candidates' spending.

decides to run, he likely will choose to speak in different ways—for example, by eschewing dubious, easy-to-answer charges—because his opponent has the ability to respond. Indeed, privately funded candidates may well find the lump-sum system *more* burdensome than Arizona's (assuming the lump is big enough). Pretend you are financing your campaign through private donations. Would you prefer that your opponent receive a guaranteed, upfront payment of $150,000, or that he receive only $50,000, with the *possibility*—a possibility that you mostly get to control—of collecting another $100,000 somewhere down the road? Me too. That's the first reason the burden on speech cannot command a different result in this case than in *Buckley*.

Number two: Our decisions about disclosure and disclaimer requirements show the Court is wrong. Starting in *Buckley* and continuing through last Term, the Court has repeatedly declined to view these requirements as a substantial First Amendment burden, even though they discourage some campaign speech. "It is undoubtedly true," we stated in *Buckley*, that public disclosure obligations "will deter some individuals" from engaging in expressive activity. 424 U. S., at 68; see *Davis*, 554 U. S., at 744. Yet we had no difficulty upholding these requirements there. And much more recently, in *Citizens United* and *Doe* v. *Reed*, 561 U. S. ___ (2010), we followed that precedent. "'Disclosure requirements may burden the ability to speak," we reasoned, but they "do not prevent anyone from speaking.'" *Id.*, at ___ (slip op., at 7) (quoting *Citizens United*, 558 U. S., at ___ (slip op., at 51)). So too here. Like a disclosure rule, the matching funds provision may occasionally deter, but "impose[s] no ceiling" on electoral expression. *Id.*, at ___ (slip op., at 51).

The majority breezily dismisses this comparison, labeling the analogy "not even close" because disclosure requirements result in no payment of money to a speaker's

opponent. *Ante*, at 18. That is indeed the factual distinction: A matching fund provision, we can all agree, is not a disclosure rule. But the majority does not tell us why this difference matters. Nor could it. The majority strikes down the matching funds provision because of its ostensible *effect*—most notably, that it may deter a person from spending money in an election. But this Court has acknowledged time and again that disclosure obligations have the selfsame effect. If that consequence does not trigger the most stringent judicial review in the one case, it should not do so in the other.

Number three: Any burden that the Arizona law imposes does not exceed the burden associated with contribution limits, which we have also repeatedly upheld. Contribution limits, we have stated, "impose *direct quantity restrictions* on political communication and association," *Buckley*, 424 U. S., at 18 (emphasis added), thus "'significant[ly] interfer[ing]'" with First Amendment interests, *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 387 (2000) (quoting *Buckley*, 424 U. S., at 25). Rather than potentially deterring or "'diminish[ing] the effectiveness'" of expressive activity, *ante*, at 10 (quoting *Davis*, 554 U. S., at 736), these limits stop it cold. Yet we have never subjected these restrictions to the most stringent review. See *Buckley*, 424 U. S., at 29–38. I doubt I have to reiterate that the Arizona statute imposes no restraints on any expressive activity. So the majority once again has no reason here to reach a different result.

In this way, our campaign finance cases join our speech subsidy cases in supporting the constitutionality of Arizona's law. Both sets of precedents are in accord that a statute funding electoral speech in the way Arizona's does imposes no First Amendment injury.

C

The majority thinks it has one case on its side—*Davis* v.

Federal Election Comm'n, 554 U. S. 724—and it pegs everything on that decision. See *ante*, at 9–12. But *Davis* relies on principles that fit securely within our First Amendment law and tradition—most unlike today's opinion.

As the majority recounts, *Davis* addressed the constitutionality of federal legislation known as the Millionaire's Amendment. Under that provision (which applied in elections not involving public financing), a candidate's expenditure of more than $350,000 of his own money activated a change in applicable contribution limits. Before, each candidate in the race could accept $2,300 from any donor; but now, the opponent of the self-financing candidate could accept three times that much, or up to $6,900 per contributor. So one candidate's expenditure of personal funds on campaign speech triggered discriminatory contribution restrictions favoring that candidate's opponent.

Under the First Amendment, the similarity between *Davis* and this case matters far less than the differences. Here is the similarity: In both cases, one candidate's campaign expenditure triggered . . . something. Now here are the differences: In *Davis*, the candidate's expenditure triggered a discriminatory speech restriction, which Congress could not otherwise have imposed consistent with the First Amendment; by contrast, in this case, the candidate's expenditure triggers a non-discriminatory speech subsidy, which all parties agree Arizona could have provided in the first instance. In First Amendment law, that difference makes a difference—indeed, it makes *all* the difference. As I have indicated before, two great fault lines run through our First Amendment doctrine: one, between speech restrictions and speech subsidies, and the other, between discriminatory and neutral government action. See *supra*, at 10–11. The Millionaire's Amendment fell on the disfavored side of both divides: To reiterate, it imposed a discriminatory speech restriction. The

Arizona Clean Elections Act lands on the opposite side of both: It grants a non-discriminatory speech subsidy.[7] So to say that *Davis* "largely controls" this case, *ante*, at 10, is to decline to take our First Amendment doctrine seriously.

And let me be clear: This is not my own idiosyncratic or *post hoc* view of *Davis;* it is the *Davis* Court's self-expressed, contemporaneous view. That decision began, continued, and ended by focusing on the Millionaire Amendment's "discriminatory contribution limits." 554 U. S., at 740. We made that clear in the very first sentence of the opinion, where we summarized the question presented. *Id.*, at 728 ("In this appeal, we consider the constitutionality of federal election law provisions that . . . impose different campaign contribution limits on candidates"). And our focus on the law's discriminatory restrictions was evident again when we examined how the Court's prior holdings informed the case. *Id.*, at 738 ("We have never upheld the constitutionality of a law that imposes different contribution limits for candidates"). And then again, when we concluded that the Millionaire's Amendment could not stand. *Id.*, at 740 (explaining that the "the activation of a scheme of discriminatory contribution limits" burdens speech). Our decision left no doubt (because we repeated the point many times over, see also *id.*, at 729, 730, 739, 740, n. 7, 741, 744): The constitutional problem with the Millionaire's Amendment lay in its use of discriminatory speech restrictions.

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[7] Of course, only publicly funded candidates receive the subsidy. But that is because only those candidates have agreed to abide by stringent spending caps (which privately funded candidates can exceed by any amount). And *Buckley* specifically approved that exchange as consistent with the First Amendment. See 424 U. S., at 57, n. 65, 95. By contrast, *Davis* involved a scheme in which one candidate in a race received concrete fundraising advantages, in the form of asymmetrical contribution limits, just because his opponent had spent a certain amount of his own money.

But what of the trigger mechanism—in *Davis*, as here, a candidate's campaign expenditures? That, after all, is the only thing that this case and *Davis* share. If *Davis* had held that the trigger mechanism itself violated the First Amendment, then the case would support today's holding. But *Davis* said nothing of the kind. It made clear that the trigger mechanism could not *rescue* the discriminatory contribution limits from constitutional invalidity; that the limits went into effect only after a candidate spent substantial personal resources rendered them no more permissible under the First Amendment. See *id.*, at 739. But *Davis* did not call into question the trigger mechanism itself. Indeed, *Davis* explained that Congress could have used that mechanism to activate a *non-discriminatory* (*i.e.*, across-the-board) increase in contribution limits; in that case, the Court stated, "Davis' argument would plainly fail." *Id.*, at 737.[8] The constitutional infirmity in *Davis* was not the trigger mechanism, but rather what lay on the other side of it—a discriminatory speech restriction.

The Court's response to these points is difficult to fathom. The majority concedes that "our decision in *Davis* focused on the asymmetrical contribution limits imposed by the Millionaire's Amendment." *Ante*, at 14. That was because, the majority explains, *Davis* presented only that issue. See *ante*, at 14. And yet, the majority insists (without explaining how this can be true), the reach of *Davis* is not so limited. And in any event, the majority claims, the burden on speech is "greater in this case than in *Davis*."

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[8] Notably, the Court found this conclusion obvious even though an across-the-board increase in contribution limits works to the comparative advantage of the non-self-financing candidate—that is, the candidate who actually depends on contributions. Such a system puts the self-financing candidate to a choice: Do I stop spending, or do I allow the higher contribution limits (which will help my opponent) to kick in? That strategic choice parallels the one that the Arizona statute forces. See *supra*, at 15.

Ante, at 14. But for reasons already stated, that is not so. The burden on speech in *Davis*—the penalty that campaign spending triggered—*was* the discriminatory contribution restriction, which Congress could not otherwise have imposed. By contrast, the thing triggered here is a non-discriminatory subsidy, of a kind this Court has approved for almost four decades. Maybe the majority is saying today that it had something like this case in mind all the time. But nothing in the logic of *Davis* controls this decision.[9]

III

For all these reasons, the Court errs in holding that the government action in this case substantially burdens speech and so requires the State to offer a compelling interest. But in any event, Arizona has come forward with just such an interest, explaining that the Clean Elections Act attacks corruption and the appearance of corruption in the State's political system. The majority's denigration of this interest—the suggestion that it either is not real or does not matter—wrongly prevents Arizona from protecting the strength and integrity of its democracy.

A

Our campaign finance precedents leave no doubt: Preventing corruption or the appearance of corruption is a

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[9]The majority also briefly relies on *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974), but that case is still wider of the mark. There, we invalidated a law compelling newspapers (by threat of criminal sanction) to print a candidate's rejoinder to critical commentary. That law, we explained, overrode the newspaper's own editorial judgment and forced the paper both to pay for and to convey a message with which it disagreed. See *id.*, at 256–258. An analogy might be if Arizona forced privately funded candidates to purchase their opponents' posters, and then to display those posters in their own campaign offices. But that is very far from this case. The Arizona statute does not require petitioners to disseminate or fund any opposing speech; nor does it in any way associate petitioners with that speech.

compelling government interest. See, *e.g.*, *Davis*, 554 U. S., at 741; *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 496–497 (1985) *(NCPAC)*. And so too, these precedents are clear: Public financing of elections serves this interest. See *supra*, at 4–5. As *Buckley* recognized, and as I earlier described, public financing "reduce[s] the deleterious influence of large contributions on our political process." 424 U. S., at 91; see *id.*, at 96. When private contributions fuel the political system, candidates may make corrupt bargains to gain the money needed to win election. See *NCPAC*, 470 U. S., at 497. And voters, seeing the dependence of candidates on large contributors (or on bundlers of smaller contributions), may lose faith that their representatives will serve the public's interest. See *Shrink Missouri*, 528 U. S., at 390 (the "assumption that large donors call the tune [may] jeopardize the willingness of voters to take part in democratic governance"). Public financing addresses these dangers by minimizing the importance of private donors in elections. Even the majority appears to agree with this premise. See *ante,* at 27 ("We have said that . . . 'public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest'").

This compelling interest appears on the very face of Arizona's public financing statute. Start with the title: The Citizens Clean Elections Act. Then proceed to the statute's formal findings. The public financing program, the findings state, was "inten[ded] to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money." §16–940(A) (West 2006). That measure was needed because the prior system of private fundraising had "[u]ndermine[d] public confidence in the integrity of public officials;" allowed those officials "to accept large campaign contributions from private interests over which

they [had] governmental jurisdiction;" favored "a small number of wealthy special interests" over "the vast majority of Arizona citizens;" and "[c]os[t] average taxpayers millions of dollars in the form of subsidies and special privileges for campaign contributors." §16–940(B).[10] The State, appearing before us, has reiterated its important anti-corruption interest. The Clean Elections Act, the State avers, "deters *quid pro quo* corruption and the appearance of corruption by providing Arizona candidates with an option to run for office without depending on outside contributions." Brief for State Respondents 19. And so Arizona, like many state and local governments, has implemented public financing on the theory (which this Court has previously approved, see *supra*, at 5), that the way to reduce political corruption is to diminish the role of private donors in campaigns.[11]

And that interest justifies the matching funds provision

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[10] The legislative findings also echo what the *Buckley* Court found true of public financing—that it "encourage[s] citizen participation in the political process" and "promote[s] freedom of speech" by enhancing the ability of candidates to "communicat[e] to voters." §§16–940(A), (B).

[11] The majority briefly suggests that the State's "austere contribution limits" lessen the need for public financing, see *ante*, at 26, but provides no support for that dubious claim. As Arizona and other jurisdictions have discovered, contribution limits may not eliminate the risk of corrupt dealing between candidates and donors, especially given the widespread practice of bundling small contributions into large packages. See Brief for United States as *Amicus Curiae* 31. For much this reason, *Buckley* upheld *both* limits on contributions to federal candidates *and* public financing of presidential campaigns. See 424 U. S., at 23–38, 90–108. Arizona, like Congress, was "surely entitled to conclude" that contribution limits were only a "partial measure," *id.*, at 28, and that a functional public financing system was also necessary to eliminate political corruption. In stating otherwise, the Court substitutes its judgment for that of Arizona's voters, contrary to our practice of declining to "second-guess a . . . determination as to the need for prophylactic measures where corruption is the evil feared." *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 210 (1982).

at issue because it is a critical facet of Arizona's public financing program. The provision is no more than a disbursement mechanism; but it is also the thing that makes the whole Clean Elections Act work. As described earlier, see *supra*, at 5–6, public financing has an Achilles heel—the difficulty of setting the subsidy at the right amount. Too small, and the grant will not attract candidates to the program; and with no participating candidates, the program can hardly decrease corruption. Too large, and the system becomes unsustainable, or at the least an unnecessary drain on public resources. But finding the sweet-spot is near impossible because of variation, across districts and over time, in the political system. Enter the matching funds provision, which takes an ordinary lump-sum amount, divides it into thirds, and disburses the last two of these (to the extent necessary) via a self-calibrating mechanism. That provision is just a fine-tuning of the lump-sum program approved in *Buckley*—a fine-tuning, it bears repeating, that prevents no one from speaking and discriminates against no message. But that fine-tuning can make the difference between a wholly ineffectual program and one that removes corruption from the political system.[12] If public financing furthers a compelling interest—and according to this Court, it does—then so too does the disbursement formula that Arizona uses to make public financing effective. The one conclusion follows directly from the other.

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[12] For this reason, the majority is quite wrong to say that the State's interest in combating corruption does not support the matching fund provision's application to a candidate's expenditure of his own money or to an independent expenditure. *Ante,* at 25–26. The point is not that these expenditures themselves corrupt the political process. Rather, Arizona includes these, as well as all other, expenditures in the program to ensure that participating candidates receive the funds necessary to run competitive races—and so to attract those candidates in the first instance. That is in direct service of the State's anti-corruption interest.

Except in this Court, where the inescapable logic of the State's position is . . . virtually ignored. The Court, to be sure, repeatedly asserts that the State's interest in preventing corruption does not "sufficiently justif[y]" the mechanism it has chosen to disburse public moneys. *Ante*, at 28; see *ante*, at 27. Only one thing is missing from the Court's response: any reasoning to support this conclusion. Nowhere does the majority dispute the State's view that the success of its public financing system depends on the matching funds mechanism; and nowhere does the majority contest that, if this mechanism indeed spells the difference between success and failure, the State's interest in preventing corruption justifies its use. And so the majority dismisses, but does not actually answer the State's contention—even though that contention is the linchpin of the entire case. Assuming (against reason and precedent) that the matching funds provision substantially burdens speech, the question becomes whether the State has offered a sufficient justification for imposing that burden. Arizona has made a forceful argument on this score, based on the need to establish an effective public financing system. The majority does not even engage that reasoning.

B

The majority instead devotes most of its energy to trying to show that "level[ing] the playing field," not fighting corruption, was the State's real goal. *Ante*, at 22–23 (internal quotation marks omitted); see *ante*, at 22–24. But the majority's distaste for "leveling" provides no excuse for striking down Arizona's law.

1

For starters, the Court has no basis to question the sincerity of the State's interest in rooting out political corruption. As I have just explained, that is the interest

the State has asserted in this Court; it is the interest predominantly expressed in the "findings and declarations" section of the statute; and it is the interest universally understood (stretching back to Teddy Roosevelt's time) to support public financing of elections. See *supra*, at 4, 23–24. As against all this, the majority claims to have found three smoking guns that reveal the State's true (and nefarious) intention to level the playing field. But the only smoke here is the majority's, and it is the kind that goes with mirrors.

The majority first observes that the matching funds provision is titled "'Equal funding of candidates'" and that it refers to matching grants as "'equalizing funds.'" *Ante,* at 23 (quoting §16–952). Well, yes. The statute provides for matching funds (above and below certain thresholds); a synonym for "match" is "equal"; and so the statute uses that term. In sum, the statute describes what the statute does. But the relevant question here (according to the majority's own analysis) is *why* the statute does that thing—otherwise said, what interest the statute serves. The State explains that its goal is to prevent corruption, and nothing in the Act's descriptive terms suggests any other objective.

Next, the majority notes that the Act allows participating candidates to accept private contributions if (but only if) the State cannot provide the funds it has promised (for example, because of a budget crisis). *Ante,* at 23 (citing §16–954(F)). That provision, the majority argues, shows that when push comes to shove, the State cares more about "leveling" than about fighting corruption. *Ante*, at 23. But this is a plain misreading of the law. All the statute does is assure participating candidates that they will not be left in the lurch if public funds suddenly become unavailable. That guarantee helps persuade candidates to enter the program by removing the risk of a state default. And so the provision directly advances the Act's

goal of combating corruption.

Finally, the Court remarks in a footnote that the Clean Elections Commission's website once stated that the "'Act was passed by the people of Arizona . . . to level the playing field.'" *Ante*, at 24, n. 10. I can understand why the majority does not place much emphasis on this point. Some members of the majority have ridiculed the practice of relying on subsequent statements by legislators to demonstrate an earlier Congress's intent in enacting a statute. See, *e.g.*, *Sullivan* v. *Finkelstein*, 496 U. S. 617, 631–632 (1990) (SCALIA, J., concurring in part); *United States* v. *Hayes*, 555 U. S. 415, 434–435 (2009) (ROBERTS, C. J., dissenting). Yet here the majority makes a much stranger claim: that a statement appearing on a government website in 2011 (written by who-knows-whom?) reveals what hundreds of thousands of Arizona's voters sought to do in 1998 when they enacted the Clean Elections Act by referendum. Just to state that proposition is to know it is wrong.

So the majority has no evidence—zero, none—that the objective of the Act is anything other than the interest that the State asserts, the Act proclaims, and the history of public financing supports: fighting corruption.

2

But suppose the majority had come up with some evidence showing that Arizona had sought to "equalize electoral opportunities." *Ante*, at 24. Would that discovery matter? Our precedent says no, so long as Arizona had a compelling interest in eliminating political corruption (which it clearly did). In these circumstances, any interest of the State in "leveling" should be irrelevant. That interest could not support Arizona's law (assuming the law burdened speech), but neither would the interest invalidate the legislation.

To see the point, consider how the matter might arise.

Assume a State has two reasons to pass a statute affecting speech. It wants to reduce corruption. But in addition, it wishes to "level the playing field." Under our First Amendment law, the interest in preventing corruption is compelling and may justify restraints on speech. But the interest in "leveling the playing field," according to well-established precedent, cannot support such legislation.[13] So would this statute (assuming it met all other constitutional standards) violate the First Amendment?

The answer must be no. This Court, after all, has never said that a law restricting speech (or any other constitutional right) demands two compelling interests. One is enough. And this statute has one: preventing corruption. So it does not matter that equalizing campaign speech is an insufficient interest. The statute could violate the First Amendment only if "equalizing" qualified as a forbidden motive—a motive that itself could annul an otherwise constitutional law. But we have never held that to be so. And that should not be surprising: It is a "fundamental principle of constitutional adjudication," from which we have deviated only in exceptional cases, "that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States* v. *O'Brien*, 391 U. S. 367, 383 (1968); see *id.*, at 384 (declining to invalidate a statute when "Congress had the undoubted power to enact" it without the suspect motive); accord, *Turner Broadcasting System, Inc.* v. *FCC*, 512

[13] I note that this principle relates only to actions restricting speech. See *Buckley*, 424 U. S., at 48–49 (rejecting the notion "that government may restrict the speech of some . . . to enhance the relative voice of others"). As previously explained, speech subsidies stand on a different constitutional footing, see *supra*, at 10–11; so long as the government remains neutral among viewpoints, it may choose to assist the speech of persons who might not otherwise be heard. But here I am assuming for the sake of argument that the Clean Elections Act imposes the kind of restraint on expression requiring that the State show a compelling interest.

U. S. 622, 652 (1994); *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41, 47–48 (1986). When a law is otherwise constitutional—when it either does not restrict speech or rests on an interest sufficient to justify any such restriction—that is the end of the story.

That proposition disposes of this case, even if Arizona had an adjunct interest here in equalizing electoral opportunities. No special rule of automatic invalidation applies to statutes having some connection to equality; like any other laws, they pass muster when supported by an important enough government interest. Here, Arizona has demonstrated in detail how the matching funds provision is necessary to serve a compelling interest in combating corruption. So the hunt for evidence of "leveling" is a waste of time; Arizona's law survives constitutional scrutiny no matter what that search would uncover.

IV

This case arose because Arizonans wanted their government to work on behalf of all the State's people. On the heels of a political scandal involving the near-routine purchase of legislators' votes, Arizonans passed a law designed to sever political candidates' dependence on large contributors. They wished, as many of their fellow Americans wish, to stop corrupt dealing—to ensure that their representatives serve the public, and not just the wealthy donors who helped put them in office. The legislation that Arizona's voters enacted was the product of deep thought and care. It put into effect a public financing system that attracted large numbers of candidates at a sustainable cost to the State's taxpayers. The system discriminated against no ideas and prevented no speech. Indeed, by increasing electoral competition and enabling a wide range of candidates to express their views, the system "further[ed] . . . First Amendment values." *Buckley*, 424 U. S., at 93 (citing *New York Times*, 376 U. S., at 270).

Less corruption, more speech. Robust campaigns leading to the election of representatives not beholden to the few, but accountable to the many. The people of Arizona might have expected a decent respect for those objectives.

Today, they do not get it. The Court invalidates Arizonans' efforts to ensure that in their State, "'[t]he people . . . possess the absolute sovereignty.'" *Id.*, at 274 (quoting James Madison in 4 Elliot's Debates on the Federal Constitution 569–570 (1876)). No precedent compels the Court to take this step; to the contrary, today's decision is in tension with broad swaths of our First Amendment doctrine. No fundamental principle of our Constitution backs the Court's ruling; to the contrary, it is the law struck down today that fostered both the vigorous competition of ideas and its ultimate object—a government responsive to the will of the people. Arizonans deserve better. Like citizens across this country, Arizonans deserve a government that represents and serves them all. And no less, Arizonans deserve the chance to reform their electoral system so as to attain that most American of goals.

Truly, democracy is not a game. See *ante*, at 25. I respectfully dissent.